

## New “Labour Rights Indicators”: Coding Rules and Definitions

Dora Sari and David Kucera

[Version: 27 April 2016]

In view of the key premises of definitional validity, transparency and inter-coder reliability, the adoption of meticulous coding rules and the construction of detailed definitions for each of the 108 evaluation criteria are indispensable.

This paper, complementary to the *New “Labour Rights Indicators”: Method and Results*<sup>1</sup>, addresses the above issues in the following order: the first two sections provide detailed descriptions of the coding rules first by discussing the (1) general coding rules applicable across all the textual sources selected for the coding and then the (2) source-specific coding rules. The third section presents the definitions constructed for the 108 evaluation criteria concluding with a summary table listing the relevant articles and paragraphs from different ILO textual sources and jurisdiction on which the definitions are based.

### 1. General Coding Rules

The general coding rules relate to:

- Frequency of the coding
- Codable and non-codable evidence
- Coding the additional criteria
- Coding the different factors of violations
- Automatically triggered coding and applying the default scores
- Retroactive coding
- Coding of progress

#### 1.1. Frequency of the coding

When considering the possible frequency of the coding, the decision was made to establish rules for annual coding of freedom of association and collective bargaining (FACB) rights violations. The main reason behind this was the ILO Regular Supervisory System. The System is based on the ILO Regular Reporting Schedule, which governs the regular reporting obligation of ILO member States regarding ratified Conventions. As a rule, reports are requested every three years for the fundamental and priority Conventions and every five years for other Conventions. However, owing to the high number of ratifications, the Regular Reporting Schedule divided member States into three groups based on alphabetical order requesting them to report on the fundamental and priority conventions not in the same but every third year. As of 2012, the first group includes a request for reports of States with names beginning with the letters A to F. The second group includes States with names beginning with the letters G to N. Finally, the third and last group concerns States from O to Z.<sup>2</sup> Accordingly, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) provides comments on an annual basis, allowing the coding as well to be done annually. However, as the CEACR provides its comments only triennially for any given country, whereas

---

<sup>1</sup> Available at: <http://labour-rights-indicators.la.psu.edu/docs/Method%20Paper.pdf>

<sup>2</sup> The Schedule is, however, subject to change if additional reports are requested, or reports were not received or in case of new ratifications.

other supervisory bodies either deal with a changing number of countries (e.g. Conference Committee) or do not provide reports on an annual basis (e.g. Representations, Complaints), rules for the annual coding of each source had to be established. See Table 1 for the specific rules.

**Table 1. Frequency of the coding**

| Source                       | Coding frequency   | Countries covered by the source   |
|------------------------------|--|---|
| CEACR comments               | Every year   | All ILO member States that ratified the Convention concerned  |
| Conference Committee Reports | Every year   | Only those ILO member States selected by the Conference Committee for the year evaluated                            |
| Country Baselines            | Every year   | All ILO member States that have not ratified the Convention concerned   |
| Representations              | Only if Representation Procedure is closed in the year evaluated | Only the country against which a representation procedure has been closed with a final report in the year evaluated |
| Complaints                   | Only if Complaint Procedure is closed in the year evaluated      | Only the country against which a complaint procedure has been closed with a final report in the year evaluated      |
| CFA cases                    | Based on the CFA report(s) adopted in the year evaluated         | Only countries whose case(s) is included in any of the Reports of the CFA adopted/published in the year evaluated   |
| National legislation         | Every year   | All ILO member States that have not ratified the Convention concerned   |
| ITUC reports                 | Every year   | All countries included in the ITUC report.  |
| US Human Rights reports      | Every year   | All countries included in the Human Rights report   |

## 1.2. Codable and non-codable evidence

In an effort to ensure consistency and reproducibility and also to prevent possible subjectivity, the following rules were established to determine whether the recorded evidence can or cannot be coded as a violation:

- (i) Being valid across the entire method and reflected in all the rules guiding the coding, the decisive rule is that *solely* the information already recorded explicitly by the selected sources can serve as the basis of the coding. That is, the aim of the method is merely to collect the already existing evidence, without providing new or differing ones. It follows from the above that only information that is explicitly expressed in the selected sources is coded, while implicit information is not considered.
- (ii) Bearing in mind the key premise of definitional validity, only violations that are considered as such by ILO standards and jurisprudence are coded. Violations that are reported as violations in non-ILO sources but are not considered violations by ILO standards and jurisprudence are not coded. The detailed definitions added to each of the evaluation criteria, being based on the ILO Constitution, ILO Conventions No. 87 and 98 and the related ILO jurisprudence, should provide sufficient guidance as to what evidence can be considered as violation.
- (iii) Cases where the supervisory bodies request clarification on a potential problem or provide comments on draft legislation, i.e. legislation that is not yet applicable, cannot be coded as violation (except if the violation has to be coded under the rules of retroactive coding, see below). Note,

however, that occasionally the supervisory bodies provide information on existing legislation indirectly, by criticizing draft legislation. In such cases the indirect information on existing laws, with verification from previous reports, should be coded.

- (iv) When a violation occurs but is remedied in the same year, the incident is coded as violation for that year. Not coding the violation would indicate as if it never occurred.
- (v) Reference in ILO sources to International Trade Union Confederation's (ITUC) survey on trade union rights' violations or reports from other workers' and employers' organizations, not being subject to revision by any of the ILO supervisory bodies, are not coded, unless the given government has already acknowledged the criticism and this is mentioned in the ILO supervisory document or if the supervisory body acknowledged it as an observed violation.
- (vi) Stemming from the nature of the sources selected for the coding situations involving contradicting information either within the same source or between different sources might possibly occur. As a main rule, unless the contradicting evidence is refuted in a way that the supervisory body concerned fully accepts it, (a) if contrary evidence is found within the same source, the information is excluded from coding; however; (b) if contrary evidence is found between different sources, evidence is coded under each source on its own terms.
- (vii) In view of the complexity of legislative powers in federal states and the additional work the coding of state level legislation would require in federal states, it was decided that violations in law are only coded at the federal level. Violations in practice are, however, coded irrespective of whether it falls under state or federal level jurisdiction. In order to be consistent, this rule is applicable to all sources selected for the coding.
- (viii) Both observations of violations and observations of progress<sup>3</sup> and/or promotional activities are coded. However, only observations of violations are used in the construction of indicators.

### **1.3. Coding the additional criteria**

As noted previously, the main categories of the evaluation criteria were complemented by the following additional criteria: (i) 'lack of guarantee of due process and/or justice'; and (ii) 'committed against trade union officials'. In order to ensure their consistent coding, the following should be considered:

- (i) Concerning the additional criterion '*lack of guarantee of due process and/or justice*: a) one 'lack of guarantee of due process and/or justice' criterion is attached to each one of the main categories of the evaluation criteria (EC 5, 35, 49, 55, 61, 72, 83, 95, 108); b) a 'lack of guarantee of due process and/or justice' criterion is added to each one of the evaluation criterion listed under the in practice

---

<sup>3</sup> The supervisory bodies refer to progress either by using "notes with satisfaction" or "notes with interest" expression. The CEACR expresses satisfaction in cases in which, following comments the CEACR has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In general, cases of interest cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the CEACR would want to continue its dialogue with the government and the social partners. In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), International Labour Conference, 101st Session, 2012.

violations of fundamental civil liberties (EC 8, 11, 14, 17, 20, 22); c) a further ‘lack of guarantee of due process and/or justice’ is added to ‘anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal’ (EC 45) criterion and ‘acts of interference of employers and/or public authorities’ (EC 47) evaluation criterion.

With regard to the actual coding, in the first case (a) if a violation of due process of law occurs, it is coded under the ‘lack of guarantee of due process and/or justice’ criterion that is included in the main category to which the coded violation is linked. Concerning the second and third cases (b-c), these additional criteria should always be coded only with regard to the particular criterion to which they are added. Note, however, that the ‘lack of guarantee of due process’ criterion can also be coded by itself if the violation it links to (‘basis violation’) has not yet been noted as such by the given source (e.g. cases where the CFA has been waiting for the court’s decision on an anti-union discrimination and the time that elapsed has created a situation of lack of due process and justice).

(ii) Coding the incidents of ‘*committed against trade union officials*’ (EC 7, 10, 13, 16, 19, 44, 107), the following rule is applied: this additional criterion should always be coded only with regard to the particular criterion to which it is added. These are the criteria under main category Ib. ‘fundamental civil liberties’, ‘anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal’ (EC 43) and the ‘imposing of excessive sanctions in case of legitimate strikes’ (EC 106).

#### **1.4. Coding the different factors of violations**

Notwithstanding the considerably large number of evaluation criteria aiming to attain transparency and unambiguousness, the situation can occur when an observed violation links to two or more evaluation criteria. In order to capture all aspects of these violations, particular attention should be given to the coding of each of those evaluation criteria to which the violation links.

(i) Such coding occurs, most often, in relation to the additional criterion ‘lack of guarantee of due process and/or justice’ and ‘committed against trade union officials’, as these criteria rarely stand on their own, but rather as a violation exacerbating another violation (‘basis violation’). For example, in the case of in practice ‘arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities’ occurs (EC 12) that was committed against a trade union official, this should be coded under both the evaluation criterion no. 12 (‘arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities’) and no. 13 (‘committed against trade union officials re violation no. 12’).

(ii) The other area where the same approach is applicable is cases where the de facto intervention of police into legitimate and peaceful strikes (and where the law and order is not seriously threatened) for strike-breaking purposes leads to killing, arbitrary arrest or detention of striking workers, or to other violent actions against participants. In such cases, EC 105 and the relevant criterion or criteria under main category Ib. (Fundamental civil liberties) should be coded simultaneously and together.

(iii) The last issue under this sub-section is the infringements of the rights relating to federations, confederations and international organizations of workers (EC 34, 48). These infringements constitute at the same time a violation with the rights accorded to these organizations in general and in relation to the more specific freedom of association and collective bargaining rights. Contrary to the above described cases where the violation is coded under each evaluation criteria it links to, in this case the decision was made to select the most significant violations and to code those only under evaluation criterion ‘infringement of the right to establish and join

federations/confederations/international organizations'. This means that with regard to these selected violations, federations/confederations/international organizations are treated separately from trade unions, whereas with regard to all other violations, federations/confederations/international organizations are treated as any other first level trade union.

The selected issues of violations are:

- General prohibition of the right to establish federations, confederations and to affiliate with international organizations;
- Exclusion of workers from the right to establish and join federations, confederations and to affiliate with international organizations;
- Previous authorization requirements to establish federations, confederations and to affiliate with international organizations.

### **1.5. Automatic coding and applying the default scores**

Deviating to some extent from the underlying concept of how violations in law and violations in practice are distinguished, the method applies the notion that general prohibitions in law (EC 23, 62 and 84) imply the automatic coding of general prohibitions in practice (EC 36, 73 and 96), though not vice versa. This approach reflects on the total outlaw of the given right (i.e. right to establish and join organizations, right to collective bargaining and right to strike) in practice.

In terms of coding, this means that the direct coding of "General prohibition of the right to establish and join organizations" in law (EC 23) automatically triggers the coding of "General prohibition of the development of independent workers' organizations" in practice (EC 36); the direct coding of "General prohibition of the right to collective bargaining" in law (EC 62) automatically triggers the coding of the "General prohibition of collective bargaining" in practice (EC 73); and, finally, the direct coding of "General prohibition of the right to strike" in law (EC 84) automatically triggers the coding of the "General prohibition of strikes" (EC 96) in practice. Given that the general prohibition of the development of independent workers' organizations implies the general prohibition of collective bargaining (though not vice versa), similar coding rules apply. That is, the direct coding of EC 23 automatically triggers the coding of EC 62 and EC 73 (as well as EC 36, as noted) and the direct coding of EC 36 automatically triggers the coding of EC 73.

The definitions for prohibition of the right to establish and join organizations (EC 23, 36) and the prohibition of the right to collective bargaining (EC 62, 73) are primarily based on the Resolution concerning the Independence of the Trade Union Movement, adopted by the International Labour Conference in 1952. Coded violations are generally in regard to situation of state monopoly imposed either in law or in practice in countries where political power is also controlled by a single party. Stressing that free and independent trade union movement is an indispensable condition for good industrial relations – [as well as the process of democratization] - the 1952 Resolution lays down the principles essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of workers.

Among others, such key condition is that governments "should not attempt to transform the trade union movement into an instrument for the pursuance of political aims"<sup>4</sup> and that should trade unions in accordance with their national law and practice decide to establish relations with a political party such political relations "should not be of such a nature as to compromise the continuance of the trade

---

<sup>4</sup> Resolution concerning the Independence of the Trade Union Movement, adopted by the International Labour Conference, 1952, Paragraph 6.

union movement or its social and economic functions irrespective of political changes in the country.”<sup>5</sup>

To consider the impact such situation has on the existence of an independent trade union movement and collective bargaining, the method applies one deviation from the normalization rules described in the Method Paper<sup>6</sup>: a “default” worst possible score of 10 is given for all-encompassing violations of FACB rights, that is, for “General prohibition of the right to establish and join organizations” in law (EC 23) “General prohibition of the development of independent workers' organizations” in practice (EC 36). This rule applies both for the overall FACB rights indicator as well as the FACB rights indicators in law and in practice.

The use of default scores is all the more justified if one considers that it affects mostly countries where the accessibility of credible, let alone any, information is particularly scarce and difficult due to the underreporting of violations. In most cases the sources selected for the coding cannot report on any concrete violation but to provide a general reference to the lack of independent trade union movement.

In view of the fact that the method only provides for the normalization of the overall, in law and in practice weighted scores, applying the default rule to any of the main categories is outside of the realm of the current method.

## **1.6. Retroactive coding**

Under the present method, retroactive coding means that in light of new information a coding becomes applicable at a prior time compelling the coder to change the coding of a previously coded violation.

Considering the nature of the sources used for the coding, it became evident that the evolution of the information within these sources had to be considered adequately. While this evolution is typically linear, experience showed that it is not always the rule. Examples for the latter involve situations when an existing violation is identified by the supervisory bodies but later than the point at which it came into force (e.g. a law was adopted in 1999, but a violation within it is identified only in 2005); or when clarification is provided with regard to an issue noted previously by the supervisory bodies and the clarification changes the status of the information from codable to non-codable or vice versa. Such cases create an uneven and incorrect picture of a country and can lead to systematic biases within the database. To avoid such situation and to ensure that the coding reflects accurately on the country concerned, the decision was made to introduce the concept of retroactive coding.

Given, however, the differences in the nature of the different sources, the rules applicable for retroactive coding differ respectively. Retroactive coding is not applied to the Reports of the Conference Committee on the Application of Standards, the Representations and the Complaints under ILO Constitution, because these sources are not available on a regular basis and are not designed to follow-up on previous reports as it is usually done either within the CEACR or Committee on Freedom of Association reports.

With regard to national legislation, retroactive coding becomes necessary if a relevant law and/or amendment is identified later than the law and/or amendment has been in effect (e.g. a law in force

---

<sup>5</sup> Ibid., Paragraph 5.

<sup>6</sup> See footnote no. 1.

since 2000 is only identified in 2005). In such cases violation(s) should be coded retroactively up to the year the given law and/or amendment has been in effect.

Applying retroactive coding with regard to International Trade Union Confederation Survey of violations of Trade Union Rights (ITUC reports) or the U.S. Department of State's Country Reports on Human Rights Practices (U.S. Human Rights reports) is less straightforward. This is mainly because these reports are less consistent and information is not always provided in a manner that is precise enough for coding. The retroactive coding, therefore, is done either by comparative reading of these reports from different years or, if needed, with cross-verification from ILO sources or national legislation. That is, for example, should the same violation be identified in the CEACR report for 2000, but only in the 2005 ITUC report, the coder can with confidence code the issue for 2000 under the ITUC report as well.

In view of the premise of transparency, information coded retroactively has to be detectable from the coding spreadsheet. Therefore, should information be retroactively coded, it is marked with capital letter in the coding spreadsheet.

### **1.7. Coding of progress**

Identifying progress in the current method is addressed slightly differently compared to earlier version. The original concept – being kept in the current method as well - was that the decrease in the number of evaluation criteria ticked between two points in time indicates progress. Such approach, however, left un-coded a significant amount of information indicating progress in the textual sources selected for the coding. Such examples include legal revision and reform, promotional activities and pro-active steps taken by governments/employers' and workers' organizations, but also all issues that were noted with interest by the supervisory bodies with request for further measures from the government. Also, progress could have remained hidden given a situation when multiple incidents from the same source are coded under the same evaluation criterion.

In fact, deviating from a violation-focused reading, it becomes clear that ILO sources, and ITUC and U.S. Human Rights reports contain rather significant amount of references to such progress. A long-lasting system for indicating progress in the ILO reports is the use of expressions of either 'noting with interest' or 'noting with satisfaction'.

The supervisory bodies express satisfaction in cases in which, following comments made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the supervisory body indicates to the government and social partners that it considers the specific matter resolved.<sup>7</sup>

Cases of interest cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the supervisory body would want to continue its dialogue with the government and the social partners. In comparison to cases of

---

<sup>7</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), International Labour Conference, 101st Session, 2012.

satisfaction, cases of interest relate to progress, which is less significant and does not allow yet the supervisory body to consider the matter resolved<sup>8</sup>.

Considering the above, issues noted with satisfaction are always considered as progress. Issues of interest, however, are either considered as progress or, should noting with interest be followed by a request for taking further action, it is considered both under progress and as a violation (for the same evaluation criterion).

To code issues of progress, both their tabular presentation and specific rules had to be established in a manner that respects the key premises of the method. Concerning the tabular presentation, the objective was to maintain the features of the coding spreadsheet used to code violations. These features are the list of 108 evaluation criteria and their definitions and the premise of transparency (i.e. violations are coded with letters ‘a’- ‘i’, respectively, indicating the different textual sources selected for the method). Therefore, to code progress, the same evaluation criteria and definitions are used and the coding is done with using the same letters (‘a’ – ‘i’), indicating the source where the issue of progress was noted. Additionally, an extra general criterion is added for “Labour law reform” and one for “Promotional activities”. Note, however, that the above information on progress is not yet published on the Labour Rights (LR) Indicators webpage, but can be made available by the authors upon request.

## **1.8. Documentation and the ‘Labour Rights Indicators’ webpage<sup>9</sup>**

Bearing in mind the key premises of transparency and reproducibility, systematic and accurate documentation of evidence coded in the selected sources is important. This implies the careful recording of all the information detected during the coding in a systematic and comprehensive manner through the formation of a background database consisting of all the sources used during the coding. This database serves as the basis for the LR Indicators webpage, where users can assess and research all coded data.

The main features of the webpage include:

- Global maps to describe overall situation concerning FACB rights across the world;
- Search options for accessing data based on year, country, violation and coding source;
- Country page for each country where data are available;
- Coding table displayed in a user-friendly manner at the country page, which allows the user to access the original paragraph(s) where the violation was coded.

*Table 2* below presents the summary of the general coding rules by providing the above listed rules in a single table.

---

<sup>8</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), International Labour Conference, 101st Session, 2012.

<sup>9</sup> Available at: <http://labour-rights-indicators.la.psu.edu/>

**Table 2. General Coding Rules**

**A. Coding Frequency:**

The table below provides the rules corresponding to the annual coding of the sources. The first column lists the sources selected for the coding, the second column specifies the frequency of the coding (annually or upon the adoption of a report in the year evaluated), while the last column indicates the countries covered by the sources (i.e. countries for which the coding can be done).

| Source                       | Coding frequency   | Countries covered by the source   |
|------------------------------|--|---|
| CEACR comments               | Every year   | All ILO member States that ratified the Convention concerned  |
| Conference Committee Reports | Every year   | Only those ILO member States selected by the Conference Committee for the year evaluated                              |
| Country Baselines            | Every year   | All ILO member States that have not ratified the Convention concerned   |
| Representations              | Only if Representation Procedure is closed in the year evaluated | Only the country against which a representation procedure has been closed by a final report in the year evaluated     |
| Complaints                   | Only if Complaint Procedure is closed in the year evaluated      | Only the country against which a complaint procedure has been closed by a final report in the year evaluated          |
| CFA cases                    | Based on the CFA report(s) adopted in the year evaluated         | Only for countries whose case(s) is included in any of the Reports of the CFA adopted/published in the year evaluated |
| National legislation         | Every year   | All ILO member States that have not ratified the Convention concerned   |
| ITUC reports                 | Every year   | For all countries included in the report.   |
| US Human Rights reports      | Every year   | For all countries included in the report  |

**B. Codable and Non-codable evidence**

This table provides the summary of the rules established to determine whether the evidence, recorded in the sources selected for the coding, can or cannot be coded under the evaluation criteria. Codable evidence means that the identified evidence can be coded as a violation; non-codable evidence means that the identified evidence cannot be coded as a violation.

| Codable evidence   | Non-codable evidence  |
|--|---|
| - Violation recorded by any of the ILO supervisory bodies in any of the sources selected for the coding.<br>- Violation considered as such by ILO standards and jurisprudence.<br>- Violation expressed explicitly.<br>- Violation remedied within the same year it was committed, except sole and closing with satisfaction or without request for further action CFA report in year evaluated. | - Violation reported by non-ILO sources not considered violation by ILO standards and jurisprudence<br>- Comments requesting further information or explanation without acknowledging any violation.<br>- Implicit violation.<br>- Comments on draft legislation. |
| References to ITUC Reports or reports of other workers' or employers' organizations solely if the government concerned fully accepts it and it is mentioned in the ILO comment or report and/or if the supervisory body acknowledges it.   | References to ITUC Reports or reports of other workers' or employers' organizations, if the government concerned does not accept it and it is mentioned in the ILO comment or report and/or if the supervisory body does not acknowledge it.                      |
| Contradictory evidence, if the contradiction occurs between different sources.   | Contradictory evidence, if the contradiction occurs within the same source.   |
| Violation in law existing in federal level legislation in case of federal States.  | Violation in law existing in state level legislation in case of federal States.   |
| Evidence of violation and evidence of progress and promotional activities  |   |

### C. Coding the additional criteria

The table below provides the rules on how to code the additional evaluation criteria. The first column lists the additional evaluation criteria; the second column indicates where and how many additional criteria are added to the evaluation criteria list. The third column gives the rules with regard to the coding of the additional evaluation criteria.

| Additional evaluation criteria                               | The additional evaluation criterion is added to   | Coding   |
|--|---|--|
| 'Other acts of prohibitions, infringements and interference' | - Each of the main categories of the evaluation criteria  | - Coding is done with regard the main category the violation links to.   |
| 'Lack of guarantee of due process and/or justice'            | <ul style="list-style-type: none"> <li>- Each of the main categories of the evaluation criteria;</li> <li>- Each civil liberties evaluation criteria in practice;</li> <li>- Anti-union discrimination evaluation criteria;</li> <li>- Acts of interference evaluation criteria.</li> </ul> | <ul style="list-style-type: none"> <li>- Coding is done with regard the main category the violation links to.</li> <li>- Coding is done only with regard the particular criterion the additional criterion is added to.</li> </ul> |
| 'Committed against trade union officials'                    | <ul style="list-style-type: none"> <li>- Each civil liberties evaluation criteria in practice;</li> <li>- Anti-union discrimination evaluation criteria;</li> <li>- Imposing excessive sanctions in case of legitimate strikes evaluation criterion.</li> </ul>                             | - Coding is done only with regard the particular criterion the additional criterion is added to.   |

### D. Coding the different factors of violations

The table below explains the rules established for the coding of cases where a violations links to more evaluation criteria. The first column contains the evaluation criteria concerned. The second column lists the criteria, which can be coded with the evaluation criterion indicated in the first column. The last column clarifies if the evaluation criteria listed in the first column can be coded on its own, being considered a violation per se, or if it can only be coded if the 'basis violation' was acknowledged by the supervisory bodies.

| Evaluation criterion  | The evaluation criterion can be coded with   | Coding on its own  |
|---|--|--|
| 'Lack of guarantee of due process and/or justice'   | The 'basis violation' and/or the criterion of 'committed against trade union officials'  | Yes  |
| 'Committed against trade union officials'   | The 'basis violation' and/or the criterion of 'lack of guarantee of due process and/or justice'  | No, only either with the 'violation' and/or with the criterion 'lack of due process of law'  |
| 'Acts of interference during the course of strike actions' (in practice)                                  | <p>The evaluation criterion of:</p> <ul style="list-style-type: none"> <li>- 'killing or disappearance of trade unionists in relation to their trade union activities' (EC 6);</li> <li>- 'other violent actions against trade unionists in relation to their trade union activities' (EC 9);</li> <li>- 'arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities' (EC 12).</li> </ul> | Yes  |
| 'Infringements of the right to establish and join federations/confederations/international organizations' | Not applicable   | <p>Yes, including:</p> <ul style="list-style-type: none"> <li>- General prohibition to establish federations/confederations and to affiliate with international organizations</li> <li>- Exclusion of workers from the right to establish and join federations/confederations and to affiliate with international organizations</li> <li>- Previous authorization requirements to establish federations/confederations and to affiliate with international organizations.</li> </ul> |

**E. Automatic coding and default scores:**

The table below provides the rules concerning coding of evaluation criteria no. 23, 36, 62, 73, 84 and 96 (the general prohibition criteria), where the coding can be triggered by the coding of another criterion, and also the rules as to how the default scores should be applied in relation to the normalized country scores.

| Coding of evaluation criteria (triggering) | Automatic coding of evaluation criteria (triggered)         | Applying the default (i.e. worst possible) score to normalized scores |
|--|---|---|
| Evaluation criterion no. 23                | Evaluation criterion no. 36, 64, 73 are automatically coded | Default score is applied for Total, In Law and In Practice Indicators |
| Evaluation criterion no. 36                | Evaluation criterion no. 73 is automatically coded          | Default score is applied for Total and In Practice Indicators         |
| Evaluation criterion no. 62                | Evaluation criterion no. 73 is automatically coded          | Default score is not applied  |
| Evaluation criterion no. 73                | No automatic coding is triggered                            | Default score is not applied  |
| Evaluation criterion no. 84                | Evaluation criterion no. 96 is automatically coded          | Default score is not applied  |
| Evaluation criterion no. 96                | No automatic coding is triggered                            | Default score is not applied  |

**F. Retroactive coding:**

The table below provides the rules concerning retroactive coding, that is applying a coding to past reports. The first column lists the sources selected for the coding, the second column specifies whether the source can or cannot be coded retroactively, while the last column indicates the specific rules for the given source.

| Source                       | Retroactive coding | Rules for retroactive coding   |
|------------------------------|--------------------|--|
| CEACR comments               | Yes                | Comparative reading between CEACR reports from different years.  |
| Conference Committee Reports | No                 | Not applicable.  |
| Country Baselines            | Yes                | Not applicable   |
| Representations              | No                 | Not applicable   |
| Complaints                   | No                 | Not applicable   |
| CFA cases                    | Yes                | Comparative reading of CFA reports from different years.   |
| National legislation         | Yes                | Ensuring that violations under any given legislation are coded with regard to all years since the law was in effect.                         |
| ITUC reports                 | Yes                | Comparative reading between ITUC reports from different years and cross-verification with CEACR reports and/or national legislation.         |
| US Human Rights reports      | Yes                | Comparative reading between Human Rights reports from different years and cross-verification with CEACR reports and/or national legislation. |

| <b>G. Coding of progress</b><br>The present table provides the summary of the rules established for the direct coding of progress. Note that progress is also indicated indirectly, by not coding a (resolved) violation for the subsequent year |  |
|--|--|
| Information on progress  | Rules for coding   |
| Noting with satisfaction   | Always coded as progress.  |
| Noting with interest   | Can be coded as progress or should noting with interest be followed by request for taking further actions, it is considered both under progress and as a violation.  |
| New legislation  | Coded under the general criterion and if concrete changes remedying violations are noted then it is coded both under the general and specific criterion as well. Only coded if no evidence suggests negative implications of the new law.              |
| Draft legislation/legal reform   | Only coded under the general criterion and only if no evidence suggests negative implications of the draft law.  |
| Judicial decision  | Only coded under the general criterion and only if no evidence suggests negative implications of the judicial decision.  |
| Promotional activities   | Cover all activities supporting the furtherance of freedom of association and collective bargaining rights. Includes e.g. trainings, workshops and reforms in institutional systems, but also to ILO country visits and cases of technical assistance. |

## **2. Source-specific Coding Rules**

The following section describes the rules governing the coding of the sources selected for the present method. Note that the section only highlights rules that are particular to the given source and does not refer to rules that have already been discussed under the general coding rules.

### **2.1. Reports of the Committee of Experts on the Application of Conventions and Recommendations (CEACR comments) – ‘a’**

For the CEACR comments, the year of adoption and the year of publication are different. It was therefore decided that these comments shall be coded under the year the observation/direct request was made and not under the year it was published. *For example:* if the year examined is 2008, comments to be coded are the ones made in 2008 and published in 2009.

As noted above with regard to fundamental conventions, reports are required every three years from governments. Consequently, whereas the coding of the source is done for all member States on an annual basis, comments are, as a rule,<sup>10</sup> provided only triennially by the CEACR to a given country. To deal with the years where no report is required and therefore no comments are made by the CEACR, it was decided that the same comments adopted for the previous year(s) should be considered applicable. Should the country comply with the Committee’s comment in the meantime, this is indicated under the subsequent coding by not coding the violation.

As regards the content of the CEACR comments, it should be noted that the actual coding does not distinguish between comments made in the form of observation and comments provided in the form of direct request. This is because the coding rules *per se* reflect on the differences between the content of these two types of comments.

### **2.2. Reports of the Conference Committee on the Application of Standards (Conference Committee reports) – ‘b’**

Unlike the comments made by the CEACR, reports of the Conference Committee are adopted and published in the same year. However, as the Conference Committee bases its examination on the CEACR annual report, adopted in the previous December, the corresponding year for the comments of the Conference Committee is the year that follows the adoption of the CEACR's report (the year evaluated). For example, when evaluating the year 2008, the relevant report is the one adopted and published by the 98<sup>th</sup> Session of the ILC, held in 2009, because this is the report that reflects on the comments made by the CEACR in 2008.

The Conference Committee provides an opportunity for representatives of governments, employers and workers to jointly examine the manner in which States fulfil their obligations deriving from international labour standards. Taking into account the special characteristics of this source arising from the interactive nature of the discussions (e.g. including general comments made by the government, employers' or workers' delegates rather than exact statements, or containing contradictory information given by the different participants of the discussion) it was decided to code only comments made by the government, employers and workers members of the country under examination and by the Employers and Workers members; and only if comments are not contradictory and are consistent with the final conclusion of the Conference Committee. That is,

---

<sup>10</sup> Reports on the application of Conventions may be requested at shorter intervals.

comments made by other governments and/or members of employers and workers of other countries, or observers are not to be taken into account for the coding.

### **2.3. Country baselines under the ILO Declaration Annual Review (Country Baselines) – ‘c’**

As the compilation of the annual reports provided by the member States is carried out every year, Country Baselines are up-dated annually. In practice, this entails that the new Country Baseline replaces and integrates the previous baselines. Therefore, the coding can only be done with regard to the current compilation of Country Baselines, although only information provided up to the year following the year evaluated should be coded. For example, in a case in which the coding is done based on the Country Baseline (2000-2012) but for the year of 2008, only information provided up to the year 2009 should be coded. Information provided for the years after 2008 cannot be taken into account during the coding of the year 2008.

As the Baseline contains multiple elements (e.g. governments’ reports, observations by employers’ and workers’ organizations, observations/recommendations by the ILO Declaration Expert-Advisers), dealing with the different parts of the document requires the coder to take different approaches. The main rules are the followings: First, if the information provided by the Baseline relates to national legislation, regardless of the year under which it is provided, it should be coded, if it is applicable. This means if there is new information afterwards that would differ from the previous information, only the new information should be coded. Second, if the information links to issues other than national legislation (e.g. policy measures, violations in practice etc.) then only the information provided under the year after the year evaluated should be coded. Last, the section quoting the ITUC reports should not be considered for the purpose of the coding.

### **2.4. Representations under Article 24 of the ILO Constitution (Representations) – ‘d’**

Representations are coded under the year the report of the tripartite committee is published, not under the year the representation is submitted. This is because the final report provides the conclusion and the recommendations of the tripartite committee, which serves as the basis of the coding on its own. Previous documents adopted by the Governing Body subsequent to the submission of the representation are interim technical/procedural documents reporting on the status of the representation procedure bear no reference to the substance of the case. Also, given that with regard to ILO sources the present method only aims to compile the already existing information generated by the ILO’s supervisory mechanism, the coding rules had to reflect on what the tripartite committee observed based on the information provided, not the provided information per se. Obviously, allegations and statements made by the parties should also be reviewed for a better understanding. However, these allegations/statements cannot serve as the basis of coding as that would require a rather subjective interpretation from the coder.

Should the representation be referred to the CFA, the rules governing the coding of the CFA cases ought to be followed (see below) and should be coded with the letter ‘f’. Applying the same reasoning, when the Governing Body passes the case to the CEACR for the follow-up on the country’s compliance with the findings of the tripartite committee, comments made by the CEACR should be coded with the letter ‘a’.

### **2.5. Complaints under Article 26 of the ILO Constitution (Complaints) – ‘e’**

Complaints should be coded under the year the report of the Commission of Inquiry is published, not under the year the complaint is submitted. The underlying rational is the same as was for

Representations: the final report provides the conclusion and the recommendations of the Commission of Inquiry, serving as its own the basis of the examination and coding, while previously adopted documents pertaining to the complaint are merely interim technical and procedural documents reporting solely on the status of the complaint procedure. Also, the coding should be done exclusively regarding the conclusion and recommendations of the report of the Commission of Inquiry or of the decision of the International Court of Justice, if the government appeals against the recommendations to the International Court of Justice. Similar to the representations, allegations and statements made by the parties should also be reviewed. These allegations and statements cannot, however, serve as the basis of the coding for the reasons indicated previously.

This method can only be applied if the government accepts the recommendations of the Commission of Inquiry within the available period of three months. In the event the government appeals to the International Court of Justice, then the basis of the coding should be the decision of the Court and, therefore, the observed violation should only be coded under the year the International Court of Justice adopts its decision.

Should the complaint be referred to the CFA, the rules governing the coding of the CFA cases is to be followed (see below) and should be coded under letter ‘f’. For the same reason, once the Governing Body passes the case to the CEACR or CFA (or both) for the follow-up of the country’s compliance with the recommendations of the Commission of Inquiry or the decision adopted by the International Court of Justice, comments made by the CEACR or CFA should be coded with letter ‘a’ or ‘f’, respectively.

## **2.6. Reports of the Committee on Freedom of Association (CFA cases) – ‘f’**

The coding of the cases brought before the CFA brings to surface the complexities stemming from the procedure itself. As the CFA reports are case-driven, where cases may proceed for years without the adoption of a definitive report that would close the case, clear rules are needed on how to select the reports and information relevant for the coding.

The general rules for the coding of CFA cases are: first, evidence can only be coded if the CFA makes a recommendation consistent with any of the complaints in any of the reports; and second, violations should always be coded for the year evaluated and not for the year the allegation was submitted (except if the year evaluated and the year of submission is the same). Concerning the selection of the relevant cases, the main rule is that all cases for which a CFA report is provided under the year evaluated should be considered, regardless of the year of submission or the actual status of the case. This means that not only the closed cases, but also the follow-up and active (i.e. ongoing) cases are examined and coded.

Considering that the CFA meets three times a year, the situation may arise when in the same year the Committee provides more than one report on the substance of the same case. In such situation the main rule is that all recommendations that are consistent with any of the complaints should be coded, even if a subsequent report adopted in the same year acknowledges that the government met the recommendations of the CFA. Compliance with a recommendation will be reflected by not coding the violation for the following year.

Similarly to representations and complaints, since the coding aims to code only recommendations made by the CFA, coding is done exclusively regarding the conclusion and recommendations of the CFA Report. Allegations and statements made by the complainant and by the government should also be reviewed, but these statements cannot serve as the basis of the coding.

Last, only recommendations provided in the year evaluated should be coded. However, with regard to on-going cases, if the CFA does not adopt any report on the substance of the case for the year evaluated, the latest recommendations made by the CFA should be considered as applicable for the coding.

## **2.7. National legislation – ‘g’**

Dealing with this source, it is necessary to decide how to define national legislation in the context of the present method. Bearing in mind the diversity that exists between countries, the definition had to be broad enough to account for considerable differences. At the same time, it also needed to be valid across the jurisdictions, while simultaneously being consistent across countries. One of the main issues is whether collective agreements or other model agreements should be considered as possible sources for national legislation. Taking into account their restricted applicability, the difficulties that could arise from the lack of accessibility of or information on these agreements, and the possibly large number of such agreements, it was decided that collective or other model agreements will not be assessed under the source of national legislation.

All things considered, it was decided that for the present method national legislation shall mean legal sources created by legislative authorities that are in effect and are applicable to and binding on all workers or – based on statutory exemption - a specific type of worker within the national jurisdiction. It should also include judicial decisions where the doctrine of ‘*stare decisis*’ is upheld.<sup>11</sup>

One of the key aspects of coding national legislation is the selection of the relevant laws that are in effect in the country. Together with the Country Baselines, the database provided by NATLEX or other relevant ILO documentation (e.g. National Labour Law Profiles under Dialogue) proved to be a useful information source. However, one should bear in mind the possible limits of these databases (e.g. not necessarily covering all the relevant legislation; not necessarily providing the most recent version of the legislation, etc.). That being said, coding national legislation necessitates a thorough research and reliance also on sources other than ILO documentation. This includes consulting online legal databases, either independent or those operated by governments and/or ministries; but also reading of secondary sources in order to identify all possible legal sources.

As regards the actual coding of national legislation, the most important rules are the ones relating to the selection of the relevant sources. Once the sources are selected, the coding is relatively straightforward, in comparison with the other sources. The difficulties mainly arise from the interpretation of the legal provisions. Therefore the coding of national legislation first and foremost requires the precise examination and – more importantly – documentation of the evidence found.

## **2.8. International Trade Union Confederation Survey of violations of Trade Union Rights (ITUC Reports) – ‘h’**

Since 2013, ITUC has introduced an online platform for real-time database of trade union rights’ violations in practice, alongside their analysis on trade union rights’ violations in law, which is updated only on a regular basis. Transitioning to this system, ITUC incorporated information from previous years (most often going back to 2009). As a result, specific coding rules had to be adopted to deal with information dated in different years. The established main rules are: information concerning violations in law should be directly coded irrespective of the year of the latest up-date

---

<sup>11</sup> Exceptionally by-laws of workers’ organizations can be considered, but only if it is made applicable to every workers’ organizations by national law (e.g. China).

given that it is before the year evaluated; and information concerning violations in practice should only be coded if it concerns the year evaluated (i.e. information reported in the year evaluated, or information reported in the following year but concerning the year evaluated). There are, however, two exceptions to these rules: if a revision of national laws was carried out since the latest update of the ITUC's section on national legislation and this created a contradiction between ITUC report and other – more updated – reports, the information in the ITUC report should not be considered. Moreover, in relation to general statements concerning violations in practice dated from previous years, the decision was made to consider those as applicable to the year evaluated should there be no contradicting information in following years.

Once the above rules established, coding ITUC reports is in general a straightforward, case-by-case activity. Difficulties mainly arise from the rather journalistic language used in the reports. This can lead to a situation when an overtly general statement cannot be subsumed under any of the evaluation criterion and as such cannot be coded (note, however, that in such situation the issue is usually captured in detail through the coding of concrete violations listed in the report).

## **2.9. U.S. Department of States' Reports on Human Rights Practices (U.S. Human Rights Reports)– ‘i’**

U.S. Department of States' Reports on Human Rights Practices are adopted on an annual basis, allowing for the coding to be done annually. Given that the reports are adopted by the end of the calendar year, the report adopted in the year evaluated should be used for the coding. For example, for the year 2012 the “Country Reports on Human Rights Practices for 2012” should be selected. Given that the Human Rights reports cover issues broader than freedom of association and collective bargaining rights, the decision was made to consider Section 2 ('Respect for Civil Liberties') Part 'b' on Freedom of Peaceful Assembly and Association and Section 7 ('Worker Rights') Part 'a' on Freedom of Association and the Right to Collective Bargaining.

Similarly to ITUC reports, the coding of the Human Rights report is generally a straightforward, case-by-case activity. Difficulties mainly arise from the similar journalistic language that may lead to a situation where the general statement prevents the information to be coded. Particular attention should be provided when coding the section of Freedom of Peaceful Assembly and Association, as it covers also violations committed against others than workers and trade unions. For the present method, however, only violations of FACB rights as defined in the present paper can be considered.

*Table 3* below summarizes the source-specific coding rules, providing those in a consistent and comparative manner. The first column lists the sources themselves. The second column indicates the letter the source should be coded under. The third column clarifies which year should be coded, while the fourth column lists the corresponding source to that year. The fifth and sixth columns provide the specific rules concerning the frequency of the coding and the coding of the content of the particular source.

**Table 3. Source specific coding rules**

| Source                       | Letter   | Year to code                  | Corresponding source   | Frequency of coding  | Coding rules for coding the content   |
|------------------------------|--|-------------------------------|--|--|---|
| CEACR comments               | a  | Year evaluated                | Year the comments are made   | <ul style="list-style-type: none"> <li>- Coding is done annually and for all countries.</li> <li>- As comments are provided triennially, for the year where no comments are made, comments adopted for the previous years are applicable.</li> </ul>   | <ul style="list-style-type: none"> <li>- Observations and direct requests are coded based on the same rules.</li> <li>- Comments requesting further information and comments on draft legislation are not coded.</li> <li>- Comments referring to ITUC or other reports are not coded, except if the government acknowledges it, and it is mentioned in the CEACR's comment and/or the CEACR acknowledges it.</li> </ul>  |
| Conference Committee reports | b  | Year after the year evaluated | Year of the adoption/publication of the report   | <ul style="list-style-type: none"> <li>- Coding is done annually, but only for countries selected by the Committee for the year evaluated.</li> <li>- Only the report adopted regarding the year evaluated is coded. Previously made reports are not considered for the coding.</li> </ul>   | <ul style="list-style-type: none"> <li>- Only evidence that is not contradictory and is in line with the Committee's conclusion is coded.</li> <li>- Only comments provided by government, employers and workers members of the country under examination and by the Employers and Workers members are coded</li> <li>- References to draft legislation are not coded.</li> <li>- References to ITUC or other reports are not coded, except if the government acknowledges it, and it is mentioned in the Report and/or the Conference Committee acknowledges it.</li> </ul>  |
| Country Baselines            | c  | Year after the year evaluated | Current country baseline   | <ul style="list-style-type: none"> <li>- Coding is done annually, but concerns only countries that have not ratified either or both of the two fundamental Conventions.</li> <li>- As country baselines are up-dated annually in a way to integrate the previous baselines, only information provided up to the year after the year evaluated but only with regard to the year evaluated should be coded, except when retroactive coding applies.</li> </ul> | <ul style="list-style-type: none"> <li>- Different parts of the baseline require different approaches for the coding.</li> <li>- Information relating to legislation is coded regardless of the year under which it is provided. If, however, new evidence is provided afterwards, it should be coded.</li> <li>- Information relating to other issues is coded only if it is provided up to year after the year evaluated.</li> <li>- Contradictory evidence between the different parts of the baseline is not coded.</li> <li>- References to ITUC or other reports and to draft legislation are not coded, except the Government acknowledges it in the last part of the Baseline.</li> </ul> |
| Representations              | d, but<br>- if referred to CFA, it is coded with letter 'f'; during its follow-up by the CEACR, it is coded with letter 'a'. | Year evaluated                | Year of the adoption/publication of the final report, but not the year of its submission | <ul style="list-style-type: none"> <li>- Coding is done only if a final report is adopted/published in the year evaluated and only for the country concerned.</li> <li>- Only the final report is coded.</li> </ul>  | <ul style="list-style-type: none"> <li>- Only the conclusion and recommendation is coded.</li> <li>- If the case is referred to the CFA, and during its follow-up by the CEACR, the representation should be coded based on the rules applicable for those sources.</li> <li>- Comments on draft legislation are not coded.</li> <li>- References to ITUC or other reports are not coded, except if it is acknowledged in the conclusion/recommendations.</li> </ul>  |

| Source                    | Letter  | Year to code   | Corresponding source  | Frequency of coding   | Coding rules for coding the content  |
|---------------------------|---|----------------|---|---|--|
| Complaints                | e, but<br>- if referred to CFA, coded under letter 'f'; during follow-up by the CEACR or CFA, it is coded with letter 'a' or 'f', respectively. | Year evaluated | Year of the adoption/ publication of the final report, but not the year of its submission | - Coding is done only if a final report is adopted/published in the year evaluated and only for the country concerned.<br>- Only the final report is coded.<br>- If the case is appealed before the ICJ, the ICJ's decision serves as the basis of the coding.  | - Only the conclusion and recommendation is coded, but only issues included in the recommendation.<br>- If the case is referred to the CFA and during its follow-up by the CEACR or CFA, it should be coded based on the rules applicable for those sources.<br>- If the case is appealed to the ICJ, it should be continued to be coded under the coding rules applicable for Complaints.<br>- Comments on draft legislation cannot be coded.<br>- References to ITUC or other reports are not coded, except if it is acknowledged in the conclusion/recommendations. |
| CFA cases                 | f   | Year evaluated | Year of the adoption/ publication of the report   | - Coding is done annually, but concerns only countries whose case is dealt with by the CFA in the year evaluated.<br>- Coding is done both for closed, follow-up and active cases, but only for report(s) dealing with the substance of the case.<br>- If more reports adopted on the substance in the same year, all recommendations consistent with the allegation(s) are coded.<br>- If no report is adopted on the case for the year evaluated, or the report is a technical one, the latest report on the substance of the case is applicable. | - Only the conclusion and recommendation is coded.<br>- Violation is only coded if the CFA makes recommendation consistent with the complaint.<br>- Violation is always coded for the year evaluated.<br>- Violation that does not originate directly from the allegation, but is ascertained and admitted by the CFA is also coded.<br>- Requests for further information/comments or an independent inquiry are not coded.<br>- Cases when the government repeatedly fails to reply are noted in the supplementary document (Annex II-III.).                         |
| National legislation      | g   | Year evaluated | N/A   | The coding is done annually and for those countries that have not ratified either or both of the two fundamental Conventions.   | - Coding is based for the most part on the information provided in the Country Baselines.<br>- Coding requires the careful selection of the relevant legal sources that are in effect.<br>- Coding implies the careful examination and documentation of evidences.   |
| ITUC reports              | h   | Year evaluated | N/A   | Coding is done annually and for all countries information provided.   | -Information is coded, except if evidence suggests that the violation in law has been remedied or the issue occurred in another year and has been solved<br>-Comments on draft legislation are not coded.<br>- Information not precise enough for the purpose of coding is not coded unless captured through the coding of issues registered in the report.  |
| U.S. Human Rights reports | i   | Year evaluated | Year of the adoption/ publication of the report   | Coding is done annually and for all countries information provided.   | - Only Section 2/Part 'b' and Section 7/Part 'a' is coded and only information concerning FACB rights' violations<br>-Comments on draft legislation are not coded.<br>- Information not precise enough for the purpose of coding is not coded unless captured through the coding of issues registered in the report.   |

### **3. Definitions of evaluation criteria**

The section provides the textual definitions of each the 108 evaluation criteria, by listing examples, in many cases taken word-for-word from the sources listed below<sup>12</sup> that depict the type of violations that should be coded under a given evaluation criteria. The illustrative nature of the definitions should be kept in mind, from which the coding of observed violation may be determined in a manner consistent with the classification of ILO Convention Nos. 87 and 98 and related jurisprudence.

The definitions are based on the following textual sources:

- Constitution of the International Labour Organisation
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Convention No. 87
- ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Convention No. 98
- Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO, 2006) - Digest of decisions and principles
- Freedom of association and collective bargaining: General Survey of the reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948, and the Right to Organise and Collective Bargaining Convention (No. 98) (ILO, 1994) - General Survey 1994
- General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008 (ILO, 2012) - General Survey 2012
- Resolution concerning the Independence of the Trade Union Movement, adopted by the International Labour Conference in 1952
- Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, adopted by the International Labour Conference in 1970

---

<sup>12</sup> Note that in order to make the text of the definitions easier to read and with consideration of the minor, but frequent alterations we applied, we decided not to use quotation marks.

## **Ia. Fundamental civil liberties, in law**

### **1. Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities<sup>13</sup> (in law)<sup>14</sup>**

**Paras. 61-95** in Digest of decisions and principles;

**Paras. 31-32** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes legislation that allows (arbitrary) arrest, detention, imprisonment, charging, fining and other heavy criminal sanctions (e.g. education through labour, forced labour) for reasons connected with trade union membership and/or legitimate trade union activities – even for a short period;
- Includes legislation that indicates prosecution and sanction for trade union membership and/or trade union activities that should be considered legitimate even if the national legislation considers it illegal, but the legislation is such as to impair or shall be so applied as to impair civil liberties, trade union rights and its guarantees;
- Includes legislation that allows arrest/mass arrest and detention/preventive detention of trade unionists without any charges being laid or court warrants being issued and without being accompanied by safeguards;
- Includes legislation that allows the arrest and sentencing of trade unionists on ground of the “disturbance of public order”;
- Includes legislation that imposes sanctions that are not proportionate to the offence or fault committed.

### **2. Infringements of trade unionists' basic freedoms (in law)**

**Paras. 121-174** in Digest of decisions and principles;

**Paras. 34-39** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes violations in law of freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes legislation that violates freedom of movement of trade unionists (Digest, Paras. 121-129.). It includes cases such as:
  - Prohibition for persons to leave any country, including trade unionists' own country, and to return to his/her country for reasons of trade union membership and/or legitimate activities (Digest, Para. 122.);
  - Surveillance, banishment for trade union membership and/or legitimate activities (Digest,

<sup>13</sup> Trade unionists under the current method refers both to trade union members and non-members carrying out trade union activity.

<sup>14</sup> In the present document “Para.” and “Paras.” refer to paragraph(s) in the Digest of decisions and principles (Digest) and in the General Survey 1994 and 2012.

Para. 124.);

- Expulsion of trade unionists from their country for activities connected with the exercise of their functions (Digest, Para. 128.);
- Includes legislation that violates trade unionists' right to peaceful and legitimate assembly and demonstration in pursuit of their legitimate objectives (Digest, Paras. 130-153.);
- Includes prohibition or dissolution of peaceful and legitimate demonstrations that are considered to be illegitimate by national legislation, but the national legislation is such as to impair or shall be so applied as to impair civil liberties, trade union rights and its guarantees;
- Includes both large scale meetings of organizations, and also public meetings and demonstrations (Digest, Paras. 131-151.);
- Includes prior authorization, interference by public authorities based on legislation for reasons that go beyond the aim of maintaining public order;
- Includes requesting unreasonable, excessive formalities, setting time restrictions;
- Includes legislation that violates trade unionists' freedom of opinion and expression (Digest, Paras. 154-174.);
- This includes freedom of opinion and expression both at trade union's meetings, in publications (through uncensored and independent press (Digest, Para. 158.)) and in other trade union activities (Digest, Para. 154.);
- Includes acts of previous authorization and censorship of publications; subjecting trade union publication to the granting of a licence at the discretion of licensing authorities; imposing restrictions on the subject matter of publications; requirement to provide a substantial bond before being able to publish a newspaper.

### **3. Infringements of trade unionists' and trade union's right to protection of their premises and property (in law)**

**Paras. 178-192** in Digest of decisions and principles;

**Paras. 706-709** in Digest of decisions and principles;

**Para. 40** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes legislation that allows arbitrary occupation and seizure of trade unions' and trade unionists' premises and property;
- Includes entry, search and/or confiscation based on law or legally obtained court order for reasons considered to be illegitimate by national legislation, but where the legislation is such as to impair or shall be so applied as to impair civil liberties, trade union rights and its guarantees;
- Includes legislation that allows the disposal of dissolved assets of organizations in a manner contrary to the organizations' own rules, or in the absence of such rules, which disposes the assets to others than the workers concerned (Digest, Paras. 706-709.; General Survey, Paras. 186-188.).

#### **4. Excessive prohibitions/restrictions on trade union rights in the event of state of emergency (in law)**

**Paras. 193-204** in Digest of decisions and principles;  
**Paras. 41-42** in General Survey 1994.

- Includes legislation that allows unjustified suspensions, prohibitions, derogations, exemptions from civil liberties, trade union rights and its guarantees based on a reason that a state of emergency exists (e.g. arbitrary arrest, detention of trade unionists, restrictions on trade union meetings, restrictions on publications; unilateral setting or changing of terms of employment, suspension or dissolution of associations by administrative authority, restrictions on the right to strike, etc.).
- *Does not include* restrictions imposed in the context of a state of emergency if such restrictions are justified in the event of an acute national emergency and are accompanied by normal judicial safeguards (Digest, Paras. 198-199.).

#### **5. Lack of guarantee of due process and/or justice re violations nos. 1-4 (in law)**

**Paras. 96-120** in Digest of decisions and principles;  
**Paras. 29-32** in General Survey 1994;  
**Paras. 60, 62** in General Survey 2012;  
**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal, e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes the lack of legal guarantees for recourse to judicial authority (e.g. the lack of the right to appeal or cases where the appeal can only be lodged to one of the Ministries) against any administrative decision concerning the trade union rights;
- Includes legal proceedings overly lengthy (Digest, Paras. 104-105.);
- Includes the lack of dissuasive and exemplary sanction or compensation for damages suffered.
- *Note:* Includes lack of guarantee of due process of law with regard to fundamental civil liberties in law, as listed under evaluation criteria nos. 1-4 and also with regard to murder or disappearance of trade unionists and other violent actions against trade unionists, as listed under evaluation criteria nos. 6-11.

## **Ib. Fundamental civil liberties, in practice**

### **6. Killing or disappearance of trade unionists in relation to their trade union activities (in practice)**

**Paras. 42-60** in Digest of decisions and principles;

**Paras. 28-30** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes those cases where the murder or disappearance is connected with trade union membership and/or trade union activities (e.g. targeted killings, dispersal of public meetings by the police involving loss of life);
- Includes murder or disappearance of trade unionists' family members;
- Includes death penalty in connection with trade union membership and/or trade union activities.
- *In case the murder or disappearance occurs during and in relation to a police intervention in a peaceful and legitimate strike, it should be coded together with violation no. 105.*

### **7. Committed against trade union officials re violation no. 6 (in practice)**

- Includes cases where the violation is committed against trade union officials.
- Note: Trade union officials refer to elected officials and representatives of trade union office.

### **8. Lack of guarantee of due process and/or justice re violation no.6 (in practice)**

**Paras. 96-120** in Digest of decisions and principles;

**Paras. 29-32** in General Survey 1994;

**Paras. 60, 62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation for damages suffered;
- Includes violations of the right to appeal to an impartial and independent judicial body.

## **9. Other violent actions against trade unionists in relation to their trade union activities (in practice)**

**Paras. 42-60** in Digest of decisions and principles;

**Paras. 28-30, 33** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes those cases where the violent action is connected with trade union membership and/or activities;
- Includes violent actions against trade unionists' family members;
- Includes violent actions such as physical assault, attacks, injury, torture, cruelty or ill-treatment while in detention (Digest, Para. 56.); internment in psychiatric hospitals (Digest, Para. 91.);
- Includes cases of dispersal of public meetings by the police leading to serious injury;
- Includes intimidation (e.g. death threat), coercion under threat of force; militarization of workplaces; and the creation of an environment of fear, climate of violence;
- *In case the violent action is committed during and in relation to a police intervention during a peaceful and legitimate strike, it should be coded together with evaluation criterion no. 105.*
- *Threats of dismissal should be coded under evaluation criterion no. 56. (Digest, Paras. 58-60.).*

## **10. Committed against trade union officials re violation no.9 (in practice)**

- Includes cases where the violation is committed against trade union officials.
- Note: Trade union officials refer to elected officials and representatives of trade union office.

## **11. Lack of guarantee of due process and/or justice re violation no.9 (in practice)**

**Paras. 96-120** in Digest of decisions and principles;

**Paras. 29-32** in General Survey 1994;

**Paras. 60, 62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation

- for damages suffered;
- Includes violations of the right to appeal to an impartial and independent judicial body.

## **12. Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities (in practice)**

**Paras. 61-95** in Digest of decisions and principles;

**Paras. 31-32** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes prosecution of and arbitrary sanctions (arrest, detention, imprisonment, fines or other heavy criminal sanctions) for reasons connected with trade union membership and/or legitimate trade union activities;
- Includes cases where the sanction imposed is not proportionate to the offence or fault committed (heavy criminal sanctions); education through labour systems;
- Includes apprehension and systematic or arbitrary interrogation by police in practice (Digest, Para. 68.).
- In case the arrest or detention occurs during and in relation to a police intervention in a peaceful and legitimate strike, it should be coded together with evaluation criterion no. 105.*

## **13. Committed against trade union officials re violation no.12 (in practice)**

- Includes cases where the violation is committed against trade union officials.
- Note: Trade union officials refer to elected officials and representatives of trade union office.

## **14. Lack of guarantee of due process and/or justice re violation no.12 (in practice)**

**Paras. 96-120** in Digest of decisions and principles;

**Paras. 29-32** in General Survey 1994;

**Paras. 60, 62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);

- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation for damages suffered;
- Includes violations of the right to appeal to an impartial and independent judicial body.

## **15. Infringements of trade unionists' basic freedoms (in practice)**

**Paras. 121-174** in Digest of decisions and principles;

**Paras. 34-39** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- Includes violations in practice of freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes violations of freedom of movement, such as:
  - Prohibition to leave any country, including trade unionists' own country, and to return to his/her country, withholding travel documents (Digest, Para. 122.) or other measures that prevent representatives of occupational organizations from e.g. participating in international trade union meetings;
  - Practice of freeing trade unionists on condition that they leave the country (Digest, Para. 127.);
- Includes violations of the right of peaceful and legitimate assembly and demonstration, such as:
  - Interference and/or use of force by public authorities for reasons that go beyond the aim of maintaining public order and security (Digest, Paras. 130-153.), the holding of meetings only with the presence of the members of the police or any representative of the authorities (General Survey, Para. 35.);
  - Includes both large scale meetings of organizations, public meetings and demonstrations (Digest, Paras. 131-151.);
  - Includes cases of arbitrary refusal to hold public meetings and demonstrations;
- Includes violations of trade unionists' freedom of opinion and expression (Digest, Paras. 154-173.);
  - This includes freedom of opinion and expression both at trade union's meetings, in publications (through uncensored and independent press (Para. 158.)) and in other trade union activities (Digest, Para. 154.);
  - Includes censorship and the arbitrary temporary or definitive suspension and/or seizure of publications (Digest, Paras. 172-173.).

## **16. Committed against trade union officials re violation no.15 (in practice)**

- |  |
|--|
| <ul style="list-style-type: none"><li>• Includes cases where the violation is committed against trade union officials.</li><li>• Note: Trade union officials refer to elected officials and representatives of trade union office.</li></ul> |
|--|

## **17. Lack of guarantee of due process and/or justice re violation no.15 (in practice)**

### **Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- |   |
|---|
| <ul style="list-style-type: none"><li>• Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);</li><li>• Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);</li><li>• Includes lack of independent and impartial judiciary;</li><li>• Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation for damages suffered;</li><li>• Includes violations of the right to appeal to an impartial and independent judicial body.</li></ul> |
|---|

## **18. Attacks against trade unions' and trade unionists' premises and property (in practice)**

**Paras. 178-192** in Digest of decisions and principles;

**Paras. 706-709** in Digest of decisions and principles;

**Para. 40** in General Survey 1994;

**Paras. 59-62** in General Survey 2012;

**Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- |   |
|---|
| <ul style="list-style-type: none"><li>• Includes arbitrary occupation, seizure and destruction of trade union premises and property in practice;</li><li>• Includes arbitrary confiscation of property without legally obtained court order;</li><li>• Includes entry or search without prior authorization or without having obtained legal warrant (Digest, Paras. 180-182., 185.) or with prior authorization and legal warrant where the public authority does not have good reasons to believe that evidence of criminal proceeding under the ordinary law will be found;</li><li>• Includes cases where the assets of organizations that are dissolved are seized and not handed over to the association that succeeds it or distributed in accordance with its own rule, or in the absence of such rule, is handed at the disposal of others than the workers concerned (Digest, Paras. 706-709.; General Survey 1994, Paras. 186-188.).</li></ul> |
|---|

## **19. Committed against trade union officials re violation no.18 (in practice)**

- |  |
|--|
| <ul style="list-style-type: none"><li>• Includes cases where the violation is committed against trade union officials.</li><li>• Note: Trade union officials refer to elected officials and representatives of trade union office.</li></ul> |
|--|

## **20 Lack of guarantee of due process and/or justice re violation no.18 (in practice)**

### **Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.**

- |   |
|---|
| <ul style="list-style-type: none"><li>• Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);</li><li>• Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);</li><li>• Includes lack of independent and impartial judiciary;</li><li>• Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation for damages suffered;</li><li>• Includes violations of the right to appeal to an impartial and independent judicial body.</li></ul> |
|---|

## **21. Excessive prohibitions/restrictions on trade union rights in the event of state of emergency (in practice)**

**Paras. 193-204** in Digest of decisions and principles;

**Paras. 41-43** in General Survey 1994.

- |  |
|--|
| <ul style="list-style-type: none"><li>• Includes unjustified suspensions, prohibitions, derogations, exemptions from civil liberties, trade union rights and its guarantees based on a reason that a state of emergency exists (e.g. arbitrary arrest, detention of trade unionists, restrictions on trade union meetings, restrictions on publications; unilateral setting or changing of terms of employment, suspension or dissolution of associations by administrative authority, restrictions on the right to strike, etc.);</li><li>• Includes calling state of emergency by the state for the purpose of evading trade union rights, freedom of association principles or ignoring civil liberties;</li><li>• <i>Does not include</i> restrictions imposed in the context of a state of emergency if such restrictions are justified in the event of an acute national emergency and are accompanied by normal judicial safeguards (Digest, Paras.198-199.).</li></ul> |
|--|

## **22. Lack of guarantee of due process and/or justice re violation no.21 (in practice)**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes legal proceedings overly lengthy ('Justice delayed is justice denied') (Digest, Paras. 104-105.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions, compensation for damages suffered;
- Includes violations of the right to appeal to an impartial and independent judicial body.

## **IIa. Right of workers to establish and join organizations, in law**

### **23. General prohibition of the right to establish and join organizations (in law)**

**Article 2 of Convention No. 87;**  
**Paras. 12, 93** in General Survey 1994;

**Para. 51** in General Survey 2012;

**Resolution concerning the Independence of the Trade Union Movement, 1952.**

- Includes the explicit general prohibition in law of the right to establish and join organizations;
- Includes provisions in law establishing state monopoly (typically in countries where political power is also wielded by a single party) by imposing a single organization to which workers must belong, while outlawing or suppressing others;
- Includes provisions in law establishing state monopoly with a recognized or organic link between those exercising political power and the prescribed actors in the world of work and where trade unions are subordinated to the organs of political power;
- Includes provisions in law obstructing the trade union movement from preserving its freedom and independence so as to be in a position to carry forward its economic and social mission, irrespective of political changes;
- Includes provisions in law transforming the trade union movement into an instrument for the pursuance of political aims of the ruling party and compromising the continuance of the trade union movement.
- *Note:* The coding of evaluation criterion no. 23 results in the automatic coding of evaluation criteria nos. 36, 62 and 73.

## **24. Exclusion of workers in EPZs from the right to establish and join organizations (in law)**

**Article 2 of Convention No. 87;**

**Paras. 209, 264-266** in Digest of decisions and principles;

**Para. 44-47, 60** in General Survey 1994;

**Paras. 63, 74** in General Survey 2012.

- Includes the exclusion in law of workers in export processing zones.

## **25. Exclusion of other workers from the right to establish and join organizations (in law)**

**Article 2 of Convention No. 87;**

**Paras. 209-264, 267-271, 360-362** in Digest of decisions and principles;

**Paras. 44-59, 61-67** in General Survey 1994;

**Paras. 53-54, 58, 63-81, 91** in General Survey 2012.

- Includes exclusion of workers based on race, political opinion, nationality (Digest, Paras. 210-215.);
- Includes exclusion of workers based on occupational categories (Digest, Paras. 216-270.): e.g. 1. public sector workers; 2. private sector workers; 3. workers in atypical occupation; and 4. workers in other vulnerable situation (e.g. domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers; self-employed workers; workers in “disguised” employment relationship.);
- Includes the exclusion of workers undergoing a period of probation, workers who have been dismissed and retired workers (Digest, Paras. 268-270.).
- *Does not include* exclusion of the armed forces and the police (with the exception of civilian staff).
- *Does not include* restrictions on the right to join organizations of senior public officials and managerial and executive staff in private sector and agricultural workers, if they are entitled to establish their own organizations and that the categories of such workers are not defined too broadly.
- *Note:* Exception concerning the members of the police and the armed forces should be construed in a restrictive manner. For example they do not include civilian personnel in armed forces, fire service personnel, prison staff, customs and excise officials, civilian employees in the industrial establishments of the armed forces, civilian employees in the intelligence services, or employees of the legislative authority. Nor do they automatically apply to all employees who may carry a weapon in the course of their duties (General Survey 2012, Para. 68.).
- *Note:* Systems which prohibit union security practices (closed shop, union shop and agency shop) in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with Convention No. 87. However, when union security clauses are imposed by the law itself, the right of workers to set up and join organizations of their own choosing is compromised. Legislation, which makes it compulsory to join a union or which designates a specific trade union as the recipient of union dues, or which achieves the same aim through regulation of the system of

compulsory union dues, has similar effect to provisions establishing at trade union monopoly and is not compatible with the Convention (General Survey 1994, Para. 103.).

## 26. Previous authorization requirements (in law)

**Article 2 and 7 of Convention No. 87;**

**Paras. 272-308** in Digest of decisions and principles;

**Paras. 68-78** in General Survey 1994.

**Paras. 82-87, 89-90** in General Survey 2012.

- Includes legislation that allows public authorities to impose previous authorization requirements that may constitute an obstacle to the establishment of an organization (Digest, Para. 272.);
- Includes acquisition of legal personality subject to legal conditions that restrict establishment of workers' organizations (Digest, Para. 272.);
- Includes legislation that goes beyond setting formalities to ensure the normal functioning of organization (Digest, Paras. 275-278.);
- Includes legal requirements regarding minimum number of members at too high level (Digest, Paras. 283-292.);
- Includes legal formalities (e.g. excessively detailed provisions) that are able to impair or discourage workers from the establishment of organization (Digest, Para. 281.);
- Includes conditions of registration that are tantamount to obtaining previous authorization from the public authorities (e.g. complicated, lengthy procedures, excessive registration requirements) (Digest, Paras. 294-295.);
- Includes legislation that entitles the competent authority with discretionary power to grant or reject registration.
- *Note:* Legislation that allows a decision to prohibit the registration of a trade union to become effective before the statutory period of lodging an appeal has expired or before the court has confirmed the appeal (Digest, Para. 301.) should be coded under violation no. 35.

## 27. Restrictions on the freedom of choice of trade union structure and composition (in law)

**Article 2 of Convention No. 87;**

**Paras. 333-337** in Digest of decisions and principles;

**Paras. 79-90** in General Survey 1994.

- Includes legal restrictions on the structure and composition of organizations;
- Includes restrictions in law that affect the size of organizations by setting that a certain number of members should belong to the same occupation or enterprise;
- Includes legal restrictions on the composition of the workers' organizations (e.g. restricting the members of the organization to workers from the same occupation, setting undue quota or high minimum proportion of certain workers, or requiring that a trade

union should have a certain proportion of citizens as members);

- Includes cases where legislation permits only first level organizations.
- *Does not include the following cases:*
  - Restriction that forbids public servants to form mixed (members from other sectors) organizations at the first level, as long as their organizations are not restricted to employees of any particular ministry, department or service, and that they may freely join federations, confederation of their own choosing;
  - Prohibition of executives, managers, confidential employees to form organizations open to lower-grade workers, as long as they have the right to form their own organizations and that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership;
  - Restrictions on first-level organizations of agricultural and domestic workers, as long as they are enabled to affiliate federations, confederation of their own choosing (General Survey 1994, Paras. 84-91.).

## 28. Imposed trade union unity (in law)

**Article 2 of Convention No. 87;**

**Paras. 309-332, 339-345** in Digest of decisions and principles;

**Paras. 91-100, 104** in General Survey 1994;

**Paras. 92-95** in General Survey 2012.

- Includes legislation that permits only single unions at various levels and imposes trade union monopoly (e.g. by prohibiting the creation of more than one first-level organization either in a given occupation, economic category or a given territorial area (Digest, Paras. 311-332.), or by permitting one national trade union for a given category of workers);
- Includes legislation that gives discretionary power to the competent authorities to refuse registration of a trade union when they consider that an already registered union adequately represents the workers concerned;
- Includes legislation that imposes either trade union unity or the proliferation of trade unions and thus obstruct trade unions to establish or join organizations “of their own choosing” (Digest, Para. 323.);
- Includes cases when the indirect result of a legislation is that it is impossible to establish a second organization representing workers’ interest (e.g. by fixing the percentage for membership in a level that makes it impossible to establish several organizations, e.g. by requiring the participation of at least 50 per cent of the workers (General Survey 1994, Para. 94.);
- Includes legislation that prevents the establishment of trade union organizations that is independent of the public authorities and of the ruling party and/or requires grass-roots organizations to be controlled by higher-level trade unions;
- Includes cases where legislation institutionalizes a factual monopoly, by referring to the

single organization by name (Digest, Para. 330.);

- Includes obligation in law to affiliate to the single central organization or to conform to the constitutions of the single existing central organization or to pay contributions to a single national trade union;
- Includes legislation that places a trade union at an advantage or disadvantage in relation to another trade union and thus indirectly creates a trade union monopoly (General Survey 1994, Paras. 91-96.), e.g. by granting an advantage in relation to the others.
- *Does not include* the distinction between the most representative trade union organizations and other trade union organizations, except if this distinction leads to the creation of trade union monopoly.
- *Discrimination between trade union organizations should be coded under evaluation criterion no. 32, except if it leads to a trade union monopoly in which case it should be coded under evaluation criterion no. 28.*
- *Note:* Should the imposed trade union unity be a state unity as defined under evaluation criterion no. 23, evaluation criterion no. 23 should as well be coded.
- *Note:* Systems which prohibit union security practices (closed shop, union shop and agency shop) in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with Convention No. 87. However, when union security clauses are imposed by the law itself, the right of workers to set up and join organizations of their own choosing is compromised. Legislation, which makes it compulsory to join a union or which designates a specific trade union as the recipient of union dues, or which achieves the same aim through regulation of the system of compulsory union dues, has similar effect to provisions establishing at trade union monopoly and is not compatible with the Convention (General Survey 1994, Para. 103.).

## 29. Dissolution/suspension of legally functioning organizations (in law)

**Article 4 of Convention No. 87;**

**Paras. 677-705** in Digest of decisions and principles;

**Paras. 180-185** in General Survey 1994.

**Para. 162** in General Survey 2012.

- Includes legislation that allows dissolution or suspension by administrative authorities, without ensuring the right of appeal to an independent and impartial judicial body;
- Includes legislation that allows the cancellation of registration or the removal of trade unions from the register by the registrar (Digest, Para. 685) or the annulment/suspension of legal personality;
- Includes dissolution and suspension by law on account of unreasonably determined insufficient membership (Digest, Para. 680.) or for reasons that are not proportionate (e.g. for illegal activities carried out by some leaders, for irregularities in the financial management, etc.).
- *Note:* Cases where the administrative decision can take effect before the expiry of the

statutory period for lodging an appeal, without an appeal having been entered or before the confirmation of such decisions by a judicial authority (Digest, Para. 703.) should be coded under violation no. 35.

### **30. Provisions in law allowing for anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal (in law)**

#### **Article 1 of Convention No. 98;**

**Paras. 769-812, 654-666, 674-675** in Digest of decisions and principles;

**Paras. 199-213** in General Survey 1994;

**Paras. 161, 176, 178-181, 186** in General Survey 2012.

- Includes legislation that allows direct and/or indirect discriminatory measures on grounds of trade union membership or legitimate trade union activities both at the time of recruitment/hiring and in the course of employment (General Survey 1994, Para. 210.);
- Includes legislation that allows direct and/or indirect discriminatory measures such as dismissal or suspension, non-renewal of contract, excluding union members from receiving bonuses, transfers, downgrading, restrictions of any kind (e.g. remuneration, social benefits, vocational training) (Digest, Paras. 781., 785-788.);
- Includes legislation that allows direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes;
- Includes legislation that allows anti-union discrimination against former trade union members (Digest, Para. 775.) or against trade union members of trade unions not recognized by the (Digest, Para. 776.).<sup>15</sup>

### **31. Lack of adequate legal guarantees against anti-union discriminatory measures (in law)**

#### **Article 3 of Convention No. 98;**

**Paras. 813-853** in Digest of decisions and principles;

**Paras. 214-224** in General Survey 1994;

**Paras. 166-167, 173-193** in General Survey 2012.

- Includes lack of appropriate measures in law guaranteeing effective protection of trade unionists and ensuring that complaints of anti-union discrimination are examined in the framework of national procedures which are prompt, impartial and considered as such by the parties concerned (Digest, Para. 817.);
- Includes lack of specific provisions accompanied by civil remedies and penal sanctions for the protection of workers against acts of anti-union discrimination (Digest, Para. 824.);
- Includes lack of access to means of redress which are expeditious, inexpensive and fully impartial (Digest, Para. 820.);
- Includes lack of provisions for sufficiently dissuasive sanctions against acts of anti-union

<sup>15</sup> Public servants engaged in the administration of the State who are not included within the scope of Convention No. 98 (Article 6) are to be protected against anti-union discrimination in employment by virtue of Article 4 of the Labour Relations (Public Service) Convention, 1978 (No. 151), where ratified.

- discriminative measures, lack of legislation providing full compensation, both in financial and in occupational terms;
- Includes legislation that does not provide the same protection against anti-union discrimination for trade union members and former trade union officials as to current trade union leaders (Digest, Para. 775.) or to trade unions not recognized by the employers as representing the majority of workers concerned (Digest, Para. 776.).

### **32. Provisions in law allowing for interference of employers and/or public authorities (in law)**

**Article 2 of Convention No. 98;**

**Paras. 855-859, 863-870** in Digest of decisions and principles;

**Paras. 225-234** in General Survey 1994;

**Paras. 194-196** in General Survey 2012.

- Includes legislation that allows undue interference that is such as to impair or shall be so applied as to impair trade union rights and its guarantees;
- Includes legislation that allows acts of interference which are designed to promote the establishment of workers' organizations under the domination of employers or employer's organization (e.g. legislation that permit the establishment of parallel unions by employers);
- Includes legislation that allows discrimination between workers' organization, *except if it leads to trade union monopoly in which case it should be coded under evaluation criterion no. 28*;
- Includes legislation that allows the disclosure of information on trade union membership and activities; infringement on the inviolability of correspondence and telephonic conversation; establishment of a register containing data on trade union members (Digest, Paras. 175-177.).

### **33. Lack of adequate legal guarantees against acts of interference (in law)**

**Article 2 of Convention No. 98;**

**Paras. 860-862, 865** in Digest of decisions and principles;

**Paras. 225-234** in General Survey 1994;

**Paras. 166-167, 173-175, 194-197** in General Survey 2012.

- Includes the lack of clear and precise legal provisions ensuring the adequate protection of workers' organizations against acts of interference (rapid and efficient procedures, coupled with effective and dissuasive sanctions);
- Includes lack of specific provisions accompanied by civil remedies and penal sanctions for the protection of workers against acts of interference (Digest, Para. 824.);
- Includes lack of access to means of redress which are expeditious, inexpensive and fully impartial (Digest, Para. 820.);
- Includes lack of provisions for sufficiently dissuasive sanctions against acts of interference, lack of legislation providing full compensation, both in financial and in

occupational terms.

#### **34. Infringements of the right to establish and join federations/confederations/international organizations (in law)**

**Article 6-7 of Convention No. 87;**

**Paras. 710-768** in Digest of decisions and principles;

**Paras. 189-198** in General Survey 1994;

**Para. 163** in General Survey 2012.

- Includes general prohibition in law to establish and/or affiliate with federations and confederations (Digest, Paras. 710-729.);
- Includes general prohibition in law to affiliate with international organisations of workers (Digest, Paras. 732-768.);
- Includes legislation that excludes workers' organizations from the right to establish and join federations and confederations or to affiliate with international organizations of workers (Digest, Para. 717.);
- Includes legislation that allows public authorities to impose previous authorization requirements to establish federations and confederations or to affiliate with international organizations of workers.
- *Note:* All other violations in law relating to federations/confederations/international organizations should be coded under the specific evaluation criterion the infringement links to.

#### **35. Lack of guarantee of due process and/or justice re violations nos. 23-34 (in law)**

- Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal);
- Includes the lack of legal guarantees for recourse to judicial authority (e.g. the lack of the right to appeal or cases where the appeal can only be lodged to one of the Ministries) against any civil, administrative, criminal and/or disciplinary decision.
- *Note:* Includes lack of guarantee of due process of law with regard to violations listed under evaluation criteria nos. 23-34, with the exception of evaluation criteria nos. 30 and 32 as those are coded under evaluation criteria nos. 31 and 33.

## **IIb. Right of workers to establish and join organizations, in practice**

### **36. General prohibition of the development of independent workers' organizations (in practice)**

**Article 2 of Convention No. 87;**

**Paras. 12, 93 in General Survey 1994;**

**Para. 51 in General Survey 2012;**

**Resolution concerning the Independence of the Trade Union Movement, 1952.**

- Includes the general prohibition in practice to establish and join organizations;
- Includes the establishment in practice of state monopoly (typically in countries where political power is also wielded by a single party) by imposing a single organization to which workers must belong, while obstructing or suppressing others;
- Includes the establishment in practice of state monopoly with a recognized or organic link between those exercising political power and the prescribed actors in the world of work and where trade unions are subordinated to the organs of political power;
- Includes violations in practice leading to the obstruction of the trade union movement from preserving its freedom and independence so as to be in a position to carry forward its economic and social mission, irrespective of political changes;
- Includes violations in practice transforming the trade union movement into an instrument for the pursuance of political aims of the ruling party and compromising the continuance of the trade union.
- *Note:* The coding of evaluation criterion no. 23 results in the automatic coding of evaluation criteria nos. 36.
- *Note:* The coding of evaluation criterion no. 36 results in the automatic coding of evaluation criterion no. 73.

### **37. Exclusion of workers in EPZs from the right to establish and join organizations (in practice)**

**Article 2 of Convention No. 87;**

**Paras. 209, 264-266 in Digest of decisions and principles;**

**Para. 44-47, 60 in General Survey 1994;**

**Paras. 63, 74 in General Survey 2012.**

- Includes the exclusion of workers in export processing zones.

### **38. Exclusion of other workers from the right to establish and join organizations (in practice)**

**Article 2 of Convention No. 87;**

**Paras. 209-264, 267-271, 360-362 in Digest of decisions and principles;**

**Paras. 44-59, 61-67 in General Survey 1994;**

**Paras. 53-54, 58, 63-81, 91 in General Survey 2012.**

- Includes exclusion of workers based on race, political opinion, nationality;
- Includes exclusion of workers based on occupational categories: e.g. 1. public sector workers; 2. private sector workers; 3. workers in atypical occupation; and 4. workers in

- other vulnerable situation (e.g. domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers; workers in the informal economy; workers in “disguised” employment relationship.);
- Includes the exclusion of workers undergoing a period of probation, workers who have been dismissed and retired workers (Digest, Paras. 268-270.).
  - *Does not include* exclusion of the armed forces and the police (with the exception of civilian staff).
  - *Does not include* restrictions on the right to join organizations of senior public officials and managerial and executive staff in private sector and agricultural workers, if they are entitled to establish their own organizations and that the categories of such workers are not defined too broadly.
  - *Note:* Exception concerning the members of the police and the armed forces should be construed in a restrictive manner. For example they do not include civilian personnel in armed forces, fire service personnel, prison staff, customs and excise officials, civilian employees in the industrial establishments of the armed forces, civilian employees in the intelligence services, or employees of the legislative authority. Nor do they automatically apply to all employees who may carry a weapon in the course of their duties (General Survey 2012, Para. 68.).
  - *Note:* Systems which prohibit union security practices (closed shop, union shop and agency shop) in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with Convention No. 87. However, when union security clauses are imposed by the law itself, the right of workers to set up and join organizations of their own choosing is compromised. Legislation, which makes it compulsory to join a union or which designates a specific trade union as the recipient of union dues, or which achieves the same aim through regulation of the system of compulsory union dues, has similar effect to provisions establishing at trade union monopoly and is not compatible with the Convention (General Survey 1994, Para. 103.).

### **39. Previous authorization requirements (in practice)**

**Article 2 and 7 of Convention No. 87;**  
**Paras. 272-308 in Digest of decisions and principles;**  
**Paras. 68-78 in General Survey 1994.**  
**Paras. 82-87, 89-90 in General Survey 2012.**

- Includes cases where public authorities can arbitrarily impose previous authorization requirements that may constitute an obstacle to the establishment of an organization (Digest, Para. 272.);
- Includes cases where either the government or other competent administrative authorities (e.g. registrar) have discretionary power in practice to grant or refuse registration of workers’ organization;
- Includes undue practices that are able to impede the right of workers to establish

- organization (e.g. intentional delays in administrative procedures);
- Includes cases where the formalities prescribed by law for the establishment of a trade union are applied in a manner as to delay or prevent the establishment of trade union organization (Digest, Para. 279.);
  - *Note:* Decisions to prohibit the registration of a trade union which has received legal recognition to become effective before the statutory period of lodging an appeal has expired or before the court has confirmed the appeal (Digest, Para. 301.) should be coded under violation no. 49.

#### **40. Restrictions on the freedom of choice of trade union structure and composition (in practice)**

**Article 2 of Convention No. 87;**  
**Paras. 333-337** in Digest of decisions and principles;  
**Paras. 79-90** in General Survey 1994.

- Includes restrictions in practice that affect the size of organizations by requiring that a certain number of members should belong to the same occupation or enterprise;
- Includes restrictions in practice on the composition of the workers' organization (e.g. allowing only workers from the same occupation to become a member of the organization).
- *Does not include the following cases:*
  - Restriction on public servants to form mixed (members from other sectors) organizations at the first level, if these organizations are not restricted to employees of any particular ministry, department or service, and that they may freely join federations, confederation of their own choosing;
  - Prohibition of executives, managers, confidential employees to form organizations open to lower-grade workers, if they have the right to form their own organizations and that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership;
  - Restrictions on first-level organizations of agricultural and domestic workers, if they are enabled to affiliate federations, confederation of their own choosing. (General Survey, Paras. 84-91.).

#### **41. Imposed trade union unity (in practice)**

**Article 2 of Convention No. 87;**  
**Paras. 309-332, 339-345** in Digest of decisions and principles;  
**Paras. 91-100, 104** in General Survey 1994;  
**Paras. 92-95** in General Survey 2012.

- Includes exercise of discretionary power of the competent authorities in practice to refuse the registration of a trade union when they consider that an already registered union

adequately represents the workers concerned;

- Includes the denial of the possibility to form other organizations where a single organization is already established;
- Includes direct/indirect support in practice of one trade union on the account of other workers' organizations, placing one organization at an advantage or disadvantage in relation to the others (e.g. through unequally distributed aid, premises provided for holding meetings or activities to one organization but not to another, refusal to recognize officers of some organizations in the exercise of their legitimate activities) and thus creating indirectly a trade union monopoly;
- Includes state-sponsored and controlled trade union monopolies.
- *Does not include* the distinction between the most representative trade union organizations and other trade union organizations, except if this distinction leads to trade union monopoly.
- *Discrimination between trade union organizations should be coded under evaluation criterion no. 46, except if it leads to trade union monopoly, in which case it should be coded under evaluation criterion no. 41.*
- *Note:* Should the imposed trade union unity be a state unity as defined under evaluation criterion no. 36, evaluation criterion no. 36 should as well be coded.
- *Note:* Systems which prohibit union security practices (closed shop, union shop and agency shop) in order to guarantee the right not to join an organization, as well as systems which authorize such practices, are compatible with Convention No. 87. However, union security clauses legislatively imposed in such a way resulting in a trade union monopoly are contrary to the principles of freedom of association (Digest, Para. 363.).

## 42. Dissolution/suspension of legally functioning organizations (in practice)

**Article 4 of Convention No. 87;**

**Paras. 677-705** in Digest of decisions and principles;

**Paras. 180-185** in General Survey 1994;

**Para. 162** in General Survey 2012.

- Includes arbitrary dissolution/suspension by administrative authorities (administrative dissolution of trade unions) in practice;
- Includes discretionary cancellation of the registration by the registrar or the removal from the register, being tantamount to the dissolution of the organization by administrative authority (Digest, Para. 685.);
- Includes dissolution by the trade union said to be voluntary, though it can be proven that the decision was not freely taken or not by following the procedure regulated in the by-laws of the trade union (e.g. by not the congress convened in a regular manner or by all the workers concerned);
- Includes discretionary dissolution or suspension in practice for reasons that are not proportionate (e.g. for illegal activities carried out by some leaders, for irregularities in the

- financial management, etc.);
- Includes cases that indirectly lead to the dissolution or suspension (e.g. loss of advantages essential to carrying out their activities, depriving it of its financial resources or annulment or suspension of legal personality);
  - *Note:* Cases where the administrative decision can take effect before the expiry of the statutory period for lodging an appeal, without an appeal having been entered or before the confirmation of such decisions by a judicial authority (Digest, Para. 703.) should be coded under violation no. 49.

### **43. Anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal (in practice)**

**Article 1 of Convention No. 98;**  
**Paras. 769-812, 654-666, 674-675** in Digest of decisions and principles;  
**Paras. 199-213** in General Survey 1994;  
**Paras. 161, 176, 178-181, 186** in General Survey 2012.

- Refers to discriminatory measures in practice on grounds of trade union membership or legitimate trade union activities both at the time of hiring/recruitment and in the course of employment (Digest, Para. 781.);
- Includes direct and/or indirect discrimination in hiring (Digest, Paras. 782-784.);
- Includes practice of blacklisting (Digest, Para. 803.);
- Includes direct and/or indirect discriminatory measures during employment, in particular non-renewal of contract, excluding union members from receiving bonuses, transfers, downgrading, restrictions of any kind (e.g. remuneration, social benefits, vocational training) (Digest, Paras. 781., 785-788.);
- Includes direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes;
- Refers to discriminatory dismissal or suspension in practice on grounds of trade union membership or legitimate trade union activities;
- Includes massive/large-scale dismissals for reasons of trade union membership and/or legitimate trade union activities;
- Includes dismissal for economic reasons if they are used as an indirect means of subjecting trade union leaders/members to acts of anti-union discrimination where the discriminatory motive and impact is proven/acknowledged (General Survey 1994, Para. 213.);
- Includes compulsory retirement as a consequence of trade union membership or legitimate trade union activities;
- Includes deportation of migrant workers for trade union membership or legitimate trade union activities.

#### **44. Committed against trade union officials re violation no. 43 (in practice)**

**Article 3 of Convention No. 98;**

**Paras. 799-802** in Digest of decisions and principles.

- Includes cases when the violation is committed against trade union officials;
- Includes violations committed either during the period of office or for a certain time thereafter.
- *Note:* Trade union officials refer to elected officials and representatives of trade union office.

#### **45. Lack of guarantee of due process and/or justice re violation no. 43 (in practice)**

**Article 3 of Convention No. 98;**

**Paras. 813-853** in Digest of decisions and principles;

**Paras. 214-224** in General Survey 1994;

**Paras. 166-167, 173-193** in General Survey 2012.

- Includes violations of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes violations of measures that guarantee an effective protection of trade unionists (e.g. procedures which should be prompt, impartial and considered as such by the parties concerned (Digest, Para. 817.));
- Includes lack of access in practice to means of redress which are expeditious, inexpensive and fully impartial (Digest, Para. 820.);
- Includes lack of sufficiently dissuasive sanctions against acts of anti-union discriminative measures.

#### **46. Acts of interference of employers and/or public authorities (in practice)**

**Article 2 of Convention No. 98;**

**Paras. 855-859, 863-870** in Digest of decisions and principles;

**Paras. 225-234** in General Survey 1994;

**Paras. 194-196** in General Survey 2012.

- Includes acts to place trade unions under the domination or control of employers, employers' organizations or public authorities (e.g. supporting workers' organizations by financial or other means, such as premises or facilities);
- Includes the establishment of parallel unions and/or solidarist or other associations; dismissal of trade union officers prejudicing the existing trade union and promoting the establishment of another trade union (Digest, Para. 869-879.; General Survey 1994, Para. 231.);
- Includes anti-union propaganda; and anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as efforts made to create puppet unions

(Digest, Para. 858.);

- Includes the use of threats of dismissal or transfer, downgrading, restrictions in remuneration; using means of pressure in favour of or against any trade union organization;
- Includes cases of government interferences when the government has one of its members as a leader of a trade union which represents several categories of workers employed by the States (Digest, Para. 867.);
- Includes discrimination between workers' organization, *except if it leads to trade union monopoly in which case it should be coded under evaluation criterion no. 41*;
- Includes disclosure of information on trade union membership and activities; infringement on the inviolability of correspondence and telephonic conversation; establishment of a register containing data on trade union members (Digest, Paras. 157-177.).

#### **47. Lack of guarantee of due process and/or justice re violation no. 46 (in practice)**

**Article 2 of Convention No. 98;**

**Paras. 860-862, 865** in Digest of decisions and principles;

**Paras. 225-234** in General Survey 1994;

**Paras. 166-167, 173-175, 194-197** in General Survey 2012.

- Includes violations of the right to fair and rapid trial, the lack of independent and impartial judiciary and/or lack of sufficiently dissuasive sanctions.

#### **48. Infringements of the right to establish and join federations/confederations/international organizations (in practice)**

**Article 6-7 of Convention No. 87;**

**Paras. 710-768** in Digest of decisions and principles;

**Paras. 189-198** in General Survey 1994;

**Para. 163** in General Survey 2012

- Includes obstacles towards the establishment of federations and confederations (Digest, Paras. 710-729.);
- Includes obstacles towards the affiliation of workers' organizations, federations, confederation with international organizations of workers (Digest, Paras. 732-768.);
- Includes exclusion of workers' organizations from the right to establish and join federations and confederations or to affiliate with international organizations of workers (Digest, Para. 717.);
- Includes previous authorization requirements to establish federations and confederations or to affiliate with international organizations of workers.
- *Note:* All other infringements of rights relating to federations/confederations/international organizations should be coded under the specific evaluation criterion the infringement

links to.

#### **49. Lack of guarantee of due process and/or justice re violations nos. 36-48 (in practice)**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions;
- Includes violations of the right to appeal to an impartial and independent judicial body.
- *Note:* Includes lack of guarantee of due process of law in practice with regard to violations of workers to establish and join organizations, as listed under evaluation criteria nos. 36-48, with the exception of evaluation criteria nos. 43 and 46 as those are coded under evaluation criteria nos. 45 and 47.

#### **IIIa. Other union activities, in law**

#### **50. Infringements of the right to freely draw up constitutions and internal rules and administration (in law)**

**Article 3 of Convention No. 87;**  
**Paras. 369-387, 454-465** in Digest of decisions and principles;  
**Paras. 108, 109-111** in General Survey 1994;  
**Paras. 100, 112-114** in General Survey 2012.

- Includes legislation that goes beyond the objective of protecting the interests of members and guaranteeing the democratic functioning of organizations, and therefore may undermine the rights of workers to draw up (or amend) their constitution and rules in full freedom (e.g. overly detailed and restrictive legal provisions, provisions that go beyond formal requirements listing the particulars that must be contained in the constitution/rules (Digest, Para. 379.));
- Includes legislation that allows interference or control in the internal administration of organizations that goes beyond the aim to ensure respect for democratic rules and provides authorities with discretionary rights of trade unions' internal and financial administration;
- Includes violations in law, e.g. making the constitution and rules subject to prior approval of public authorities or enabling the public authorities to draw up the constitution;
- Includes legal requirements to follow a model constitution and rules which contain more than certain purely formal clauses or to use such a model as a basis (Digest, Para. 384.);
- Includes requirements in law to make the constitution subject to approval by the central administration of the existing organization (Digest, Para. 387.);

- Includes legislation over-regulating the internal rules and structure of workers' organizations, including e.g. rules concerning membership, disciplinary measures, decision to terminate the activities of an organization, composition of the congress, voting thresholds etc.

## 51. Infringements of the right to freely elect representatives (in law)

**Article 3 of Convention No. 87;**

**Paras. 388-453** in Digest of decisions and principles;

**Paras. 108, 112-123** in General Survey 1994;

**Paras. 101-107** in General Survey 2012.

- Includes legislation that restricts, infringes the right of trade unions to primarily determine the procedures and methods for the election of their officials e.g. through excessively precise, meticulous and detailed regulation (Digest, Para. 393.);
- Includes legislation that obliges workers' organizations to submit their candidates' names together with personal particulars in advance to the authorities/employers;
- Includes infringements of the right of trade unions to determine eligibility conditions for their representatives (e.g. setting nationality, political beliefs or lack of them and requirement of being free of any criminal conviction as a condition for trade union office or being employed in the occupation/enterprise, certain duration of membership of the organization) (Digest, Paras. 405-426.);
- Includes legal requirements for candidates to belong to the respective occupation, enterprise or production unit, or to be actually employed in this occupation;
- Includes legislation that deters candidates from becoming official (e.g. prohibiting trade union leaders from receiving remuneration of any kind (Digest, Para. 458);
- Includes legislation allowing the interference in the election by public authorities (e.g. prior approval of the results of the elections by public authorities; interference in various stage of the electoral process; being physically present during the election, nomination by the authorities/political parties/employers of members of executive committees of trade unions );
- Includes legislation that restricts re-elections or sets the maximum length of terms of trade union office (Digest, Paras. 425-426.; General Survey 1994, Para. 121.);
- Includes legal provisions that permit the suspension and removal of trade union officers or the placing of trade union organizations under control e.g. through the appointment of temporary administrators by the administrative authorities/employers, by the executive board of a single central organization (Digest, Para. 444-453.).
- *Does not include* cases when foreign workers are allowed to take union office only upon the condition of a reasonable period of residence.

## **52. Infringements of the right to freely organize and control financial administration (in law)**

**Article 3 of Convention No. 87;**

**Paras. 466-494** in Digest of decisions and principles;

**Paras. 108, 124-127** in General Survey 1994;

**Paras. 108-111** in General Survey 2012.

- Includes legislation that allows interference or control in the financial administration of organizations that goes beyond the aim to ensure respect for democratic rules and provides authorities with discretionary rights of trade unions' financial administration;
- Includes control and restriction on the use of trade union dues and funds, including the collection of union dues (e.g. legislation that regulate in detail what trade union funds can be spent, legislation that allows employer to withhold trade union dues or to withdraw the check-off facility);
- Includes legal provisions which give the authorities the right to restrict the freedom of a trade union to administer and utilize its funds;
- Includes legal provisions exceeding the obligations normally limited to submitting periodic financial reports or allowing administrative control over trade union assets (such as financial audits and investigations) to be applied not only in exceptional cases, when justified by grave circumstances (e.g. presumed irregularities in the annual statement);
- Includes legislation prohibiting the acceptance by a trade union of financial or other assistance from an international organization of workers to which it is affiliated or requiring the trade union to obtain prior authorization to receive it.

## **53. Infringements of the right to freely organize activities/programmes (in law)**

**Article 3 of Convention No. 87;**

**Paras. 508-519** in Digest of decisions and principles;

**Paras. 108, 128-130, 133-135** in General Survey 1994;

**Para. 115** in General Survey 2012.

- Includes prohibition or restriction in law of any other legitimate trade union activities (Digest, Paras. 508-519., e.g. internal meetings, trainings, petitions, campaigns, submitting claims to the employers, representation of trade union members before court to defend them, organizing training programmes, etc.);
- Includes legal restrictions/prohibitions relating to facilities necessary for the proper exercise of trade union functions (e.g. access to their offices, access to the workplace, free time accorded to trade union leaders) that goes beyond the aim to ensure respect for democratic rules.

#### **54. Prohibition of all political activities (in law)**

**Article 3 of Convention No. 87;**

**Paras. 497-507** in Digest of decisions and principles;

**Paras. 108, 130-133** in General Survey 1994;

**Para. 116** in General Survey 2012.

- Includes general prohibition in law of trade union organizations' engagement with any political activity, including those aiming the advancement of their economic and social objectives.
- Note: Trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests.

#### **55. Lack of guarantee of due process and/or justice re violations nos. 50-54 (in law)**

- Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal);
- Includes the lack of legal guarantees for recourse to judicial authority (e.g. the lack of the right to appeal or cases where the appeal can only be lodged to one of the Ministries) against any civil, administrative, criminal and/or disciplinary decision.
- Note: Includes lack of guarantee of due process of law with regard to violations of other union activities, as listed under evaluation criteria nos.50-54.

#### **IIIb. Other union activities, in practice**

#### **56. Infringements of the right to freely draw up constitutions and internal rules and administration (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 369-387, 454-465** in Digest of decisions and principles;

**Paras. 108, 109-111** in General Survey 1994;

**Paras. 100, 112-114** in General Survey 2012.

- Includes interference in practice in the trade union's right to freely draw or amend constitutions and rules (e.g. arbitrary approval of the constitution and rules by public authorities/employers or approval by the central or higher level organizations);
- Includes imposition in practice to follow a model constitution which contains more than certain purely formal clauses or to use such a model as a basis;
- Includes requirement of amendments to constitution that go beyond formal requirements;
- Includes interference by public authorities/employer in the internal functioning of workers' organizations, e.g. by requesting copies of the decisions taken by the executive committees to be transmitted or interfering in the settlement of internal disputes in a trade union..

## **57. Infringements of the right to freely elect representatives (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 388-453** in Digest of decisions and principles;

**Paras. 108, 112-123** in General Survey 1994;

**Paras. 101-107** in General Survey 2012.

- Includes interference by public authorities/employers in the election of trade union officials (e.g. arbitrary prior approval of the results of the elections; interference in various stages of the electoral process; obligation to submit candidates' names in advance to the public authority; presence of representatives of public authorities (civil or military), labour inspectors) (Digest, Paras. 429., 437-438.);
- Includes removal or suspension of trade union officers in practice which is not the result of an internal decision of the trade union or normal judicial proceedings and the placement of trade unions under control by public authorities (Digest, Paras. 444-453.);
- Includes deterrence of candidates from becoming official (e.g. prohibiting trade union leaders from receiving remuneration of any kind (Digest, Para. 458));
- Includes intimidation of candidates and other trade unionist to impede their participation;
- Includes suspension of the validity of elections – pending the final outcome of the judicial proceedings - based on complaints brought before labour courts by an administrative authority challenging the results of trade union elections (Digest, Para. 441.).

## **58. Infringements of the right to freely organize and control financial administration (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 466-494** in Digest of decisions and principles;

**Paras. 108, 124-127** in General Survey 1994;

**Paras. 108-111** in General Survey 2012.

- Includes interference in the financial independence of workers' organizations (e.g. examination of books and other documents without safeguards of ordinary due processes of law; discretionary power of authorities/employers for investigation and to demand information at any time by public authorities);
- Includes control and restriction in practice on the use of trade union dues and funds, including the collection of union dues (e.g. withholding trade union dues or to withdrawing the check-off facility);
- Includes interference through freezing of union bank accounts (Digest, Para. 486.);
- Includes obstruction of the acceptance by a trade union of financial or other assistance from an international organization of workers to which it is affiliated or imposing prior authorization in practice in order to receive it.

## **59. Infringements of the right to freely organize activities/programmes (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 508-519** in Digest of decisions and principles;

**Paras. 108, 128-130, 133-135** in General Survey 1994;

**Para. 115** in General Survey 2012.

- Includes major difficulties, restrictions in practice of any legitimate trade union activities (Digest, Paras. 508-519., e.g. internal meetings, trainings, petitions, campaigns, submitting claims to the employers, representation of trade union members before court to defend them, organizing training programmes, etc.);
- Includes restrictions/prohibitions of the use of facilities necessary for the proper exercise of trade union functions (e.g. access to their offices, access to the workplace, free time accorded to trade union leaders).

## **60. Prohibition of all political activities (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 497-507** in Digest of decisions and principles;

**Paras. 108, 130-133** in General Survey 1994;

**Para. 116** in General Survey 2012.

- Includes prohibition in practice of trade union organizations' participation in any political activity, including those aiming the advancement of their economic and social objectives.
- *Note:* Trade union organizations should not engage in political activities in an abusive manner and go beyond their true functions by promoting essentially political interests.

## **61. Lack of guarantee of due process and/or justice re violations nos. 56-60 (in practice)**

- Includes infringements in practice of the right to fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions;
- Includes violations of the right to appeal to an impartial and independent judicial body.
- *Note:* Includes lack of guarantee of due process of law with regard to violations of other union activities, as listed under evaluation criteria nos. 56-60.

#### **IVa. Right to collective bargaining, in law**

##### **62. General prohibition of the right to collective bargaining (in law)**

**Article 4 of Convention No. 98;**

**Paras. 12, 93 in General Survey 1994;**

**Para. 51 in General Survey 2012;**

**Resolution concerning the Independence of the Trade Union Movement, 1952.**

- Includes the explicit general prohibition in law of the right to collective bargaining;
- Being inextricably linked to freedom of association and considering that the right of workers to establish their independent organizations is the basic prerequisite for collective bargaining, in the event of the establishment of state monopoly (see evaluation criterion no. 23), the general prohibition of the right to collective bargaining in law should as well be coded.
- *Note:* The coding of evaluation criterion no. 23 results in the automatic coding of evaluation criterion no. 62.
- *Note:* The coding of evaluation criterion no. 62 results in the automatic coding of evaluation criterion no. 73.

##### **63. Insufficient promotion of collective bargaining (in law)**

**Article 4 of Convention No. 98;**

**Paras. 880, 888, 928-933 in Digest of decisions and principles;**

**Paras. 235-236, 244-247 in General Survey 1994;**

**Paras. 166-167, 198-199 in General Survey 2012.**

- Includes lack of provisions in law explicitly recognizing and regulating the right to bargain collectively;
- Includes the lack of or insufficient legal provisions encouraging and promoting the full development and utilization of machinery for negotiation of terms and conditions of employment between employers or employers' organizations and workers' organizations;
- *Note:* “Article 4 of Convention No. 98 in no way places a duty on the government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragements and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment. The public authorities should however refrain from any undue interference in the negotiation process.” (Digest, Para. 928.).

#### **64. Exclusion of workers in EPZs from the right to collective bargaining (in law)**

**Article 5 - 6 of Convention No. 98;**

**Para. 885** in Digest of decisions and principles;

**Paras. 168, 209** in General Survey 2012.

- Includes the exclusion in law of workers in export processing zones.

#### **65. Exclusion of other workers from the right to collective bargaining (in law)**

**Article 5 - 6 of Convention No. 98;**

**Paras. 885-911** in Digest of decisions and principles;

**Paras. 261-264** in General Survey 1994.

**Paras. 168, 170-172, 209-213** in General Survey 2012.

- Includes exclusion of workers based on race, political opinion, nationality;
- Includes of workers exclusion based on occupational categories: e.g. 1. public sector workers (other than public servants directly engaged in the administration of state, e.g. teachers, public hospital workers); 2. private sector workers; 3. workers in atypical occupation; and 4. workers in other vulnerable situation (e.g. agricultural, rural workers; domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers; self-employed workers; workers in “disguised” employment relationship).
- *Does not include exclusion of the armed forces, police and public servants engaged in the administration of State.*

#### **66. Exclusion/restriction of subjects covered by collective bargaining (in law)**

**Article 4 of Convention No. 98;**

**Paras. 912-924, 1024-1045** in Digest of decisions and principles;

**Para. 250** in General Survey 1994.

**Paras. 215-221** in General Survey 2012.

- Includes legal restrictions on the scope of negotiable issues (e.g. wages, benefits and allowances, working hours, rest periods, leave and conditions of work, selection criteria in case of redundancy, the coverage of the collective agreement, system for the collection of union dues, the granting of trade union facilities, including access to the workplace beyond what is provided for in legislation, etc. (Digest, Para. 913.));
- Includes legal prohibition on the extension of matters covered by collective bargaining;
- Includes legislation that allows the employer and public authorities as employers to unilaterally regulate or to refuse to bargain collectively on certain issues.
- *Note:* “With regard to allegations concerning the refusal to bargain collectively on certain matters in the public sector, the Committee has recalled the view of the Fact-Finding and Conciliation Commission on Freedom of Association that ‘there are certain matters which clearly appertain primarily or essentially to the management and operation of government

business; these can reasonably be regarded as outside the scope of negotiation. It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust.” (Digest, Para. 920.)

- *Note:* Limitations on the content of future collective agreements in the public sector, particularly in relation to wages, imposed by the authorities, by virtue of economic stabilization or structural adjustment policies that have become necessary are admissible on condition that they have been subject to prior consultations with workers’ and employers’ organizations and meet the following conditions: (i) they are applied as an exceptional measures; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected. (General Survey 2012, Para. 220)

## **67. Compulsory arbitration accorded to collective bargaining (in law)**

**Article 4 of Convention No. 98;**  
**Paras. 992-997** in Digest of decisions and principles;  
**Paras. 254-259** in General Survey 1994;  
**Paras. 246-250** in General Survey 2012.

- Includes legal imposition of compulsory arbitration by law in cases where the parties do not reach agreement through collective bargaining;
- Includes legislation that enables public authorities and/or one of the parties to recourse unilaterally to compulsory arbitration.
- *Does not include* recourse to compulsory arbitration if it is at the request of both parties involved in a dispute, where compulsory arbitration is not indicated as binding, in the case of public servants engaged in the administration of State, in essential services in the strict sense of the term (those services whose interruption would endanger the life, personal safety or health of the whole or part of the population) or in case of acute national emergency.

## **68. Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of trade unions entitled to collective bargaining (in law)**

**Article 4 of Convention No. 98;**  
**Paras. 944-983** in Digest of decisions and principles;  
**Paras. 238-243** in General Survey 1994.  
**Paras. 224-240** in General Survey 2012.

- Includes legislation that does not base the determination of the representative organization on objective, pre-established and precise criteria;
- Includes legislation that requires excessively high representation thresholds or

- membership for trade unions for collective bargaining purposes, e.g. by requiring absolute majority (50 per cent of the members of the bargaining unit) without granting collective bargaining rights to all the union in this unit, at least on behalf of their own members, in case no union covers more than 50 per cent of the workers in the unit (rights of minority unions (Digest, Paras. 974-980.);
- Includes legislation that allows the discretionary refusal to recognize the organizations representative of the workers or the most representative one of these organizations for collective bargaining purposes;
  - Includes legislation that sets excessive, lengthy and complicated procedures to determine the trade union(s) entitled to negotiate;
  - Includes legislation that sets excessively long periods after which an organization which fails to secure a sufficiently large number or an organization other than the certified organizations can ask for new election;
  - Includes legislation that does not provide the right to any new organization other than the certified organization to demand a new election after a reasonable period has elapsed;
  - Includes legislation that entitles representatives of unorganized workers to be one of the parties in collective bargaining in spite of the existing workers' organizations.
  - Includes privileges provided in a discretionary manner to the most representative organization that go beyond priority in representation for the purpose of collective bargaining, consultation by governments or the appointment of delegates to international bodies and might lead to depriving other trade union organizations of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes (Digest, Para. 346.).
  - *Note:* With regard to legislation that allows the procedure of certifying unions as exclusive bargaining agents, the following safeguards should be included: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certified organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election. (Digest, Para. 969.)

## **69. Acts of interference in collective bargaining (in law)**

**Article 4 of Convention No. 98;**  
**Paras. 880-881, 925-938, 984-991, 998-1005, 1024-1046, 1054-1058** in Digest of decisions and principles;  
**Paras. 244-249** in General Survey 1994.  
**Paras. 198, 200, 208, 214, 222-223** in General Survey 2012.

- Includes legislation that infringes the free and voluntary character of collective bargaining and allows any undue interference in the negotiation process;
- Includes the legal prohibition/restriction of access to voluntary dispute settlement

procedures, to which the parties may have recourse on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement;

- Includes legislation that determines and imposes the level of bargaining or entitles administrative authority to determine and impose the level of bargaining;
- Includes legislation that sets unreasonable and discouraging time-limits for bargaining;
- Includes legislation that infringes the rights of workers' organizations to choose which delegates will represent them in collective bargaining or that regulates the composition of the representatives of the parties (Digest, Paras. 984-985.);
- Includes legislation that provides incentives to workers to give up the right to collective bargaining;
- Includes legislation that allows offering better working conditions to non-unionized workers under individual agreements if the latter can override certain clauses in the collective agreement, except if the relationship between individual contracts and the collective agreement has been agreed between the employer and the trade union organizations (Digest, Paras. 1054-1056.);
- Includes legislation that as part of the government's economic stabilization policy allows restrictions on future collective bargaining, without exceeding a reasonable period .
- *Does not include* legislation that allows the interventions of the authorities in cases it is obvious that the deadlock in bargaining will not be broken without some initiative on their part, except cases where the intervention is not consistent with the principle of free and voluntary negotiations (Digest, Paras. 1003-1004.).
- *Note:* "The Committee has endorsed the point of view expressed by the Committee of Experts in its 1994 General Survey: 'While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above require some flexibility in its application. Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish and overall "budget package" within which the parties may negotiate monetary or standard-setting clauses (...) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employers, are compatible with the Convention, provided they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations are be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts (...)." (Digest, Para. 1038.)

## **70. Violations of collective agreements (in law)**

**Article 4 of Convention No. 98;**

**Paras. 939-943, 1001, 1006-1045, 1047-1053** in Digest of decisions and principles;

**Paras. 251-253** in General Survey 1994.

**Paras. 201-207** in General Survey 2012.

- Includes legislation that allows the unilateral alteration of the content of collective agreements (e.g. by subjecting collective agreements to government economic policy) or the discretionary refusal to approve a collective agreement (e.g. on grounds such as incompatibility with the general policy of the government);
- Includes legislation that allows the unilateral suspension/cancellation of collective agreements freely entered into by the parties by decree (e.g. because they were contrary to national economic policy);
- Includes legislation that allows/requests prior approval of collective agreements unless the approval may only be refused if the collective agreement has a procedural flaw or does not conform to the minimum standards laid down by general labour legislation (General Survey 1994, Para. 251.);
- Includes legal provisions on the obligation to renegotiate existing collective agreements (e.g. forced renegotiation of collective agreements for reasons of economic crisis);
- Includes legal provisions on the compulsory extension of the period for which collective agreements are in force, unless it is used only in cases of emergency and for brief periods of time (Digest, Para. 1023.);
- Includes legislation that sets an excessive statutory period for the duration in force of collective agreements (Digest, Paras. 1047-1049.);
- Includes legislation that allows the extension of a collective agreement (e.g. to an entire sector or to non-member workers of enterprises) contrary to the views of the organization representing most of the workers in a category covered by the extended agreement; or if the extended agreement is a collective agreement that was not negotiated by the most representative organization (Digest, Paras. 1052-1053.);
- *Note:* Extension of the collective agreement is not contrary to Convention No. 98 if (i) the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (ii) as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (iii) the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations.(General Survey 2012 Para. 245.)

## **71. Infringements of the consultation with workers' organizations (in law)**

**Paras. 1065-1088** in Digest of decisions and principles.

- Includes legislation that infringes the principle of consultation and cooperation (social

- dialogue) between public authorities and employers' and workers' organizations (e.g. by discriminating between the relevant organizations);
- Includes legislation that allows by-passing tripartite consultation during the preparation and adoption of legislation affecting workers' and employers' and their organizations' interests or before the adoption of new labour, social or economic policy (e.g. refusal to permit the participation of trade union organizations in the preparation of new legislation affecting their interests);
  - Includes legislation that allows by-passing consultation concerning economic rationalization programmes, restructuring process and staff reduction processes.

## **72. Lack of guarantee of due process and/or justice re violations nos. 62-71 (in law)**

- Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal);
- Includes the lack of legal guarantees for recourse to judicial authority (e.g. the lack of the right to appeal or cases where the appeal can only be lodged to one of the Ministries) against any civil, administrative, criminal and/or disciplinary decision.
- *Note:* Includes lack of guarantee of due process of law with regard to violations of the right to collective bargaining, as listed under evaluation criteria nos. 62-71.

## **IVa. Right to collective bargaining, in practice**

### **73. General prohibition of collective bargaining (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 12, 93 in General Survey 1994;**

**Para. 51 in General Survey 2012;**

**Resolution concerning the Independence of the Trade Union Movement, 1952.**

- Includes the general prohibition in practice of collective bargaining;
- Being inextricably linked to freedom of association and considering that the right of workers to establish their independent organizations is the basic prerequisite for collective bargaining, in the event of the establishment of state monopoly (evaluation criteria no. 23 and/or 36) the general prohibition of collective bargaining in practice should as well be coded.
- *Note:* The coding of evaluation criterion no. 62 results in the automatic coding of evaluation criterion no. 73.
- *Note:* The coding of 73 does not result in the automatic coding of other evaluation criteria.

#### **74. Insufficient promotion of collective bargaining (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 880, 888, 928-933** in Digest of decisions and principles;

**Paras. 235-236, 244-247** in General Survey 1994;

**Paras. 166-167, 198-199** in General Survey 2012.

- Includes the absence or low number of collective agreements overall or in a given sector;
- Includes the low level of collective negotiations between employer or employers' organizations and workers' organizations.
- *Note:* "Article 4 of Convention No. 98 in no way places a duty on the government to enforce collective bargaining, nor would it be contrary to this provision to oblige social partners, within the framework of the encouragements and promotion of the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment. The public authorities should however refrain from any undue interference in the negotiation process." (Digest, Para. 928.).

#### **75. Exclusion of workers in EPZs from the right to collective bargaining (in practice)**

**Article 5 - 6 of Convention No. 98;**

**Para. 885** in Digest of decisions and principles;

**Paras. 168, 209** in General Survey 2012.

- Includes the exclusion of workers in export processing zones.

#### **76. Exclusion of other workers from the right to collective bargaining (in practice)**

**Article 5-6 of Convention No. 98;**

**Paras. 885-911** in Digest of decisions and principles;

**Paras. 261-264** in General Survey 1994;

**Paras. 168, 170-172, 209-213** in General Survey 2012.

- Includes exclusion of workers based on race, political opinion, nationality;
- Includes exclusion of workers based on occupational categories: e.g. 1. public sector workers (other than public servants directly engaged in the administration of state, e.g. teachers, public hospital workers); 2. private sector workers; 3. workers in atypical occupation; and 4. workers in other vulnerable situation (e.g. agricultural, rural workers; domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers, workers in privatized companies; workers in the informal economy; workers in "disguised" employment relationship.).
- *Does not include exclusion of the armed forces, police and public servant engaged in the administration of State.*

## **77. Exclusion/restriction of subjects covered by collective bargaining (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 912-924, 1024-1045** in Digest of decisions and principles;

**Para. 250** in General Survey 1994;

**Paras. 215-221** in General Survey 2012.

- Includes setting in practice the subjects covered by collective bargaining unilaterally either by public authorities or employers;
- Includes arbitrary refusal in practice to bargain collectively on certain issues.
- *Note:* “With regard to allegations concerning the refusal to bargain collectively on certain matters in the public sector, the Committee has recalled the view of the Fact-Finding and Conciliation Commission on Freedom of Association that ‘there are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of negotiation’. It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment and that such matters should not be regarded as falling outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust.” (Digest, Para. 920.)
- *Note:* Limitations on the content of future collective agreements in the public sector, particularly in relation to wages, imposed by the authorities, by virtue of economic stabilization or structural adjustment policies that have become necessary are admissible on condition that they have been subject to prior consultations with workers’ and employers’ organizations and meet the following conditions: (i) they are applied as an exceptional measures; (ii) they are limited to the extent necessary; (iii) they do not exceed a reasonable period; and (iv) they are accompanied by safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be the most affected. (General Survey 2012, Para. 220)

## **78. Compulsory arbitration accorded to collective bargaining (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 992-997** in Digest of decisions and principles;

**Paras. 254-259** in General Survey 1994;

**Paras. 246-250** in General Survey 2012.

- Includes imposition of compulsory arbitration in cases where the parties do not reach agreement through collective bargaining;
- Includes cases where public authorities and/or one of the parties recourse unilaterally to compulsory arbitration.
- *Does not include* recourse to compulsory arbitration if it is at the request of both parties involved in a dispute, or where compulsory arbitration is not indicated as binding, in the case of public servants engaged in the administration of State, in essential services in the strict sense of the term (those services whose interruption would endanger the life,

personal safety or health of the whole or part of the population) or in case of acute national emergency.

#### **79. Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of trade unions entitled to collective bargaining (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 944-983** in Digest of decisions and principles;

**Paras. 238-243** in General Survey 1994;

**Paras. 224-240** in General Survey 2012.

- Includes cases where the determination of the representative organization is based on the discretionary decision of employers and/or public authorities in practice;
- Includes the non-recognition of the most representative organizations and the infringement of the right to determine the trade union(s) entitled to negotiate;
- Includes practices applied in order to delay the recognition process (excessive, lengthy and complicated procedure);
- Includes the denial of collective bargaining rights for the unions in the unit, at least on behalf of their own members, in case no union covers more than 50 per cent of the workers in the unit (rights of minority unions, Digest, Paras. 974-980.);
- Includes the discretionary rejection of or interference with new election of the organization which fails to secure a sufficiently large number or an organization other than the certificated organizations after a reasonable period has elapsed;
- Includes collective bargaining with representatives of unorganized workers in practice in spite of the existence of workers' organizations;
- Includes privileges provided in a discretionary manner to the most representative organization that go beyond priority in representation for the purpose of collective bargaining, consultation by governments or the appointment of delegates to international bodies and might lead to depriving other trade union organizations of the essential means for defending the occupational interests of their members, for organizing their administration and activities and formulating their programmes (Digest, Para. 346.).
- *Note:* Allowing the procedure of certifying unions as exclusive bargaining agents, the following safeguards should be included: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certificated organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election. (Digest, Para. 969.)

## 80. Acts of interference in collective bargaining (in practice)

**Article 4 of Convention No. 98;**

**Paras. 880-881, 925-938, 984-991, 998-1005, 1024-1046, 1054-1058** in Digest of decisions and principles;

**Paras. 244-249** in General Survey 1994;

**Paras. 198, 200, 208, 214, 222-223** in General Survey 2012.

- Includes violations of the principle of free and voluntary bargaining and the principle of bargaining in good faith (e.g. unjustified delays in the holding of negotiations (Digest, Para. 937.)) or the autonomy of parties to collective bargaining;
- Includes discretionary refusal to bargain collectively, to use the mechanisms promoting and facilitating collective bargaining (i.e. denial of access to information on the economic situation of the bargaining unit, enterprise or companies in the same sector);
- Includes the unilateral determination of the level of bargaining and the setting of unreasonable and discouraging time-limits for bargaining;
- Includes infringements on the rights of workers' organizations to choose which delegates will represent them in collective bargaining (Digest, Paras. 984-985.);
- Includes offering incentives to workers to give up their right to collective bargaining (Digest, Para. 1058.);
- Includes the case for offering better working conditions to non-unionized workers under individual agreements if the latter can override certain clauses in the collective agreement;
- Includes restrictions as part of the government's economic stabilization policy on future collective bargaining without exceeding a reasonable period.
- *Does not include* interventions of the authorities in cases it is obvious that the deadlock in bargaining will not be broken without some initiative on their part, except the intervention is not consistent with the principle of free and voluntary negotiations (Digest, Paras. 1003-1004.).
- *Note:* “The Committee has endorsed the point of view expressed by the Committee of Experts in its 1994 General Survey: ‘While the principle of autonomy of the parties to collective bargaining is valid as regards public servants covered by Convention No. 151, the special characteristics of the public service described above require some flexibility in its application. Thus, in the view of the Committee, legislative provisions which allow Parliament or the competent budgetary authority to set upper and lower limits for wage negotiations or to establish and overall “budget package” within which the parties may negotiate monetary or standard-setting clauses (...) or those which give the financial authorities the right to participate in collective bargaining alongside the direct employers, are compatible with the Convention, provided they leave a significant role to collective bargaining. It is essential, however, that workers and their organizations are be able to participate fully and meaningfully in designing this overall bargaining framework, which implies in particular that they must have access to all the financial, budgetary and other data enabling them to assess the situation on the basis of the facts (...).’” (Digest, Para. 1038.)

## **81. Violations of collective agreements (in practice)**

**Article 4 of Convention No. 98;**

**Paras. 939-943, 1001, 1006-1045, 1047-1053** in Digest of decisions and principles;

**Paras. 251-253** in General Survey 1994.

**Paras. 201-207** in General Survey 2012.

- Includes the failure to recognize and/or implement a collective agreement, even on a temporary basis;
- Includes violations of collective agreements in practice (e.g. violation of the provisions of collective agreement in force, the unilateral alteration of the content of collective agreements or the recourse to renegotiation or unilaterally imposing the duration of collective agreements);
- Includes the discretionary refusal to approve a collective agreement; unilateral suspension/cancellation of collective agreement (unless the parties agree on the suspension/cancellation);
- Includes the prior approval of collective agreements in practice;
- Includes the unilateral extension of the period for which collective agreements are in force;
- Includes the discretionary or unilateral extension of a collective agreement (e.g. to an entire sector or to non-member workers of enterprises) if contrary to the views of the organization representing most of the workers in a category covered by the extended agreement; or if the extended agreement is a collective agreement that was not negotiated by the most representative organization (Digest, Paras. 1052-1053.);
- *Note:* Extension of the collective agreement is not contrary to Convention No. 98 if (i) the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (ii) as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and (iii) the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations.(General Survey 2012 Para. 245.)

## **82. Infringements of the consultation with workers' organizations (in practice)**

**Paras. 1065-1088** in Digest of decisions and principles.

- Includes violations of the principle of consultation and cooperation (social dialogue) between public authorities and employers' and workers' organizations (e.g. by discriminating between the relevant organizations);
- Includes by-passing/refusal of tripartite consultation during the preparation and adoption of legislation affecting workers' and employers' and their organizations' interests or before the adoption of new labour, social or economic policy (e.g. refusal to permit the participation of trade union organizations in the preparation of new legislation affecting

their interests);

- Includes by-passing consultation concerning economic rationalization programmes, restructuring process and staff reduction processes.
- Includes infringements of the principles of full and frank consultation, consultation in good faith and with mutual respect (e.g. not providing sufficient information on the issue being on the agenda).

### **83. Lack of guarantee of due process and/or justice re violations nos. 73-82 (in practice)**

- Includes infringements in practice of the right for fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions;
- Includes violations of the right to appeal to an impartial and independent judicial body.
- *Note:* Includes lack of guarantee of due process of law with regard to violations of the right to collective bargaining, as listed under evaluation criteria nos. 73-82.

#### **Va. Right to strike, in law**

### **84. General prohibition of the right to strike (in law)**

**Article 3 of Convention No. 87;**

**Paras. 548, 567, 570-571** in Digest of decisions and principles;

**Paras. 152-153, 170-171** in General Survey 1994;

**Paras. 122, 140, 144** in General Survey 2012.

- Includes the explicit general prohibition in law of the right to strike;
- Includes the imposition of such compulsory arbitration in law that virtually prohibits all strikes in practice (see evaluation criterion no. 91);
- Includes such prerequisites in law that are so complex or slow that lawful strikes become impossible in practice (see evaluation criterion no. 92).
- *Does not include* prohibition of strikes in the event of an acute national emergency (such as those arising as a result of a serious conflict, insurrection or natural disaster), but just in cases where the decision making lies with an independent body which has the confidence of all parties concerned, if it is for a limited period and to the extent necessary to meet the requirements of the situation.
- *Note:* The coding of evaluation criterion no. 84 results in the automatic coding of evaluation criterion no. 96.

## **85. Exclusion of workers in EPZs from the right to strike (in law)**

**Paras. 169** in General Survey 1994;  
**Paras. 132-134, 143** in General Survey 2012.

- Includes the exclusion in law of workers in export processing zones.

## **86. Exclusion of other workers from the right to strike (in law)**

**Paras. 572-594** in Digest of decisions and principles;  
**Paras. 154-160** in General Survey 1994;  
**Paras. 127, 129-135** in General Survey 2012.

- Includes legislation that provides an overly broad definition of essential services and public sector workers exercising authority in the name of State, including provisions prohibiting strikes on the basis of their potential economic consequences, their potential detriment to public order or to the general or national interest;
- Includes exclusion of workers based on race, political opinion, nationality;
- Includes exclusion of workers based on occupational categories: e.g. 1. public sector workers (other than public servants directly engaged in the administration of state); 2. private sector workers; 3. workers in atypical occupation; and 4. workers in other vulnerable situation (e.g. agricultural, rural workers; domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers, workers in privatized companies; self-employed workers; workers in “disguised” employment relationship.).
- *Does not include exclusion by law of workers from the right to strike working in essential services in the strict sense of term (i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population)<sup>16</sup> or public servants exercising authority in the name of State;<sup>17</sup>*
- *Note:* “What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population”. (Digest, Para. 582.)

<sup>16</sup> *The following may be considered to be essential services in the strict sense of the term:* the hospital sector; electricity services; water supply services; the telephone service; the police and the armed forces; the fire-fighting services; the public or private prison services; the provision of food to pupils of school age and the cleaning of schools; air traffic control. (Digest of decisions and principles, Para. 585.)

*The following do not constitute essential services in the strict sense of the term:* radio and television; the petroleum sector; ports; banking; computer services for the collection of excise duties and taxes; department stores and pleasure parks; the metal and mining sectors; transport generally; airline pilots; production, transport and distribution of fuel; railway services; metropolitan transport; postal services; refuse collection services; refrigeration enterprises; hotel services; construction; automobile manufacturing; agricultural activities, the supply and distribution of foodstuffs; the Mint; the government printing services and the state alcohol, salt and tobacco monopolies; the education sector; mineral water bottling company. (Digest of decisions and principles, Para. 587.).

<sup>17</sup> E.g. officials working in the administration of justice and the judiciary. (Digest of decisions and principles, Para. 578.)

## **87. Exclusion/restriction based on the objective and/or type of the strike (in law)**

**Paras. 526-546** in Digest of decisions and principles;  
**Paras. 165-168, 173** in General Survey 1994;  
**Paras. 124-126, 142** in General Survey 2012.

- Includes legal prohibition/restrictions of strikes other than purely political strikes, thus prohibition of strikes aiming to defend the occupational and socio-economic interests of workers in the broader sense (e.g. seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers (Digest, Para. 526.); protest strike aimed at criticizing a government's economic and social policies (Digest, Para. 529.));
- Includes legal prohibition/restriction of sympathy strikes, provided the initial strike they are supporting is in itself lawful;
- Includes a legal ban on strikes related to recognition disputes (for collective bargaining) (Digest, Para. 536.) and on calling for industrial action in support of multi-employers contracts (collective agreements) (Digest, Para. 540.);
- Includes limiting strike actions solely to industrial disputes that are likely to be resolved through the signing of a collective agreement (Digest, Para. 531.);
- .Includes legal prohibition/restriction on different types of strike actions, unless the strike action ceases to be peaceful;
- Includes prohibition of strikes during particular days or at particular places other than those necessary to ensure public law and order.
- *Does not include social peace obligations arising from collective agreements if they are compensated by the right to "have recourse to impartial and rapid mechanisms, within which individual and collective agreements can be examined" (Digest, Para. 533.); and if the social peace obligation does not prevent workers' organizations from striking against the social and economic policy of the Government;*
- *Note:* “The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.” (Digest, Para. 532.)
- *Note:* “(...) Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralyzing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.” (General Survey 1994, Para. 173.)

## **88. Provisions in law allowing for the suspension and/or declaration of illegality of strikes by administrative authority (in law)**

**Paras. 628-631** in Digest of decisions and principles;  
**Para. 157** in General Survey 2012.

- Includes legislation that allows the public authorities/government but not an independent body to suspend and/or declare a strike action illegal (Digest, Para. 628.).

## **89. Lack of compensatory guarantees accorded to lawful restrictions on the right to strike (in law)**

**Paras. 595-603** in Digest of decisions and principles;  
**Para. 164** in General Survey 1994;  
**Paras. 141** in General Survey 2012.

- Includes legislation that restricts or does not provide recourse to adequate, impartial, speedy conciliation and arbitration procedures (compensatory guarantees) in cases where restrictions are lawfully placed on the right to strike (essential services in the strict sense of the term and the public service workers exercising authority in the name of state).

## **90. Infringements of the determination of minimum services (in law)**

**Paras. 604-627** in Digest of decisions and principles;  
**Paras. 161-162** in General Survey 1994;  
**Paras. 136-139** in General Survey 2012.

- Includes imposition of a minimum service by law in cases other than a) the essential services in the strict sense of the term, b) the services which are not essential but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population and c) the public services of fundamental importance (Digest, Para. 606.);<sup>18</sup>
- Includes imposition of a minimum service by law that goes beyond the intention to ensure safety of persons and machinery and the prevention of accidents (Digest, Para. 605.);
- Includes legislation that allows determining minimum services and minimum number of workers unilaterally by the employers/public authorities (Digest, Para. 610.);
- Includes legislation that determines or allows to determine minimum services in such a way which results in the strike becoming ineffective in practice (i.e. over-generous, not limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service) (Digest, Para. 612.).
- *Note:* Minimum service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are

<sup>18</sup> Examples of when the Committee has considered that the conditions were met for requiring a minimum operational service: ferry service; underground railway's activities; rail transport sector; transportation of passengers and commercial goods; postal service; refuse collection service; banking service and the petroleum sector. (Digest of decisions and principles, Para. 615-626.).

strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. (General Survey 2012, Para. 137.)

## 91. Compulsory arbitration accorded to strikes (in law)

**Paras. 564-569** in Digest of decisions and principles;

**Para. 153** in General Survey 1994;

**Paras. 153-156** in General Survey 2012.

- Includes imposition of compulsory arbitration (automatically) by law to prevent strike from occurring altogether or to end an ongoing strike;
- Includes legislation that enables public authorities and/or employers to have recourse unilaterally to compulsory arbitration to prevent or end strike actions.
- *Does not include* legislation that allows compulsory arbitration at the request of both parties involved in a dispute; which does not indicate compulsory arbitration as binding; or which allows compulsory arbitration in cases the right to strike is acceptably restricted/banned by law (for public servants exercising authority in the name of State or in essential services in the strict sense of the term).

## 92. Excessive prerequisites required for exercising the right to strike (in law)

**Paras. 547-563** in Digest of decisions and principles;

**Paras. 170-172** in General Survey 1994;

**Paras. 144-148** in General Survey 2012.

- Includes legislation that sets too lengthy/unreasonable period of time for previous negotiation, conciliation and mediation;
- Includes legislation that requests unreasonable period of notice/cooling-off periods before calling a strike, resulting in excessive delays and undermining the right to strike action (Digest, Para. 554.);
- Includes legislation that requires a previous ballot where the ballot method, the quorum and the majority required is such as that the exercise of the right to strike is excessively limited (e.g. requirement of absolute majority of workers (Digest, Paras. 555-563.));
- Includes complicated legal procedures for declaring a strike that makes it practically impossible to declare a legal strike (Digest, Para. 548.).
- *Does not include* legislation which provides for voluntary negotiation, conciliation and arbitration before calling the strike or allows to suspend a strike for such procedures, as long as the restriction is accompanied by adequate, impartial and speedy negotiation, conciliation and arbitration procedures and does not prevent the calling of the strike once

the period of time for previous negotiation, conciliation and mediation has expired (Digest, Paras. 549-550.).

### **93. Acts of interference during the course of strike action (in law)**

**Paras. 632-653** in Digest of decisions and principles;

**Paras. 163, 174-175** in General Survey 1994;

**Paras. 149-152** in General Survey 2012.

- Includes legislation that allows back-to-work orders or to hire workers during a strike in sectors that cannot be regarded as essential service in the strict sense of the term or when a strike does not cause a situation in which the life, health or personal safety of the population might be endangered (Digest, Paras. 632-639.);
- Includes the prohibition by law of strike pickets, except for cases where it may disturb public order and threaten the right of workers to continue to work (Digest, Paras. 648-653.);
- Includes legislation that allows the use of police, military and requisitioning orders to break a strike over occupational claims, unless these actions are aimed at maintaining essential services in circumstances of the utmost gravity (Digest, Para. 635.).

### **94. Imposing excessive sanctions in case of legitimate strikes (in law)**

**Paras. 667-674** in Digest of decisions and principles;

**Paras. 176-178** in General Survey 1994;

**Paras. 157-160** in General Survey 2012.

- Includes legislation that allows excessive, disproportionate and/or penal sanctions for organizing or participating in legitimate strike, irrespectively whether the strike is lawful or unlawful under the national legislation;
- *Legislation that allows direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes should be coded under violation no. 30.*
- *Note:* The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike. Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. (Digest, Paras. 667-668.)

## **95. Lack of guarantee of due process and/or justice re violations nos. 84-94 (in law)**

- Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal);
- Includes the lack of legal guarantees for recourse to judicial authority (e.g. the lack of the right to appeal or cases where the appeal can only be lodged to one of the Ministries) against any civil, administrative, criminal and/or disciplinary decision.
- *Note:* Includes lack of guarantee of due process of law with regard to violations of the right to strike, as listed under evaluation criteria nos.84-94.

### **Vb. Right to strike, in practice**

## **96. General prohibition of strikes (in practice)**

**Article 3 of Convention No. 87;**

**Paras. 548, 567, 570-571** in Digest of decisions and principles;

**Paras. 152-153, 170-171** in General Survey 1994;

**Paras. 122, 140, 144, 159** in General Survey 2012.

- Includes the general prohibition in practice of strikes;
- Includes the imposition of such compulsory arbitration in practice that virtually prohibits all strikes in practice (see evaluation criterion no. 103);
- Includes such prerequisites in practice that are so complex or slow that lawful strikes become impossible in practice (see evaluation criterion no. 104);
- Includes cases where severe penal sanctions (including those imposed on the basis of more general provisions of penal and public order laws) imposed against workers for having carried out a peaceful strike are applied in a manner under the threat of which strikes become non-existent in practice;
- Includes cases where the cumulative effect of the lack of protection provided in law for the right to strike and the authorities repressive approach and interference renders strikes impossible to be carried out in practice.
- *Does not include* prohibition of strikes in the event of an acute national emergency (such as those arising as a result of a serious conflict, insurrection or natural disaster), but just in cases where the decision making lies with an independent body which has the confidence of all parties concerned, if it is for a limited period and to the extent necessary to meet the requirements of the situation.
- *Note:* The coding of evaluation criterion no. 84 results in the automatic coding of evaluation criterion no. 96.
- *Note:* The coding of evaluation criterion no. 96 does not result in the automatic coding of other evaluation criteria.

## **97. Exclusion of workers in EPZs from the right to strike (in practice)**

**Paras. 169** in General Survey 1994;  
**Paras. 132-134, 143** in General Survey 2012.

- Includes the exclusion of workers in export processing zones.

## **98. Exclusion of other workers from the right to strike (in practice)**

**Paras. 572-594** in Digest of decisions and principles;  
**Paras. 154-160** in General Survey 1994;  
**Paras. 127, 129-135** in General Survey 2012.

- Includes exclusion of workers based on overly broad definition of essential services and public sector workers exercising authority in the name of State, e.g. exclusion of workers on the basis of the potential economic consequences or detriment to public order or to the general or national interest of the strike;
- Includes exclusion of workers based on race, political opinion, nationality;
- Includes exclusion of workers based on occupational categories: e.g. 1. public sector workers (other than public servants directly engaged in the administration of state); 2. private sector workers; 3. workers in atypical occupation; and 4. workers in other vulnerable situation (e.g. agricultural, rural workers; domestic workers; migrant workers, seafarers, women; workers affected by structural changes e.g. outsourced workers, workers in privatized companies; workers in the informal economy; workers in “disguised” employment relationship.).
- *Does not include exclusion of workers from the right to strike in practice working in essential services in the strict sense of term<sup>19</sup> - i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population - or public servants exercising authority in the name of State,<sup>20</sup>*
- *Note:* “What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population”. (Digest, Para. 582.)

## **99. Exclusion/restriction based on the objective and/or type of the strike (in practice)**

**Paras. 526-546** in Digest of decisions and principles;  
**Paras. 165-168, 173** in General Survey 1994;  
**Paras. 124-126, 142** in General Survey 2012.

- Includes discretionary power of authorities to prohibit and/or restrict a strike by

<sup>19</sup> See footnote No. 16

<sup>20</sup> See footnote No. 17

- considering it purely political (e.g. prohibiting/restricting strikes aiming to defend the occupational and socio-economic interests of workers in the broader sense; protest strike aimed at criticizing a government's economic and social policies);
- Includes major difficulties in practice to the organizing of sympathy strikes (provided the initial strike they are supporting is in itself lawful);
  - Includes prohibition/restriction of strikes related to recognition disputes.
  - Includes major difficulties/restrictions in practice on different types of strike actions, unless the strike action ceases to be peaceful;
  - Includes prohibition of strikes during particular days or at particular places other than those necessary to ensure public law and order.
  - *Note:* “The solution to a legal conflict as a result of a difference in interpretation of a legal text should be left to the competent courts. The prohibition of strikes in such a situation does not constitute a breach of freedom of association.” (Digest, Para. 532.)
  - *Note:* “(...) Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralyzing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful.” (General Survey 1994, Para. 173.)

## **100. Suspension and/or declaration of illegality of strikes by administrative authority (in practice)**

**Paras. 628-631** in Digest of decisions and principles;  
**Para. 157** in General Survey 2012.

- Suspending and/or declaring strike action illegal by public authorities/government but not an independent body (Digest, Para. 628.);
- Wrongful and repeated recourse to judiciary decision to obstruct and suspend strike actions in practice.

## **101. Lack of compensatory guarantees accorded to lawful restrictions on the right to strike (in practice)**

**Paras. 595-603** in Digest of decisions and principles;  
**Para. 164** in General Survey 1994;  
**Paras. 141** in General Survey 2012.

- Includes the denial of compensatory guarantees in cases where the right to strike is lawfully restricted (essential services in the strict sense of the term or public servants exercising authority in the name of State);
- Includes major difficulties in practice of recourse to impartial, speedy conciliation and arbitration procedures (Digest, Para. 596.) in cases where restrictions are lawfully placed

- on the right to strike (essential services in the strict sense of the term and the public service workers exercising authority in the name of state);
- Includes e.g. cases where the minister appoints all members in the conciliation/arbitration body.

## **102 Infringements of the determination of minimum services (in practice)**

**Paras. 604-627** in Digest of decisions and principles;  
**Paras. 161-162** in General Survey 1994;  
**Paras. 136-139** in General Survey 2012.

- Includes imposition of minimum service in practice in cases other than the essential services in the strict sense of the term; in services which are not essential but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and in public services of fundamental importance (Digest, Para. 606.);<sup>21</sup>
- Includes imposition of minimum service beyond the necessity to ensure safety of persons and machinery and the prevention of accidents (Digest, Para. 605.);
- Includes cases where the minimum services and minimum number of workers were determined unilaterally (Digest, Para. 610.);
- Includes cases where minimum services were imposed in such a way that results in the strike becoming ineffective in practice (i.e. over-generous, not limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service) (Digest, Para. 612.).
- *Note:* Minimum service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. (General Survey 2012, Para. 137.)

## **103. Compulsory arbitration accorded to strikes (in practice)**

**Paras. 564-569** in Digest of decisions and principles;  
**Para. 153** in General Survey 1994;  
**Paras. 153-156** in General Survey 2012.

- *Does not include* recourse to compulsory arbitration if it is at the request of both parties

---

<sup>21</sup> See footnote No. 18

involved in a dispute; where compulsory arbitration is not indicated as binding; or in case the right to strike is restricted/banned (disputes in the public service involving public servants exercising authority in the name of State or in essential services in the strict sense of the term);

- Includes imposition of compulsory arbitration at the discretion of the public authorities and/or employers with the aim to prevent or end strike action;
- Includes recourse to compulsory arbitration unilaterally by public authorities and/or employers.

#### **104. Excessive prerequisites required for exercising the right to strike (in practice)**

**Paras. 547-563** in Digest of decisions and principles;

**Paras. 170-172** in General Survey 1994;

**Paras. 144-148** in General Survey 2012.

- Includes violations, obstructions and delays in previous negotiation, conciliation and mediation procedures;
- Includes violations of strike ballots (infringements during the voting procedures, the counting of votes, presence of public authorities, etc.);
- Includes complicated procedures for declaring a strike that makes it practically impossible to declare a legal strike. (Digest, Para. 548.)

#### **105. Acts of interference during the course of strike action (in practice)**

**Paras. 632-653** in Digest of decisions and principles;

**Paras. 163, 174-175** in General Survey 1994;

**Paras. 149-152** in General Survey 2012.

- Includes back-to-work orders or hiring of workers in practice during a strike in sectors that cannot be regarded as essential service in the strict sense of the term or when a strike does not cause a situation in which the life, health or personal safety of the population might be endangered (Digest, Paras. 632-639.);
- Includes intimidation and/or threatening of workers to impede their participation in strike action and/or offering advantages (e.g. money) should the trade unionists withdraw from participation;
- Includes the use of the military and requisitioning orders to break a strike unless these actions aim to maintain essential services (Digest, Para. 635.);
- Includes the intervention of the army and/or police during the course of strike not limited to the maintenance of public order (Digest, Para. 645.) and/or not in “situation where law and order is seriously and genuinely threatened” (Digest, Paras. 644, 640-647.);
- Includes the prohibition of strike pickets in practice, except for cases it disturbs public order and threatens workers who continued to work.

## **106. Imposing excessive sanctions in case of legitimate strikes (in practice)**

**Paras. 667-674** in Digest of decisions and principles;  
**Paras. 176-178** in General Survey 1994;  
**Paras. 157-160** in General Survey 2012.

- Includes excessive, disproportionate and/or penal sanctions for organizing or participating in legitimate strike, irrespectively whether the strike is lawful or unlawful under the national legislation;
- *Cases of direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes should be coded under evaluation criterion no. 43.*
- *Note:* The principles of freedom of association do not protect abuses consisting of criminal acts while exercising the right to strike. Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike. (Digest, Paras. 667-668.)

## **107. Committed against trade union officials re violation no. 106 (in practice)**

- Includes cases where the violation is committed against trade union officials.
- *Note:* Trade union officials refer to elected officials and representatives of trade union office.

## **108. Lack of guarantee of due process and/or justice re violations nos. 96-107 (in practice)**

- Includes infringements in practice of the right for fair and rapid trial (e.g. non-informing about charges, delays in procedure, lack of adequate time and/or facilities to prepare defence, etc.);
- Includes lack of independent and impartial judiciary;
- Includes absence of judgement, impunity or lack of dissuasive sanctions;
- Includes violations of the right to appeal to an impartial and independent judicial body.
- *Note:* Includes lack of guarantee of due process of law with regard to violations of the right to strike, as listed under evaluation criteria nos.96-107.

Table 4 below provides an outline for the definitions of the 108 evaluation criteria by listing the relevant articles and paragraphs from different ILO textual sources and jurisdiction.

**Table 4. Definitions of evaluation criteria**

| No. | Violations  | Source of definition  |
|-----|---|---|
|     | <b>Ia. Fundamental civil liberties, in law</b>  |   |
| 1   | Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities | <b>Paras. 61-95</b> in Digest of decisions and principles;<br><b>Paras. 31-32</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>  |
| 2   | Infringements of trade unionists' basic freedoms  | <b>Paras. 121-174</b> in Digest of decisions and principles;<br><b>Paras. 34-39</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>  |
| 3   | Infringements of trade unions' and trade unionists' right to protection of their premises and property              | <b>Paras. 178-192</b> in Digest of decisions and principles;<br><b>Paras. 706-709</b> in Digest of decisions and principles;<br><b>Para. 40</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>  |
| 4   | Excessive prohibitions/restrictions on trade union rights in the event of state of emergency                        | <b>Paras. 193-204</b> in Digest of decisions and principles;<br><b>Paras. 41-42</b> in General Survey 1994.   |
| 5   | Lack of guarantee of due process and/or justice re violations nos. 1-4  | <b>Paras. 96-120</b> in Digest of decisions and principles;<br><b>Paras. 29-32</b> in General Survey 1994;<br><b>Paras. 60, 62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal) and/or recourse to judicial authority against any civil, administrative, criminal and/or disciplinary decision. |
|     | <b>Ib. Fundamental civil liberties, in practice</b>   |   |
| 6   | Killing or disappearance of trade unionists in relation to their trade union activities                             | <b>Paras. 42-60</b> in Digest of decisions and principles;<br><b>Paras. 28-30</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>  |
| 7   | Committed against trade union officials re violation no. 6  | Trade union officials refer to elected officials and representatives of trade union office.   |
| 8   | Lack of guarantee of due process and/or justice re violation no.6   | <b>Paras. 96-120</b> in Digest of decisions and principles;<br><b>Paras. 29-32</b> in General Survey 1994;<br><b>Paras. 60, 62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.  |
| 9   | Other violent actions against trade unionists in relation to their trade union activities                           | <b>Paras. 42-60</b> in Digest of decisions and principles;<br><b>Paras. 28-30, 33</b> in General Survey 1994.<br><b>Paras. 59-62</b> in General Survey 2012;  |

|    |   |  |
|----|---|--|
|    |   | <b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>   |
| 10 | Committed against trade union officials re violation no.9   | Trade union officials refer to elected officials and representatives of trade union office.  |
| 11 | Lack of guarantee of due process and/or justice re violation no.9   | <b>Paras. 96-120</b> in Digest of decisions and principles;<br><b>Paras. 29-32</b> in General Survey 1994;<br><b>Paras. 60, 62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions. |
| 12 | Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities | <b>Paras. 61-95</b> in Digest of decisions and principles;<br><b>Paras. 31-32</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>   |
| 13 | Committed against trade union officials re violation no.12  | Trade union officials refer to elected officials and representatives of trade union office.  |
| 14 | Lack of guarantee of due process and/or justice re violation no.12  | <b>Paras. 96-120</b> in Digest of decisions and principles;<br><b>Paras. 29-32</b> in General Survey 1994;<br><b>Paras. 60, 62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions. |
| 15 | Infringements of trade unionists' basic freedoms  | <b>Paras. 121-174</b> in Digest of decisions and principles;<br><b>Paras. 34-39</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>   |
| 16 | Committed against trade union officials re violation no.15  | Trade union officials refer to elected officials and representatives of trade union office.  |
| 17 | Lack of guarantee of due process and/or justice re violation no.15  | <b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.   |
| 18 | Attacks against trade unions' and trade unionists' premises and property  | <b>Paras. 178-192</b> in Digest of decisions and principles;<br><b>Paras. 706-709</b> in Digest of decisions and principles;<br><b>Para. 40</b> in General Survey 1994;<br><b>Paras. 59-62</b> in General Survey 2012;<br><b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b>   |
| 19 | Committed against trade union officials re violation no.18  | Trade union officials refer to elected officials and representatives of trade union office.  |
| 20 | Lack of guarantee of due process and/or justice re violation no.18  | <b>Resolution concerning Trade Union Rights and Their Relation to Civil Liberties, 1970.</b><br>Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.   |
| 21 | Excessive prohibitions/restrictions on trade union rights in the event of state of emergency                        | <b>Paras. 193-204</b> in Digest of decisions and principles;<br><b>Paras. 41-43</b> in General Survey 1994.  |
| 22 | Lack of guarantee of due process and/or justice re violation  | Includes infringements of the right to fair and rapid trial;   |

|    |   |  |
|----|---|--|
|    | no.21   | the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.  |
|    | <b>IIa. Right of workers to establish and join organizations, in law</b>  |  |
| 23 | General prohibition of the right to establish and join organizations  | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 12, 93</b> in General Survey 1994;<br><b>Para. 51</b> in General Survey 2012;<br><b>Resolution concerning the Independence of the Trade Union Movement, 1952.</b>                        |
| 24 | Exclusion of workers in EPZs from the right to establish and join organizations   | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 209, 264-266</b> in Digest of decisions and principles;<br><b>Para. 44-47, 60</b> in General Survey 1994;<br><b>Paras. 63, 74</b> in General Survey 2012.                                |
| 25 | Exclusion of other workers from the right to establish and join organizations   | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 209-264, 267-271, 360-362</b> in Digest of decisions and principles;<br><b>Paras. 44-59, 61-67</b> in General Survey 1994;<br><b>Paras. 53-54, 58, 63-81, 91</b> in General Survey 2012. |
| 26 | Previous authorization requirements   | <b>Article 2 and 7 of Convention No. 87;</b><br><b>Paras. 272-308</b> in Digest of decisions and principles;<br><b>Paras. 68-78</b> in General Survey 1994.<br><b>Paras. 82-87, 89-90</b> in General Survey 2012.                            |
| 27 | Restrictions on the freedom of choice of trade union structure and composition  | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 333-337</b> in Digest of decisions and principles;<br><b>Paras. 79-90</b> in General Survey 1994.  |
| 28 | Imposed trade union unity   | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 309-332, 339-345</b> in Digest of decisions and principles;<br><b>Paras. 91-100, 104</b> in General Survey 1994;<br><b>Paras. 92-95</b> in General Survey 2012.                          |
| 29 | Dissolution/suspension of legally functioning organizations   | <b>Article 4 of Convention No. 87;</b><br><b>Paras. 677-705</b> in Digest of decisions and principles;<br><b>Paras. 180-185</b> in General Survey 1994.<br><b>Para. 162</b> in General Survey 2012.  |
| 30 | Provisions in law allowing for anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal | <b>Article 1 of Convention No. 98;</b><br><b>Paras. 769-812, 654-666, 674-675</b> in Digest of decisions and principles;<br><b>Paras. 199-213</b> in General Survey 1994;<br><b>Paras. 161, 176, 178-181, 186</b> in General Survey 2012.    |
| 31 | Lack of adequate legal guarantees against anti-union discriminatory measures  | <b>Article 3 of Convention No. 98;</b><br><b>Paras. 813-853</b> in Digest of decisions and principles;<br><b>Paras. 214-224</b> in General Survey 1994;<br><b>Paras. 166-167, 173-193</b> in General Survey 2012.                            |
| 32 | Provisions in law allowing for interference of employers and/or public authorities  | <b>Article 2 of Convention No. 98;</b><br><b>Paras. 855-859, 863-870</b> in Digest of decisions and principles;<br><b>Paras. 225-234</b> in General Survey 1994;<br><b>Paras. 194-196</b> in General Survey 2012.                            |
| 33 | Lack of adequate legal guarantees against acts of interference  | <b>Article 2 of Convention No. 98;</b><br><b>Paras. 860-862, 865</b> in Digest of decisions and principles;<br><b>Paras. 225-234</b> in General Survey 1994;<br><b>Paras. 166-167, 173-175, 194-197</b> in General Survey 2012.              |
| 34 | Infringements of the right to establish and join federations/confederations/international organizations   | <b>Article 6-7 of Convention No. 87;</b><br><b>Paras. 710-768</b> in Digest of decisions and principles;<br><b>Paras. 189-198</b> in General Survey 1994;  |

|    |  |   |
|----|--|---|
|    |  | <b>Para. 163</b> in General Survey 2012.  |
| 35 | Lack of guarantee of due process and/or justice re violations nos. 23-34   | Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal) and/or recourse to judicial authority against any civil, administrative, criminal and/or disciplinary decision. |
|    | <b>IIb. Right of workers to establish and join organizations, in practice</b>  |   |
| 36 | General prohibition of the development of independent workers' organizations   | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 12, 93</b> in General Survey 1994;<br><b>Para. 51</b> in General Survey 2012;<br><b>Resolution concerning the Independence of the Trade Union Movement, 1952.</b>   |
| 37 | Exclusion of workers in EPZs from the right to establish and join organizations  | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 209, 264-266</b> in Digest of decisions and principles;<br><b>Para. 44-47, 60</b> in General Survey 1994;<br><b>Paras. 63, 74</b> in General Survey 2012.   |
| 38 | Exclusion of other workers from the right to establish and join organizations  | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 209-264, 267-271, 360-362</b> in Digest of decisions and principles;<br><b>Paras. 44-59, 61-67</b> in General Survey 1994;<br><b>Paras. 53-54, 58, 63-81, 91</b> in General Survey 2012.                      |
| 39 | Previous authorization requirements  | <b>Article 2 and 7 of Convention No. 87;</b><br><b>Paras. 272-308</b> in Digest of decisions and principles;<br><b>Paras. 68-78</b> in General Survey 1994.<br><b>Paras. 82-87, 89-90</b> in General Survey 2012.   |
| 40 | Restrictions on the freedom of choice of trade union structure and composition   | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 333-337</b> in Digest of decisions and principles;<br><b>Paras. 79-90</b> in General Survey 1994.   |
| 41 | Imposed trade union unity  | <b>Article 2 of Convention No. 87;</b><br><b>Paras. 309-332, 339-345</b> in Digest of decisions and principles;<br><b>Paras. 91-100, 104</b> in General Survey 1994;<br><b>Paras. 92-95</b> in General Survey 2012.   |
| 42 | Dissolution/suspension of legally functioning organizations  | <b>Article 4 of Convention No. 87;</b><br><b>Paras. 677-705</b> in Digest of decisions and principles;<br><b>Paras. 180-185</b> in General Survey 1994;<br><b>Para. 162</b> in General Survey 2012.   |
| 43 | Anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal | <b>Article 1 of Convention No. 98;</b><br><b>Paras. 769-812, 654-666, 674-675</b> in Digest of decisions and principles;<br><b>Paras. 199-213</b> in General Survey 1994;<br><b>Paras. 161, 176, 178-181, 186</b> in General Survey 2012.                         |
| 44 | Committed against trade union officials re violation no. 43  | <b>Article 3 of Convention No. 98;</b><br><b>Paras. 799-802</b> in Digest of decisions and principles.  |
| 45 | Lack of guarantee of due process and/or justice re violation no. 43  | <b>Article 3 of Convention No. 98;</b><br><b>Paras. 813-853</b> in Digest of decisions and principles;<br><b>Paras. 214-224</b> in General Survey 1994;<br><b>Paras. 166-167, 173-193</b> in General Survey 2012.   |
| 46 | Acts of interference of employers and/or public authorities  | <b>Article 2 of Convention No. 98;</b><br><b>Paras. 855-859, 863-870</b> in Digest of decisions and principles;<br><b>Paras. 225-234</b> in General Survey 1994;<br><b>Paras. 194-196</b> in General Survey 2012.   |
| 47 | Lack of guarantee of due process and/or justice re violation no. 46  | <b>Article 2 of Convention No. 98;</b><br><b>Paras. 860-862, 865</b> in Digest of decisions and principles;<br><b>Paras. 225-234</b> in General Survey 1994;  |

|    |   |   |
|----|---|---|
|    |   | <b>Paras. 166-167, 173-175, 194-197</b> in General Survey 2012.   |
| 48 | Infringements of the right to establish and join federations/confederations/international organizations | <b>Article 6-7 of Convention No. 87;</b><br><b>Paras. 710-768</b> in Digest of decisions and principles;<br><b>Paras. 189-198</b> in General Survey 1994;<br><b>Para. 163</b> in General Survey 2012  |
| 49 | Lack of guarantee of due process and/or justice re violations nos. 36-48                                | Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.  |
|    | <b>IIIa. Other union activities, in law</b>   |   |
| 50 | Infringements of the right to freely draw up constitutions and internal rules and administration        | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 369-387, 454-465</b> in Digest of decisions and principles;<br><b>Paras. 108, 109-111</b> in General Survey 1994;<br><b>Paras. 100, 112-114</b> in General Survey 2012.                                       |
| 51 | Infringements of the right to freely elect representatives  | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 388-453</b> in Digest of decisions and principles;<br><b>Paras. 108, 112-123</b> in General Survey 1994;<br><b>Paras. 101-107</b> in General Survey 2012.   |
| 52 | Infringements of the right to freely organize and control financial administration                      | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 466-494</b> in Digest of decisions and principles;<br><b>Paras. 108, 124-127</b> in General Survey 1994;<br><b>Paras. 108-111</b> in General Survey 2012.   |
| 53 | Infringements of the right to freely organize activities/programmes                                     | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 508-519</b> in Digest of decisions and principles;<br><b>Paras. 108, 128-130, 133-135</b> in General Survey 1994;<br><b>Para. 115</b> in General Survey 2012.   |
| 54 | Prohibition of all political activities   | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 497-507</b> in Digest of decisions and principles;<br><b>Paras. 108, 130-133</b> in General Survey 1994;<br><b>Para. 116</b> in General Survey 2012.  |
| 55 | Lack of guarantee of due process and/or justice re violations nos. 50-54                                | Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal) and/or recourse to judicial authority against any civil, administrative, criminal and/or disciplinary decision. |
|    | <b>IIIb. Other union activities, in practice</b>  |   |
| 56 | Infringements of the right to freely draw up constitutions and internal rules and administration        | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 369-387, 454-465</b> in Digest of decisions and principles;<br><b>Paras. 108, 109-111</b> in General Survey 1994;<br><b>Paras. 100, 112-114</b> in General Survey 2012.                                       |
| 57 | Infringements of the right to freely elect representatives  | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 388-453</b> in Digest of decisions and principles;<br><b>Paras. 108, 112-123</b> in General Survey 1994;<br><b>Paras. 101-107</b> in General Survey 2012.   |
| 58 | Infringements of the right to freely organize and control financial administration                      | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 466-494</b> in Digest of decisions and principles;<br><b>Paras. 108, 124-127</b> in General Survey 1994;<br><b>Paras. 108-111</b> in General Survey 2012.   |
| 59 | Infringements of the right to freely organize activities/programmes                                     | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 508-519</b> in Digest of decisions and principles;<br><b>Paras. 108, 128-130, 133-135</b> in General Survey 1994;<br><b>Para. 115</b> in General Survey 2012.   |
| 60 | Prohibition of all political activities   | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 497-507</b> in Digest of decisions and principles;<br><b>Paras. 108, 130-133</b> in General Survey 1994;<br><b>Para. 116</b> in General Survey 2012.  |

|    |   |  |
|----|---|--|
| 61 | Lack of guarantee of due process and/or justice re violations nos. 56-60  | Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.   |
|    | <b>IVa. Right to collective bargaining, in law</b>  |  |
| 62 | General prohibition of the right to collective bargaining   | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 12, 93</b> in General Survey 1994;<br><b>Para. 51</b> in General Survey 2012;<br><b>Resolution concerning the Independence of the Trade Union Movement, 1952.</b>  |
| 63 | Insufficient promotion of collective bargaining   | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 880, 888, 928-933</b> in Digest of decisions and principles;<br><b>Paras. 235-236, 244-247</b> in General Survey 1994;<br><b>Paras. 166-167, 198-199</b> in General Survey 2012.   |
| 64 | Exclusion of workers in EPZs from the right to collective bargaining  | <b>Article 5 - 6 of Convention No. 98;</b><br><b>Para. 885</b> in Digest of decisions and principles;<br><b>Paras. 168, 209</b> in General Survey 2012.  |
| 65 | Exclusion of other workers from the right to collective bargaining  | <b>Article 5 - 6 of Convention No. 98;</b><br><b>Paras. 885-911</b> in Digest of decisions and principles;<br><b>Paras. 261-264</b> in General Survey 1994.<br><b>Paras. 168, 170-172, 209-213</b> in General Survey 2012.   |
| 66 | Exclusion/restriction of subjects covered by collective bargaining  | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 912-924, 1024-1045</b> in Digest of decisions and principles;<br><b>Para. 250</b> in General Survey 1994.<br><b>Paras. 215-221</b> in General Survey 2012.   |
| 67 | Compulsory arbitration accorded to collective bargaining  | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 992-997</b> in Digest of decisions and principles;<br><b>Paras. 254-259</b> in General Survey 1994;<br><b>Paras. 246-250</b> in General Survey 2012.   |
| 68 | Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of trade unions entitled to collective bargaining | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 944-983</b> in Digest of decisions and principles;<br><b>Paras. 238-243</b> in General Survey 1994.<br><b>Paras. 224-240</b> in General Survey 2012.   |
| 69 | Acts of interference in collective bargaining   | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 880-881, 925-938, 984-991, 998-1005, 1024-1046, 1054-1058</b> in Digest of decisions and principles;<br><b>Paras. 244-249</b> in General Survey 1994.<br><b>Paras. 198, 200, 208, 214, 222-223</b> in General Survey 2012. |
| 70 | Violations of collective agreements   | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 939-943, 1001, 1006-1045, 1047-1053</b> in Digest of decisions and principles;<br><b>Paras. 251-253</b> in General Survey 1994.<br><b>Paras. 201-207</b> in General Survey 2012.   |
| 71 | Infringements of the consultation with workers' organizations   | <b>Paras. 1065-1088</b> in Digest of decisions and principles.   |
| 72 | Lack of guarantee of due process and/or justice re violations nos. 62-71  | Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal) and/or recourse to judicial authority against any civil, administrative, criminal and/or disciplinary decision.              |
|    | <b>IVb. Right to collective bargaining, in practice</b>   |  |
| 73 | General prohibition of collective bargaining  | <b>Article 4 of Convention No. 98;</b><br><b>Paras. 12, 93</b> in General Survey 1994;<br><b>Para. 51</b> in General Survey 2012;<br><b>Resolution concerning the Independence of the Trade Union Movement, 1952.</b>  |

|    |   |   |
|----|---|---|
|    |   | <b>Article 4 of Convention No. 98;</b><br>Paras. 880, 888, 928-933 in Digest of decisions and principles;<br>Paras. 235-236, 244-247 in General Survey 1994;<br>Paras. 166-167, 198-199 in General Survey 2012.   |
| 74 | Insufficient promotion of collective bargaining   | <b>Article 5 - 6 of Convention No. 98;</b><br>Para. 885 in Digest of decisions and principles;<br>Paras. 168, 209 in General Survey 2012.   |
| 75 | Exclusion of workers in EPZs from the right to collective bargaining  | <b>Article 5-6 of Convention No. 98;</b><br>Paras. 885-911 in Digest of decisions and principles;<br>Paras. 261-264 in General Survey 1994;<br>Paras. 168, 170-172, 209-213 in General Survey 2012.   |
| 76 | Exclusion of other workers from the right to collective bargaining  | <b>Article 4 of Convention No. 98;</b><br>Paras. 912-924, 1024-1045 in Digest of decisions and principles;<br>Para. 250 in General Survey 1994;<br>Paras. 215-221 in General Survey 2012.   |
| 77 | Exclusion/restriction of subjects covered by collective bargaining  | <b>Article 4 of Convention No. 98;</b><br>Paras. 992-997 in Digest of decisions and principles;<br>Paras. 254-259 in General Survey 1994;<br>Paras. 246-250 in General Survey 2012.   |
| 78 | Compulsory arbitration accorded to collective bargaining  | <b>Article 4 of Convention No. 98;</b><br>Paras. 944-983 in Digest of decisions and principles;<br>Paras. 238-243 in General Survey 1994;<br>Paras. 224-240 in General Survey 2012.   |
| 79 | Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of trade unions entitled to collective bargaining | <b>Article 4 of Convention No. 98;</b><br>Paras. 880-881, 925-938, 984-991, 998-1005, 1024-1046, 1054-1058 in Digest of decisions and principles;<br>Paras. 244-249 in General Survey 1994;<br>Paras. 198, 200, 208, 214, 222-223 in General Survey 2012. |
| 80 | Acts of interference in collective bargaining   | <b>Article 4 of Convention No. 98;</b><br>Paras. 939-943, 1001, 1006-1045, 1047-1053 in Digest of decisions and principles;<br>Paras. 251-253 in General Survey 1994;<br>Paras. 201-207 in General Survey 2012.   |
| 81 | Violations of collective agreements   | <b>Paras. 1065-1088 in Digest of decisions and principles.</b>  |
| 82 | Infringements of the consultation with workers' organizations   | Includes infringements of the right to fair and rapid trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions.  |
| 83 | Lack of guarantee of due process and/or justice re violations nos. 73-82  | <b>Va. Right to strike, in law</b>  |
| 84 | General prohibition of the right to strike  | <b>Article 3 of Convention No. 87;</b><br>Paras. 548, 567, 570-571 in Digest of decisions and principles;<br>Paras. 152-153, 170-171 in General Survey 1994;<br>Paras. 122, 140, 144 in General Survey 2012.  |
| 85 | Exclusion of workers in EPZs from the right to strike   | Paras. 169 in General Survey 1994;<br>Paras. 132-134, 143 in General Survey 2012.   |
| 86 | Exclusion of other workers from the right to strike   | Paras. 572-594 in Digest of decisions and principles;<br>Paras. 154-160 in General Survey 1994;<br>Paras. 127, 129-135 in General Survey 2012.  |
| 87 | Exclusion/restriction based on the objective and/or type of the strike  | Paras. 526-546 in Digest of decisions and principles;<br>Paras. 165-168, 173 in General Survey 1994;<br>Paras. 124-126, 142 in General Survey 2012.   |
| 88 | Provisions in law allowing for the suspension and/or declaration of illegality of strikes by administrative authority   | Paras. 628-631 in Digest of decisions and principles;<br>Para. 157 in General Survey 2012.  |
| 89 | Lack of compensatory guarantees accorded to lawful  | Paras. 595-603 in Digest of decisions and principles;   |

|   |  |   |
|---|--|---|
|   | restrictions on the right to strike  | <b>Para. 164</b> in General Survey 1994;<br><b>Paras. 141</b> in General Survey 2012.   |
| 90                                      | Infringements of the determination of minimum services                                 | <b>Paras. 604-627</b> in Digest of decisions and principles;<br><b>Paras. 161-162</b> in General Survey 1994;<br><b>Paras. 136-139</b> in General Survey 2012.  |
| 91                                      | Compulsory arbitration accorded to strikes   | <b>Paras. 564-569</b> in Digest of decisions and principles;<br><b>Para. 153</b> in General Survey 1994;<br><b>Paras. 153-156</b> in General Survey 2012.   |
| 92                                      | Excessive prerequisites required for exercising the right to strike                    | <b>Paras. 547-563</b> in Digest of decisions and principles;<br><b>Paras. 170-172</b> in General Survey 1994;<br><b>Paras. 144-148</b> in General Survey 2012.  |
| 93                                      | Acts of interference during the course of strike action                                | <b>Paras. 632-653</b> in Digest of decisions and principles;<br><b>Paras. 163, 174-175</b> in General Survey 1994;<br><b>Paras. 149-152</b> in General Survey 2012.   |
| 94                                      | Imposing excessive sanctions in case of legitimate strikes                             | <b>Paras. 667-674</b> in Digest of decisions and principles;<br><b>Paras. 176-178</b> in General Survey 1994;<br><b>Paras. 157-160</b> in General Survey 2012.  |
| 95                                      | Lack of guarantee of due process and/or justice re violations nos. 84-94               | Includes lack of adequate legislation that would guarantee the due process of law (fair and rapid trial by an independent and impartial tribunal) and/or recourse to judicial authority against any civil, administrative, criminal and/or disciplinary decision. |
| <b>Vb. Right to strike, in practice</b> |  |   |
| 96                                      | General prohibition of strikes   | <b>Article 3 of Convention No. 87;</b><br><b>Paras. 548, 567, 570-571</b> in Digest of decisions and principles;<br><b>Paras. 152-153, 170-171</b> in General Survey 1994;<br><b>Paras. 122, 140, 144, 159</b> in General Survey 2012.                            |
| 97                                      | Exclusion of workers in EPZs from the right to strike                                  | <b>Paras. 169</b> in General Survey 1994;<br><b>Paras. 132-134, 143</b> in General Survey 2012.   |
| 98                                      | Exclusion of other workers from the right to strike                                    | <b>Paras. 572-594</b> in Digest of decisions and principles;<br><b>Paras. 154-160</b> in General Survey 1994;<br><b>Paras. 127, 129-135</b> in General Survey 2012.   |
| 99                                      | Exclusion/restriction based on the objective and/or type of the strike                 | <b>Paras. 526-546</b> in Digest of decisions and principles;<br><b>Paras. 165-168, 173</b> in General Survey 1994;<br><b>Paras. 124-126, 142</b> in General Survey 2012.  |
| 100                                     | Suspension and/or declaration of illegality of strikes by administrative authority     | <b>Paras. 628-631</b> in Digest of decisions and principles;<br><b>Para. 157</b> in General Survey 2012.  |
| 101                                     | Lack of compensatory guarantees accorded to lawful restrictions on the right to strike | <b>Paras. 595-603</b> in Digest of decisions and principles;<br><b>Para. 164</b> in General Survey 1994;<br><b>Paras. 141</b> in General Survey 2012.   |
| 102                                     | Infringements of the determination of minimum services                                 | <b>Paras. 604-627</b> in Digest of decisions and principles;<br><b>Paras. 161-162</b> in General Survey 1994;<br><b>Paras. 136-139</b> in General Survey 2012.  |
| 103                                     | Compulsory arbitration accorded to strikes   | <b>Paras. 564-569</b> in Digest of decisions and principles;<br><b>Para. 153</b> in General Survey 1994;<br><b>Paras. 153-156</b> in General Survey 2012.   |
| 104                                     | Excessive prerequisites required for exercising the right to strike                    | <b>Paras. 547-563</b> in Digest of decisions and principles;<br><b>Paras. 170-172</b> in General Survey 1994;<br><b>Paras. 144-148</b> in General Survey 2012.  |
| 105                                     | Acts of interference during the course of strike action                                | <b>Paras. 632-653</b> in Digest of decisions and principles;<br><b>Paras. 163, 174-175</b> in General Survey 1994;<br><b>Paras. 149-152</b> in General Survey 2012.   |
| 106                                     | Imposing excessive sanctions in case of legitimate strikes                             | <b>Paras. 667-674</b> in Digest of decisions and principles;<br><b>Paras. 176-178</b> in General Survey 1994;<br><b>Paras. 157-160</b> in General Survey 2012.  |
| 107                                     | Committed against trade union officials re violation no. 106                           | Trade union officials refer to elected officials and representatives of trade union office.   |
| 108                                     | Lack of guarantee of due process and/or justice re violations                          | Includes infringements of the right to fair and rapid   |

|  |             |  |
|--|-------------|--|
|  | nos. 96-107 | trial; the lack of independent and impartial judiciary; and/or absence of judgement, impunity or lack of dissuasive sanctions. |
|--|-------------|--|