

New “Labour Rights Indicators”: Definitions

[Version: 27 April 2016]

Definitions of evaluation criteria

The paper provides the textual definitions of each the 108 evaluation criteria, by listing examples, in many cases taken word-for-word from the sources listed below¹ 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

¹ 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 activities² (in law)³

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,

² Trade unionists under the current method refers both to trade union members and non-members carrying out trade union activity.

³ 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)

- 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.

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.

- 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.

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.

- Includes arbitrary occupation, seizure and destruction of trade union premises and property in practice;
- Includes arbitrary confiscation of property without legally obtained court order;
- 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;
- 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.).

19. Committed against trade union officials re violation no.18 (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.

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.

- 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.

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.

- 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.);
- Includes calling state of emergency by the state for the purpose of evading trade union rights, freedom of association principles or ignoring civil liberties;
- *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.).

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.

Ila. 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 a 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 a 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.).⁴

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

⁴ 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 a 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)⁵ or public servants exercising authority in the name of State;⁶*
- *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.)

⁵ *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.)

⁶ 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.);⁷
- 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

⁷ 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 term⁸ - 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;*⁹
- *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

⁸ See footnote No. 5

⁹ See footnote No. 6

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.);¹⁰
- 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

¹⁰ See footnote No. 7

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.