

**Measuring progress towards the application of freedom of
association and collective bargaining rights:
A tabular presentation of the findings
of the ILO supervisory system**

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Abstract: The paper describes a method to measure ILO member States' progress towards the application of freedom of association and collective bargaining rights. The method is based on coding the findings of the ILO supervisory system and compiling this information in a readily accessible and concise manner. It consists of both conceptual and more practical components and builds on four basic elements: the premises of definitional validity, reproducibility and transparency; the 168 evaluation criteria used to code de jure and de facto issues of non-compliance; the ILO textual sources selected for coding; and the general and source-specific coding rules. The final product is a table providing detailed and verifiable information that can be easily traced back to the original ILO textual source. The paper also aims to serve as a reference for future work on measuring progress towards the implementation of the other fundamental principles and rights at work, covered in the ILO 1998 Declaration.

Resumé: Le document décrit une méthode permettant de mesurer les progrès réalisés par les États Membres de l'OIT concernant le respect de la liberté syndicale et du droit de négociation collective. La méthode est fondée sur une codification des constatations faites par le système de contrôle de l'OIT et sur la restitution de ces informations sous une forme concise et facilement accessible. Elle comporte des aspects à la fois conceptuels et pratiques, et s'appuie sur quatre éléments essentiels: les principes de validité des définitions, de transparence et de reproductibilité; les 168 critères d'évaluation utilisés pour coder les problèmes de non-respect observés dans le droit et dans les faits; les sources textuelles de l'OIT sélectionnées pour la codification; les règles de codification générales et propres aux sources. Le résultat final est un tableau contenant des informations détaillées et vérifiables, qu'il est facile de rattacher à la source textuelle originale de l'OIT. Le document est également destiné à servir de référence pour de futurs travaux sur la mesure des progrès concernant la mise en œuvre des autres principes et droits fondamentaux au travail contenus dans la Déclaration de l'OIT de 1998.

Resumen: El documento describe un método para medir el avance de los Estados miembros de la OIT en la aplicación de los derechos de libertad de asociación y negociación colectiva. El método está basado en la codificación de los hallazgos del sistema de supervisión de la OIT y en la compilación de dicha información de forma concisa y fácilmente accesible. Consta de elementos conceptuales y prácticos, y se compone de cuatro elementos básicos: las premisas de validez de las definiciones, la reproducibilidad y la transparencia; los 168 criterios evaluativos empleados para codificar los aspectos de jure y de facto sobre incumplimientos; las fuentes textuales de la OIT seleccionadas para la codificación; y las reglas generales y específicas de codificación. El producto final es una tabla que proporciona información detallada y verificable que puede ser fácilmente rastreada hacia el texto original de la OIT. El documento pretende también servir como referencia para futuros trabajos de medición del avance en la aplicación de los otros principios y derechos fundamentales en el trabajo, cubiertos por la Declaración de la OIT de 1998.

The Policy Integration Department

The Policy Integration Department pursues the ILO's decent work and fair globalization agenda from an integrated perspective.

The central objective of the Policy Integration Department is to further greater policy coherence and the integration of social and economic policies at both the international and national level. To this end, it works closely with other multilateral agencies and national actors such as Governments, trade unions, employers' federations, NGOs and universities. Through its policy-oriented research agenda, it explores complementarities and interdependencies between employment, working conditions, social protection, social dialogue and labour standards. Current work is organized around four thematic areas that call for greater policy coherence: Fair globalization, the global poor and informality, macro-economic policies for decent work, and emerging issues.

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Measuring progress towards the application of freedom of association and collective bargaining rights: A tabular presentation of the findings of the ILO supervisory system

Contents

	<i>Page</i>
Introduction	1
Part I. Conceptual Aspects of the Method	3
1. General Background.....	3
1.1. Qualitative indicators of labour standards	3
1.2. Previous method - Qualitative Indicator of Trade Union Rights Violations	4
2. Revision of the previous method.....	5
3. Elements of the method	6
4. Key premises	13
5. List of Evaluation Criteria	15
5.1. Construction of the evaluation criteria	15
5.2. Additional evaluation criteria	17
6. Coding sources	18
Part II. Practical Aspects of the Method	22
1. General Coding Rules.....	22
1.1. Introduction	22
1.2. Frequency of the coding	22
1.3. Codable and non-codable evidence	23
1.4. Coding the additional criteria	25
1.5. Coding the different factors of non-compliance.....	29
1.6. Documentation	34
2. Source-specific Coding Rules.....	37
2.1. Introduction	37
2.2. Comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR comments) – ‘a’	38
2.3. Reports from the Conference Committee on the Application of Standards (Conference Committee reports) – ‘b’	40
2.4. Country baselines under the ILO Declaration Annual Review (Country Baselines) – ‘c’	42
2.5. Representation under article 24 of the ILO Constitution (Representations) – ‘d’	45
2.6. Commissions of inquiry appointed under article 26 of the ILO Constitution (Complaints) – ‘e’	47
2.7. Committee on Freedom of Association Cases (CFA cases) – ‘f’	49
2.8. National legislation – ‘g’	52

3. Definitions of the Evaluation Criteria.....	56
3.1. Issues of non-compliance in relation to trade union rights.....	57
3.2. Issues of non-compliance in relation to the rights of employers' organizations.....	108
References	139

Measuring progress towards the application of freedom of association and collective bargaining rights: A tabular presentation of the findings of the ILO supervisory system

Introduction

In his first report to the International Labour Conference in June 1999, ILO Director-General Juan Somavia introduced the concept of decent work with the following words: ‘The primary goal of the ILO today is to promote opportunities for women and men, to obtain decent and productive work in conditions of freedom, equity, security and human dignity’.¹ The Decent Work Agenda, built from four components (employment creation, social protection, social dialogue and rights at work), has subsequently become the organising framework for ILO activities. However, its multifaceted nature and the interrelated character of its components set a number of challenges for measuring progress towards its achievement.

Recognizing that the lack of sufficient monitoring hampers both the ILO’s own work and the ability of its constituents to monitor and evaluate their progress, measuring progress towards decent work has become a primary concern for ILO’s constituents. The need to measure decent work was recognised by the Advisory Group on Statistics in its recommendations to the Director-General² as far back as 2001, and, more recently, was strongly reaffirmed by the ILO Declaration on Social Justice for Fair Globalization, adopted in June 2008, recommending that member States may consider “the establishment of appropriate indicators or statistics, if necessary with the assistance of the ILO, to monitor and evaluate the progress made”.³

Since 2000, the Office has undertaken a significant amount of research into methods of measuring decent work.⁴ The ILO Governing Body, following the Tripartite Meeting of Experts on the Measurement of Decent Work held in September 2008⁵, has on various occasions discussed the issue and provided guidance on the main principles concerning measurement.⁶ What has been emphasized from the beginning is that, given the nature of decent work as a multifaceted concept, progress towards its achievement cannot be

¹ See ILO (1999).

² Anker et al. (2002, p. vi.).

³ See ILO (2008b, Part II(B)(ii)); also available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_099766.pdf (accessed 14 Sep. 2010).

⁴ For instance, inclusion of a detailed section on measuring decent work in the General Report to the 17th International Conference of Labour Statisticians; testing some of the proposed indicators in pilot countries; testing the measurement of some of the qualitative aspects of decent work; establishing a task team to consolidate the various proposals for indicators into an integrated set; publishing a special issue of the International Labour Review; collaboration with UNECE, EUROSTAT and Eurofound; discussing the possibility of a joint ILO-EC project to monitor progress on decent work in developing countries. (See ILO, 2008d, pp. 1-2).

⁵ The Governing Body approved the convening of the meeting in its 301st Session (March 2008). See ILO (2008f).

⁶ See, for example, ILO (2008f) and ILO (2008a).

assessed by standard quantitative indicators only, as those by themselves cannot adequately capture the wide-ranging and inherently qualitative nature of many aspects of decent work. Being relevant across the entire Decent Work Agenda, it was recognized that alongside statistical indicators, fundamental principles and rights at work (FPRWs)⁷ and, more generally, the legal framework of decent work needed to be prominently reflected and should also be an integral part of the ILO's framework for measuring decent work.⁸

In order to reflect on this, two complementary proposals were endorsed: (i) the compilation of legal framework indicators that provide textual information on rights at work; and (ii) the development of reliable and reproducible indicators to monitor progress in the progressive implementation of fundamental principles and rights at work, as enshrined in the ILO 1998 Declaration on Fundamental Principles and Rights at Work⁹ (1998 Declaration). Regarding the latter, the proposal suggested that indicators would be developed for a base year with subsequent progress towards their full application being recorded. The aim would be to provide objective information both on the compliance of national legislation with FPRWs and its actual application, but also on efforts and progress made towards their full application. Experts agreed that measurement should be based on a standard coding framework and suggested beginning with the right to freedom of association and collective bargaining.¹⁰

With this in mind, this paper describes the method constructed to measure freedom of association and collective bargaining rights at the country level based on the coding of issues of non-compliance as recorded in ILO textual sources. The method intends to measure progress made towards the full application of these rights solely by compiling already existing information generated by the ILO's supervisory system in such a manner that would further support countries in monitoring progress and identifying gaps and areas of improvement. The method does not aim to provide new or differing information on countries compliance, but to present already existing and compiled information in an easily accessible and concise manner. In line with the request of the Governing Body,¹¹ the intention of this work is not in any way to create a forum for "naming and shaming" or for scoring and ranking countries based on their performance, but to present the findings of the ILO supervisory bodies in another format that is, at the same time, fully consistent with the work of these bodies and does not lead to the creation of an additional supervisory instrument. Being applied in relation to the principle of freedom of association and collective bargaining, the paper also aims to serve as a reference resource for the work on measuring progress towards the implementation of the remaining fundamental principles and rights at work.

The presentation of the method is divided into two main parts. The first part of the paper describes the conceptual aspects of the method and is structured as follows: Section 1 provides the broader theoretical background of the current work. Section 2 presents the

⁷ Freedom of association and the effective recognition of the right to collective bargaining; Elimination of all forms of forced or compulsory labour; Effective abolition of child labour; Elimination of discrimination in respect of employment and occupation.

⁸ See ILO (2008d).

⁹ See ILO (1998) also available at: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (accessed 14 Sep. 2010).

¹⁰ See ILO (2008a) and ILO (2008e, pp. 18-19).

¹¹ See ILO (2008f).

pilot project carried out for the construction of the method. Section 3 provides a summary of the various elements of the method, followed by sections describing those elements that relate to the conceptual aspects of the method. Section 4 discusses the key premises on which the method is based on, Section 5 describes the structure of the evaluation criteria, Section 6 presents the sources selected to identify issues of non-compliance with freedom of association and collective bargaining rights.

Intended to be used as a guide for the actual coding, the second part of the paper deals with the more practical, methodological aspects of the approach and explains in detail the method of the coding and its components. This part of the paper consists of three main sections: Section 1 on the general coding rules, Section 2 on the source-specific coding rules and Section 3 on the definitions of the evaluation criteria.

The reason for combining the conceptual and the practical aspects of the method in a single paper is to provide all the related elements in one readily-accessible document. That is, instead of putting the general and source specific coding rules and the evaluation criteria definitions (functioning more as a manual or implementation guide) under separate annexes, these are included in the main body of the paper. Although this results in a number of repetitions within the paper, in our view this approach facilitates a fuller understanding at the application of the method.¹² Lastly, it should be also noted that given its practical orientation, this paper does not include a comprehensive survey of comparable literature, but rather focuses on issues directly linked to the method itself.

Part I. Conceptual Aspects of the Method

1. General Background

1.1. *Qualitative indicators of labour standards*

The wider context of the present work is a rapidly growing interest in the construction and use of so-called ‘qualitative indicators’ of labour standards. There are several reasons for this, such as an increasing interest in socially responsible investments, the still topical debates on the effects of labour standards on economic outcomes, and the recognition that traditional quantitative indicators, such as statistics on trade union membership, are too narrow in scope to adequately capture the intrinsically qualitative nature of labour standards and their application.¹³ In the absence of good data, alternative ways to measure compliance with labour rights needed to be explored.

One commonly used way of measuring compliance with labour standards across countries is to rely on the number of ratifications of ILO Conventions.¹⁴ In spite of its simplicity, this method was widely used in econometric studies of the relationship between labour standards and international competitiveness,¹⁵ and was supported with the argument that “ratification and compliance are identifiable, voluntary actions by a country that indicate

¹² In addition, there is a fair amount of overlap between the definitions for issues of non-compliance regarding the rights of workers’ and employers’ organizations.

¹³ Kucera (2007b, p. 1).

¹⁴ For examples, see Block (2007, p. 46).

¹⁵ Kucera (2007b, p. 2).

that the country is willing to provide protection to workers”.¹⁶ However, given that the number of ratifications of ILO Conventions may not necessarily reflect on the actual implementation of labour standards,¹⁷ the development of more comprehensive methods to measure application of labour rights has become necessary.¹⁸

Qualitative indicators demonstrate one form of a more comprehensive measure. Being based on methods such as expert assessments or – like the present method discussed below - coding of textual sources dealing with national legislation or the application of rights, these indicators seem likely to be more capable of addressing the specific nature of labour standards and their application.¹⁹

1.2. Previous method - Qualitative Indicator of Trade Union Rights Violations

The present method is based on the one that was developed and used by the International Labour Office to evaluate the effects of trade union rights on foreign direct investment and trade.²⁰ The former method was built upon 37 evaluation criteria for assessing trade union rights, grouped into six categories: freedom of association/collective bargaining-related civil liberties; right to establish and join unions and worker organizations; other union activities; right to bargain collectively; right to strike; and export processing zones. The criteria jointly addressed *de jure* violations (the problem of non-compliance of the national legislation with ILO Conventions), as well as *de facto* violations (non-compliance with the country’s own national legislation in practice) and was applied only to violations committed with respect to workers’ organizations, not with respect to employers’ organizations. Country-level information on trade union rights was then based on the coding of violations recorded in three different textual sources.²¹

As the previous method was constructed for a different purpose, it had to first be adapted to the objective of measuring progress towards the application of FPRWs. In line with the request of the Governing Body, the main aim of the revision was to construct a method that builds on clear and sufficiently detailed evaluation criteria to define compliance with FPRWs, is fully coherent with the ILO sources and supervisory system, and at the same time is reliable and reproducible.²²

¹⁶ Block (2007, p. 47).

¹⁷ As Block writes: “Conventions ratified, per se, may not be a valid measure of labour standards. Many less developed countries have ratified more ILO Conventions than the U.S. Yet, even with its low level of labour standards relative to Canada and the E.U. other developed countries (...) it is not reasonable to believe that the U.S. has lower standards than many less developed countries that have ratified more ILO Conventions.” (Block, 2007, p. 47).

¹⁸ For more, see Kucera (2007a); Teitelbaum (2010, p. 462).

¹⁹ Teitelbaum (2010, pp. 461-74).

²⁰ See Kucera (2001).

²¹ These textual sources were the followings: International Confederation of Free Trade Unions’ Annual Survey of Violations of Trade Union Rights; the U.S. State Department’s Country Reports on Human Rights Practices, and the ILO’s Report of the Committee on Freedom of Association.

²² See ILO (2008a); see also ILO (2008d, p. 30), ILO (2008e, p. 18).

2. Revision of the previous method

Following the request of the Governing Body,²³ a pilot project was undertaken by the International Labour Office in 2009 to develop a system for measuring progress towards the application of ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The pilot included five countries: Austria, Brazil, Malaysia, the United Republic of Tanzania and Ukraine.²⁴

The construction of the system was done in two stages. The first stage involved the compilation of a preliminary list of evaluation criteria derived from the relevant ILO sources. On the one hand, this involved careful examination of the ILO Constitution and Conventions Nos. 87 and 98 - the main international instruments on the subject²⁵ - and on the other hand, the review of the related ILO principles of application as embodied in the (i) Digest of decisions and principles of the Committee on Freedom of Association²⁶ and the (ii) General Survey of Conventions Nos. 87 and 98.²⁷ Moreover, to ensure comprehensiveness, additional ILO sources dealing specifically with the subject of freedom of association and collective bargaining were also studied.²⁸

In order to test the method and to develop specific coding rules guiding the actual coding, the second stage of the pilot included the coding of a wide range of ILO textual sources with preliminary evaluation criteria in the five pilot countries. To apply the method accurately, the ILO supervisory machinery was used as the key source for identifying issues of non-compliance. Moreover, to see whether the method is capable of satisfying the demand to evaluate progress in time, the coding was done for two points in time, for the years of 2000 and 2008.

After having undertaken the pilot for five countries, certain aspects of the method were once more tested on a few other countries at random. In doing so, the evaluation criteria, the coding rules and the method of coding were further amended and clarified to account for issues that did not arise during the first stages of the pilot. In addition, an initial presentation of the method was made to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in December 2009. Being the legal body responsible for the examination of the compliance of ILO member States with Conventions and Recommendations it was considered important to have the Committee's view on the feasibility of the method, with a particular emphasis on the list and definitions of the evaluation criteria. At the same time, it was also vital to demonstrate that the method and

²³ See ILO (2008a).

²⁴ The five countries participated in the pilot offered their collaboration with the Office in order to compile decent work country profiles during the 18th International Conference of Labour Statisticians, held from 24 November to 5 December 2008 in Geneva. (ILO, 2009a).

²⁵ See ILO (2008c); also available at:
http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_096122.pdf (accessed 14 Sep. 2010).

²⁶ ILO (2006); also available at:
<http://www.ilo.org/ilolex/english/digestq.htm> (accessed 14 Sep. 2010).

²⁷ ILO (1994); also available at:
<http://www.ilo.org/ilolex/english/surveyq.htm> (accessed 14 Sep. 2010).

²⁸ See Tajgman and Curtis (2000) and ILO (2008c).

its aims were consistent with the work of the CEACR and the other ILO supervisory organs, and that these would not lead to the duplication or the diminution of their work or to the creation of an additional supervisory instrument. What had to be clarified is that the method does not aim to provide new or differing information on countries' compliance, but to compile the already existing information generated by the supervisory system in such a manner that would further support countries in monitoring their progress towards the application of the FPRWs. The CEACR remarked on the seriousness with which this project was being undertaken and on its potential importance for the ILO.²⁹ Given the objective of developing a method that is fully coherent with the ILO supervisory system and provides an accurate reflection of its findings, it would be useful for there to be ongoing review by the CEACR.

3. Elements of the method

The above described revision of the previous method resulted in an improved and more comprehensive method. As noted, the refined method consists of two main components, a conceptual and a more practical and methodological one, and builds on the following four basic elements: (i) the key premises (Part I. Section 4); (ii) the evaluation criteria together with the evaluation criteria definitions (Table 1; Part I. Section 5; Part 2. Section 3); (iii) the sources selected to identify issues of non-compliance (Box 1; Part I. Section 6); and (iv) the general and source-specific coding rules guiding the actual coding (Part II. Section 1; Part II. Section 2).

Table 1 below provides the list of the 168 evaluation criteria as they are presented in the so-called 'coding spreadsheet', the tool where the actual coding should be done. The first column indicates the number of the evaluation criteria; the second column contains the evaluation criteria; while the third column is where the identified issues of non-compliance are coded by source under the year evaluated.

²⁹ See ILO (2010).

Table 1. List of the 168 evaluation criteria (as presented in the coding spreadsheet)

	Trade Unions	Year
	Ia. Fundamental civil liberties, de jure	
1	Arrest, detention, imprisonment, charging and fining of trade unionists	
2	Infringements of trade unionists' basic freedoms	
3	Infringements of trade union's right to protection of their premises and property	
4	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	
5	Lack of guarantee of due process of law re Ia	
	Ib. Fundamental civil liberties, de facto	
6	Murder or disappearance of trade unionists	
7	Committed against trade union leaders re 6	
8	Lack of guarantee of due process of law and/or impunity re 6	
9	Severity (widespread and/or systematic) re 6	
10	Other violent actions against trade unionists	
11	Committed against trade union leaders re 10	
12	Lack of guarantee of due process of law and/or impunity re 10	
13	Severity (widespread and/or systematic) re 10	
14	Arrest, detention, imprisonment, charging and fining of trade unionists	
15	Committed against trade union leaders re 14	
16	Lack of guarantee of due process of law and/or impunity re 14	
17	Severity (widespread and/or systematic) re 14	
18	Infringements of trade unionists' basic freedoms	
19	Committed against trade union leaders re 18	
20	Lack of guarantee of due process of law and/or impunity re 18	
21	Severity (widespread and/or systematic) re 18	
22	Attacks against trade union premises and property	
23	Committed against trade union leaders re 22	
24	Lack of guarantee of due process of law and/or impunity re 22	
25	Severity (widespread and/or systematic) re 22	
26	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	
27	Lack of guarantee of due process of law and/or impunity re 26	
28	Severity (widespread and/or systematic) re 26	
	Ia. Right of workers to establish and join organizations, de jure	
29	General prohibition on the right of workers to establish and join organizations	
30	Exclusion/restriction of workers from the right to establish and join organizations	
31	Previous authorization requirements	
32	Restrictions on the freedom of choice of trade union structure and composition	
33	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
34	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
35	Prejudice or discrimination with regard to employment because of trade union membership/ legitimate activities	
36	Lack of adequate legal guarantees against anti-union discriminatory measures re 35	
37	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
38	Lack of adequate legal guarantees against anti-union discriminatory measures re 37	
39	Acts of interference of employers and/or public authorities	
40	Lack of adequate legal guarantees against acts of interference	
41	Infringement of the right to establish and join federations/confederations/international organizations	
42	Other de jure acts of prohibitions, infringements and interference re Ila	
43	Lack of guarantee of due process of law re Ila	
	Iib. Right of workers to establish and join organizations, de facto	
44	Obstacles towards the development of independent workers' organizations in practice	
45	Exclusion/restriction of workers from the right to establish and join organizations	
46	Previous authorization requirements	
47	Restrictions on the freedom of choice of trade union structure and composition	
48	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	

49	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
50	Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities	
51	Committed against trade union leaders re 50	
52	Lack of guarantee of due process of law re 50	
53	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
54	Committed against trade union leaders re 53	
55	Lack of guarantee of due process of law re 53	
56	Acts of interference of employers and/or public authorities	
57	Lack of adequate guarantees against acts of interference	
58	Infringement of the right to establish and join federations/confederations/international organizations	
59	Other de facto acts of prohibitions, infringements and interference re IIb	
60	Lack of guarantee of due process of law re IIb	
	IIla. Other union activities, de jure	
61	Infringements on the right to freely draw up constitutions and rules	
62	Infringements on the right to freely elect representatives	
63	Infringements on the right to freely organize and control internal and financial administration	
64	Infringements on the right to freely organize activities/programmes	
65	Other de jure acts of prohibitions, infringements and interference re IIla	
66	Lack of guarantee of due process of law re IIla	
	IIlb. Other union activities, de facto	
67	Infringements on the right to freely draw up constitutions and rules	
68	Infringements on the right to freely elect representatives	
69	Infringements on the right to freely organize and control internal and financial administration	
70	Infringements on the right to freely organize activities/programmes	
71	Other de facto acts of prohibitions, infringements and interference re IIlb	
72	Lack of guarantee of due process of law re IIlb	
	IVa. Right to collective bargaining, de jure	
73	General prohibition on the right to collective bargaining	
74	Exclusion/restriction of workers from the right to collective bargaining	
75	Exclusion/restriction of subjects covered by collective bargaining	
76	Compulsory arbitration accorded to collective bargaining	
77	Infringements on the determination/recognition of trade unions entitled to collective bargaining	
78	Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining	
79	Acts of interference according to collective agreements	
80	Infringements of the consultation with workers' organizations	
81	Other de jure acts of prohibitions, infringements and interference re IVa	
82	Lack of guarantee of due process of law re IVa	
	IVb. Right to collective bargaining, de facto	
83	Obstacles towards collective bargaining in practice	
84	Exclusion/restriction of workers from the right to collective bargaining	
85	Exclusion/restriction of subjects covered by collective bargaining	
86	Compulsory arbitration accorded to collective bargaining	
87	Infringements on the determination/recognition of trade unions entitled to collective bargaining	
88	Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining	
89	Acts of interference according to collective agreements	
90	Infringements of the consultation with workers' organizations	
91	Other de facto acts of prohibitions, infringements and interference re IVb	
92	Lack of guarantee of due process of law re IVb	
	Va. Right to strike, de jure	
93	General prohibition on the right to strike	
94	Exclusion/restriction of workers from the right to strike	
95	Exclusion/restriction based on the objective of the strike	
96	Exclusion/restriction based on the type of the strike	
97	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	
98	Infringements on the determination of minimum services	

99	Compulsory arbitration accorded to strikes	
100	Infringements of the prerequisites lawfully required for exercising the right to strike	
101	Acts of interference during the course of strike action	
102	Imposing excessive sanctions in case of legitimate and peaceful strikes	
103	Other de jure acts of prohibitions, infringements and interference re Va	
104	Lack of guarantee of due process of law re Va	
	Vb. Right to strike, de facto	
105	Obstacles to strike actions in practice	
106	Exclusion/restriction of workers from the right to strike	
107	Exclusion/restriction based on the objective of the strike	
108	Exclusion/restriction based on the type of the strike	
109	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	
110	Infringements on the determination of minimum services	
111	Compulsory arbitration accorded to strikes	
112	Infringements of the prerequisites lawfully required for exercising the right to strike	
113	Acts of interference during the course of strike action	
114	Imposing excessive sanctions in case of legitimate and peaceful strikes	
115	Committed against trade union leaders re 114	
116	Other de facto acts of prohibitions, infringements and interference re Vb	
117	Lack of guarantee of due process of law re Vb	
	Employers' Organizations	Year
	Vla. Fundamental civil liberties, de jure	
118	Arrest, detention, imprisonment, charging and fining of members of employers' organizations	
119	Infringements of employers' organizations' basic freedoms and/or of their right to protection of their premises and property	
120	Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	
121	Lack of guarantee of due process of law re Via	
	Vlb. Fundamental civil liberties, de facto	
122	Murder or disappearance of members of employers' organizations	
123	Committed against leaders of the organization re 122	
124	Lack of guarantee of due process of law and/or impunity re 122	
125	Severity (widespread and/or systematic) re 122	
126	Other violent action and/or arrest, detention, imprisonment, charging and fining of members of the employers' organizations	
127	Committed against leaders of the organization re 126	
128	Lack of guarantee of due process of law and/or impunity re 126	
129	Severity (widespread and/or systematic) re 126	
130	Infringements of employers' organizations' basic freedoms and/or attacks against their premises and property	
131	Committed against leaders of the organization re 130	
132	Lack of guarantee of due process of law and/or impunity re 130	
133	Severity (widespread and/or systematic) re 130	
134	Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	
135	Lack of guarantee of due process of law and/or impunity re 134	
136	Severity (widespread and/or systematic) re 134	
	VIIa. Right of employers to establish and join organizations, de jure	
137	Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	
138	Restrictions on the right of employers to establish and join to organizations of their own choosing	
139	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
140	Acts of interference of workers' organizations and/or public authorities	
141	Lack of adequate legal guarantees against acts of interference	
142	Infringement of the right to establish and join federations/confederations/international organizations	
143	Lack of guarantee of due process of law re VIIa	
	VIIb. Right of employers to establish and join organizations, de facto	
144	Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	
145	Restrictions on the right of employers to establish and join to organizations of their own choosing	
146	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
147	Acts of interference of workers' organizations and/or public authorities	

148	Lack of adequate guarantees against acts of interference	
149	Infringement of the right to establish and join federations/confederations/international organizations	
150	Lack of guarantee of due process of law re VIIIb	
	VIIIa. Other activities of employers organizations, de jure	
151	Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes	
152	Lack of guarantee of due process of law re VIIIa	
	VIIIb. Other activities of employers organizations, de facto	
153	Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes	
154	Lack of guarantee of due process of law re VIIIb	
	IXa. Right to collective bargaining, de jure	
155	Prohibition, restrictions on/exclusion from the right to collective bargaining	
156	Exclusion/restriction of subjects covered by collective bargaining	
157	Compulsory arbitration accorded to collective bargaining	
158	Infringements on the determination/recognition of employers' organizations entitled to collective bargaining	
159	Acts of interference in collective bargaining and collective agreement	
160	Infringements of the consultation with employers' organizations	
161	Lack of guarantee of due process of law re IXa	
	IXb. Right to collective bargaining, de facto	
162	Prohibition, restrictions on/exclusion from the right to collective bargaining	
163	Exclusion/restriction of subjects covered by collective bargaining	
164	Compulsory arbitration accorded to collective bargaining	
165	Infringements on the determination/recognition of employers' organizations entitled to collective bargaining	
166	Acts of interference in collective bargaining and collective agreement	
167	Infringements of the consultation with employers' organizations	
168	Lack of guarantee of due process of law re IXb	

Box 1 below includes the list of the seven textual sources selected to identify issues of non-compliance at the country level. For further details with regard the sources see Part I. Section 6.


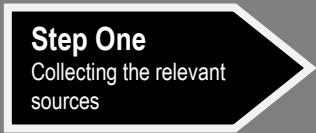
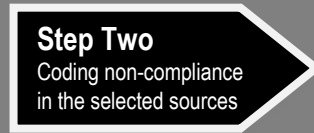
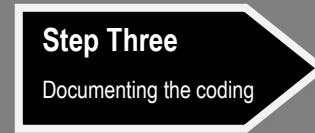
<p>Box 1</p> <p>Sources selected to identify issues of non-compliance</p> <p>a: Comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR comments);</p> <p>b: Reports from the Conference Committee on the Application of Standards (Conference Committee reports);</p> <p>c: Country baselines under the ILO Declaration Annual Review (Country Baselines);</p> <p>d: Representation under article 24 of the ILO Constitution (Representations);</p> <p>e: Commissions of inquiry appointed under article 26 of the ILO Constitution (Complaints);</p> <p>f: Committee on Freedom of Association cases (CFA cases);</p> <p>g: National legislation.³⁰</p>

³⁰ National legislation becomes relevant in relation to the Country Baselines under the ILO Declaration Annual Review.

As explained in **Table 2** ('Coding Steps') the coding exercise first requires a good understanding on the conceptual aspects of the method. This is particularly important regarding the parts dealing with the key premises and the construction and definitions of the evaluation criteria. It is only after this that the actual coding can begin by collecting the sources relevant for the year evaluated. The actual coding, i.e. identifying and documenting the observed issues of non-compliance, is the last step in the process.

However, as the present part of the paper focuses on the conceptual aspects of the method, the following sections will describe in detail (i) the key premises that form the foundation and the frame of the entire method (definitional validity, reproducibility, transparency); (ii) the structure of the 168 evaluation criteria, explaining the significance and meaning of the distinction between de jure and de facto non-compliance and the recurring additional evaluation criteria ('other acts of prohibitions, infringements and interference', 'lack of guarantee of due process of law' and 'committed against leaders of the organization'); and last (iii) the rationale behind the selection of the seven sources, explaining why these and not other sources were chosen to identify observed issues of non-compliance at the country level.

The practical aspects of the method are elaborated in the second part of the paper, including the general and source-specific coding rules governing the actual coding and the definitions of the evaluation criteria. In practice, the coding is done in a spreadsheet (Annex I) where the issue of non-compliance, with reference to the actual source (by using the letters of 'a'-'g') should be recorded. The actual coding is furthermore backed by systematic documentation, recording the coded information in a way that further facilitates the coding itself and the tracing of an observed issue of non-compliance back to a particular textual source and the evidence it records.

Table 2. Coding Steps						
	 Preparation Reading the key elements of the coding	 Step One Collecting the relevant sources	 Step Two Coding non-compliance in the selected sources	 Step Three Documenting the coding		
Preparation Reading the key elements	BEFORE STARTING THE CODING CAREFUL READING OF THE FOLLOWING ELEMENTS IS IMPORTANT. <ul style="list-style-type: none"> ▪ Key premises (definitional validity, reproducibility and transparency) ▪ List of evaluation criteria and their definitions (168 evaluation criteria and their definitions indicating the most frequent issues of non-compliance the criteria cover) ▪ General coding rules (provide the rules relevant for all the sources) ▪ Source-specific coding rules (provide the coding rules for each of the seven sources selected to identify issues of non-compliance) 			Part I. Section 4 Part I. Section 5 Part II. Section 3 Part II. Section 1 Part II. Section 2		
Tools	IN ORDER TO DO THE CODING, THE FOLLOWING TOOLS ARE NEEDED: <ul style="list-style-type: none"> ▪ Coding Spreadsheet ▪ Evaluation criteria definitions ▪ Supplementary annex attached to the coding spreadsheet to document specific issues 			Annex I. Part II. Section 3 Annex II-III.		
Steps	To do			References		
Step One Selection of the documents relevant to the year evaluated	AS THE CODING IS DONE ANNUALLY, COLLECTING THE SOURCES RELEVANT FOR THE YEAR EVALUATED AND FOR THE COUNTRY CONCERNED IS THE FIRST STEP OF THE CODING. THE COLLECTION OF THE RELEVANT SOURCES DEPENDS ON WHETHER THE COUNTRY HAS RATIFIED THE CONVENTION CONCERNED. <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ▪ Sources for countries that ratified the Convention concerned: <ul style="list-style-type: none"> - CEACR comments: annual coding, for all countries that ratified the Convention - Conference Committee Reports: annual coding, for countries selected by the Committee - Representations, Complaints, CFA cases: coding only if report is adopted for the country in the year evaluated </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ▪ Sources for countries that have not ratified the Convention concerned: <ul style="list-style-type: none"> - Country Baselines: annual coding, for all countries that have not ratified the Convention - National legislation: annual coding, for all countries that have not ratified the Convention - CFA cases: coding only if report is adopted for the country in the year evaluated </td> </tr> </table>			<ul style="list-style-type: none"> ▪ Sources for countries that ratified the Convention concerned: <ul style="list-style-type: none"> - CEACR comments: annual coding, for all countries that ratified the Convention - Conference Committee Reports: annual coding, for countries selected by the Committee - Representations, Complaints, CFA cases: coding only if report is adopted for the country in the year evaluated 	<ul style="list-style-type: none"> ▪ Sources for countries that have not ratified the Convention concerned: <ul style="list-style-type: none"> - Country Baselines: annual coding, for all countries that have not ratified the Convention - National legislation: annual coding, for all countries that have not ratified the Convention - CFA cases: coding only if report is adopted for the country in the year evaluated 	Part I. Section 6 Part II. Section 2
<ul style="list-style-type: none"> ▪ Sources for countries that ratified the Convention concerned: <ul style="list-style-type: none"> - CEACR comments: annual coding, for all countries that ratified the Convention - Conference Committee Reports: annual coding, for countries selected by the Committee - Representations, Complaints, CFA cases: coding only if report is adopted for the country in the year evaluated 	<ul style="list-style-type: none"> ▪ Sources for countries that have not ratified the Convention concerned: <ul style="list-style-type: none"> - Country Baselines: annual coding, for all countries that have not ratified the Convention - National legislation: annual coding, for all countries that have not ratified the Convention - CFA cases: coding only if report is adopted for the country in the year evaluated 					
Step Two Coding issues of non-compliance in the selected sources	THE CODING IS DONE BY READING THE COLLECTED SOURCES RELEVANT FOR THE YEAR EVALUATED. ISSUES OF NON-COMPLIANCE ARE IDENTIFIED BASED ON THE EVALUATION CRITERIA DEFINITIONS. IDENTIFIED ISSUES OF NON-COMPLIANCE ARE CODED UNDER LETTERS 'a'-g' IN A SPREADSHEET, INDICATING THE SOURCE WHERE THE INFORMATION WAS FOUND. <ol style="list-style-type: none"> 1. Reading the collected sources and identifying issues of non-compliance 2. Coding the identified issues of non-compliance: <ul style="list-style-type: none"> - The coding of the identified issues of non-compliance is done based on the general and the source-specific rules - The actual coding is done in a spreadsheet, where the issue of non-compliance, with reference to the actual source should be recorded by using the letters of 'a'-g'. 			Part II. Section 1 Part II. Section 2 Annex I.		
Step Three Documentation	THE CODING IS COMPLEMENTED BY A SYSTEMATIC BACKGROUND DOCUMENTATION <ul style="list-style-type: none"> ▪ Documentation of specific issues in the supplementary annex: <ul style="list-style-type: none"> - Records the evaluation criterion of (i) 'severity'; (ii) 'excluded workers/employers'; and (iii) 'other acts of prohibitions, infringements and interference'; and other information (e.g. coded legislation; cases when the Government repeatedly fails to reply to the CFA, etc.) by copying word for word the paragraphs referring to the observed issue of non-compliance from the original text. ▪ General documentation: <ul style="list-style-type: none"> - Database consisting of all the sources used during the coding. 			Annex II. Annex III. Part II. Section 1		

4. Key premises

As noted above, the main aim when developing the method was to construct clear and sufficiently detailed evaluation criteria to define compliance with FPRWs and to develop a method that is fully coherent with the ILO sources and supervisory system and is at the same time reliable and reproducible. In order to achieve this, it was essential to base the method on the following key premises: (i) definitional validity, that is whether the definitions used to construct the evaluation criteria reflect accurately on the phenomena it aims to measure; (ii) reproducibility, that is to what extent are different evaluators able to consistently arrive at the same results; and (iii) transparency, that is how well a coded issue of non-compliance can be traced back to individual information sources.³¹

Definitional validity

To ensure definitional validity, two methods are used:

(i) First, the list of evaluation criteria are constructed directly based on the ILO Constitution, Conventions Nos. 87 and 98 and the relevant ILO principles of application,³² both in terms of the structure of the criteria and the language used to phrase them. Using the same categories and terminology as in the ILO sources, the aim is to facilitate identifying the issues of non-compliance in a consistent manner and to thus ensure coherence across the system and with the above sources. By doing so, the coding became more direct, preventing differing interpretations of the issues of non-compliance recorded in the textual sources. Attaining definitional validity in such manner also strengthens the reproducibility of the method (see below).

(ii) Second, a document was developed to provide detailed ‘definitions’ for each of the 168 criterion, indicating the types of non-compliance that should be coded under the evaluation criterion. These ‘definitions’ are constructed by listing matching quotations from Conventions Nos. 87 and 98 and related ILO principles with each of the evaluation criteria (Part II. Section 3). As presented in *Box 2* below, the structure of the definitions is built on ‘text-boxes’, providing both (i) the source of the definition by referring to the concrete Articles of ILO Constitution and Conventions and the relevant Paragraphs of the ILO principles,³³ (ii) and the ‘definition’ itself, listing specific quotations from the above sources. However, it should be highlighted that as the definitions are given by listing some frequently occurring examples for the specific issue of non-compliance, as identified in ILO textual sources and principles of application, one should always keep in mind the illustrative nature of the definitions, from which the observed issue of non-compliance may be deduced, strictly consistent with the classification of the ILO supervisory mechanism. Moreover, since reference to employers’ organizations is not always explicit in the relevant paragraphs of the ILO principles, definitions provided for workers’ organizations were also used in developing definitions for employers’ organizations.

³¹ These are also the key premises the previous method was based on. See Kucera (2007c, p. 159).

³² This refers to principles embodied in: (i) Freedom of Association: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (ILO, 2006); and (ii) ILO: *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).

³³ Ibid.

Box 2
Example for coding definitions, evaluation criterion number 31, 'De jure previous authorization requirement'
(Part II. Section 3)

31. Previous authorization requirements (de jure)

Article 2 and 7 of Convention No. 87;
Paras. 272-308 (Chapter 4) in Digest of decisions and principles;
Paras. 68-78 in General Survey 1994.

- 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 legislation that goes beyond setting formalities to ensure the normal functioning of organization (Digest, Paras. 275-278.);
- Includes legislation obliging organizations to deposit their rules, unless this is merely a formality;
- Includes acquisition of legal personality subject to legal conditions that restrict establishment of workers' organizations (Digest, Para. 272.);
- 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;
- Includes 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.).

Reproducibility

In constructing the method, great importance was given to reproducibility: that is, two evaluators working independently should consistently arrive at the same result when using the method. Achieving reproducibility ensures the credibility and accuracy of the method. To satisfy the condition of reproducibility, it was therefore necessary to develop precise and comprehensive coding rules. These rules include (i) general coding rules (Part II. Section 1); (ii) coding rules addressing the issues specific to each of the selected seven sources (Part II. Section 2); (iii) and the above mentioned detailed coding definitions developed for each of the 168 evaluation criteria (Part II. Section 3).

The detailed and explicit coding rules suggest that adherence to the coding rules can, indeed, lead to the attainment of reproducible results. As noted, this requires becoming conversant with the definitions of the evaluation criteria, creating the foundation of a common understanding on what each of the evaluation criteria mean. This is essential in order to identify the observed issues of non-compliance in a consistent manner. The next step requires the careful examination of the general and the specific coding rules, important for ensuring the reproducible coding of the sources selected for the method.

Transparency

There are three tools built into the system to guarantee the transparency of the method.

(i) The first, as explained below, is the use of the large number of evaluation criteria aiming to ensure the identification of issues of non-compliance in a precise, evident manner.

(ii) The second is the method of the actual coding. Problems found regarding the evaluation criteria are coded with letters 'a'-'g', respectively, indicating each one of the

different textual sources selected for the method (see Box 1, particularly the letters marking the selected textual sources). Such coding facilitates tracing of an observed non-compliance back to a particular textual source.

Table 3 below provides an example for the actual coding as it appears in the coding spreadsheet. The letters in the last two columns indicate the source(s) where the issue of non-compliance was recorded.

Table 3. Example of the actual coding in the spreadsheet, evaluation criteria number 29-34

	Ila. Right of workers to establish and join organizations, de jure	2000	2008
29	General prohibition on the right of workers to establish and join organizations		
30	Exclusion/restriction of workers from the right to establish and join organizations	acg	
31	Previous authorization requirements	cg	fg
32	Restrictions on the freedom of choice of trade union structure and composition	ag	afg
33	Imposed trade union unity and/or favouritism/discrimination among workers' organizations		
34	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	cg	

(iii) Third, the coding spreadsheet is complemented by two separate supplementary textual documents (one for trade unions and another for employers' organizations, Annex II-III), where the evaluation criterion of (i) 'severity (widespread and/or systematic)',³⁴ (ii) 'excluded workers/employers', and (iii) 'other acts of prohibitions, infringements and interference' is elaborated, by copying word for word the paragraphs referring to the issue of non-compliance from the original text. The rationale behind this method arose from the nature of these criteria which made it necessary to provide the exact information on which the coding was based (i.e. when requiring a more complex judgement from the evaluator or when the specific details are particularly important). Documenting evidence in this way further enhances the transparency of the method and also provides the essential details with regard to those issues of non-compliance it felt necessary.

5. List of Evaluation Criteria

5.1. Construction of the evaluation criteria

The coding framework is based on 168 criteria, 117 for assessing trade union rights and 51 for employers' organizations rights. The criteria are split into de jure and de facto criteria and grouped into five main categories: I. fundamental civil liberties; II. right of workers to establish and join organizations; III. other union activities; IV. right to collective bargaining; and V. right to strike, only in relation to trade unions (see Table 1).

³⁴ Severity in the present context includes flagrant cases, occurring in a widespread and/or systematic manner that is continuously followed by the absence of independent judicial inquiry and judgements against the guilty parties (situation of impunity), therefore reinforcing the climate of violence and insecurity and creating an extremely damaging effect on the exercise of trade union rights. (See Part II. Section 3).

These 168 evaluation criteria provide a working definition of rights of workers' and employers' organizations. Though the number of evaluation criteria is sizeable, it is built up from what seemed a manageable number of categories, with – as described below - a great deal of parallel structure within these categories.³⁵ The argument that supported the number of evaluation criteria was to avoid building a system that is not transparent or capable of identifying issues of non-compliance in a precise manner, for instance by using broad criteria embracing multiple “sub-criteria” from which the exact non-compliance is hardly identifiable. It is also worth bearing in mind that the list of evaluation criteria simply provides a means of recording issues of non-compliance as determined by the ILO's supervisory system, *not* a checklist where all evaluation criteria are monitored.

As was indicated above, in serving the aim of capturing all possible issues of non-compliance, each evaluation criterion has been split into *de jure* and *de facto* non-compliance.³⁶ The underlying rationale was that in spite of the increasing number of ratifications and the adoption of the sufficient and enabling legal environment, the effective implementation of these rights in practice may still lag behind in many countries. Therefore the distinction between *de jure* and *de facto* issues of non-compliance aims to also record those cases where despite the sufficient national legislation, the actual *de facto* situation differs and workers' and employers' rights are violated.

(i) *De jure* non-compliance thus refers, on the one hand, to national legislation³⁷ that is not in conformity with the ILO freedom of association and collective bargaining standards and principles that stem from the ILO Constitution, Conventions Nos. 87 and 98 and relevant ILO principles, but, on the other hand, also to actions that were taken based on this legislation.

(ii) As against this, *de facto* non-compliance refers to incidents that are committed in practice despite and in violation of the existing national legislation that is in conformity with the ILO freedom of association and collective bargaining standards and principles.

Distinguishing between *de jure* and *de facto* non-compliance in a precise manner was a crucial aspect of the method. The decisive factor was to identify the origin of the non-compliance. If the non-compliance occurs in practice but is due to an existing *de jure* infringement, this requires the amendment of the legislation and not more effective implementation as such. The same rationale was used to deal with the question of absence of relevant national legislation. If the lack of legislation in itself constitutes a *de jure* non-compliance as defined in the ILO freedom of association and collective bargaining standards and principles (such as in the case of lack of adequate legal guarantees against

³⁵ See the issue of ‘Additional Evaluation Criteria’ under Part I. Sub-Section 5.2.

³⁶ There are, however, two exceptions to this main rule: ‘Murder or disappearance’ of the members of workers' and employers' organizations and ‘Other violent actions’. These are coded just under *de facto* non-compliance as it is unlikely that legal provisions can be found which would explicitly render, for example, death penalty for trade union membership or activities. Furthermore, it should be noted that even though the distinction between *de jure* and *de facto* issues of non-compliance was made for all types of non-compliance, there certainly are criteria according to which either *de jure* or *de facto* non-compliance seem to be more likely and frequent, while the other will not, or only rarely happen.

³⁷ Working definition of national legislation: national legislation in the framework of the present coding method shall mean national level general collective agreements and (other) legal sources created by legislative authorities that are in effect and are applicable to and binding on all workers/employers or – based on statutory exemption - a specific type of worker/employer within the national jurisdiction. (See under Part II, Section 2).

anti-union discriminatory measures) the issue is coded under a specific de jure non-compliance. If, however, the absence of legislation does not constitute a de jure non-compliance but nevertheless leads to negative impact on de facto situation of workers' and employers' rights (as in relation to the right to strike), such instances are coded under de facto non-compliance (under the general obstacles towards the application of these rights, unless the non-compliance links to a specific criterion in which case it should be coded under that specific criterion). In some cases, however, there is a fine line between de jure and de facto incidents, and the situation may occasionally arise where the issue of non-compliance could be coded both under de jure and de facto infringements.³⁸ This is usually the case when the de jure issue of non-compliance has an implication in practice that cannot be directly derived from the de jure non-compliance.

5.2. Additional evaluation criteria

As was noted, each of the main categories of the evaluation criteria³⁹ (both de jure and de facto) build upon a parallel structure, being systematically complemented by three additional criteria: (i) 'other acts of prohibitions, infringements and interference'; (ii) 'lack of guarantee of due process of law'; and (iii) a criterion established for cases 'committed against the leaders of the organization'.⁴⁰

(i) Adding the criterion of 'other acts of prohibitions, infringements and interference', the aim was to ensure that all instances of non-compliance, even those that could not be coded under any explicit criterion, are captured and recorded. That is because it was thought that, despite the comprehensive list of evaluation criteria, in reality there might still exist the possibility for issues of non-compliance that are not addressed by any of the other criteria. Therefore, to record these issues the decision was made to code them under the criterion of 'other acts of prohibitions, infringements and interference'. This criterion is added to each one of the main categories of the evaluation criteria, with two exceptions: the additional criterion 'other acts of prohibitions, infringements and interference' is not used in the categories of 'fundamental civil liberties' and in none of the categories related to employers' organizations, as the listed evaluation criteria under these categories seemed able to capture all possible issues of non-compliance.

(ii) The criterion 'lack of guarantee of due process of law' was based on the premise that in order to ensure the free exercise of freedom of association and collective bargaining, appropriate measures for their effective protection should as well be guaranteed. Measuring compliance with the principle of sufficiently prompt and fair trial by an independent and impartial judiciary was therefore seen as an indispensable element of the method. Thus an additional criterion of 'lack of guarantee of due process of law' was attached to each of the main categories of the evaluation criteria.

³⁸ One example that occurred during the pilot was the case when the actual non-compliance was a result of a de jure infringement (de jure exclusion/restriction from the right to establish and join organizations), it nonetheless affected a certain group of workers in practice that was not specifically intended to be affected by the law.

³⁹ The main categories of the evaluation criteria are: I. fundamental civil liberties; II. right of workers to establish and join organizations; III. other union activities; IV. right to collective bargaining; V. right to strike, being solely assessed in relation to trade unions.

⁴⁰ In the list of evaluation criteria, this criterion appears either as 'committed against trade union leaders' or as 'committed against the leaders of the organization', depending on whether the criterion links to workers' or employers' organizations.

In addition, having a fundamental role with regard to de facto non-compliance with fundamental civil liberties, a ‘lack of guarantee of due process of law and/or impunity’ criterion was added separately to each one of the evaluation criterion⁴¹ (see Categories Ib and VIb in the list of evaluation criteria).⁴² Besides, in connection with cases of ‘anti-union discrimination’ and ‘acts of interference’,⁴³ the system yet again provided a due process criterion for each of these criteria, considering it particularly important *vis-à-vis* these complaints.⁴⁴ This is also underlined by Article 3 of Convention No. 98 which requires that “Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise...”.

(iii) As regards the emphasis on the leaders of the workers’ and employers’ organizations (evaluation criterion ‘committed against leaders of the organizations’), the aim was to give greater weight to incidents committed against leaders. Such incidents can obstruct the leaders of the organizations from performing their duties in full independence and, therefore, could amount to intimidation aimed at preventing the free exercise of their functions or even lead to the dissolution of the organization.⁴⁵ Being the most frequently occurring cases and the ones where the leaders’ position is particularly vulnerable, it was decided to add the evaluation criterion of ‘committed against leaders of the organizations’ to the following evaluation criteria: all de facto fundamental civil liberties evaluation criteria, anti-union discrimination criteria and the criterion of ‘use of excessive sanctions in case of legitimate and peaceful strikes’.

6. Coding sources

In seeking to monitor both de jure and de facto aspects of countries’ compliance with international labour standards, the incompleteness of the existing information sources, being an unavoidable difficulty, had to be accepted as a limitation of the process. Problems of incomplete information are less acute for de jure than for de facto issues of non-compliance. Nevertheless these concerns led to the construction of a method that builds on coding sources that are readily and systematically available. Alongside this, the selected sources also had to meet with the above described key premises and be fully consistent

⁴¹ It should be noted, that with regard de facto issues of non-compliance in relation to fundamental civil liberties, alongside the additional criterion ‘lack of guarantee of due process of law and/or impunity’, the criterion ‘severity (widespread and/or systematic)’ was as well added separately to each one of the evaluation criterion.

⁴² As the CEACR and CFA repeatedly stress a genuinely free and independent trade union movement can only develop where fundamental human rights are fully respected and where in the event of violation measures are taken to identify, bring to trial and convict the guilty parties. (ILO, 2006, Paras. 33 and 51).

⁴³ ‘Anti-union discrimination’ refers to two evaluation criteria: ‘prejudice or discrimination with regard to employment because of trade union membership/legitimate activities’ and ‘discriminatory dismissal/suspension because of trade union membership/legitimate activities’. ‘Acts of interference’ refers to ‘acts of interference of employers and/or public authorities’ and ‘acts of interference of workers’ organizations and/or public authorities’ evaluation criteria.

⁴⁴ In case of *de jure* anti-discrimination (‘de jure prejudice or discrimination with regard to employment because of trade union membership/legitimate activities’ and ‘de jure discriminatory dismissal/suspension because of trade union membership/legitimate activities’) the ‘lack of guarantee of due process of law’ criterion is expressed under the title of ‘lack of adequate legal guarantees against acts of interference’.

⁴⁵ ILO (2006, Paras. 799 and 810).

with the ILO provisions and principles of application. From these aspects the information gathered by the ILO's supervisory system (see Box 3) proved to be the essential source. Through this system the ILO regularly examines the application of international labour standards in member States and points out lagging areas and/or provisions that are in violation with the standards and principles.

Box 3
Supervisory system of the ILO

The application of international labour standards is supported by the ILO's unique supervisory system. This supervisory system is based on *two types of mechanisms*:

- A. Regular supervisory system:** relies on the regular reporting of governments and workers' and employers' organizations on ratified Conventions;
- B. Complaint-based special procedures:** include procedure for representation, procedure for complaint and a special procedure regarding freedom of association rights.

A. Regular supervisory system: based on the examination of reports and comments sent regularly by the Government and workers' and employers' organizations with regard to the measures which it has taken to give effect to the provisions of ratified Conventions. *The reports are reviewed by two ILO bodies:*

- **Committee of Experts on the Application of Conventions and Recommendations:** made up of twenty independent jurists appointed by the Governing Body. Based on the examination of the reports the Committee provides its comments (observations and direct requests) published in the Committee's annual report.
- **Conference Committee:** tripartite standing committee of the International Labour Conference (ILC), made up of government, employer and worker delegates. It examines in a tripartite setting a selected number of observations adopted by the CEACR in the previous December.

B. Complaint-based special procedures: based on the submission of representation or complaint, *that are examined in three procedures:*

- **Procedure for representations:** allows workers' and employers' organizations to present a representation against any member State which failed to comply with a ratified Convention. The representation is examined by a tripartite committee of three members established by the ILO Governing Body.
- **Procedure for complaints:** allows for the examination of a complaint filed by a member State that ratified the Convention concerned, a delegate to the ILC or the Governing Body. It is the strongest measure among the supervisory procedures that gives rise to a Commission of Inquiry in case a member State is accused committing persistent and serious violations and has repeatedly refused to address them. The Commission is composed of three independent members, appointed by the ILO Director-General.
- **Special procedure for complaints regarding freedom of association:** allows for the examination of complaints alleging violations of freedom of association, even where the relevant Conventions have not been ratified. The complaint is examined by the Committee of Freedom of Association, a tripartite body composed of nine members along of nine deputy members and an independent chairperson. The Committee meets three times a year.

By providing the compiled information in a more accessible and concise manner, the possible improvement of the information sources constitutes one of the possible outcomes of the method. The enhanced visibility of the information generated by the ILO supervisory system may reveal issues arising from lack of information, encouraging constituents to share more up-to-date and accurate information with the supervisory bodies.

The available information regarding the eight fundamental conventions,⁴⁶ as covered by the 1998 Declaration, is, however, more complete under the ILO's supervisory system, both in relation to countries that have and have not ratified the Convention concerned.

For one thing, information is more frequently collected, as the countries that have ratified any of the eight fundamental conventions (as well as the four priority conventions⁴⁷) are obliged to submit reports every two years to the CEACR detailing the steps taken in law and practice to apply them.⁴⁸ For all the other ratified conventions, reports must be submitted every five years.⁴⁹ As presented in Box 3, based on the information sent by the governments, the CEACR publishes its annual report examining the compliance by ILO member States with the ILO Conventions and Recommendations. In addition to these reports, the reports adopted annually by the Conference Committee on the Application of Standards also assess the manner in which member States fulfil their obligations with respect to ratified Conventions.

In addition, information is available as a result of the adoption of the 1998 Declaration and its follow-up. The aim of the follow-up procedure is to encourage and review the efforts made by the member States to promote fundamental principles and rights at work, enshrined in the 1998 Declaration. As the 1998 Declaration states, "all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions".⁵⁰ In order to achieve its objective, the 1998 Declaration and its follow-up established three tools. First, the Annual Review process composed of the annual reports submitted by member States which have not ratified the relevant ILO conventions relating to the principles and rights stated in the 1998 Declaration. These annual reports are publicly available in the forms of Country

⁴⁶ The eight fundamental Conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁴⁷ The four priority Conventions are: Labour Inspection Convention, 1974 (No. 81); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); Employment Policy Convention, 1964 (No. 122). Selecting these conventions as "priority" instruments, the Governing Body's aim was to encourage their ratification due to their particular importance in the functioning of the international labour standards system. (ILO, 2009c, p. 13; also available at: http://www.ilo.org/global/What_we_do/Publications/lang--en/docName--WCMS_108393/index.htm).

⁴⁸ Note that subsequent to the decision of the ILO Governing Body taken during its 306th Meeting (March 2009, (GB.306/LILS/4 (Rev.)), as from 2012 the two-year reporting cycle with regard to the fundamental and priority Conventions will change to a three-year cycle, resulting also in adjustments of the Regular Reporting Schedule. Rules described in the present paper reflect on the biannual reporting system that was applicable at the time the pilot project was carried out and the present paper was written.

⁴⁹ The exceptions from this rule are the conventions that have been "shelved", which are no longer supervised on a regular basis. Furthermore it should also be noted that reports on the application of conventions may be requested at shorter intervals. For more information see ILO (2009, pp. 80-92).

⁵⁰ ILO (1998, Art. 2).

Baselines.⁵¹ Second, the Global Reports that provide each year a global picture of one of the four categories of FPRWs. Third, the technical cooperation projects, aiming to address specific needs in relation to the 1998 Declaration and to strengthen local capacities.

In spite of the above mentioned follow-up mechanism, there still exist differences in the reporting requirements and the actual examination of the reports between countries that have and have not ratified a given ILO Convention, and this may create an information bias between these two groups of countries. This can be offset by additionally making use of such sources that are equally available for all the ILO member States. These are the reports of the Committee on Freedom of Association⁵² and the national legislation of the member States. However, as the regular Supervisory System examines the compliance of national legislation in countries that have ratified the Conventions concerned, national legislation is only used for member States that have not ratified either or both of the relevant fundamental Conventions, and only as a complementary source to the Country Baselines. This is because the use of national legislation proved to be a vital asset to clarify the information provided in the Country Baselines and to attain more accurate information on the realization of these principles.

A further benefit of using multiple sources is the increased probability of detecting information on de facto non-compliance, thus the increased capability to offset the information bias between de jure and de facto issues of non-compliance. In particular, reports of the supervisory system which provide information on issues of non-compliance of a more de facto nature offer valuable information to measure countries' compliance. Alongside the CFA reports these are the reports on representation procedures (governed by articles 24 and 25 of the ILO Constitution) and the reports on complaint procedures (governed by articles 26 to 34 of the ILO Constitution).

Based on the above, in order to identify issues of non-compliance in relation to the rights of workers' and employers' organizations, the following sources were selected: CEACR comments; Conference Committee Reports; Country Baselines - complemented with the national legislation; Representations; Complaints and CFA cases. (See Box 1).

⁵¹ The current compilation of Country Baselines is available at: <http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines/lang--en/index.htm> (accessed on 31 Aug. 2010).

⁵² Obvious information bias between regions and countries exists with regard to the cases brought before the CFA. Considering the years 2006-2008, about two-thirds of the new cases come from Latin American countries, indicating mainly that workers' organizations rely more actively on this mechanism.

Part II. Practical Aspects of the Method

1. General Coding Rules

1.1. Introduction

To satisfy the requirement of reproducibility and therefore to ensure the credibility and accuracy of the method, the construction of detailed rules guiding the coding is indispensable. These rules consist of the (i) general coding rules (Part II. Section 1); (ii) source-specific coding rules concerning the coding of each of the selected seven sources (Part II. Section 2); and (iii) detailed coding definitions developed for each of the 168 evaluation criteria (Part II. Section 3). Although the coding is guided, for the most part, by the source-specific coding rules, general coding rules had to be adopted to ensure consistency concerning issues that are relevant across the sources.

The general coding rules, as discussed below, are the followings:

- Frequency of the coding
- Codable and Non-codable evidence
- Coding the additional criteria
- Coding the different factors of non-compliance
- Documentation of the coding

Note that although the examples provided below mostly refer to issues of non-compliance with trade union rights, the same rules are applicable for issues of non-compliance with employers' organizations' rights, where relevant. Moreover, the rules and examples listed below are applicable to both *de jure* and *de facto* issues of non-compliance.

1.2. Frequency of the coding

In order to record progress made towards the application of Conventions Nos. 87 and 98, the decision was made to test whether the coding can be done on an annual basis. The most important factor determining this was the ILO Regular Supervisory System, consisting of the CEACR and the Conference Committee. This System is based on the ILO Regular Reporting Schedule,⁵³ which governs the regular reporting obligation of ILO member States regarding ratified Conventions by indicating the year the Government's report is due. As a rule, reports are requested every two years for the fundamental and priority Conventions and every five years for other Conventions.⁵⁴ However, owing to the high number of ratifications, the Regular Reporting Schedule divided member States into two groups based on alphabetical order requesting them to report on the fundamental and priority conventions not in the same but every other year. To illustrate the above with an example, with regard Convention No. 87, the Regular Reporting Schedule indicates that 86 member States (countries with letters from A to J) are requested to send their reports for the year 2011, while the other 89 member States (countries with letters from K to Z) will

⁵³ The ILO Regular Reporting Schedule is available at:
<http://webfusion.ilo.org/public/db/standards/normes/schedule/index.cfm.cfm?lang=EN>
(accessed 15 Sep. 2010)

⁵⁴ See footnote No. 48.

do so for the year 2012.⁵⁵ Accordingly, the CEACR provides comments on an annual basis, allowing the coding as well to be done annually. However, as the CEACR provides its comments only biannually for any given country, whereas other supervisory bodies either deal with a changing number of countries (e.g. Conference Committee) or do not provide reports on an annual basis (e.g. Representations, Complaints), rules for the annual coding of each source had to be established.

Table 4 below provides the rules corresponding to the annual coding. In the first column, the sources selected for the coding are listed. The second column specifies the frequency of the coding, indicating whether the coding is done every year or only upon the adoption of the relevant report in the year evaluated. The last column provides information on the countries covered by the sources, therefore indicates the countries for which the coding can be done.

Table 4. Coding frequency

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

It should, however, be noted that no final decision has been made on the frequency of the coding. The above rules reflect the situation in which the coding would be done on an annual basis.

1.3. Codable and non-codable evidence

To ensure consistency and reproducibility and also to prevent possible subjectivity, the following rules were established to determine whether the recorded evidence can or cannot be coded as an issue of non-compliance:

(i) Being valid across the entire method and reflected in all the rules guiding the coding, the decisive rule is that *solely* the information already recorded by the ILO supervisory bodies can serve as the basis of the coding. That is, the aim of the method is merely to

⁵⁵ The Schedule is, however, subject to change if additional reports are requested, or reports were not received or in case of new ratifications.

collect the already existing evidence acknowledged by the supervisory bodies, without providing new or differing ones.

(ii) Cases where the supervisory bodies request clarification on a potential problem or provide comments on draft legislation, i.e. legislation that is not yet applicable, cannot be coded as issue of non-compliance.

(iii) When an issue of non-compliance occurs but is remedied in the same year, the incident is coded as an issue of non-compliance for that year. Not coding the remedied issue of non-compliance would indicate as if remedied issues of non-compliance have never occurred.

(iv) International Trade Union Confederation's (ITUC) reports on trade union rights' violations,⁵⁶ or reports from other workers' and employers' organizations, not being subject to revision by any of the ILO supervisory bodies, are not selected as sources for the method. References to evidence found in these comments, can nonetheless be coded as an issue of non-compliance if the given government has already acknowledged the criticism and this is mentioned in the ILO supervisory document or if the supervisory body acknowledged it as an observed issue of non-compliance. Taking this approach, the method allows considering information provided by these organizations in a way that is in line with the ILO supervisory mechanism and the aim of the coding.

(v) Stemming from the nature of the sources selected for the coding (see Box 1) – reflecting on the principle of tripartism - situations involving contradicting information either within the same source or between different sources might possibly occur. As a rule, unless the contradicting evidence is refuted in a way that the supervisory body concerned fully accepts it, (a) if contrary evidence is found within the same source, the information is excluded from coding; however; (b) if contrary evidence is found between different sources, evidence is coded under each source on its own terms.

(vi) Only observations of issues non-compliance, but not observations of progress and/or good practices are coded. However, by not coding good practices, or by not coding a (resolved) non-compliance for the subsequent year, the method, indirectly, acknowledges and indicates progress and good practices.

Table 5 below provides a quick summary on the above explained rules on evidences that can and cannot be coded as an issue of non-compliance.

⁵⁶ Indicating comments made in the ITUC Annual Survey of violations of trade union rights; <http://www.ituc-csi.org/> (accessed 15 Sep. 2010).

Table 5. Codable and Non-codable evidence

Codable evidence	Non-codable evidence
<ul style="list-style-type: none"> - Non-compliance recorded by any of the ILO supervisory bodies in any of the sources selected for the coding. - Non-compliance remedied within the same year it was committed. 	<ul style="list-style-type: none"> - Comments requesting further information or explanation without acknowledging any issue of non-compliance. - Comments on draft legislation.
References to ITUC Reports or reports of other workers' or employers' organizations, solely if the government concerned fully accepts it and it is mentioned in the ILO comment or report and/or if the supervisory body acknowledges it.	References to ITUC Reports or reports of other workers' or employers' organizations, if the government concerned does not accept it and it is mentioned in the ILO comment or report and/or if the supervisory body does not acknowledge it.
Contradictory evidence, if the contradiction occurs between different sources.	Contradictory evidence, if the contradiction occurs within the same source.
Evidence of non-compliance	Evidence of progress and/or good practices

1.4. Coding the additional criteria

As explained in the first part of the paper, the main categories of the evaluation criteria were complemented by the following additional criteria: (i) 'other acts of prohibitions, infringements and interference'; (ii) 'lack of guarantee of due process of law'; and (iii) 'committed against leaders of the organizations'. In order to ensure their consistent coding, the following should be considered:

(i) With regard to the first additional criterion (*'other acts of prohibitions, infringements and interference'*), it was decided to add the criterion to each of the main categories of evaluation criteria, with the exceptions of the category of 'fundamental civil liberties' and the categories related to employers' organizations.⁵⁷ Therefore, the coding of an issue of non-compliance under this additional criterion requires coding the non-compliance under the main category to which it links. For instance, if the issue of non-compliance links to the main category of de jure 'right of workers to establish and join organizations' (IIa), it should be coded under the evaluation criterion no. 42, 'other de jure acts of prohibitions, infringements and interference re IIa' (*Table 6*).

Table 6. Coding the criterion 'other acts of prohibitions, infringements and interference'

	IIa. Right of workers to establish and join organizations, de jure	2008
29	General prohibition on the right of workers to establish and join organizations	
30	Exclusion/restriction of workers from the right to establish and join organizations	
31	Previous authorization requirements	
32	Restrictions on the freedom of choice of trade union structure and composition	
33	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
34	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
35	Prejudice or discrimination with regard to employment because of trade union membership/ legitimate activities	
36	Lack of adequate legal guarantees against anti-union discriminatory measures re 35	
37	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
38	Lack of adequate legal guarantees against anti-union discriminatory measures re 37	
39	Acts of interference of employers and/or public authorities	

⁵⁷ The reason for not including the additional evaluation criterion into these categories was that the listed evaluation criteria under these categories seemed to be able to capture all possible issues of non-compliance.

40	Lack of adequate legal guarantees against acts of interference	
41	Infringement of the right to establish and join federations/confederations/international organizations	
42	Other de jure acts of prohibitions, infringements and interference re IIa	a
43	Lack of guarantee of due process of law re IIa	

However, as the content of the incidents coded under this additional evaluation criterion does not emerge from the coding spreadsheet, in order to attain transparency the actual coding of these issues of non-compliance necessitates an accurate documentation indicating exactly what the recorded non-compliance is. Therefore when coding such incidents, the original text recording the non-compliance should be copied word-by-word to the supplementary textual document attached to the coding spreadsheet (Annex II-III).

(ii) Concerning the additional criterion '*lack of guarantee of due process of law*': a) one 'lack of guarantee of due process of law' criterion is attached to each one of the main categories of the evaluation criteria; b) a 'lack of guarantee of due process of law and/or impunity' criterion is added to each one of the evaluation criterion listed under the de facto non-compliance relating to fundamental civil liberties; c) a further 'lack of guarantee of due process of law' is added to 'anti-union discrimination' criteria and 'acts of interference' evaluation criterion.

a) With regard to the actual coding, in the first case (one 'lack of guarantee of due process of law' criterion attached to each of the main categories), if a non-compliance relating to due process of law occurs, it is coded under the 'lack of guarantee of due process of law' criterion that is included in the category to which the non-compliance links. This means that if the non-compliance relating to due process of law, for instance, occurs with regard 'de facto previous authorization requirements' (evaluation criterion no. 46), the non-compliance relating to due process of law should be coded under the criterion 'de facto lack of guarantee of due process of law *re IIb*' (evaluation criterion no. 60) (*Table 7*).

Table 7. Coding the criterion 'lack of guarantee of due process of law' added to the main categories

	IIb. Right of workers to establish and join organizations, de facto	2008
44	Obstacles towards the development of independent workers' organizations in practice	
45	Exclusion/restriction of workers from the right to establish and join organizations	
46	Previous authorization requirements	f
47	Restrictions on the freedom of choice of trade union structure and composition	
48	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
49	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
50	Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities	
51	Committed against trade union leaders re 50	
52	Lack of guarantee of due process of law re 50	
53	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
54	Committed against trade union leaders re 53	
55	Lack of guarantee of due process of law re 53	
56	Acts of interference of employers and/or public authorities	
57	Lack of adequate guarantees against acts of interference	
58	Infringement of the right to establish and join federations/confederations/international organizations	
59	Other de facto acts of prohibitions, infringements and interference re IIb	
60	Lack of guarantee of due process of law re IIb	f

b) - c) Concerning the second and third cases ('lack of guarantee of due process of law and/or impunity' criterion added to each criteria under 'de facto fundamental civil liberties'; 'lack of guarantee of due process of law' criterion added to 'anti-union discrimination' and 'acts of interference' criteria), these additional criteria should always be coded only with regard the particular criterion they are added to. This means that, for example, if a non-compliance relating to due process of law occurs with regard to 'de facto murder or disappearance of trade unionists' (evaluation criterion no. 6), the non-compliance relating to 'lack of guarantee of due process of law' should be coded under the evaluation criterion no. 8 (*Table 8*).

Table 8. Coding the criterion 'lack of guarantee of due process of law' added to each of the evaluation criterion of 'de facto fundamental civil liberties'

	Ib. Fundamental civil liberties, de facto	2008
6	Murder or disappearance of trade unionists	f
7	Committed against trade union leaders re 6	
8	Lack of guarantee of due process of law and/or impunity re 6	f
9	Severity (widespread and/or systematic) re 6	
10	Other violent actions against trade unionists	
11	Committed against trade union leaders re 10	
12	Lack of guarantee of due process of law and/or impunity re 10	
13	Severity (widespread and/or systematic) re 10	
14	Arrest, detention, imprisonment, charging and fining of trade unionists	
15	Committed against trade union leaders re 14	
16	Lack of guarantee of due process of law and/or impunity re 14	
17	Severity (widespread and/or systematic) re 14	
18	Infringements of trade unionists' basic freedoms	
19	Committed against trade union leaders re 18	
20	Lack of guarantee of due process of law and/or impunity re 18	
21	Severity (widespread and/or systematic) re 18	
22	Attacks against trade union premises and property	
23	Committed against trade union leaders re 22	
24	Lack of guarantee of due process of law and/or impunity re 22	
25	Severity (widespread and/or systematic) re 22	
26	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	
27	Lack of guarantee of due process of law and/or impunity re 26	
28	Severity (widespread and/or systematic) re 26	

If a non-compliance relating to due process of law occurs with regard to 'de facto discriminatory dismissal/suspension because of trade union membership/legitimate activities' (evaluation criterion no. 53), the non-compliance relating to 'lack of guarantee of due process of law' should be coded under evaluation criterion no. 55 (*Table 9*).

Table 9. Coding the criterion ‘lack of guarantee of due process of law’ added to the anti-union discrimination evaluation criteria

	IIb. Right of workers to establish and join organizations, de facto	2008
44	Obstacles towards the development of independent workers' organizations in practice	
45	Exclusion/restriction of workers from the right to establish and join organizations	
46	Previous authorization requirements	
47	Restrictions on the freedom of choice of trade union structure and composition	
48	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
49	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
50	Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities	
51	Committed against trade union leaders re 50	
52	Lack of guarantee of due process of law re 50	
53	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	f
54	Committed against trade union leaders re 53	
55	Lack of guarantee of due process of law re 53	f
56	Acts of interference of employers and/or public authorities	
57	Lack of adequate guarantees against acts of interference	
58	Infringement of the right to establish and join federations/confederations/international organizations	
59	Other de facto acts of prohibitions, infringements and interference re IIb	
60	Lack of guarantee of due process of law re IIb	

Note, however, that - as detailed in Part II. Sub-Section 1.5. - the ‘lack of guarantee of due process of law’ criterion can either be coded by itself or together with another non-compliance it links to (which we refer as a ‘basis non-compliance’), if the ‘basis non-compliance’ was acknowledged by the supervisory body.

(iii) Coding the incidents of ‘committed against leaders of the organizations’, the above described rule is applied: this additional criterion should always be coded only with regard the particular criterion it is added to. These are the criteria under ‘de facto fundamental civil liberties’, ‘anti-union discrimination’ and the ‘use of excessive sanctions in case of legitimate and peaceful strikes’.

To give an example, in case a ‘de facto discriminatory dismissal/suspension because of trade union membership/legitimate activities’ (evaluation criterion no. 53) is committed against a leader of the organization, the case should also be coded under evaluation criterion no. 54, indicating that the it was committed against a leader of the organization (*Table 10*).

Table 10. Coding the evaluation criterion ‘committed against leaders of the organizations’

	IIb. Right of workers to establish and join organizations, de facto	2008
44	Obstacles towards the development of independent workers' organizations in practice	
45	Exclusion/restriction of workers from the right to establish and join organizations	
46	Previous authorization requirements	
47	Restrictions on the freedom of choice of trade union structure and composition	
48	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
49	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
50	Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities	
51	Committed against trade union leaders re 50	
52	Lack of guarantee of due process of law re 50	
53	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	f
54	Committed against trade union leaders re 53	f
55	Lack of guarantee of due process of law re 53	

56	Acts of interference of employers and/or public authorities	
57	Lack of adequate guarantees against acts of interference	
58	Infringement of the right to establish and join federations/confederations/international organizations	
59	Other de facto acts of prohibitions, infringements and interference re IIb	
60	Lack of guarantee of due process of law re IIb	

Table 11 below provides the summary for the above described rules. The first column lists the additional evaluation criteria (i.e. evaluation criteria added systematically to the main categories of the evaluation criteria). The second column provides the information on the occurrence of the additional criterion (i.e. where and how many additional criterion is included in the list of evaluation criteria). The last column indicates the rules on how to code these criteria.

Table 11. Coding the additional evaluation criteria

Additional evaluation criteria	The additional evaluation criterion is added to	Coding
'Other acts of prohibitions, infringements and interference'	- Each of the main categories ⁵⁸	- Coding is done with regard the main category the non-compliance links to.
'Lack of guarantee of due process of law'	- Each of the main categories	- Coding is done with regard the main category the non-compliance links to.
	- Each de facto civil liberties evaluation criteria; - Anti-union discrimination evaluation criteria; - Acts of interference evaluation criteria.	- Coding is done only with regard the particular criterion the additional criterion is added to.
'Committed against leaders of the organization'	- Each de facto civil liberties evaluation criteria; - Anti-union discrimination evaluation criteria; - Imposing excessive sanctions in case of legitimate and peaceful strikes evaluation criterion.	- Coding is done only with regard the particular criterion the additional criterion is added to.

1.5. Coding the different factors of non-compliance

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

(i) Such way of coding occurs, most often, in relation to the additional criterion a) 'committed against leader of the organization'; b) 'severity (widespread and/or systematic)'; and c) the 'lack of guarantee of due process of law', as these criteria rarely stand on their own, but rather as a non-compliance exacerbating another non-compliance ('basis non-compliance'). For example, in the case of de facto 'arrest, detention, imprisonment, charging and fining of trade unionists' occurs (evaluation criterion no. 14)

⁵⁸ There are, however, two exceptions from this rule: additional criterion 'other acts of prohibitions, infringements and interference' is not used in the categories of 'fundamental civil liberties' and in none of the categories related to employers' organizations.

that was committed against the leader of the organization, this should be coded under both the evaluation criterion no. 14 (de facto ‘arrest, detention, imprisonment, charging and fining of trade unionists’) and no. 15 (de facto ‘committed against trade union leaders re 14’).

a) With regard to the evaluation criterion ‘committed against leader of the organization’, the following cases can occur:

- Case A: the criterion is coded together with the ‘basis non-compliance’ (Table 12, column A);
- Case B: the criterion is coded together with the criterion ‘lack of guarantee of due process of law and/or impunity’ (Table 12, column B);
- Case C: the criterion is coded together with the ‘basis non-compliance’ and with the criterion ‘lack of guarantee of due process of law and/or impunity’ (Table 12, column C);
- Case D: the criterion is coded together with the ‘basis non-compliance’, with the criterion ‘lack of guarantee of due process of law and/or impunity’ and ‘severity (widespread and/or systematic)’ (Table 12, column D).

Table 12. Coding the evaluation criterion ‘committed against leaders of the organization’

	Ib. Fundamental civil liberties, de facto	A	B	C	D
14	Arrest, detention, imprisonment, charging and fining of trade unionists	f		f	f
15	Committed against trade union leaders re 14	f	f	f	f
16	Lack of guarantee of due process of law and/or impunity re 14		f	f	f
17	Severity (widespread and/or systematic) re 14				f

b) With regard to the evaluation criterion ‘severity (widespread and/or systematic)’, the following incidents are possible:

- Case A: the criterion is coded together with the ‘basis non-compliance’ (Table 13, column A);
- Case B: the criterion is coded together with the ‘basis non-compliance’ and with the criterion ‘lack of guarantee of due process of law and/or impunity’ (Table 13, column B);
- Case C: the criterion is coded together with the ‘basis non-compliance’, the criterion ‘committed against the leaders of the organizations’ and ‘lack of guarantee of due process of law’ (Table 13, column C).

Table 13. Coding the evaluation criterion ‘severity (widespread and/or systematic)’

	Ib. Fundamental civil liberties, de facto	A	B	C
14	Arrest, detention, imprisonment, charging and fining of trade unionists	f	f	f
15	Committed against trade union leaders re 10			f
16	Lack of guarantee of due process of law and/or impunity re 14		f	f
17	Severity (widespread and/or systematic) re 14	f	f	f

c) In comparison with the above explained cases, the coding of the evaluation criterion ‘lack of guarantee of due process of law’ is slightly different, as it can also be coded on its own, being considered *per se* a non-compliance. This also means that if “lack of guarantee of due process of law” concerns the leader of the organization, the criterion ‘committed

against leaders of the organisations’ should be coded with the “lack of guarantee of due process of law”, irrespectively of the alleged ‘basis non-compliance’.

With regard the evaluation criterion ‘lack of guarantee of due process of law and/or impunity’, the following cases can occur:

- Case A: the criterion is coded by itself (*Table 14, column A*);
- Case B: the criterion is coded only with the criterion ‘committed against leaders of the organizations’ (*Table 14, column B*);
- Case C: the criterion is coded together with the ‘basis non-compliance’ (*Table 14, column C*);
- Case D: the criterion is coded together with the ‘basis non-compliance’ and the criterion ‘committed against leaders of the organizations’ (*Table 14, column D*);
- Case E: the criterion is coded together with the ‘basis non-compliance’, the criterion ‘committed against leaders organizations’ and ‘severity (widespread and/or systematic)’ (*Table 14, column E*).

Table 14. Coding the evaluation criterion ‘lack of guarantee of due process of law’

	Ib. Fundamental civil liberties, de facto	A	B	C	D	E
14	Arrest, detention, imprisonment, charging and fining of trade unionists			f	f	f
15	Committed against trade union leaders re 14		f		f	f
16	Lack of guarantee of due process of law and/or impunity re 14	f	f	f	f	f
17	Severity (widespread and/or systematic) re 14					f

(ii) The other area where the same approach is applicable is cases where the de facto intervention of police into legitimate and peaceful strikes (and where the law and order is not seriously threatened) for strike-breaking purposes leads to murder, arbitrary arrest or detention of striking workers, or to other violent actions against participants.

Concerning the above described situation, the following cases can occur:

- Case A: the criterion is coded by itself (*Table 15, column A*);
- Case B: the criterion is coded with ‘murder or disappearance of trade unionists’, if it occurs during and in relation to a police intervention (*Table 15, column B*);
- Case C: the criterion is coded with ‘other violent actions against trade unionists’, if it occurs during and in relation to a police intervention (*Table 15, column C*);
- Case D: the criterion is coded with ‘arrest, detention, imprisonment, charging and fining of trade unionists’, if it occurs during and in relation to a police intervention (*Table 15, column D*);
- Case E: the criterion is coded together with ‘murder or disappearance of trade unionists’ and ‘other violent actions against trade unionists’ if those occur during and in relation to a police intervention (*Table 15, column E*);
- Case F: the criterion is coded together with ‘other violent actions against trade unionists’ and ‘arrest, detention, imprisonment, charging and fining of trade unionists’ if those occur during and in relation to a police intervention (*Table 15, column F*);
- Case G: the criterion is coded together with ‘murder or disappearance of trade unionists’ and ‘arrest, detention, imprisonment, charging and fining of trade unionists’ if those occur during and in relation to a police intervention (*Table 15, column G*);
- Case H: all four criteria are coded together if those occur during and in relation to a police intervention (*Table 15, column H*).

Note that in the above cases the ‘basis non-compliance’ is the ‘acts of interference during the course of strike actions’.

Table 15. Coding of the de facto evaluation criteria ‘Acts of interference during the course of strike action’ (i.e. police intervention during peaceful and legitimate strike) in cases it leads to murder, arrest/detention or other violent actions against striking workers

	Ib. Fundamental civil liberties, de facto	A	B	C	D	E	F	G	H
6	Murder or disappearance of trade unionists		f			f		f	f
10	Other violent actions against trade unionists			f		f	f		f
14	Arrest, detention, imprisonment, charging and fining of trade unionists				f		f	f	f
	Vb. Rights to strike, de facto								
113	Acts of interference during the course of strike actions	f	f	f	f	f	f	f	f

(iii) The last issue under this sub-section is the infringements of the rights relating to federations, confederations and international organizations of workers and employers. These infringements constitute at the same time an issue of non-compliance with the rights accorded to these organizations in general and in relation to the more specific freedom of association and collective bargaining rights.

Contrary to the above described cases where the non-compliance is coded under each evaluation criteria it links to, in this case the decision was made to select the most significant issues of non-compliance and to code each one of them under one evaluation criterion, the ‘infringement of the right to establish and join federations/confederations/international organizations’. This means that with regard to these selected issues of non-compliance, federations, confederations and international organizations of workers and employers are treated separately from workers’ and employers’ organizations, whereas with regard to all other issues of non-compliance, federations, confederations and international organizations of workers and employers are treated as workers’ and employers’ organizations.

The selected issues of non-compliance are the followings:

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

With regard to the coding of issues of non-compliance in relation to federations, confederation and international organizations of workers and employers, the following cases can occur:

- Case A: the criterion is coded by itself, as the non-compliance links to general prohibition on the right to establish federations, confederations and to affiliate with international organizations (*Table 16, column A*);
- Case B: the criterion is coded by itself, as the non-compliance links to exclusion, restriction from the right to establish and join federations, confederations and to affiliate with international organizations (*Table 16, column B*);
- Case C: the criterion is coded by itself, as the non-compliance links to previous authorization requirements to establish federations, confederations and to affiliate with international organizations (*Table 16, column C*);
- Case D: the criterion is *not* coded, as the non-compliance links to a criterion (‘restrictions on the freedom of choice of trade union structure and compositions’) other than the selected issues of non-compliance (*Table 16, column D*).

Table 16. Coding the issues of non-compliance in relation to federations, confederations and international organizations of workers and employers

	IIb. Right of workers to establish and join organizations, de jure	A	B	C	D
29	General prohibition on the right of workers to establish and join organizations				
30	Exclusion/restriction of workers from the right to establish and join organizations				
31	Previous authorization requirements				
32	Restrictions on the freedom of choice of trade union structure and composition				a
41	Infringement of the right to establish and join federations/confederations/international organizations	a	a	a	

Table 17 below summarizes the above explained rules for coding the different factors of non-compliance. The first column lists the evaluation criteria concerned with the coding. The second column indicates those criteria the evaluation criterion (listed in the first column) can be coded with. The last column provides the information on whether the evaluation criterion listed in the first column can or cannot be coded by its own.

Table 17. Rules for coding the different factors of non-compliance

Evaluation criterion	The evaluation criterion can be coded with	Coding on its own
'Lack of guarantee of due process of law'	The 'basis non-compliance' and/or the criterion of 'committed against leader of the organizations'	Yes
'Committed against leaders of the organization'	The 'basis non-compliance' and/or the criterion of 'lack of guarantee of due process of law'	No, only either with the 'basis non-compliance' and/or with the criterion 'lack of due process of law'
'Severity (widespread and/or systematic)'	The 'basis non-compliance'	No, only with the 'basis non-compliance'
'Acts of interference during the course of strike actions' (de facto)	The de facto evaluation criterion of: - 'murder or disappearance of trade unionists'; - 'other violent actions against trade unionists'; - 'arrest, detention, imprisonment, charging and fining of trade unionists'.	Yes
'Infringement of the right to establish and join to federations/confederations/ International organizations'	Not applicable	Yes, including: - General prohibition to establish federations/confederations and to affiliate with international organizations - Exclusion/restriction from the right to establish and join federations/confederations and to affiliate with international organizations - Previous authorization requirements to establish federations/confederations and to affiliate with international organizations.

1.6. **Documentation**

Because of the need to ensure transparency and reproducibility, a systematic and accurate documentation of evidences coded in the selected sources is important. This implies careful recording of information on the evaluation criteria (i) ‘severity (widespread and/or systematic)’; (ii) ‘excluded workers/employers’; (iii) ‘other acts of prohibitions, infringements and interference’, and on other information⁵⁹ by copying word for word the paragraphs referring to the issue of non-compliance from the original text (Annex II-III). Moreover, by recording all the information detected during the coding, the documentation also assists the formation of a ‘database’ consisting of all the sources used during the coding that facilitates the coding itself and the tracing of an observed issue of non-compliance back to a particular textual source and the evidence it records.⁶⁰

Table 18 below presents the summary of the general coding rules by providing the above listed tables in a single document. The tables are identical to the ones used above and are complemented by a brief introduction/explanation.

⁵⁹ For example, information can be provided on coded legislation; on cases when the Government repeatedly fails to reply to the CFA; or difficulties with regard to the information sources, etc.

⁶⁰ This can be ensured by different means given that they satisfy the above mentioned key premises of the method.

Table 18. General Coding Rules

A. Coding Frequency:		
The table below provides the rules corresponding to the annual coding of the sources. The first column lists the sources selected for the coding, the second column specifies the frequency of the coding (annually or upon the adoption of a report in the year evaluated), while the last column indicates the countries covered by the sources (i.e. countries for which the coding can be done).		
Source	Coding frequency	Countries covered by the source
CEACR comments	Every year	All ILO member States that ratified the Convention concerned
Conference Committee Reports	Every year	Only those ILO member States selected by the Conference Committee for the year evaluated
Country Baselines	Every year	All ILO member States that have not ratified the Convention concerned
Representations	Only if Representation Procedure is closed in the year evaluated	Only the country against who a representation procedure has been closed by a final report in the year evaluated
Complaints	Only if Complaint Procedure is closed in the year evaluated	Only the country against who a complaint procedure has been closed by a final report in the year evaluated
CFA cases	Based on the CFA report(s) adopted in the year evaluated	Only for countries whose case(s) is included in any of the Reports of the CFA adopted/published in the year evaluated
National legislation	Every year	All ILO member States that have not ratified the Convention concerned

B. Codable and Non-codable evidence	
The present table provides the summary of the rules established to determine whether the evidence, recorded in the sources selected for the coding, can or cannot be coded under the evaluation criteria. Codable evidence means that the identified evidence can be coded as a non-compliance; non-codable evidence means that the identified evidence cannot be coded as a non-compliance.	
Codable evidence	Non-codable evidence
<ul style="list-style-type: none"> - Non-compliance recorded by any of the ILO supervisory bodies in any of the sources selected for the coding. - Non-compliance remedied within the same year it was committed. 	<ul style="list-style-type: none"> - Comments requesting further information or explanation without acknowledging any issue of non-compliance. - Comments on draft legislation.
References to ITUC Reports or reports of other workers' or employers' organizations solely if the government concerned fully accepts it and it is mentioned in the ILO comment or report and/or if the supervisory body acknowledges it.	References to ITUC Reports or reports of other workers' or employers' organizations, if the government concerned does not accept it and it is mentioned in the ILO comment or report and/or if the supervisory body does not acknowledge it.
Contradictory evidence, if the contradiction occurs between different sources.	Contradictory evidence, if the contradiction occurs within the same source.
Evidence of non-compliance	Evidence of progress and/or good practices

C. Coding the additional criteria		
The table below provides the rules on how to code the additional evaluation criteria. The first column lists the additional evaluation criteria; the second column indicates where and how many additional criteria are added to the evaluation criteria list. The third column gives the rules with regard to the coding of the additional evaluation criteria.		
Additional evaluation criteria	The additional evaluation criterion is added to	Coding
'Other acts of prohibitions, infringements and interference'	- Each of the main categories of the evaluation criteria ⁶¹	- Coding is done with regard the main category the non-compliance links to.
'Lack of guarantee of due process of law'	- Each of the main categories of the evaluation criteria; - Each de facto civil liberties evaluation criteria; - Anti-union discrimination evaluation criteria; - Acts of interference evaluation criteria.	- Coding is done with regard the main category the non-compliance links to. - Coding is done only with regard the particular criterion the additional criterion is added to.
'Committed against leaders of the organization'	- Each de facto civil liberties evaluation criteria; - Anti-union discrimination evaluation criteria; - Imposing excessive sanctions in case of unlawful, but otherwise legitimate and peaceful strikes evaluation criterion.	- Coding is done only with regard the particular criterion the additional criterion is added to.

D. Coding the different factors of non-compliance		
The table below explains the rules established for the coding of cases where an issue of non-compliance links to more evaluation criteria. The first column contains the evaluation criteria concerned. The second column lists the criteria which can be coded with the evaluation criterion indicated in the first column. The last column clarifies if the evaluation criteria listed in the first column can be coded on its own, being considered a non-compliance per se, or if it can only be coded if the 'basis non-compliance' was acknowledged by the supervisory bodies.		
Evaluation criterion	The evaluation criterion can be coded with	Coding on its own
'Lack of guarantee of due process of law'	The 'basis non-compliance' and/or the criterion of 'committed against leader of the organizations'	Yes
'Committed against leaders of the organization'	The 'basis non-compliance' and/or the criterion of 'lack of guarantee of due process of law'	No, only either with the 'basis non-compliance' and/or with the criterion 'lack of due process of law'
'Severity (widespread and/or systematic)'	The 'basis non-compliance'	No, only with the 'basis non-compliance'
'Acts of interference during the course of strike actions' (de facto)	The de facto evaluation criterion of: - 'murder or disappearance of trade unionists'; - 'other violent actions against trade unionists'; - 'arrest, detention, imprisonment, charging and fining of trade unionists'.	Yes
'Infringement of the right to establish and join federations/confederations/ International organizations'	Not applicable	Yes, including: - General prohibition to establish federations/confederations and to affiliate with international organizations - Exclusion/restriction from the right to establish and join federations/confederations and to affiliate with international organizations - Previous authorization requirements to establish federations/confederations and to affiliate with international organizations.

⁶¹ There are, however, two exceptions from this rule: additional criterion 'other acts of prohibitions, infringements and interference' is not used in the categories of 'fundamental civil liberties' and in none of the categories related to employers' organizations.

2. Source-specific Coding Rules

2.1. *Introduction*

The following section describes the rules governing the coding of the sources selected for the present method. The section is constructed in a manner in which the same structure is applied when dealing with each of the sources. In general, the first part provides a short introduction with regard to the source itself, including a reference to the URL⁶² where the relevant source can be found. In the following parts, the document explains the rules for choosing the particular source relevant for the year examined and the rules guiding their actual coding.

As noted above, in the framework of the present method, the observed issues on non-compliance are identified by coding the following sources:

- a:** Comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR comments);
- b:** Reports from the Conference Committee on the Application of Standards (Conference Committee Reports);
- c:** Country baselines under the ILO Declaration Annual Review (Country Baselines);
- d:** Representation under article 24 of the ILO Constitution (Representations);
- e:** Commissions of inquiry appointed under article 26 of the ILO Constitution (Complaints);
- f:** Committee on Freedom of Association cases (CFA cases);
- g:** National legislation.

Note that as no final decision has been made on the frequency of the coding, rules explained below reflect the situation in which the coding would be done on an annual basis.⁶³

⁶² The URL links provided in the present document were accessed and active during the period of July – Sep. 2010.

⁶³ See footnote No. 48.

2.2. **Comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR comments)⁶⁴ – ‘a’**

Source

Established in 1926, the CEACR, being part of the ILO’s Regular Supervisory System,⁶⁵ represents the legal body responsible for the examination of compliance by ILO member States with the international labour standards. It is composed of twenty independent jurists appointed by the Governing Body for renewable periods of three years. The bases of the examination are the reports sent by the governments on those Conventions the country has ratified, as well as comments provided from workers’ and employers’ organizations. As regards the eight fundamental and four priority conventions, these reports are required every two years, while all the other conventions are requested every five years.⁶⁶

The CEACR adopts its report annually.⁶⁷ When examining the application of international labour standards, the CEACR provides two kinds of comments: (i) observations, containing comments on fundamental questions raised by the application of a particular convention by a country, and (ii) direct requests, relating to more technical questions or requesting for further information. While observations are published in the Committee’s annual report, direct requests, without being published in the report, are communicated directly to the governments concerned. The Committee meets once a year.

⁶⁴ The Sub-Section is based on the following sources:

ILO (2009c, pp. 80-81); also available at:
http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf (accessed 15 Sep. 2010)

http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CommitteeofExperts/lang--en/index.htm (accessed 15 Sep. 2010).

<http://www.ilo.org/ilolex/english/ceacre.htm> (accessed 15 Sep. 2010).

⁶⁵ The ILO Regular Supervisory System consists of the CEACR, on the one hand, and the Conference Committee on the Application of Conventions and Recommendations on the other hand.

⁶⁶ As noted earlier, the exceptions from this rule are the conventions that have been “shelved”, which are no longer supervised on a regular basis. Furthermore it should also be noted that reports on the application of conventions may be requested at shorter intervals.

⁶⁷ The CEACR’s annual report consists of three parts: Part I. General report, which includes the comments about member states’ respect for their Constitutional obligations and highlights from the observations; Part II., which provides observations on the application of international labour standards; Part III., which includes the General Survey.

Box 4
Links for the CEACR comments (accessed 31 Aug. 2010)

1. Application of International Labour Standards (Lybsind): Reports and cases of the Committee on Freedom of Association (CFA) and comments from the CEACR regarding Conventions Nos. 87 and 98.

<http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1>

2. Database on International Labour Standards (ILOLEX): ILOLEX is a database containing ILO Conventions and Recommendations, ratification information, comments of the CEACR and the CFA, representations, complaints, interpretations, General Surveys, and numerous related documents. Besides, its 'Advanced Query Form' (see second link) offers a particularly useful database portal.

<http://www.ilo.org/ilolex/index.htm>

<http://www.ilo.org/ilolex/english/iloquery.htm>

3. NATLEX Country Profiles: The database brings together information on national labour law and the application of international labour standards in one portal.

http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en

Coding rule for choosing the source relevant for the year examined

For the CEACR comments, the year of adoption and the year of publication differs. It was therefore decided that these comments shall be coded under the year the observation/direct request was made and not under the year it was published.

For example: if the year examined is 2008, comments to be coded are the ones made in 2008 and published in 2009.

Rules of coding

As noted above with regard to the eight fundamental and four priority conventions, reports are required every two years from governments. Consequently, whereas the coding of the source is proposed to be done for all member States on an annual basis, comments regarding the eight fundamental and four priority conventions are, as a rule,⁶⁸ provided only biannually for any given country by the CEACR. However, as this does not necessarily imply that comments made in the reporting year are not relevant for the following non-reporting year, it was decided that for those years where no report is required and therefore no comments are made by the Committee, the same comments adopted for the previous year should be considered applicable. In cases when the country complies with the Committee's comment in the meantime, this will be indicated under the subsequent coding, i.e. by not coding the issue of non-compliance.

For example: if the reporting year is 2008, no comments are provided by the CEACR for 2009. Therefore, comments adopted in 2008 should be applied as one and the same for both years. However, for the year 2010, comments adopted in 2010 should be coded.

As regards the content of the CEACR comments, as noted under the general coding rules, those observations and direct requests where the Committee requests further information or explanation, without giving a statement on the issue at hand, are not coded as issues of non-compliance. Cases where the Committee provides comment on draft legislation are also not coded as issues of non-compliance. It should be noted, however, that the actual coding does not distinguish between comments made in the form of observation and

⁶⁸ Reports on the application of conventions may be requested at shorter intervals.

comments provided in the form of direct request. This is because the coding rules *per se* reflect on the differences between the content of these two types of comments (see above).

Regarding references made to International Trade Union Confederation's (ITUC) reports on trade union rights' violations or to reports of other workers' and employers' organizations, the above listed general coding rule remains: these can only be coded as an issue of non-compliance if the given government has already acknowledged the criticism and this is mentioned in the Committee's comment or the Committee acknowledged it as an issue of non-compliance. This is because these reports as a whole are not subject to revision by any of the ILO supervisory bodies and the CEACR usually refers to these issues non-compliance only together with a request for the governments to send their observations on the alleged issues.

Notwithstanding the general clarity of the CEACR reports, in cases when the Committee solely refers back to previously made comments without elaborating on the issue, reading of the comments from previous years may become necessary.

2.3. Reports from the Conference Committee on the Application of Standards (Conference Committee reports)⁶⁹ – 'b'

Source

The Committee on the Application of Standards is a specialised tripartite standing committee of the International Labour Conference (ILC), made up of governments', employers' and workers' delegates. Being part of the ILO Regular Supervisory System, it is formed at each session of the ILC to examine the report adopted by the CEACR in the December preceding the session. Based on this report, the Conference Committee selects for discussion a number of observations made by the CEACR on the application of a particular convention by an ILO member State. Governments referred to in these selected observations are invited to respond before the Conference Committee and to provide information on the issue in question. Based on the tripartite discussion, the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance.

The discussions and the subsequent conclusions adopted by the Conference Committee are published in its report, submitted to the ILC. The report has two parts: Part One on the general discussion (General Report); and Part Two on the discussion of the CEACR observations.⁷⁰

⁶⁹ The Sub-Section is based on the following sources:
http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CCAS/lang--en/index.htm (accessed 15 Sep. 2010)
<http://www.ilo.org/ilolex/english/ilccre.htm> (accessed 15 Sep. 2010).

⁷⁰ At the time of the writing of the present paper the Conference Committee's report also contained a separate part on the "Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)".

Box 5
Links for the Conference Committee reports (accessed 31 Aug. 2010)

1. Database on International Labour Standards (ILOLEX): ILOLEX is a database containing ILO Conventions and Recommendations, ratification information, comments of the CEACR and the CFA, representations, complaints, interpretations, General Surveys, and numerous related documents. Besides, its 'Advanced Query Form' (see second link) offers a particularly useful database portal.

<http://www.ilo.org/ilolex/index.htm>

<http://www.ilo.org/ilolex/english/iloquery.htm>

To obtain the Conference Committee's report relevant for the year evaluated (e.g. 2008), the subsequent year (e.g. 2009) should be selected in the Query Form.

2. NATLEX Country Profiles: The database brings together information on national labour law and the application of international labour standards in one portal.

http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en

Coding rule for choosing the source relevant for the year examined

Unlike the comments made by the CEACR, reports of the Conference Committee are adopted and published in the same year. However, as the Conference Committee bases its examination on the CEACR annual report, adopted in the previous December, the corresponding year for the comments of the Conference Committee is the year that follows the adoption of the CEACR's report (the year evaluated).

For example: When evaluating the year 2008, the relevant report is the one adopted and published by the 98th Session of the ILC, held in 2009, as that is the report that reflects on the comments made by the CEACR in 2008.

Rules of coding

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

Although information is provided by the representatives of governments, employers and workers, the coding rules are applicable irrespective of who provides the information.

Draft legislation, similarly to the rules relative to the CEACR comments, should not be coded. Likewise, references made to ITUC or other workers' or employers' organizations' reports can only be coded as an issue of non-compliance if the government acknowledges the criticism or if the Conference Committee acknowledged it as an issue of non-compliance.

Conversely, as the report of the Conference Committee does not deal systematically with all the countries examined by the CEACR, merely with those where "it would appear

desirable to invite government to provide information to the Conference Committee”,⁷¹ only comments adopted and published regarding the year evaluated should be taken into consideration. Previously made comments are not coded under the year evaluated, particularly because in some cases there is a significant interval between reports adopted vis-à-vis the same country.

2.4. Country baselines under the ILO Declaration Annual Review (Country Baselines)⁷² – ‘c’

Source

Being part of the ILO1998 Declaration, the follow-up procedure aims to support the commitment of member States to respect and promote principles and rights in four categories, irrespective of whether they have ratified the relevant ILO Convention (See Part I. Section 6). Under the follow-up procedure to the 1998 Declaration, member States that have not ratified one or more of the eight core Conventions are asked to report annually on the status of the relevant rights and principles within their country with the aim to inform the needs/challenges of the member States, the actions undertaken and the results achieved in the promotion of the fundamental principles and rights at work. These annual reports are presented in the form of Country Baselines.

Box 6

Link for the Country Baselines (accessed 31 Aug. 2010)

Current compilation of country baselines:

<http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines/lang--en/index.htm>

Coding rule for choosing the source relevant for the year examined

As the compilation of the annual reports provided by the member States is carried out every year, Country Baselines are up-dated annually. This at the same time entails that the new Country Baseline replaces and integrates the previous baselines. Therefore, the coding should always be done with regard to the current compilation of Country Baselines, even though, only information provided before and pertaining to the year evaluated should be coded.

For example: in case the coding is done based on the Country Baseline (2000-10) but for the year of 2008, only information provided before and for the year of 2008 should be coded. Information provided for the years of 2009-10 cannot be taken into account during the coding of the year 2008.

⁷¹ ILO (2009b, p. v), also available at:

http://www2.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_116491.pdf (accessed 15 Sep. 2010).

⁷² The Sub-Section is based on the following sources:

<http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm> (accessed 15 Sep. 2010)

<http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines/lang--en/index.htm> (accessed 15 Sep. 2010).

Rules of coding

As Baselines are based on multiple elements (e.g. governments' reports, observations by employers' and workers' organizations, observations/recommendations by the ILO Declaration Expert-Advisers), dealing with the different parts of the document requires that different approaches be taken.

The main rules are the followings: First, if the information provided by the Baseline relates to national legislation, regardless of the year under which it is provided, it should be coded, if it is still applicable. This means if there is new information afterwards that would differ from the previous information, only the new information should be coded. Second, if the information links to issues other than national legislation (e.g. policy measures, de facto issues of non-compliance, etc.), only the information provided under the year evaluated should be coded.

References to ITUC or other workers' or employers' organizations' reports shall not be coded. Information regarding these comments in the Baseline is usually provided not for one specific year but for a period, and since the Baseline summarizes rather than provides the full text of the paragraphs of the ITUC reports, it would be difficult to capture precise information relevant for the year evaluated. The only possible way of reflecting on these comments is if the government's reply, included in the fourth part of the Baseline, acknowledges the alleged issue of non-compliance.

Nevertheless, it should be noted that since the wording of the Baseline does not always reach the level of precision required by the coding, in certain cases the coder should rely on the national legislation in order to code the issue of non-compliance with confidence. Furthermore, it must also be taken into consideration that there are parts of the Baseline (e.g. Reporting; Observations by the Social Partners; Technical Cooperation) which, by nature of the subject, do not contain information relevant for the coding.

Table 19 below indicates the specific rules applicable for the different parts of the Baseline, specifying the year that should be coded: (i) the year evaluated or (ii) all the years for which information is provided.

Table 19. Coding rules relating to the different parts of the Baseline⁷³

Part of the Baseline	Part of the Baseline	Year to be coded
Reporting	Fulfilment of Government's reporting obligations	<i>Year evaluated</i>
	Involvement of Employers' and Workers' organizations in the reporting process	
Observations by the Social Partners	Employers' organizations	<i>Year evaluated</i>
	Workers' organizations	
Efforts and progress made in realizing the principle and right	Ratification	<i>Year evaluated</i>
	Recognition of the principles and right (prospects(s), means of action, basic legal provisions)	<i>All years</i>
	Exercise of the principle and right	<i>All years</i>
	Monitoring, enforcements and sanctions mechanisms	<i>All years</i>
	Involvements of the social partners	<i>Year evaluated</i>
	Promotional activities	<i>Year evaluated</i>
	Special initiatives/Progress	<i>Year evaluated</i>
Challenges in realizing the principle and right	According to the social partners	<i>Year evaluated</i>
	According to the Government	<i>Year evaluated</i>
Technical Cooperation	Request	<i>Year evaluated</i>
	Offer	
Expert-Advisers' observations/recommendations		<i>Year evaluated</i>
Governing Body Observations/Recommendations		<i>Year evaluated</i>

⁷³ The names of the 'parts of the baseline' are identical to the ones in the first two columns in the 'Country Baselines under the 1998 ILO Declaration Annual Review', see for example: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_091262.pdf (accessed 15 Sep. 2010).

2.5. **Representation under article 24 of the ILO Constitution (Representations)⁷⁴ – ‘d’**

Source

The representation procedure is governed by articles 24 and 25 of the ILO Constitution. It grants to workers' or employers' organizations the right to present to the ILO Governing Body a representation against any member State which, in their view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention of which it is a party".⁷⁵ A tripartite committee of three members of the Governing Body may be established to examine the representation and the response of the government. The report of the tripartite committee states the legal and practical aspects of the case, examines the information submitted and provides recommendations. Upon adoption of the report, the Governing Body passes the case to the CEACR for follow-up on the country's compliance with the findings of the tripartite committee.

It should be noted that representations concerning the application of Conventions Nos. 87 and 98 are referred to the CFA for examination.

Box 7

Links for the Representations (accessed 31 Aug. 2010)

1. Database on International Labour Standards (ILOLEX): ILOLEX is a database containing ILO Conventions and Recommendations, ratification information, comments of the CEACR and the CFA, representations, complaints, interpretations, General Surveys, and numerous related documents. Besides, its 'Advanced Query Form' (see second link) offers a particularly useful database portal.

<http://www.ilo.org/ilolex/index.htm>

<http://www.ilo.org/ilolex/english/iloquery.htm>

2. List of representations under article 24 of the ILO Constitution

<http://www.ilo.org/ilolex/english/repframeE.htm>

3. NATLEX Country Profiles: The database brings together information on national labour law and the application of international labour standards in one portal.

http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en

⁷⁴ The Sub-Section is based on the following sources:

ILO (2009c, pp. 84-85); available at:

http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf (accessed 15 Sep. 2010)

http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Representations/lang--en/index.htm (accessed 15 Sep. 2010)

<http://www.ilo.org/ilolex/english/art2426e.htm> (accessed 15 Sep. 2010)

<http://www.ilo.org/ilolex/english/art2426e.htm> (accessed 15 Sep. 2010).

⁷⁵ Article 24 of the ILO Constitution.

Coding rule for choosing the source relevant for the year examined

Representations are coded under the year the report of the tripartite committee is published,⁷⁶ not under the year the representation is submitted. This is because the final report provides the conclusion and the recommendations of the tripartite committee, which – as will be explained below - serves as the basis of the coding on its own. Previous documents adopted by the Governing Body subsequent to the submission of the representation are interim technical/procedural documents reporting on the status of the representation procedure bear no reference to the substance of the case.

Nevertheless, in case the representation is referred for examination to the CFA, rules governing the selection of the relevant sources in relation to the cases brought before the CFA should be applied (see below).

Rules of coding

As noted above, coding is done exclusively regarding the conclusion and recommendations of the final report of the tripartite committee. Given that the present method only aims to compile the already existing information generated by the ILO's supervisory mechanism, the coding rules had to reflect on what the tripartite committee observed based on the information provided, not the provided information per se. Obviously, allegations and statements made by the parties should also be reviewed for a better understanding. However, these allegations/statements cannot serve as the basis of coding as that would require a rather subjective interpretation from the evaluator.

Should the representation be referred to the CFA, the rules governing the coding of the CFA cases ought to be followed (see below). Nonetheless, in order to satisfy the key premise of transparency, the decision was made that issues of non-compliance recorded by the CFA in cases referred to it by the Governing Body should be coded with the letter 'f', therefore allowing that these be traced back to the source where the evidence is recorded. Applying the same reasoning, when the Governing Body passes the case to the CEACR for the follow-up on the country's compliance with the findings of the tripartite committee, comments made by the CEACR should be coded with the letter 'a'.

⁷⁶ As regards Representations, the final report is adopted and published under the same year.

2.6. **Commissions of inquiry appointed under article 26 of the ILO Constitution (Complaints)⁷⁷ – ‘e’**

Source

The complaint procedure is governed by articles 26 to 34 of the ILO Constitution. A complaint may be filed either by a member State invoking the non-compliance of another member State with a Convention that both have ratified, a delegate to the ILC or *ex officio* by the Governing Body. In case a member State is accused of committing persistent and serious violations and has repeatedly refused to address them, the Governing Body may, subsequent to the filing of a complaint, form an ad hoc Commission of Inquiry comprising three independent members. The Commission of Inquiry, as the ILO's highest-level investigative procedure, is responsible for carrying out a full investigation of the complaint and for making recommendations concerning the measures to be taken to address the issues raised by the complaint.⁷⁸ The report of the Commission of Inquiry is submitted to the Governing Body.

Within a period of three months, the government must indicate to the Director-General of the ILO whether or not it accepts the recommendations of the Commission of Inquiry. In the event it does not accept them, the government may submit the case to the International Court of Justice (ICJ), whose decision shall be final. However, in case the government refuses to fulfill the recommendations of a Commission of Inquiry or the ICJ, the Governing Body, in virtue of article 33 of the ILO Constitution, can take action “as it may deem wise and expedient to secure compliance therewith”.⁷⁹

In the event the government accepts the recommendations, the Governing Body passes the case to the CEACR or the CFA (or both) for follow-up on the country's compliance with the recommendations of the Commission of Inquiry. If the government appeals the decision, the follow-up is assured following the decision by the ICJ.

⁷⁷ The Sub-Section is based on the following sources:

ILO (2009c, pp. 86-87); also available at:

http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf (accessed 15 Sep. 2010)

http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Complaints/lang--en/index.htm (accessed 15 Sep. 2010)

<http://www.ilo.org/ilolex/english/art2426e.htm> (accessed 15 Sep. 2010).

⁷⁸ For more, see: <http://www.ilo.org/ilolex/english/art2426e.htm> (accessed 15 Sep. 2010).

⁷⁹ Article 33 states the following: “[i]n the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.” Also available at:

http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Complaints/lang--en/index.htm (accessed 15 Sep. 2010)

<http://www.ilo.org/ilolex/english/art2426e.htm> (accessed 15 Sep. 2010).

Similar to representations, complaints concerning the application of Conventions Nos. 87 and 98 may be referred to the CFA for examination, pending a final decision on the establishment of a Commission of Inquiry.

Box 8

Links for the Complaints (accessed 31 Aug. 2010)

1. Database on International Labour Standards (ILOLEX): ILOLEX is a database containing ILO Conventions and Recommendations, ratification information, comments of the CEACR and the CFA, representations, complaints, interpretations, General Surveys, and numerous related documents. Besides, its 'Advanced Query Form' (see second link) offers a particularly useful database portal.

<http://www.ilo.org/ilolex/index.htm>

<http://www.ilo.org/ilolex/english/iloquery.htm>

2. List of Commissions of Inquiry

<http://www.ilo.org/ilolex/english/INQUIRY.htm>

3. NATLEX Country Profiles: The database brings together information on national labour law and the application of international labour standards in one portal.

http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en

Coding rule for choosing the source relevant for the year examined

Complaints should be coded under the year the report of the Commission of Inquiry is published,⁸⁰ not under the year the complaint is submitted. The underlying rationale remains unchanged: the final report provides the conclusion and the recommendations of the Commission of Inquiry, serving as its own the basis of the examination and coding, while previously adopted documents pertaining to the complaint are merely interim technical and procedural documents reporting solely on the status of the complaint procedure.

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

If the complaint is referred for examination to the CFA, rules governing the selection of the relevant sources in relation to the cases brought before the CFA should be applied (see below).

Rules of coding

With regard to the rules guiding the coding of the complaints, the above described rules concerning the coding of representations are likewise applicable. Therefore the coding should be done exclusively regarding the conclusion and recommendations of the report of the Commission of Inquiry or of the decision of the ICJ, if the government appeals against the recommendations to the ICJ. Similar to the representations, allegations and statements made by the parties should also be reviewed. These allegations and statements cannot, however, serve as the basis of the coding for the reasons indicated previously.

⁸⁰ As regards Complaints, the final report is adopted and published under the same year.

Should the complaint be referred to the CFA, the rules governing the coding of the CFA cases is to be followed (see below). However, as was explained with regard to representations, issues of non-compliance recorded by the CFA in cases referred to it by the Governing Body should be coded with ‘f’, so as to meet the requirement of transparency. For the same reason, once the Governing Body passes the case to the CEACR or CFA (or both) for the follow-up of the country’s compliance with the recommendations of the Commission of Inquiry or the decision adopted by the ICJ, comments made by the CEACR or CFA should be coded with letter ‘a’ or ‘f’, respectively.

2.7. Committee on Freedom of Association Cases (CFA cases)⁸¹ – ‘f’

Source

The CFA is a tripartite body that was set up in 1951 by the Governing Body with the purpose of examining complaints alleging violations of freedom of association. Allegations may be brought against a member State by employers’ and workers’ organizations, irrespective of the ratification of the relevant convention by the country concerned. Having a tripartite structure, the CFA is composed of nine members and nine deputies from the government, workers’ and employers’ groups of the Governing Body, and has an independent chairperson.

The CFA meets three times a year. Based on the examination of the allegations submitted, the CFA makes recommendations to the governments through the Governing Body on how the situation could be remedied. In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the CEACR for follow-up. The CFA may also choose to propose an ILO mission to assist in resolving the problem directly with government officials and the social partners.

The reports of the CFA are submitted to the Governing Body for approval and published in the ILO Official Bulletin.

Box 9

Link for the CFA cases (accessed 31 Aug. 2010)

Application of International Labour Standards (Lybsind): Reports and cases of the CFA and comments from the CEACR regarding Conventions No. 87 and 98.

<http://webfusion.ilo.org/public/db/standards/normes/libsynd/index.cfm?Lang=EN&hdroff=1>

⁸¹ The Sub-Section is based on the following sources:

ILO (2009c, pp. 88-89); also available at:

http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf (accessed 15 Sep. 2010)

http://www.ilo.int/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/CFA/lang--en/index.htm (accessed 15 Sep. 2010)

<http://www.ilo.org/ilolex/english/cfae.htm> (accessed 15 Sep. 2010).

Coding rule for choosing the source relevant for the year examined

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

The general rules for the coding of CFA cases are, first, that evidence can only be coded if the CFA makes a recommendation consistent with the complaint in any of the reports⁸² and, second, that issues of non-compliance should always be coded for the year evaluated and not for the year the allegation was submitted.⁸³ Concerning the latter, while this rule is based on the assumption that as long as the case is open, the non-compliance is still active, there is also a practical reason for doing so, as coding the information in a retroactive manner would make the coding process cumbersome and less transparent.

Concerning the selection of the relevant report, the main rule is that all cases for which a CFA report is provided under the year evaluated should be considered, regardless of the year of submission or the actual status of the case. This means that not only the closed cases, but also the follow-up and active (i.e. ongoing) cases are examined and coded.

For example: If countries are evaluated for the year 2008, all cases for which a report was adopted in 2008 should be coded, even if, for instance, the case was submitted in 2006 and closed in 2008 (closed case) or closed only in 2010 (ongoing case).

Furthermore, given that the reports of the CFA have either a more technical content in which the Committee does not discuss the substance of the case (e.g. reports on urgent appeals, on the arrival of new cases, on observations requested from governments and/or complainants, on received observations, etc.) or a content that provides recommendations that specifically focus on the substance, only reports that deal with the substance of the case will be coded.

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

Rules of coding

As indicated, the basic rule for coding CFA cases is that an issue of non-compliance can only be coded if the Committee makes a recommendation consistent with the complaint. In addition, issues of non-compliance that did not directly originate from the allegation but which were nevertheless admitted and ascertained by the CFA should also be coded.

Furthermore, since the coding aims to code only recommendations made by the CFA, coding is done exclusively regarding the conclusion and recommendations of the CFA

⁸² This is the same rule that was applied in the previous method. See Kucera (2007c, p. 151).

⁸³ This rule differs from the one used in the previous method, where issues of non-compliance were always coded for the year the allegation was submitted. See Kucera (2007c, p. 151).

Report. Allegations and statements made by the complainant and by the government should also be reviewed, but these statements cannot serve as the basis of the coding. The most important reason behind this approach is that, as was noted above, the method does not aim to provide new or differing information on countries' compliance, but to compile the already existing information generated by the supervisory system. Allegations and replies of the parties can both contain information not necessarily admitted by the CFA.

Another key coding rule is that only recommendations provided in the year evaluated (e.g. 2008) should be coded, and report(s) provided in the previous years (e.g. in 2006, 2007) should not be applied.⁸⁴ However, with regard to on-going cases, if the CFA does not adopt any report on the substance of the case for the year evaluated, the latest recommendations made by the CFA should be considered as applicable.

From the viewpoint of content, the CFA cases can be divided into two groups. The first group includes cases which contain only de facto issues of non-compliance, while the second group includes cases that – either together or without de facto non-compliance – contain de jure issues of non-compliance.

In cases of de jure non-compliance, the above described system can, for the most part, work without further problems. In other words, once the de jure non-compliance, consistent with the allegation is acknowledged by the CFA, the non-compliance is to be coded under each successive report adopted by the CFA, pending the Government's compliance with the Committee's recommendation(s).

The difficulties mainly occur in case of de facto issues of non-compliance. If the report examined is a definitive report (one which closes a case) the non-compliance can be coded without further questions based on the final recommendations of the CFA. However, in active and follow-up cases (examined under "Interim Report", "Report where effect given to the Recommendations of the Committee and the Governing Body" or in "Report in which the Committee requests to be kept informed of developments") the allegations are still pending without final statement from the side of the CFA. In these cases the CFA usually requests the government (or sometimes the alleging party) to, for instance, provide further information, to provide their comments regarding a certain question, to establish an independent inquiry to examine the allegations or to provide the CFA with the final judgement made by the national Court. In these cases, the CFA is either waiting for sufficient information to decide on the case, and therefore the alleged non-compliance cannot be coded yet, or, as regards follow-up cases, monitors the steps taken by the government concerned to comply with the CFA's recommendations. Nevertheless both cases have to be considered during the coding, especially as those can already provide codable findings of the CFA.

There is, however, one specific issue of non-compliance that can and should be coded even without being alleged or without the CFA acknowledging the initially alleged non-compliance ('basis non-compliance', see Part II. Sub-Section 1.5.): '*lack of guarantee of due process of law*'. As an example, assume that the allegation is discriminatory dismissal committed in 1994. In 1996, the CFA already noted that 'justice delayed is justice denied', expressing the issue of non-compliance in relation to due process of law, considering the time that has elapsed since the alleged incident to be too long. Therefore, this non-compliance could already be coded under '*lack of guarantee of due process of law*' for the year of 1996. Next, in 1999, the CFA made a recommendation consistent with the complaint – thus acknowledging the alleged issue of non-compliance in relation to the anti-

⁸⁴ In spite of this, reading the preceding Reports adopted by the CFA is essential to grasp the alleged non-compliance and the underlying circumstances.

union discriminatory dismissal – and requested the reinstatement of the dismissed worker. This means that for the year 1999 the non-compliance should be coded under two evaluation criteria, under ‘de facto discriminatory dismissal/suspension because of trade union membership/legitimate activities’ and under ‘de facto lack of guarantee of due process of law’. If in 2000, since the worker has not yet been reinstated, the CFA repeats its recommendation, the non-compliance should again be coded under both evaluation criteria. Were the CFA to again repeat its recommendation in the year 2003, the same non-compliance should again be coded and so on.

In addition, in cases where the given Government repeatedly fails to reply, even after urgent appeals by the CFA, the method was chosen to record the issue by copying the notice made by the CFA on it in the attached supplementary document. (Annex II-III)

2.8. National legislation – ‘g’

Source

As noted above (Part I. Section 6), concerning national legislation, the determining rule is that national legislation is used only with regard to member States that have not ratified either or both of the two fundamental Conventions, and only as a complementary source to the Country Baselines.

Dealing with this source, it was necessary to decide how to define national legislation in the frame of the present method. Although the information indicated in the Country Baselines provides a good starting point on the relevant legal sources existing at the national level, a working definition fulfilling a number of prerequisites had to be adopted. Bearing in mind the diversity that exists between countries, the definition had to be broad enough to account for considerable differences. At the same time, it also needed to be valid across the jurisdictions, while simultaneously, being consistent across countries. One of the main issues was whether collective agreements or other model agreements should be considered as possible sources for national legislation. Taking into account their restricted applicability,⁸⁵ the difficulties that could arise from the lack of accessibility of or information on these agreements, and the possibly large number of such agreements, it was decided that collective or other model agreements will not be assessed under the source of national legislation. The sole exception is national level general collective agreements, being applicable throughout the whole jurisdiction.

All things considered, it was opted that for the present coding method national legislation shall mean national level general collective agreements and (other) legal sources created by legislative authorities that are in effect and are applicable to and binding on all workers/employers or – based on statutory exemption - a specific type of worker/employer within the national jurisdiction.

⁸⁵ For example, they may only cover workers belonging to the same employer in case of enterprise-level collective agreements.

Box 10

Links for the national legislation (accessed 31 Aug. 2010)

1. Current compilation of country baselines:

<http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines/lang--en/index.htm>

2. NATLEX: Database of national labour, social security and related human rights legislation maintained by the ILO's International Labour Standards Department. Records in NATLEX provide abstracts of legislation and relevant citation information, and they are indexed by keywords and by subject classifications.

NATLEX Country Profiles: The database brings together information on national labour law and the application of international labour standards in one portal.

http://www.ilo.org/dyn/natlex/country_profiles.byCountry?p_lang=en

3. National Labour Law Profiles: Produced by ILO Industrial and Employment Relations Department of the ILO (DIALOGUE), the National Labour Law Profiles intend to provide a rapid overview of the labour law in a number of ILO member States. Their purpose is to facilitate a general understanding of how the labour law works in each country, and to provide easy access to information on a number of topics. However, the profiles do not intend to give a comprehensive description of the labour law in any country.

<http://www.ilo.org/public/english/dialogue/ifpdial/info/national/index.htm>

Coding rule for choosing the source relevant for the year examined

Alongside using the information provided in the Country Baselines, the following issues should be considered in the selection of the relevant national legislation. As the sources relating to freedom of association and collective bargaining constitute only a part of a broader national legislation, the first issue arising is the selection of the legal sources relevant to freedom of association and collective bargaining. The second issue is to find the relevant legislation that is at the same time the one that is in effect in the country. Together with the Country Baselines, the database provided by NATLEX or other relevant ILO documentation (e.g. National Labour Law Profiles under Dialogue) proved to be a useful information source. However, one should bear in mind the possible limits of these databases (e.g. not necessarily covering all the relevant legislation; not necessarily providing the most recent version of the legislation, etc).

Moreover, reflecting on a situation in which the coding would be done on an annual basis, the above described careful selection of the relevant sources would also need to be done every year. Again, although the information provided in the annually up-dated Country Baselines can serve as a main reference source, national legislation should, if needed, also be collected to complement that information.

Rules of coding

As regards the actual coding of national legislation, the most important rules are the ones relating to the selection of the relevant sources (see above). In general, it should be noted that in the process of coding national legislation, the major challenges are posed by the incomplete nature of the accessible information sources. Once the sources are selected, the coding is relatively straightforward, in comparison with the use of other sources.

The difficulties mainly arise from the possibly long length of the sources and the interpretation of the legal provisions. Therefore, while guided by the information provided in the Country Baselines, the coding of national legislation first and foremost requires the precise examination and – more importantly – documentation of the evidence found.

Table 20 provides the summary of the above explained source-specific coding rules. In order to support the process of the actual coding, the aim of the table is to present the rules in an easily understandable, user-friendly manner. The first column lists the seven sources that were selected for the method. The next columns indicate the rules that correspond to the particular source. These are the rules with regard to the coding letters that indicate the source in which the evidence is recorded; the rules concerning the collection of the sources relevant to the year evaluated (the year to code and the source corresponding to the year); and the coding rules relating to the frequency of the coding and to the content of the source.

Table 20. Source specific Coding Rules					
Source	Coding letter	Year to code	Corresponding source	Coding rules related to the frequency of the coding	Coding rules related to the content of the sources
a: CEACR comments	a	Year evaluated	Year the comments are made	<ul style="list-style-type: none"> - Coding is done annually and for all countries. - As comments are provided biannually, for the year where no comments are made, comments adopted for the previous year are applicable. 	<ul style="list-style-type: none"> - Observations and direct requests are coded based on the same rules. - Comments requesting further information and comments on draft legislation are not coded. - Comments referring to ITUC or other reports are not coded, except if the government acknowledges it, and it is mentioned in the CEACR's comment and/or the CEACR acknowledges it.
b: Conference Committee reports	b	Next year after the year evaluated	Year of the adoption/publication of the report	<ul style="list-style-type: none"> - Coding is done annually, but only for countries selected by the Committee for the year evaluated. - Only the report adopted regarding the year evaluated is coded. Previously made reports are not considered for the coding. 	<ul style="list-style-type: none"> - Only evidence that is not contradictory and is in line with the Committee's conclusion is coded. - It is irrelevant which representative provides the information, same coding rules are applicable. - References to draft legislation are not coded. - References to ITUC or other reports are not coded, except if the government acknowledges it, and it is mentioned in the Report and/or the Conference Committee acknowledges it.
c: Country Baselines	c	Year evaluated		<ul style="list-style-type: none"> - Coding is done annually, but concerns only countries that have not ratified either or both of the two fundamental Conventions. - As country baselines are up-dated annually in a way to integrate the previous baselines, only information provided previously and with regard to the year evaluated should be coded. 	<ul style="list-style-type: none"> - Different parts of the baseline require different approaches for the coding. - Information relating to <i>legislation</i> is coded regardless of the year under which it is provided. If, however, new - evidence is provided afterwards, it should be coded. - Information relating to <i>other issues</i> is coded only if it is provided under the year evaluated. - Contradictory evidence between the different parts of the baseline is not coded. - References to ITUC or other reports and to draft legislation are not coded, except the Government acknowledges it in the last part of the Baseline.
d: Representations	d, but - if referred to CFA, it is coded with letter 'f'; during its follow-up by the CEACR, it is coded with letter 'a'.	Year evaluated	Year of the adoption/publication of the final report, but not the year of its submission	<ul style="list-style-type: none"> - Coding is done only if a final report is adopted/published in the year evaluated and only for the country concerned. - Only the final report is coded. 	<ul style="list-style-type: none"> - Only the conclusion and recommendation is coded. - If the case is referred to the CFA, and during its follow-up by the CEACR, the representation should be coded based on the rules applicable for those sources. - Comments on draft legislation are not coded. - References to ITUC or other reports are not coded, except if it is acknowledged in the conclusion/recommendations.
e: Complaints	e, but - if referred to CFA, it is coded with letter 'f'; during its follow-up by the CEACR or CFA, it is coded with letter 'a' or 'f', respectively.	Year evaluated	Year of the adoption/publication of the final report, but not the year of its submission	<ul style="list-style-type: none"> - Coding is done only if a final report is adopted/published in the year evaluated and only for the country concerned. - Only the final report is coded. - If the case is appealed before the ICJ, the ICJ's decision serves as the basis of the coding. 	<ul style="list-style-type: none"> - Only the conclusion and recommendation is coded. - If the case is referred to the CFA and during its follow-up by the CEACR or CFA, it should be coded based on the rules applicable for those sources. - If the case is appealed to the ICJ, it should be continued to be coded under the coding rules applicable for Complaints. - Comments on draft legislation cannot be coded. - References to ITUC or other reports are not coded, except if it is acknowledged in the conclusion/recommendations.
f: CFA cases	f	Year evaluated	Year of the adoption/publication of the report	<ul style="list-style-type: none"> - Coding is done annually, but concerns only countries whose case is dealt with by the CFA in the year evaluated. - Coding is done both for closed, follow-up and active cases, but only for report(s) dealing with the substance of the case. - If more reports adopted on the substance in the same year, all recommendations consistent with the allegation are coded. - If no report is adopted on the case for the year evaluated, or the report is a technical one, the latest report on the substance of the case is applicable. 	<ul style="list-style-type: none"> - Only the conclusion and recommendation is coded. - Non-compliance is only coded if the CFA makes recommendation consistent with the complaint. - Non-compliance is always coded for the year evaluated. - Non-compliance that does not originate directly from the allegation, but is ascertained and admitted by the CFA is also coded. - Requests for further information/comments or an independent inquiry are not coded. - Cases when the government repeatedly fails to reply are noted in the supplementary document (Annex II-III.).
g: National legislation	g	Year evaluated	n/a	The coding is done annually and for those countries that have not ratified either or both of the two fundamental Conventions.	<ul style="list-style-type: none"> - Coding is based for the most part on the information provided in the Country Baselines. - Coding requires the careful selection of the relevant legal sources that are in effect. - Coding implies the careful examination and documentation of evidences.

3. Definitions of the Evaluation Criteria

The following section provides the detailed ‘definitions’ for each of the 168 criterion (Table 1) by indicating the types of non-compliance that should be coded under the evaluation criterion. As explained above (Part I. Section 5), the 168 evaluation criteria assess both the rights of workers’ and employers’ organizations and are split into de jure and de facto issues of non-compliance.

The structure of the definitions is built on ‘text-boxes’, providing both (i) the source of the definition by referring to the concrete Articles of ILO Constitution and Conventions and the relevant paragraphs of the ILO principles; (ii) and the ‘definition’ itself, listing specific quotations from the above sources.

Box 11 Sources of the definitions

In constructing the definitions, the following sources were used⁸⁶:

- Constitution of the International Labour Organisation
<http://www.ilo.org/public/english/bureau/leg/amend/constitution.pdf>;
- ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
<http://www.ilo.org/ilolex/english/convdisp1.htm>;
- ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
<http://www.ilo.org/ilolex/english/convdisp1.htm>;
- Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Digest of decisions and principles)
<http://www.ilo.org/ilolex/english/digestq.htm>;
- ILO: 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) (General Survey 1994)
<http://www.ilo.org/ilolex/english/surveyq.htm>

Note, that as the ‘definitions’ of the 168 evaluation criteria are given by listing some frequently occurring examples for the specific issue of non-compliance, as identified in the ILO textual sources and principles of application, these by no means can be considered an exhaustive list of possible issues of non-compliance. Therefore, the illustrative nature of the definitions should always be kept in mind, from which the observed issue of non-compliance may be deduced, strictly consistent with the classification of the ILO supervisory mechanism. Moreover, since reference to employers’ organizations is not always explicit in the relevant paragraphs of the ILO principles, definitions provided for workers’ organizations were also used in developing definitions for employers’ organizations.

⁸⁶ The URL links provided in the present document were accessed and active during the period of July – Sep. 2010.

3.1. *Issues of non-compliance in relation to trade union rights*

Ia. Fundamental civil liberties, de jure

1. Arrest, detention, imprisonment, charging and fining of trade unionists (de jure)

Paras.⁸⁷ 61-95 in Digest of decisions and principles;
Paras. 31-32 in General Survey 1994.

- 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 (de jure)

Paras. 121-175 in Digest of decisions and principles;
Paras. 34-39 in General Survey 1994.

- Includes de jure non-compliance with freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes legislation that (directly or indirectly) 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.);
 - House arrest, surveillance, banishment for trade union membership and/or legitimate activities (Digest, Para. 124.);
 - Expulsion of trade unionists from their country for activities connected with the exercise

⁸⁷ 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 (General Survey).

of their functions (Digest, Para. 128.);

- Includes legislation that is such as to violate trade unionists' right for 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 the meetings of organizations in their premises, 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 attendance of trade union meetings by a representative of the public authorities;
- Includes requesting unreasonable, excessive formalities, setting time restrictions;
- Includes lack of precise instruction to police authorities in order to avoid cases where people are arrested simply for having organized or participated in a demonstration.
- 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;
- Includes measures of administrative control, arbitrary withdrawal of a licence;
- Includes the temporary or definitive suspension and/or seizure of publications (Digest, Paras. 172-173.).

3. Infringements of trade union's right to protection of their premises and property (de jure)

[Paras. 178-192 in Digest of decisions and principles;](#)

[Paras. 706-708 in Digest of decisions and principles;](#)

[Para. 40 in General Survey 1994.](#)

- Includes legislation that allows arbitrary occupation and seizure of trade union's and trade unionists' premises and property;
- Includes confiscation based on legislation and 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 entry or search with prior authorization or with obtained legal warrant for activities 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 (de jure)

[Paras. 193-204 in Digest of decisions and principles;](#)
[Paras. 677, 701, 777 in Digest of decisions and principles;](#)
[Paras. 41-43 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 of law re Ia (de jure)

[Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles;](#)
[Paras. 29, 31-32 in General Survey 1994.](#)

- 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 de jure lack of guarantee of due process of law with regard to de jure fundamental civil liberties, as listed under evaluation criteria nos. 1-4.

Ib. Fundamental civil liberties, de facto

6. Murder or disappearance of trade unionists (de facto)

[Paras. 42-60 in Digest of decisions and principles;](#)
[Paras. 28-30 in General Survey 1994.](#)

- 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);
- Refers only to de facto issues of non-compliance, as it is unlikely that national legislation would contain any paragraph that would explicitly render death penalty for trade union membership or activities;
- Includes murder or disappearance of trade unionists' family members.
- *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 evaluation criterion no. 113.*

7. Committed against trade union leaders re 6 (de facto)

- Includes cases when the incident is committed against trade union leaders.

8. Lack of guarantee of due process of law and/or impunity re 6 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles;](#)
[Paras. 29, 31-32 in General Survey 1994.](#)

- 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.
- *Note:* Impunity refers to cases in which those committing violations are not brought to account since they are not subject to inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to dissuasive sanctions. It also includes ineffective investigatory institutions in which no meaningful progress in investigative and judicial phases can be observed or where such institutions are observed not to be independent.

9. Severity (widespread and/or systematic) re 6 (de facto)

[Paras. 52-53 in Digest of decisions and principles.](#)

- Includes flagrant cases, occurring in a widespread and/or systematic manner that is continuously followed by the absence of independent judicial inquiry and judgements against the guilty parties (situation of impunity), therefore reinforcing the climate of violence and insecurity and thus creating an extremely damaging effect on the exercise of trade union rights.

10. Other violent actions against trade unionists (de facto)

[Paras. 42-60 in Digest of decisions and principles;](#)
[Paras. 28-30, 33 in General Survey 1994.](#)

- Includes those cases where the violent action is connected with trade union membership and/or activities;
- Includes violent actions against trade unionists' family members;
- Refers only to de facto issues of non-compliance;
- 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 intimidation (e.g. death threat), coercion under threat of force;
- Includes cases in which the dispersal of public meetings by the police, being excessive, has involved serious injury;
- Includes the militarization of workplaces;
- Includes the creation of an environment of fear, climate of violence, coercion and threats, but does not include threats of dismissal. *Threats of dismissal should be coded under evaluation criterion no. 56.* (Digest, Paras. 58-60.).
- *In case the other violent action is committed during and in relation to a police intervention in a peaceful and legitimate strike, it should be coded together with evaluation criterion no. 113.*

11. Committed against trade union leaders re 10 (de facto)

- See under evaluation criterion no. 7

12. Lack of guarantee of due process of law and/or impunity re 10 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles;](#)
[Paras. 29, 31-32 in General Survey 1994.](#)

- See under evaluation criterion no. 8

13. Severity (widespread and/or systematic) re 10 (de facto)

[Paras. 52-53 in Digest of decisions and principles.](#)

- See under evaluation criterion no. 9

14. Arrest, detention, imprisonment, charging and fining of trade unionists (de facto)

[Paras. 61-95 in Digest of decisions and principles;](#)
[Paras. 31-32 in General Survey 1994.](#)

- 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 prosecution of and arbitrary sanctions (arrest, detention, imprisonment, fines) based on fictitious charges;
- Includes arrest/mass arrest, detention/preventive detention and apprehension without any charges being brought or without any court warrant being issued;
- 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. 113.*

15. Committed against trade union leaders re 14 (de facto)

- See under evaluation criterion no. 7

16. Lack of guarantee of due process of law and/or impunity re 14 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles;](#)
[Paras. 29, 31-32 in General Survey 1994.](#)

- See under evaluation criterion no. 8

17. Severity (widespread and/or systematic) re 14 (de facto)

[Paras. 52-53 in Digest of decisions and principles.](#)

- See under evaluation criterion no. 9

18. Infringements of trade unionists' basic freedoms (de facto)

Paras. 121-175 in Digest of decisions and principles;
Paras. 34-39 in General Survey 1994.

- Includes de facto non-compliance with freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes infringements in practice that results in the prohibition or restriction of freedom of movement. It includes cases 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;
 - Restricted movement; house arrest, surveillance (Digest, Para. 124.);
 - Practice of freeing trade unionists on condition that they leave the country (Digest, Para. 127.);
 - Restriction of a person's movements to a limited area, accompanied by the prohibition of entry into the area in which his/her trade union operates and he/she carries on his/her trade union functions.
- Includes infringements in practice of the right of peaceful and legitimate assembly and demonstration by interference of public authorities for reasons that go beyond the aim of maintaining public order and security (Digest, Paras. 130-153.);
 - Includes both the meetings of organizations in their premises and also public meetings and demonstration (Digest, Paras. 131-151.);
 - Includes the use of force that goes beyond the aim of maintaining public order and security;
 - Includes cases of arbitrary refusal to hold public meetings and demonstrations;
 - Includes 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 lack of precise instruction to police authorities in order to avoid cases where public order is not seriously threatened, people are not arrested simply for having organized or participated in a demonstration.
- Includes infringements in practice 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 measures of arbitrary administrative control, withdrawal of a licence, control of printing plants and equipments, the control of paper supply (General Survey, Paras. 38-39.);
 - Includes censorship in practice; and the arbitrary temporary or definitive suspension and/or seizure of publications (Digest, Paras. 172-173.).

19. Committed against trade union leaders re 18 (de facto)

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| <ul style="list-style-type: none">• See under evaluation criterion no. 7 |

20. Lack of guarantee of due process of law and/or impunity re 18 (de facto)

<p>Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles; Paras. 29, 31-32 in General Survey 1994</p>
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| <ul style="list-style-type: none">• See under evaluation criterion no. 8 |
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21. Severity (widespread and/or systematic) re 18 (de facto)

<p>Paras. 52-53 in Digest of decisions and principles.</p>
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| <ul style="list-style-type: none">• See under evaluation criterion no. 9. |
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22. Attacks against trade unions premises and property (de facto)

<p>Paras. 178-192 in Digest of decisions and principles; Paras. 706-708 in Digest of decisions and principles; Para. 40 in General Survey 1994.</p>

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| <ul style="list-style-type: none">• 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.);• Includes entry or search with prior authorization or with obtained legal warrant in cases 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 search is not restricted to the purpose for which the warrant was issued;• 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, Paras. 186-188.). |
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23. Committed against trade union leaders re 22 (de facto)

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| <ul style="list-style-type: none">• See under evaluation criterion no. 7 |

24. Lack of guarantee of due process of law and/or impunity re 22 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- See under evaluation criterion no. 8

25. Severity (widespread and/or systematic) re 22 (de facto)

[Paras. 52-53](#) in Digest of decisions and principles.

- See under evaluation criterion no. 9

26. Excessive prohibitions/restrictions on trade union rights in the event of state of emergency (de facto)

[Paras. 193-204](#) in Digest of decisions and principles;
[Paras. 677, 701, 777](#) 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;
- Includes major difficulties, restrictions in practice on civil liberties, trade union rights and its guarantees in the event of state of emergency;
- Includes delays in restitution of rights or e.g. reinstating trade unionists who might have been dismissed for their union activity.
- *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.).

27. Lack of guarantee of due process of law and/or impunity re 26 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- See under evaluation criterion no. 8

28. Severity (widespread and/or systematic) re 26 (de facto)

[Paras. 52-53](#) in Digest of decisions and principles.

- See under evaluation criterion no. 9

IIa. Right of workers to establish and join organizations, de jure

29. General prohibition on the right of workers to establish and join organizations (de jure)

Articles 1-2 of Convention No. 87;
Para. 209 in Digest of decisions and principles;
Paras. 44-46 in General Survey 1994.

- Includes explicit general legal prohibition on the establishment of workers' organization.

30. Exclusion/restriction of workers from the right to establish and join organizations (de jure)

Article 2 of Convention No. 87;
Paras. 210-271 (Chapter 3) in Digest of decisions and principles;
Paras. 45-67 in General Survey 1994.

- *Does not include* exclusion/restriction 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;
- Includes the explicit or indirect exclusion/restriction of workers other than the armed forces and the police in law from the right to establish and/or join workers organizations;
- Includes exclusion/restriction based on race, political opinion, nationality (Digest, Paras. 210-215.);
- Includes exclusion/restriction based on occupational categories (Digest, Paras. 216-270.): e.g. 1. public sector workers; 2. private sector workers; 3. workers in atypical occupation; 4. workers in Export Processing Zones and 5. 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/restriction of workers undergoing a period of probation, workers who have been dismissed and retired workers (Digest, Paras. 268-270.).

31. Previous authorization requirements (de jure)

Article 2 and 7 of Convention No. 87;
Paras. 272-308 (Chapter 4) in Digest of decisions and principles;
Paras. 68-78 in General Survey 1994.

- 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 legislation that goes beyond setting formalities to ensure the normal functioning of organization (Digest, Paras. 275-278.);
- Includes legislation obliging organizations to deposit their rules, unless this is merely a

formality;

- Includes acquisition of legal personality subject to legal conditions that restrict establishment of workers' organizations (Digest, Para. 272.);
- 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;
- Includes 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.).

32. Restrictions on the freedom of choice of trade union structure and composition (de jure)

[Article 2 of Convention No. 87;](#)
[Paras. 333-337, 360-362 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 in law, 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, Paras. 84-91.).

33. Imposed trade union unity and/or favouritism/discrimination among workers' organizations (de jure)

Article 2 of Convention No. 87;
Paras. 309-332, 339-345 in Digest of decisions and principles;
Paras. 91-107 in General Survey 1994.

- 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 imposes either trade union unity or the proliferation of trade unions and thus obstructs 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, Para. 94.);
- 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, 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 has an effect of 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.) or if the determination of the most representative trade union is not based on objective and pre-established criteria (Digest, Para. 347.).
- *Discrimination between trade union organizations should be coded under evaluation criterion no. 39, except if it leads to a trade union monopoly in which case it should be coded under evaluation criterion no. 33.*
- *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, Para. 103.).

34. Dissolution/suspension of legally functioning organizations by public authorities and/or legislation (de jure)

Article 4 of Convention No. 87;

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

Paras. 180-185 in General Survey 1994.

- Includes legislation that allows dissolution or suspension by administrative authorities, (administrative dissolution of trade unions) without ensuring the right of appeal to an independent and impartial judicial body;
- Includes legislation that allows the cancellation of registration of an organization by the registrar or the removal of trade unions from the register (Digest, Para. 685) or the annulment/suspension of legal personality;
- Includes legislation that allows dissolution and suspension for reasons considered to be illegal in the national legislation, but which legislation is such as to impair or shall be so applied to impair trade union rights and its guarantees;
- Includes dissolution and suspension by law on account of unreasonably determined insufficient membership (Digest, Para. 680.);
- Includes legislation that allows dissolution or suspension for reasons that are not proportionate (e.g. for illegal activities carried out by some leaders, for irregularities in the financial management, etc.);
- Includes dissolution/suspension by law where the dissolution/suspension is not being a remedy of last resort with the exhaustion of other possibilities with less serious effects for the organization as a whole;
- Includes 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.).

35. Prejudice or discrimination with regard to employment because of trade union membership/ legitimate activities (de jure)

Article 1 of Convention No. 98;

Paras. 769-781, 782-788, 799-803, 654-657, 658, 660, 675 in Digest of decisions and principles;

Paras. 199-212 in General Survey 1994.

- 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, Para. 210.);
- Includes legislation that allows direct and/or indirect discriminatory measures such as 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 (by not forbidding it) against former trade union members and trade union officials (Digest, Para. 775.) or trade unions not recognized by the employers as representing the majority of workers concerned (Digest, Para. 776.).⁸⁸

36. Lack of adequate legal guarantees against anti-union discriminatory measures re 35 (de jure)

Article 3 of Convention No. 98;

Paras. 813-836 in Digest of decisions and principles;

Paras. 214-224 in General Survey 1994.

- Includes lack of appropriate measures 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 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.).

37. Discriminatory dismissal/suspension because of trade union membership/legitimate activities (de jure)

Article 1 of Convention No. 98;

Paras. 769-781, 789-798, 799-802, 804-812, 658-666, 674 in Digest of decisions and principles;

Paras. 199-210, 213 in General Survey 1994.

- Includes legislation that allows direct and/or indirect discriminatory dismissal or

⁸⁸ 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.

suspension on grounds of trade union membership or legitimate trade union activities;

- Includes legislation that allows dismissal/suspension for participating in legitimate and peaceful strikes;
- Includes legislation that allows anti-union discrimination (by not forbidding it) against former trade union members and trade union officials (Digest, Para. 775.) or trade unions not recognized by the employers as representing the majority of workers concerned (Digest, Para. 776.).⁸⁹

38. Lack of adequate legal guarantees against anti-union discriminatory measures re 37 (de jure)

Article 3 of Convention No. 98;

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

Paras. 214-224 in General Survey 1994.

- Includes lack of appropriate measures that guarantee an effective protection of trade unionists and ensure 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 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.).

39. Acts of interference of employers and/or public authorities (de jure)

Article 2 of Convention No. 98;

Paras. 855-859, 863-868 in Digest of decisions and principles;

Paras. 225-234 in General Survey 1994.

- 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 legal provisions which allow employers to undermine workers' organizations through artificial promotions of workers (Digest, Para. 864.);

⁸⁹ See footnote No. 88.

- 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. 33*;
- 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.).

40. Lack of adequate legal guarantees against acts of interference (de jure)

Article 2 of Convention No. 98;
Paras. 860-862, 865 in Digest of decisions and principles;
Paras. 225-234 in General Survey 1994.

- 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).

41. Infringement of the right to establish and join federations/confederations/international organizations (de jure)

Article 6-7 of Convention No. 87;
Paras. 710-768 in Digest of decisions and principles;
Paras. 189-198 in General Survey 1994.

- Includes general prohibition in law for workers' organisations to establish and/or affiliate with federations and confederations (Paras. 710-729.);
- Includes general prohibition in law for workers' organisations, federations and confederations to affiliate with international organisations of workers (Paras. 732-768.);
- Includes legislation that excludes/restricts workers' organizations from the right to establish and join federations and confederations or to affiliate with international organizations of workers (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 infringements of rights relating to federations/confederations/international organizations should be coded under the specific evaluation criterion the infringement links to.

42. Other de jure acts of prohibitions, infringements and interference re IIa (de jure)

- Includes other de jure prohibitions, infringements, interferences not specified above under evaluation criteria nos. 29-41 that violate (either in a direct or an indirect way, by punishing or by discouraging workers) workers right to establish and join workers' organizations.

43. Lack of guarantee of due process of law re IIa (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure right of workers to establish and join organizations, as listed under evaluation criteria nos. 29-42.

IIb. Right of workers to establish and join organizations, de facto

44. Obstacles towards the development of independent workers' organizations in practice (de facto)

[Articles 1-2 of Convention No. 87;](#)
[Paras. 209 in Digest of decisions and principles;](#)
[Paras. 44-46 in General Survey 1994.](#)

- Includes practical obstacles to the establishment of an independent trade union movement in practice;
- Includes major difficulties, restrictions in practice on the right of workers to establish and join organizations.

45. Exclusion/restriction of workers from the right to establish and join organizations (de facto)

[Article 2 of Convention No. 87;](#)
[Chapter 3 \(Paras. 210-271\) in Digest of decisions and principles;](#)
[Paras. 45-67 in General Survey 1994.](#)

- *Does not include* exclusion/restriction 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;

- Includes the explicit or indirect exclusion/restriction of workers other than the armed forces and the police, from the right to establish and/or join workers organizations;
- Includes exclusion/restriction based on race, political opinion, nationality;
- Includes exclusion/restriction based on occupational categories: e.g. 1. public sector workers; 2. private sector workers; 3. workers in atypical occupation; 4. workers in Export Processing Zones and 5. 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/restriction of workers undergoing a period of probation, workers who have been dismissed and retired workers (Digest, Paras. 268-270.).

46. Previous authorization requirements (de facto)

[Article 2 and 7 of Convention No. 87;](#)

[Paras. 272-308 \(Chapter 4\) in Digest of decisions and principles;](#)

[Paras. 68-78 in General Survey 1994.](#)

- 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.);
- Includes 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.

47. Restrictions on the freedom of choice of trade union structure and composition (de facto)

[Article 2 of Convention No. 87;](#)

[Paras. 333-337, 360-362 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.).

48. Imposed trade union unity and/or favouritism/discrimination among workers' organizations (de facto)

Article 2 of Convention No. 87;
Paras. 309-345 in Digest of decisions and principles;
Paras. 91-107 in General Survey 1994.

- 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 has an effect of 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.) or if the determination of the most representative trade union is not based on objective and pre-established criteria (Digest, Para. 347.).
- *Discrimination between trade union organizations should be coded under evaluation criterion no. 56, except if it leads to trade union monopoly, in which case it should be*

coded under evaluation criterion no. 48.

- *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.).

49. Dissolution/suspension of legally functioning organizations by public authorities and/or legislation (de facto)

Article 4 of Convention No. 87;
Paras. 677-705 in Digest of decisions and principles;
Paras. 180-185 in General Survey 1994.

- Includes arbitrary dissolution/suspension by administrative authorities (administrative dissolution of trade unions) in practice;
- Includes discretionary cancellation of the registration of an organization by the registrar or their 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 where the dissolution/suspension was not a remedy of last resort with the exhaustion other possibilities with less serious effects for the organization as a whole;
- 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);
- Includes 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.).

50. Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities (de facto)

Article 1 of Convention No. 98;
Paras. 769-781, 782-788, 799-803, 654-657, 658, 660, 675 in Digest of decisions and principles;
Paras. 199-212 in General Survey 1994.

- 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.

51. Committed against trade union leaders re 50 (de facto)

Article 3 of Convention No. 98;
Paras. 799-803 in Digest of decisions and principles.

- Includes cases when the incident is committed against trade union leaders (e.g. for having presented a list of dispute grievances);
- Includes incidents committed either during the period of office or for a certain time thereafter.

52. Lack of guarantee of due process of law re 50 (de facto)

Article 3 of Convention No. 98;
Paras. 813-836 in Digest of decisions and principles;
Paras. 214-224 in General Survey 1994.

- 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 infringements in practice 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.

53. Discriminatory dismissal/suspension because of trade union membership/legitimate activities (de facto)

Article 1 of Convention No. 98;
Paras. 769-781, 789-798, 799-802, 804-812, 658-666, 674 in Digest of decisions and principles;
Paras. 199-210, 213 in General Survey 1994.

- 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, Para. 213.);
- Includes compulsory retirement as a consequence of trade union membership or legitimate trade union activities;
- Includes direct and/or indirect discriminatory dismissal or suspension for participating in legitimate and peaceful strikes.

54. Committed against trade union leaders re 53 (de facto)

Article 3 of Convention No. 98;
Paras. 799-812. in Digest of decisions and principles.

- Includes cases when the incident is committed against trade union leaders (e.g. for having presented a list of dispute grievances);
- Includes incidents committed either during the period of office or for a certain time thereafter.

55. Lack of guarantee of due process of law re 53 (de facto)

Article 3 of Convention No. 98;
Paras. 813-853 in Digest of decisions and principles;
Paras. 214-224 in General Survey 1994.

- 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 infringements in practice 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, lack of reinstatement of workers who had been dismissed without justification or in case reinstatement is not practicable, lack of adequate and full compensation without delay.

56. Acts of interference of employers and/or public authorities (de facto)

Article 2 of Convention No. 98;

Paras. 855-859, 863-868 in Digest of decisions and principles;

Paras. 225-234 in General Survey 1994.

- Includes acts to place trade unions under the domination or control of employers, employers' organizations or public authorities (e.g. by supporting workers' organizations by financial or other means, such as premises or facilities);
- Includes the establishment or attempted establishment of parallel unions and/or solidarist or other associations; the existence of two executive committees within a trade union, one of which was allegedly manipulated by the employer; dismissal of trade union officers prejudicing the existing trade union and promoting the establishment of another trade union (Digest, Para. 869-879.; General Survey, 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 the alleged 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. 48;*
- 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.).

57. Lack of adequate guarantees against acts of interference (de facto)

Article 2 of Convention No. 98;

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

Paras. 225-234 in General Survey 1994.

- Includes infringements in practice of provisions ensuring the adequate protection of workers' organizations against acts of interference;
- Includes infringements in practice of the right to fair and rapid trial, the lack of independent and impartial judiciary and/or lack of sufficiently dissuasive sanctions.

58. Infringement of the right to establish and join federations/confederations/international organizations (de facto)

Article 6-7 of Convention No. 87;
Paras. 710-768 in Digest of decisions and principles;
Paras. 189-198 in General Survey 1994.

- Includes obstacles towards the establishment of federations and confederations (Paras. 710-729.);
- Includes obstacles towards the affiliation of workers' organizations, federations, confederation with international organizations of workers (Paras. 732-768.);
- Includes exclusion/restriction of workers' organizations from the right to establish and join federations and confederations or to affiliate with international organizations of workers (Para. 717.);
- Includes previous authorization requirements in practice 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.

59. Other de facto acts of prohibitions, infringements and interference re IIb (de facto)

- Includes other de facto prohibitions, infringements and interferences not included above under evaluation criteria nos. 44-58 that violate (either in a direct or an indirect way or by intimidating, discouraging workers) workers' right to establish and join organizations.

60. Lack of guarantee of due process of law re IIb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto right of workers to establish and join organizations, as listed under evaluation criteria nos. 44-59.

IIIa. Other union activities, de jure

61. Infringements on the right to freely draw up constitutions and rules (de jure)

Article 3 of Convention No. 87;
Paras. 369-387 in Digest of decisions and principles;
Paras. 108, 109-112 in General Survey 1994.

- 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 interference based on legislation, 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 cases where the sole central organization or higher level organizations specified by law may have the exclusive right to elaborate the by-laws of first-level trade unions (General Survey, Para. 111.).

62. Infringements on the right to freely elect representatives (de jure)

Article 3 of Convention No. 87;
Paras. 388-453 in Digest of decisions and principles;
Paras. 108, 113-123 in General Survey 1994.

- Includes legislation that restricts, infringes the right of trade unions to primarily determine the regulation of 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 interference in the election by public authorities based on legislation (e.g. prior approval of the results of the elections by public authorities; interference in various stage

of the electoral process; obligation to submit candidates' names in advance to the public authority (Digest, Paras. 429., 437-438.);

- Includes legal obligation for the organization's members to vote (Digest, Paras. 427-428.);
- Includes legislation that allows supervision of or other interventions in the election procedures by the administrative authorities/employers or the single trade union central organization (e.g. 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, 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.);
- Includes legislation that – pending the final outcome of the judicial proceedings - allows suspending the validity of elections based on complaints brought before labour courts by an administrative authority challenging the results of trade union elections (Digest, Para. 441.).
- *Does not include* cases when foreign workers are allowed to take union office only upon the condition of a reasonable period of residence.

63. Infringements on the right to freely organize and control internal and financial administration (de jure)

Article 3 of Convention No. 87;
Paras. 454-494 in Digest of decisions and principles;
Paras. 108, 124-127 in General Survey 1994.

- 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 lack of financial independence (e.g. being financed in such a way as to allow the public authorities to enjoy discretionary powers over them);
- Includes control and restriction on the use of trade union dues and funds, including the collection of union dues (e.g. 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 as it wishes for normal and lawful trade union purposes;
- 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;
- Includes legislation that allows interference of public authorities/employers in the right of trade unions to resolve any disputes by themselves (Digest, Para. 484.).

64. Infringements on the right to freely organize activities/programmes (de jure)

Article 3 of Convention No. 87;

Paras. 495-519 in Digest of decisions and principles;

Paras. 108, 128-135 in General Survey 1994.

- Includes general prohibition in law of trade union organizations' participation - aiming the advancement of their economic and social objectives - in political activities (Digest, Para. 498.);
- Includes the establishment of a close relationship between trade union organizations and a political party by legislation (e.g. with the aim to transform the trade union movement into an instrument for the pursuance of political aims) (Digest, Para. 499.);
- Includes legislative provisions which regulate in detail the internal functioning of trade unions;
- Includes prohibition or restriction in law of any other legitimate trade union activities (Digest, Paras. 508-519., e.g. 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.

65. Other de jure acts of prohibitions, infringements and interference re IIIa (de jure)

- Includes other de jure prohibitions, infringements, interferences not specified above under evaluation criteria nos. 61-64 that violate (either in a direct or an indirect way, by punishing or by discouraging workers) workers rights according to other trade union activities.

66. Lack of guarantee of due process of law re IIIa (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure other union activities, as listed under evaluation criteria nos. 61-65.

IIIb. Other union activities, de facto

67. Infringements on the right to freely draw up constitutions and rules (de facto)

Article 3 of Convention No. 87;
Paras. 369-387 in Digest of decisions and principles;
Paras. 108, 109-112 in General Survey 1994.

- Includes interference in practice in the trade union's right to freely draw or amend constitutions and rules (e.g. making the approval of the constitution and rules subject to arbitrary decisions of public authorities/employers);
- Includes cases where public authorities or employers interfere in practice to draw up constitutions and rules of trade unions;
- 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 in practice that go beyond formal requirements;
- Includes requirement of making the constitution subject to approval by the central or higher level organizations.

68. Infringements on the right to freely elect representatives (de facto)

Article 3 of Convention No. 87;
Paras. 388-453 in Digest of decisions and principles;
Paras. 108, 113-123 in General Survey 1994.

- Includes de facto interference by public authorities/employers in trade unions' right to freely elect/re-elect their representatives (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 supervision of the election procedures by authorities/employers or the single trade union central organization (e.g. being physically present during the election);

- 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 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.).

69. Infringements on the right to freely organize and control internal and financial administration (de facto)

Article 3 of Convention No. 87;
Paras. 454-494 in Digest of decisions and principles;
Paras. 108, 124-127 in General Survey 1994.

- Includes lack of financial independence in practice (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 cases where organizations are financed in such a way as to allow the public authorities to enjoy discretionary powers over them;
- 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.) or prohibiting trade union leaders from receiving remuneration of any kind (Digest, Para. 458.);
- 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;
- Includes interference of public authorities/employers in the right of trade unions to resolve any disputes by themselves (Digest, Para. 484.).

70. Infringements on the right to freely organize activities/programmes (de facto)

Article 3 of Convention No. 87;
Paras. 495-519 in Digest of decisions and principles;
Paras. 108, 128-135 in General Survey 1994.

- Includes major difficulties, restrictions in practice of trade union organizations' participation in political activities for the promotion of their specific objectives (but not for the promotion of essentially political interests);
- Includes major difficulties, restrictions in practice of any legitimate trade union activities

(Digest, Paras. 508-519., e.g. petitions, campaigns, submitting claims to the employers, representation of trade union members before court to defend them, organizing training programmes, etc.);

- Includes restrictions/prohibitions in practice 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.

71. Other de facto acts of prohibitions, infringements and interference re IIIb (de facto)

- Includes other de facto prohibitions, infringements and interferences not included above under evaluation criteria nos. 67-70 that violate (either in a direct or an indirect way or by intimidating, discouraging workers) workers' rights according to the other trade union activities.

72. Lack of guarantee of due process of law re IIIb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto other union activities, as listed under evaluation criteria nos. 67-71.

IVa. Right to collective bargaining, de jure

73. General prohibition on the right to collective bargaining (de jure)

Article 4 of Convention No. 98;
Paras. 880-884 in Digest of decisions and principles;
Paras. 235-236, 260-264 in General Survey 1994.

- Includes explicit general legal prohibition of collective bargaining.

74. Exclusion/restriction of workers from the right to collective bargaining (de jure)

Article 5 - 6 of Convention No. 98;
Paras. 885-911 in Digest of decisions and principles;
Paras. 261-264 in General Survey 1994.

- Includes the explicit or indirect exclusion/restriction in law of workers from the right to

collective bargaining other than the armed forces, police and public servants engaged in the administration of State;

- *Does not include* exclusion/restriction of the armed forces, police and public servants engaged in the administration of State;
- Includes exclusion/restriction based on race, political opinion, nationality;
- Includes exclusion/restriction 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; 4. workers in Export Processing Zones and 5. 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).

75. Exclusion/restriction of subjects covered by collective bargaining (de jure)

Article 4 of Convention No. 98;

Paras. 912-924 in Digest of decisions and principles;

Para. 250 in General Survey 1994.

- 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 the terms and conditions of employment 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.)

76. Compulsory arbitration accorded to collective bargaining (de jure)

[Article 4 of Convention No. 98;](#)

[Paras. 925-928, 992-997, 566-567 in Digest of decisions and principles;](#)

[Paras. 254-259 in General Survey 1994.](#)

- *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;
- Includes 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, except in cases, where authorities might be justified to step in when it is obvious that the longstanding deadlock in bargaining will not be broken without some initiative on their part.

77. Infringements on the determination/recognition of trade unions entitled to collective bargaining (de jure)

[Article 4 of Convention No. 98;](#)

[Paras. 944-983 in Digest of decisions and principles;](#)

[Paras. 238-243 in General Survey 1994.](#)

- 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 bases the determination of the representative organization not 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 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.

- *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.)

78. Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining (de jure)

Article 4 of Convention No. 98;

Paras. 880-881, 925-938, 984-991, 1003-1004, 1046, 1058 in Digest of decisions and principles;

Paras. 244-249 in General Survey 1994.

- Includes legislation that infringes the free and voluntary character of collective bargaining and allows any undue interference in the negotiation process;
- Includes lack of mechanisms for the promotion of collective bargaining (i.e. lack of machinery and procedures to facilitate bargaining, lack of access to information on the economic situation of the bargaining unit, enterprise or companies in the same sector) or includes legislation that does not guarantee the autonomy of parties to collective bargaining (Digest, Para. 933.);
- 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 as part of the government's economic stabilization policy allows restrictions on future collective bargaining for instance on wage rates or wage increases beyond the level of the increase in the cost of living, except if such restriction is imposed as an exceptional measure and only to the extent that is necessary (e.g. not exceeding sectors actually facing an emergency situation), without exceeding a reasonable period and if it is accompanied by adequate safeguards to protect workers' living standards (Digest, Paras. 1024-1032.).
- *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:* “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.).
- *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.)

79. Acts of interference according to collective agreements (de jure)

Article 4 of Convention No. 98;
Paras. 940-943, 1001-1023, 1047-1053 in Digest of decisions and principles;
Paras. 251-253 in General Survey 1994.

- Includes legislation that allows intervention in drafting collective agreements (e.g. observance of criteria pre-established by the law);
- 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), unless the parties agreed on the suspension/cancellation;
- Includes legislation that allows/requests prior approval of collective agreements (system of previous administrative authorization) 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, 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.);
- 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.).
- *Does not include* a “procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion”. (General Survey, Para. 253.)

80. Infringements of the consultation with workers’ organizations (de jure)

[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 establishment 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).

81. Other de jure acts of prohibitions, infringements and interference re Iva (de jure)

- Includes other de jure prohibitions, infringements, interference not included above under evaluation criteria nos. 73-80 that violates (either in a direct or an indirect way, by punishing them or by discouraging them) workers’ right to bargain collectively.

82. Lack of guarantee of due process of law re Iva (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure right to collective bargaining, as listed under evaluation criteria nos. 73-81.

IVa. Right to collective bargaining, de facto

83. Obstacles towards collective bargaining in practice (de facto)

[Article 4 of Convention No. 98;](#)
[Paras. 880-882 in Digest of decisions and principles;](#)
[Paras. 235-236, 260-264 in General Survey 1994.](#)

- Includes obstacles to the free and voluntary negotiation in practice;
- Includes major difficulties, restrictions in practice on the right to collective bargaining.

84. Exclusion/restriction of workers from the right to collective bargaining (de facto)

[Article 5-6 of Convention No. 98;](#)
[Paras. 885-911 in Digest of decisions and principles;](#)
[Paras. 261-264 in General Survey 1994.](#)

- Includes the explicit or indirect exclusion/restriction of workers from the right to collective bargaining other than the armed forces, police and public servants engaged in the administration of State;
- *Does not include* exclusion/restriction of the armed forces, police and public servant engaged in the administration of State;
- Includes exclusion/restriction based on race, political opinion, nationality;
- Includes exclusion/restriction 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; 4. workers in Export Processing Zones and 5. 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.).

85. Exclusion/restriction of subjects covered by collective bargaining (de facto)

Article 4 of Convention No. 98;
Paras. 912-924 in Digest of decisions and principles;
Para. 250 in General Survey 1994.

- Includes infringements by 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.)

86. Compulsory arbitration accorded to collective bargaining (de facto)

Article 4 of Convention No. 98;
Paras. 925-928, 992-997, 566-567 in Digest of decisions and principles;
Paras. 254-259 in General Survey 1994.

- *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;
- 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 (except cases, when authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part).

87. Infringements on the determination/recognition of trade unions entitled to collective bargaining (de facto)

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

- 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 discretionary refusal to recognize a trade union, the non-recognition of the most representative organizations and the infringement of the right to determine the trade union(s) entitled to negotiate;
- 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 the request for a 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 practices applied in order to delay the recognition process (excessive, lengthy and complicated procedure);
- 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.)

88. Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining (de facto)

Article 4 of Convention No. 98;
Paras. 880-881, 925-938, 984-991, 1003-1004,1046, 1058 in Digest of decisions and principles;
Paras. 244-249 in General Survey 1994.

- Includes infringements in practice 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 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 restrictions as part of the government's economic stabilization policy on future collective bargaining for instance on wage rates or wage increases beyond the level of the increase in the cost of living, except if such restriction is imposed as an exceptional measure and only to the extent that is necessary (e.g. not exceeding sectors actually facing an emergency situation), without exceeding a reasonable period and if it is accompanied by adequate safeguards to protect workers' living standards (Digest, Paras. 1024-1032.).
- *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:* "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.)
- *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.)

89. Acts of interference according to collective agreements (de facto)

Article 4 of Convention No. 98;

Paras. 940-943, 1001-1023, 1047-1053 in Digest of decisions and principles;

Paras. 251-253 in General Survey 1994.

- Includes the failure to recognize and/or implement a collective agreement, even on a temporary basis;
- Includes infringements of collective agreements in practice (e.g. intervention in drafting collective agreements; 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.);
- 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;
- *Does not include* a “procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion”. (General Survey, Para. 253.)

90. Infringements of the consultation with workers’ organizations (de facto)

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

- Includes infringements on 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 establishment 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 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).

91. Other de facto acts of prohibitions, infringements and interference re IVb (de facto)

- Includes other de facto prohibitions, infringements and interference not included above under evaluation criteria nos. 83-90 that violates (either in a direct or an indirect way or by intimidating, discouraging workers) workers' right to bargain collectively.

92. Lack of guarantee of due process of law re IVb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto right to collective bargaining, as listed under evaluation criteria nos. 83-91.

Va. Right to strike, de jure

93. General prohibition on the right to strike (de jure)

[Paras. 520-523, 570-571 in Digest of decisions and principles;](#)
[Paras. 136-142, 145-151, 152 in General Survey 1994.](#)

- Includes explicit or indirect prohibition by law of the right to strike.
- *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 (Digest, Para. 571., General Survey, Para 152.).

94. Exclusion/restriction of workers from the right to strike (de jure)

[Paras. 572-594 in Digest of decisions and principles;](#)
[Paras. 154-160, 169 in General Survey 1994.](#)

- Includes explicit or indirect exclusion/restriction by law of workers from the right to strike other than those 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)⁹⁰ or public servants exercising authority in the name of State;⁹¹

- Includes legislation that provide an overly broad definition of essential services and public sector workers exercising authority in the name of State;
- Includes exclusion/restriction based on race, political opinion, nationality;
- Includes exclusion/restriction 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; 4. workers in Export Processing Zones and 5. 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.).
- *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.)

95. Exclusion/restriction based on the objective of the strike (de jure)

[Paras. 526-544 in Digest of decisions and principles;](#)

[Paras. 165-168 in General Survey 1994.](#)

- 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

⁹⁰ *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, 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, Para. 587.)

⁹¹ E.g. officials working in the administration of justice and the judiciary. (Digest, Para. 578.)

are supporting is in itself lawful;

- Includes cases when the sympathy/solidarity strike was called by federation, confederation (Digest, Para. 525.) or by an international affiliation;
- *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;
- 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 prohibition on strike actions that are not linked to a collective dispute to which the employee or union is a party (Digest, Para. 538.).
- *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.)

96. Exclusion/restriction based on the type of the strike (de jure)

[Paras. 545-546 in Digest of decisions and principles;](#)
[Para. 173 in General Survey 1994.](#)

- 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.
- *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, Para. 173.)

97. Lack of compensatory guarantees accorded to lawful restrictions on the right to strike (de jure)

[Paras. 595-603 in Digest of decisions and principles;](#)
[Para. 164 in General Survey 1994.](#)

- 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);

- Includes e.g. legislation that entitles the minister to appoint all members in the conciliation/arbitration body.

98. Infringements on the determination of minimum services (de jure)

[Paras. 604-627 in Digest of decisions and principles;](#)
[Paras. 161-162 in General Survey 1994.](#)

- 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.);⁹²
- Includes imposition of a minimum service by law that is not genuinely and exclusively a minimum service and 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.).

99. Compulsory arbitration accorded to strikes (de jure)

[Paras. 564- 569 in Digest of decisions and principles;](#)
[Para. 153 in General Survey 1994.](#)

- *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 (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 (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

⁹² 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, Para. 615-626.).

unilaterally to compulsory arbitration to prevent or end strike actions.

100. Infringements of the prerequisites lawfully required for exercising the right to strike (de jure)

[Paras. 547-563 in Digest of decisions and principles;](#)
[Paras. 170-172 in General Survey 1994.](#)

- *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.);
- Includes legislation that sets or allows to set 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.).

101. Acts of interference during the course of strike action (de jure)

[Paras. 628-653 in Digest of decisions and principles;](#)
[Paras. 174-175 in General Survey 1994.](#)

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

102. Imposing excessive sanctions in case of legitimate and peaceful strikes (de jure)

Paras. 667-674 in Digest of decisions and principles;
Paras. 176-179 in General Survey 1994.

- *Legislation that allows direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes should be coded under evaluation criterion no. 35;*
- *Legislation that allows direct and/or indirect discriminatory dismissal/suspension/refusal of re-employment for participating in legitimate and peaceful strikes should be coded under evaluation criterion no. 37;*
- Includes legislation that allows excessive, disproportionate and/or penal sanctions for organizing or participating in legitimate and peaceful strike, irrespectively whether the strike is lawful or unlawful under the national legislation;
- Includes legislation that orders/allows the closure of trade union offices because of strike action (Digest, Para. 659.).
- *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.)

103. Other de jure acts of prohibitions, infringements and interference re Va (de jure)

- Includes other de jure prohibitions, infringements, interference not included above under evaluation criteria nos. 93-102 that violates (either in a direct or an indirect way, by punishing them or by discouraging them) the right to strike.

104. Lack of guarantee of due process of law re Va (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure right to strike, as listed under evaluation criteria nos. 93-103.

Vb. Right to strike, de facto

105. Obstacles to strike actions in practice (de facto)

[Paras. 520-523, 570-571 in Digest of decisions and principles;](#)
[Paras. 136-142,145-151, 152 in General Survey 1994.](#)

- Includes major difficulties, restrictions, obstructions in practice on the right to strike 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. (Digest, Para. 571, General Survey, Para 152.)

106. Exclusion/restriction of workers from the right to strike (de facto)

[Paras. 572-594 in Digest of decisions and principles;](#)
[Paras. 154-160, 169 in General Survey 1994.](#)

- Includes exclusion/restriction of workers from the right to strike in practice other than those excluded/restricted by existing legislation that is in line with the principles of freedom of association, thus workers working in essential services in the strict sense of term⁹³ - 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;⁹⁴
- Includes exclusion/restriction based on race, political opinion, nationality;
- Includes exclusion/restriction 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; 4. workers in Export Processing Zones and 5. 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.).
- *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.)

⁹³ See footnote No. 90.

⁹⁴ See footnote No. 91.

107. Exclusion/restriction based on the objective of the strike (de facto)

[Paras. 526-544](#) in Digest of decisions and principles;
[Paras. 165-168](#) in General Survey 1994.

- Includes discretionary power of authorities to prohibit and/or restrict a strike by 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), including those ones called by federation, confederation (Digest, Para. 525.) or by an international organization;
- Includes prohibition/restriction of strikes related to recognition disputes.
- *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.)

108. Exclusion/restriction based on the type of the strike (de facto)

[Paras. 545-546](#) in Digest of decisions and principles;
[Para. 173](#) in General Survey 1994.

- 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*: "(...) 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, Para. 173.)

109. Lack of compensatory guarantees accorded to lawful restrictions on the right to strike (de facto)

[Paras. 595-603](#) in Digest of decisions and principles;
[Para. 164](#) in General Survey 1994.

- 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.

110. Infringements on the determination of minimum services (de facto)

[Paras. 604-627 in Digest of decisions and principles;](#)

[Paras. 161-162 in General Survey 1994.](#)

- 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.);⁹⁵
- Includes imposition of minimum service in practice – despite existing legislation - in cases where it goes beyond the intention 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.).

111. Compulsory arbitration accorded to strikes (de facto)

[Paras. 564-569 in Digest of decisions and principles;](#)

[Para. 153 in General Survey 1994.](#)

- *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; 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.

⁹⁵ See footnote No. 92.

112. Infringements of the prerequisites lawfully required for exercising the right to strike (de facto)

Paras. 547-563 in Digest of decisions and principles;
Paras. 170-172 in General Survey 1994.

- Includes too lengthy period of time for previous negotiation, conciliation and mediation;
- Includes infringements in practice with respect to 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.)

113. Acts of interference during the course of strike action (de facto)

Paras. 628-653 in Digest of decisions and principles;
Paras. 174-175 in General Survey 1994.

- Includes declaration of a strike as illegal by public authorities in practice but not by an independent body (Digest, Para. 628.);
- 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 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.

114. Imposing excessive sanctions in case of legitimate and peaceful strikes (de facto)

Paras. 667-674 in Digest of decisions and principles;
Paras. 176-179 in General Survey 1994.

- *Cases of direct and/or indirect discriminatory measures for participating in legitimate and peaceful strikes should be coded under evaluation criterion no. 50;*
- *Cases of direct and/or indirect discriminatory dismissal/suspension/refusal of re-employment for participating in legitimate and peaceful strikes should be coded under evaluation criterion no. 53;*
- Includes excessive, disproportionate and/or penal sanctions for organizing or participating in legitimate and peaceful strike, irrespectively whether the strike is lawful or unlawful under the national legislation;
- Includes the closure of trade union offices because of strike action (Digest, Para. 659.).

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- *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.)

115. Committed against trade union leaders re 114 (de facto)

- Includes cases when the incident is committed against trade union leaders.

116. Other de facto acts of prohibitions, infringements and interference re Vb (de facto)

- Includes other de facto prohibitions, infringements and interference not included above under evaluation criteria nos. 105-115 that violates (either in a direct or an indirect way or by intimidating, discouraging workers) right to strike.

117. Lack of guarantee of due process of law re Vb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto right to strike, as listed under evaluation criteria nos. 105-116.

3.2. *Issues of non-compliance in relation to the rights of employers' organizations*

Via. Fundamental civil liberties, de jure

118. Arrest, detention, imprisonment, charging and fining of members of employers' organizations (de jure)

[Paras. 61-95 in Digest of decisions and principles;](#)
[Paras. 31-32 in General Survey 1994.](#)

- 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 membership in employers' organization and/or legitimate activities in relation with their right of association – even for a short period;
- Includes legislation that indicates prosecution and sanction for membership in employers' organization and/or activities in relation with their right of association 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, freedom of association and collective bargaining rights and its guarantees;
- Includes legislation that allows arrest and detention of members of employers' organizations 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 members of employers' organizations on ground of the “disturbance of public order”;
- Includes legislation that imposes sanctions that are not proportionate to the offence or fault committed.

119. Infringements of employers' organizations' basic freedoms and/or of their right to protection of their premises and property (de jure)

[Paras. 121-192, 706-708 in Digest of decisions and principles;](#)
[Paras. 34-40 in General Survey 1994.](#)

- Includes de jure non-compliance with freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes legislation that (directly or indirectly) violates freedom of movement of members of employers' organizations (Digest, Paras. 121-129.). It includes cases such as:
 - Prohibition for persons to leave any country, including their own country, and to return to their country for reasons of membership in employers' organizations and/or legitimate activities in relation with their right of association (Digest, Para. 122.);
 - House arrest, surveillance, banishment or expulsion from their country for membership in employers' organizations and/or their legitimate activities (Digest, Para. 124., 128.).
- Includes legislation that is such as to violate employers' right for 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, freedom of association and collective bargaining rights and its guarantees;
- Includes both the meetings of organizations in their premises, 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 attendance of meetings by a representative of the public authorities;
- Includes requesting unreasonable, excessive formalities, setting time restrictions;
- Includes lack of precise instruction to police authorities in order to avoid cases where people are arrested simply for having organized or participated in a demonstration.
- Includes legislation that violates employers' freedom of opinion and expression (Digest, Paras. 154-174.);
- This includes freedom of opinion and expression both at their meetings, in publications (through uncensored and independent press (Digest, Para. 158.)) and in other activities in relation to their right of association (Digest, Para. 154.);
- Includes acts of previous authorization and censorship of publications; subjecting employers' organization's 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;
- Includes measures of administrative control, arbitrary withdrawal of a licence;
- Includes the temporary or definitive suspension and/or seizure of publications (Digest, Paras. 172-173.).
- Includes legislation that allows arbitrary occupation and seizure of employers' organizations' and their members' premises and property;
- Includes confiscation based on legislation and 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, freedom of association and collective bargaining rights and its guarantees;
- Includes entry or search with prior authorization or with obtained legal warrant for activities 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, freedom of association and collective bargaining 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 employers' concerned (Digest, Paras. 706-709.; General Survey, Paras. 186-188.);
- Includes legislation that allows the closure of enterprise in the event of a strike and thus infringes the freedom of work of persons not participating in a strike and disregards the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the

right of employers and managerial staff to enter the installations of the enterprise and to exercise their activities) (Digest, Para. 676.).

120. Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency (de jure)

[Paras. 193-204](#) in Digest of decisions and principles;
[Paras. 677, 701, 777](#) in Digest of decisions and principles;
[Paras. 41-43](#) in General Survey 1994.

- Includes legislation that allows unjustified suspensions, prohibitions, derogations, exemptions from civil liberties, rights of employers' organizations and its guarantees based on a reason that a state of emergency exists (e.g. arbitrary arrest, detention of members' of employers' organizations, restrictions on their meetings, restrictions on publications; suspension or dissolution of associations by administrative authority, 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.).

121. Lack of guarantee of due process of law re VIa (de jure)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- 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 rights of employers' organizations;
- Includes legal proceedings overly lengthy (Digest, Paras. 104-105.);
- Includes the lack of dissuasive and exemplary sanction or compensation for damages suffered.
- *Note:* Includes de jure lack of guarantee of due process of law with regard to de jure fundamental civil liberties, as listed under evaluation criteria nos. 118-120.

VIb. Fundamental civil liberties, de facto

122. Murder or disappearance of members of employers' organizations (de facto)

[Paras. 42-60](#) in Digest of decisions and principles;
[Paras. 28-30](#) in General Survey 1994.

- Includes those cases where the murder or disappearance is connected with membership in

employers' organization and/or activities in relation of their right of association (e.g. targeted killings, dispersal of public meetings by the police involving loss of life);

- Refers only to de facto issues of non-compliance, as it is unlikely that national legislation would contain any paragraph that would explicitly render death penalty for membership in employers' organization or their activities;
- Includes murder or disappearance of family members of members of employers' organizations.

123. Committed against leaders of the organization re 122 (de facto)

- Includes cases when the incident is committed against leaders of employers' organizations.

124. Lack of guarantee of due process of law and/or impunity re 122 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- 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.
- *Note:* Impunity refers to cases in which those committing violations are not brought to account since they are not subject to inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to dissuasive sanctions. It also includes ineffective investigatory institutions in which no meaningful progress in investigative and judicial phases can be observed or where such institutions are observed not to be independent.

125. Severity (widespread and/or systematic) re 122 (de facto)

[Paras. 52-53](#) in Digest of decisions and principles.

- Includes flagrant cases, occurring in a widespread and/or systematic manner that is continuously followed by the absence of independent judicial inquiry and judgements against the guilty parties (situation of impunity), therefore reinforcing the climate of violence and insecurity and thus creating an extremely damaging effect on the exercise of freedom of association and collective bargaining rights.

126. Other violent action and/or arrest, detention, imprisonment, charging and fining of members and leaders of the employers organizations (de facto)

[Paras. 42-95 in Digest of decisions and principles;](#)
[Paras. 28-33 in General Survey 1994.](#)

- Includes those cases where the violent action is connected with membership in employers' organization and/or activities in relation to their right of association;
- Includes violent actions against family members of members of employers' organizations;
- Refers only to de facto issues of non-compliance;
- 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 intimidation (e.g. death threat), coercion under threat of force;
- Includes cases in which the dispersal of public meetings by the police, being excessive, has involved serious injury;
- Includes the militarization of workplaces;
- Includes the creation of an environment of fear, climate of violence, coercion and threats;
- Includes prosecution of and arbitrary sanctions (arrest, detention, imprisonment, fines or other heavy criminal sanctions) for reasons connected with membership in employers' organizations and/or their legitimate activities (Digest, Para. 71.);
- Includes prosecution of and arbitrary sanctions (arrest, detention, imprisonment, fines) based on fictitious charges;
- Includes arrest, detention and apprehension without any charges being brought or without any court warrant being issued;
- 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.).

127. Committed against leaders of the organization re 126 (de facto)

- See under evaluation criterion no. 123

128. Lack of guarantee of due process of law and/or impunity re 126 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120 in Digest of decisions and principles;](#)
[Paras. 29, 31-32 in General Survey 1994.](#)

- See under evaluation criterion no. 124

129. Severity (widespread and/or systematic) re 126 (de facto)

Paras. 52-53 in Digest of decisions and principles.

- See under evaluation criterion no. 125

130. Infringements of employers' organizations' basic freedoms and/or attacks against their premises and property (de facto)

Paras. 121-192, 706-708 in Digest of decisions and principles;
Paras. 34-40 in General Survey 1994.

- Includes de facto non-compliance with freedom of movement; rights of assembly and demonstration; freedom of opinion and expression;
- Includes infringements in practice that results in the prohibition or restriction of freedom of movement. It includes cases such as:
 - Prohibition to leave any country, including the employer own country, and to return to his/her country, withholding travel documents (Digest, Para. 122.) or other measures that prevent representatives of employers' organizations from e.g. participating in international meetings of employers' organizations;
 - Restricted movement; house arrest, surveillance (Digest, Para. 124.);
 - Practice of freeing members of employers' organizations on condition that they leave the country (Digest, Para. 127.);
 - Restriction of a person's movements to a limited area, accompanied by the prohibition of entry into the area in which his/her organization operates and he/she carries on his/her functions.
- Includes infringements in practice of the right of peaceful and legitimate assembly and demonstration by interference of public authorities for reasons that go beyond the aim of maintaining public order and security (Digest, Paras. 130-153.);
 - This contains both the meetings of organizations in their premises and also public meetings and demonstration (Digest, Paras. 131-151.);
 - Includes the use of force that goes beyond the aim of maintaining public order and security;
 - Includes cases of arbitrary refusal to hold public meetings and demonstrations;
 - Includes the holding of meetings only with the presence of the members of the police or any representative of the public authorities (General Survey, Para. 35.);
 - Includes lack of precise instruction to police authorities in order to avoid cases where public order is not seriously threatened, people are not arrested simply for having organized or participated in a demonstration.
- Includes infringements in practice of employers' freedom of opinion and expression (Digest, Paras. 154-173.);
 - This includes freedom of opinion and expression both at employers' organizations meetings, in publications (through uncensored and independent press (Para. 158.)) and in other activities in relation to their right of association (Digest, Para. 154.);

- Includes measures of arbitrary administrative control, withdrawal of a licence, control of printing plants and equipments, the control of paper supply (General Survey, Paras. 38-39.);
- Includes censorship in practice; and the arbitrary temporary or definitive suspension and/or seizure of publications (Digest, Paras. 172-173.).
- Includes arbitrary occupation, seizure and destruction of premises and property of employers' organizations and its members 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.);
- Includes entry or search with prior authorization or with obtained legal warrant in cases 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 search is not restricted to the purpose for which the warrant was issued;
- 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 employers concerned (Digest, Paras. 706-709.; General Survey, Paras. 186-188.);
- Includes the closure of enterprise in the event of a strike, being an infringement of the freedom of work of person not participating in a strike and the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of employers and managerial staff to enter the installations of the enterprise and to exercise their activities) (Digest, Para. 676.).

131. Committed against leaders of the organization re 130 (de facto)

- See under evaluation criterion no. 123

132. Lack of guarantee of due process of law and/or impunity re 130 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- See under evaluation criterion no. 124

133. Severity (widespread and/or systematic) re 130 (de facto)

[Paras. 52-53](#) in Digest of decisions and principles.

- See under evaluation criterion no. 125

134. Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency (de facto)

[Paras. 193-204](#) in Digest of decisions and principles;
[Paras. 677, 701, 777](#) in Digest of decisions and principles;
[Paras. 41-43](#) in General Survey 1994.

- Includes unjustified suspensions, prohibitions, derogations, exemptions from civil liberties, freedom of association and collective bargaining rights and its guarantees based on a reason that a state of emergency exists (e.g. arbitrary arrest, detention of employers, restrictions on their meetings, restrictions on publications;, suspension or dissolution of associations by administrative authority, etc.);
- Includes calling state of emergency by the state for the purpose of evading the rights of employers' organizations, freedom of association principles or ignoring civil liberties;
- Includes major difficulties, restrictions in practice on civil liberties, rights of employers' organizations and its guarantees in the event of state of emergency.
- *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.).

135. Lack of guarantee of due process of law and/or impunity re 134 (de facto)

[Paras. 48-57, 75-83, 89-90, 96-120](#) in Digest of decisions and principles;
[Paras. 29, 31-32](#) in General Survey 1994.

- See under evaluation criterion no. 124

136. Severity (widespread and/or systematic) re 134 (de facto)

[Paras. 52-53](#) in Digest of decisions and principles.

- See under evaluation criterion no. 125

VIIa. Right of employers to establish and join organizations, de jure

137. Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations (de jure)

[Articles 1-2 and 7 of Convention No. 87](#);
[Article 1 and 3 of Convention No. 98](#);
[Paras. 209-308](#) in Digest of decisions and principles;
[Paras. 44-78](#) in General Survey 1994.

- Includes explicit general legal prohibition on the establishment of employers' organization;
- Includes the explicit exclusion or indirect restriction of employers from the right to

establish and/or join employers' organizations;

- Includes exclusion/restriction based on race, political opinion, nationality (Digest, Paras. 210-215.) or on occupational categories;
- 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 legislation that goes beyond setting formalities to ensure the normal functioning of organization (Digest, Paras. 275-278.);
- Includes legislation obliging organizations to deposit their rules, unless this is merely a formality;
- Includes acquisition of legal personality subject to legal conditions that restrict establishment of employers' organizations (Digest, Para. 272.);
- 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 employers 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. 295.);
- Includes legislation that entitles the competent authority with discretionary power to grant or reject registration;
- Includes legislation that allows a decision to prohibit the registration of an employers' organization to become effective before the statutory period of lodging an appeal has expired or before the court has confirmed the appeal (Digest, Para. 301.);
- Includes legislation that allows direct and/or indirect discriminatory measures or prejudice against an employer on grounds of being a member in an employers' organization or for exercising his/her freedom of association and collective bargaining rights;
- Includes lack of adequate legal measure guaranteeing effective protection for employers against discriminatory measures (prompt, impartial and fair procedures together with sufficiently dissuasive sanctions against such discriminatory measures).

138. Restrictions on the right of employers to establish and join to organizations of their own choosing (de jure)

Article 2 of Convention No. 87;

Paras. 309-345, 360-362 in Digest of decisions and principles;

Paras. 79-107 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 employers' organizations (e.g. restricting the members of the organization to employers from the same occupation, setting undue

quota or high minimum proportion of certain employers in law);

- Includes cases where legislation permits only first level organizations.
- Includes legislation that permits only single organizations at various levels and imposes a monopoly situation (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 employers' organization for a given category of employers);
- Includes legislation that imposes either a monopoly situation or the proliferation of employers' organizations and thus obstruct employers' organizations to establish or join organizations "of their own choosing" (Digest, Paras. 320-323.);
- Includes cases when the indirect result of a legislation is that it is impossible to establish a second organization representing employers' interest (e.g. by fixing the percentage for membership in a level that makes it impossible to establish several organizations (General Survey, Para. 94.));
- 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 employers' organization;
- Includes legislation that allows discrimination between employers' organizations if it creates indirectly a monopoly situation (for instance by placing an employers' organization at an advantage or disadvantage in relation to another employers' organization (Digest, Para. 341.)); *other cases of discrimination between employers' organizations should be coded under evaluation criterion no. 140.*
- *Does not include* the distinction between the most representative employers' organizations and other employers' organizations, except if this distinction has an effect of depriving other employers' 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.) or if the determination of the most representative employers' organization is not based on objective and pre-established criteria (Digest, Para. 347.).

139. Dissolution/suspension of legally functioning organizations by public authorities and/or legislation (de jure)

Article 4 of Convention No. 87;

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

Paras. 180-185 in General Survey 1994.

- Includes legislation that allows dissolution or suspension by administrative authorities, (administrative dissolution of employers' organizations) without ensuring the right of appeal to an independent and impartial judicial body (Digest, Para. 691.);
- Includes legislation that allows the cancellation of registration of an organization by the

registrar or the removal of employers' organizations from the register (Digest, Paras. 685-686.) or the annulment/suspension of legal personality;

- Includes legislation that allows dissolution and suspension for reasons considered to be illegal in the national legislation, but which legislation is such as to impair or shall be so applied to impair rights of employers' organizations and its guarantees;
- Includes dissolution and suspension by law on account of unreasonably determined insufficient membership (Digest, Para. 680.);
- Includes legislation that allows dissolution or suspension for reasons that are not proportionate (e.g. for illegal activities carried out by some leaders, for irregularities in the financial management, etc.);
- Includes dissolution/suspension by law where the dissolution/suspension is not being a remedy of last resort with the exhaustion other possibilities with less serious effects for the organization as a whole;
- Includes 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.).

140. Acts of interference of workers' organizations and/or public authorities (de jure)

Article 2 of Convention No. 98;

Paras. 855-859, 863-868 in Digest of decisions and principles;

Paras. 225-234 in General Survey 1994.

- Includes legislation that allows undue interference by workers' organizations and/or public authorities that is such as to impair or shall be so applied as to impair employers' organization rights and its guarantees;
- Includes legislation that allows acts of interferences which are designed to promote the establishment of an employers' organization under the domination of public authorities;
- Includes legislation that allows for discrimination between employers' organizations, *unless it leads to a monopoly situation in which case it should be coded under evaluation criterion no. 138*;
- Includes legislation that allows the disclosure of information on membership and activities in employers' organization; infringement on the inviolability of correspondence and telephonic conversation; establishment of a register containing data on members of employers' organization (Digest, Paras. 175-177.).

141. Lack of adequate legal guarantees against acts of interference (de jure)

Article 2 of Convention No. 98;

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

Paras. 225-234 in General Survey 1994.

- Includes the lack of clear and precise legal provisions ensuring the adequate protection of employers' organizations against acts of interference (rapid and efficient procedures,

coupled with effective and dissuasive sanctions).

142. Infringement of the right to establish and join federations/confederations/international organizations (de jure)

Article 6-7 of Convention No. 87;

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

Paras. 189-198 in General Survey 1994.

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

143. Lack of guarantee of due process of law re VIIa (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure right of employers to establish and join organizations, as listed under evaluation criteria nos. 137-142.

VIIb. Right of employers to establish and join organizations, de facto

144. Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations (de facto)

Articles 1-2 and 7 of Convention No. 87;
Article 1 and 3 of Convention No. 98;
Paras. 209-308 in Digest of decisions and principles;
Paras. 44-78 in General Survey 1994.

- Includes major difficulties, restrictions and obstacles in practice on the right of employers to establish and join organizations;
- Includes the explicit exclusion or indirect restriction of employers from the right to establish and/or join employers' organizations;
- Includes exclusion/restriction based on race, political opinion, nationality or on occupational categories;
- 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 employers' organization;
- Includes undue practices that are able to impede the right of employers to establish organization (e.g. intentional delays in administrative procedures);
- Includes cases where the formalities prescribed by law for the establishment of an employers' organization are applied in a manner as to delay or prevent the establishment of an employers' organization (Digest, Para. 279.);
- Includes decisions to prohibit the registration of an employers' organization 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;
- Includes direct and/or indirect discriminatory measures or prejudice against an employer on grounds of being a member in an employers' organization or for exercising his/her freedom of association and collective bargaining rights;
- Includes lack of adequate protection in practice for employers against discriminatory measures (infringements in practice of the right to fair, impartial and rapid trial, lack of dissuasive sanctions against such discriminatory measures).

145. Restrictions on the right of employers to establish and join to organizations of their own choosing (de facto)

Article 2 of Convention No. 87;
Paras. 309-345, 360-362 in Digest of decisions and principles;
Paras. 79-107 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;

- Includes restrictions in practice on the composition of the employers' organization (e.g. allowing only employers from the same occupation to become a member of the organization);
- Includes exercise of discretionary power of the competent authorities in practice to refuse the registration of an employers' organization when they consider that an already registered organization adequately represents the employers 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 employers' organization on the account of other employers' organizations, placing one organization at an advantage or disadvantage in relation to the others and thus creating indirectly a monopoly situation;
- Includes state-sponsored and controlled monopoly of employers' organization;
- Includes discrimination between employers' organizations, if it creates indirectly a monopoly situation (for instance 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) *other cases of discrimination between employers' organizations should be coded under evaluation criterion no. 147.*
- *Does not include* the distinction between the most representative employers' organizations and other employers' organizations, except if this distinction has an effect of depriving other employers' 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.) or if the determination of the most representative employers' organization is not based on objective and pre-established criteria (Digest, Para. 347.).

146. Dissolution/suspension of legally functioning organizations by public authorities and/or legislation (de facto)

Article 4 of Convention No. 87;
Paras. 677-705 in Digest of decisions and principles;
Paras. 180-185 in General Survey 1994.

- Includes arbitrary dissolution/suspension by administrative authorities (administrative dissolution of employers' organization) in practice;
- Includes discretionary cancellation of the registration of an organization by the registrar or their removal from the register, being tantamount to the dissolution of the organization by administrative authority (Digest, Para. 685.);
- Includes dissolution by the employers' organization 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 employers' organization;
- 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 where the dissolution/suspension was not a remedy of last resort with the exhaustion other possibilities with less serious effects for the organization as a whole;
- 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);
- Includes 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.).

147. Acts of interference of workers' organizations and/or public authorities (de facto)

Article 2 of Convention No. 98;

Paras. 855-859, 863-868 in Digest of decisions and principles;

Paras. 225-234 in General Survey 1994.

- Includes undue interference of workers' organizations and/or public authorities that is such as to impair or shall be so applied as to impair employers' organization rights and its guarantees;
- Includes acts of interferences which are designed to promote the establishment of an employers' organization under the domination of public authorities;
- Includes the establishment of parallel employers' organizations or other associations by public authorities; propaganda of public authorities against an already existing employers' organization or tactics in the form of bribes offered to members of employers' organization, or threats of closure of enterprise to encourage their withdrawal from their organization;
- Includes cases of government interferences when the government has one of its members as a leader of an employers' organization (Digest, Para. 867.);
- Includes discrimination between employers' organizations, *unless it leads to a monopoly situation in which case it should be coded under evaluation criterion no. 145;*
- Includes disclosure of information on membership and activities in employers' organization; infringement on the inviolability of correspondence and telephonic conversation; establishment of a register containing data on members in employers' organization (Digest, Paras. 157-177.).

148. Lack of adequate guarantees against acts of interference (de facto)

Article 2 of Convention No. 98;

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

Paras. 225-234 in General Survey 1994.

- Includes infringements in practice of provisions ensuring the adequate protection of employers' organizations against acts of interference;

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

149. Infringement of the right to establish and join federations/confederations/international organizations (de facto)

Article 6-7 of Convention No. 87;
Paras. 710-768 in Digest of decisions and principles;
Paras. 189-198 in General Survey 1994.

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

150. Lack of guarantee of due process of law re VIIb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto right of employers to establish and join organizations, as listed under evaluation criteria nos. 144-149.

VIIIa. Other activities of employers' organizations, de jure

151. Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes (de jure)

Article 3 of Convention No. 87;

Paras. 369-519 in Digest of decisions and principles;

Paras. 108, 109-135 in General Survey 1994.

- Includes legislation that violates the rights of employers' organizations to freely draw up their constitutions and rules, to freely organize their internal and financial administration, activities and programmes.
- Infringements of the right of employers' organizations to freely draw up their constitutions and rules include:
 - 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 employers' organizations 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.));
 - Interference based on legislation, e.g. making the constitution and rules subject to prior approval of public authorities or enabling the public authorities to draw up the constitution;
 - 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.).
- Infringements of the right employers' organizations to freely elect their representatives include:
 - Legislation that restricts, infringes the right of employers' organizations to primarily determine the regulation of procedures and methods for the election of their officials e.g. through excessively precise, meticulous and detailed regulation (Digest, Paras. 392-393.);
 - Legislation that obliges employers' organizations to submit their candidates' names together with personal particulars in advance to the authorities;
 - Infringements of the right of employers' organizations 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 office) (Digest, Paras. 390., 405-426.);
 - Interference in the election by public authorities based on legislation (e.g. prior approval of the results of the elections by public authorities; nomination by the authorities/political parties of members; interference in various stage of the electoral process for instance by being physically present during the election; obligation to submit candidates' names in advance to the public authority (Digest, Paras. 429., 437-438.));
 - Legislation that restricts re-elections or sets the maximum length of terms of office (Digest, Paras. 425-426.; General Survey, Para. 121.);
 - Legal provisions that permit the suspension and removal of officers or the placing of employers' organizations under control e.g. through the appointment of temporary

administrators by the administrative authorities (Digest, Para. 444-453.);

- Legislation that – pending the final outcome of the judicial proceedings - allows suspending the validity of elections based on complaints brought before labour courts by an administrative authority challenging the results of elections (Digest, Para. 441.).
- Infringements of the right of employers’ organizations to freely organize their internal and financial administration include:
 - 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 employers’ organizations’ internal and financial administration;
 - Lack of financial independence (e.g. being financed in such a way as to allow the public authorities to enjoy discretionary powers over them);
 - Control and restriction on the use of dues and funds of employers’ organizations, including the collection of employers’ organizations’ dues (Digest, Para. 484.);
 - Legal provisions which give the authorities the right to restrict the freedom of a employers’ organization to administer and utilize its funds as it wishes for normal and lawful purposes of the organization;
 - Legal provisions exceeding the obligations normally limited to submitting periodic financial reports or allowing administrative control over the assets of employers’ organization (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);
 - Legislation prohibiting the acceptance of financial or other assistance from an international organization of employers to which it is affiliated or requiring the employers’ organization to obtain prior authorization to receive it;
 - Legislation that allows interference of public authorities in the right of employers’ organizations to resolve any disputes by themselves (Digest, Para. 460.).
- Infringements of the right of employers’ organizations to freely organize their activities and programmes include:
 - General prohibition in law of employers’ organizations’ participation - aiming the advancement of their economic and social objectives - in political activities (Digest, Para. 498.);
 - Establishment of a close relationship between employers’ organizations and a political party by legislation (e.g. with the aim to transform the employers’ organization into an instrument for the pursuance of political aims) (Digest, Para. 499.);
 - Legislative provisions which regulate in detail the internal functioning of employers’ organizations;
 - Prohibition or restriction in law of any other legitimate activities of employers’ organizations (Digest, Paras. 508-519., e.g. petitions, campaigns, organizing training programmes, etc.);
 - Legal restrictions/prohibitions relating to facilities necessary for the proper exercise of employers’ organizations’ functions that go beyond the aim to ensure respect for democratic rules.

152. Lack of guarantee of due process of law re VIIIa (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure other union activities, as listed under evaluation criterion no. 151.

VIIIb. Other activities of employers' organizations, de facto

153. Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes (de facto)

[Article 3 of Convention No. 87;](#)
[Paras. 369-519 in Digest of decisions and principles;](#)
[Paras. 108, 109-135 in General Survey 1994.](#)

- Includes infringements in practice of the rights of employers' organizations to freely draw up their constitutions and rules, to freely organize their internal and financial administration, activities and programmes.
- Infringements of the right of employers' organizations to freely draw up their constitutions and rules in practice include:
 - Interference in practice in the right of employers' organizations to freely draw or amend constitutions and rules (e.g. making the approval of the constitution and rules subject to arbitrary decisions of public authorities);
 - Includes cases where public authorities interfere in practice to draw up constitutions and rules of employers' organizations;
 - 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;
 - Requirement of amendments to constitution in practice that go beyond formal requirements;
 - Requirement of making the constitution subject to approval by the central or higher level organizations.
- Infringements of the right of employers' organizations to freely elect their representative in practice include:
 - De facto interference by public authorities in the right of employers' organizations to freely elect/re-elect their representatives (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.);
 - Supervision of the election procedures by authorities (e.g. being physically present during

the election);

- Removal or suspension of officers in practice which is not the result of an internal decision of the employers' organization or normal judicial proceedings and the placement of employers' organizations under control by public authorities (Digest, Paras. 444-453.);
- Intimidation of candidates and other members of employers' organization to impede their participation;
- 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 elections (Digest, Para. 441.).
- Infringements of the right of employers' organizations to freely organize their internal and financial administration in practice include:
 - Lack of financial independence in practice (e.g. examination of books and other documents without safeguards of ordinary due processes of law; discretionary power of authorities for investigation and to demand information at any time by public authorities);
 - Cases where organizations are financed in such a way as to allow the public authorities to enjoy discretionary powers over them;
 - Control and restriction in practice on the use of dues and funds of employers' organizations, including the collection of union dues (Digest, Para. 484.);
 - Interference through freezing of employers' organizations bank accounts (Digest, Para. 486.);
 - Obstruction of the acceptance of financial or other assistance from an international organization of employers to which it is affiliated or imposing prior authorization in practice in order to receive it;
 - Interference of public authorities in the right of employers' organizations to resolve any disputes by themselves (Digest, Para. 460.).
- Infringements of the right of employers' organizations to freely organize their activities and programmes in practice include:
 - Major difficulties, restrictions in practice of employers organizations' participation in political activities for the promotion of their specific objectives (but not for the promotion of essentially political interests);
 - Major difficulties, restrictions in practice of any legitimate activities of employers' organizations (Digest, Paras. 508-519., e.g. petitions, campaigns, organizing training programmes, etc.);
 - Restrictions/prohibitions in practice relating to facilities necessary for the proper exercise of employers' organizations' functions that goes beyond the aim to ensure respect for democratic rules.

154. Lack of guarantee of due process of law re VIIIb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto other union activities, as listed under evaluation criterion no. 153.

IXa. Right to collective bargaining, de jure

155. Prohibition, restrictions on/exclusion from the right to collective bargaining (de jure)

Article 4-6 of Convention No. 98;
Paras. 880-911 in Digest of decisions and principles;
Paras. 235-236, 260-264 in General Survey 1994.

- Includes explicit general legal prohibition of collective bargaining;
- Includes the explicit exclusion or indirect restriction in law of employers or their organizations from the right to collective bargaining;
- Includes exclusion/restriction based on race, political opinion, nationality or on occupational categories.

156. Exclusion/restriction of subjects covered by collective bargaining (de jure)

Article 4 of Convention No. 98;
Paras. 912-924 in Digest of decisions and principles;
Para. 250 in General Survey 1994.

- 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, etc. (Digest, Para. 913.));
- Includes legal prohibition on the extension of matters covered by collective bargaining.
- *Does not include* legislation that excludes from the subjects covered by negotiations of matters which are for the employer to decide upon as part of the freedom to manage the enterprise.
- *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.)

157. Compulsory arbitration accorded to collective bargaining (de jure)

[Article 4 of Convention No. 98;](#)
[Paras. 925-928, 992-997 in Digest of decisions and principles;](#)
[Paras. 254-259 in General Survey 1994.](#)

- *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;
- Includes 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, except in cases, where authorities might be justified to step in when it is obvious that the longstanding deadlock in bargaining will not be broken without some initiative on their part.

158. Infringements on the determination/recognition of employers' organizations entitled to collective bargaining (de jure)

[Article 4 of Convention No. 98;](#)
[Paras. 944-983 in Digest of decisions and principles;](#)
[Paras. 238-243 in General Survey 1994.](#)

- Includes legislation that allows the discretionary refusal to recognize the organizations representative of the employers or the most representative one of these organizations for collective bargaining purposes;
- Includes legislation that bases the determination of the representative organization not on objective, pre-established and precise criteria;
- Includes legislation that requires excessively high representation thresholds or membership for employers' organizations for collective bargaining purposes, or sets excessive, lengthy and complicated procedures to determine the employers' organizations 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 grants exclusive collective bargaining rights to an organization (e.g. the Chamber of Commerce) which is created by law and to which affiliation is compulsory (Digest, Para. 983.).

159. Acts of interference in collective bargaining and collective agreement (de jure)

Article 4 of Convention No. 98;

Paras. 880-881, 925-938, 940-943, 984-991, 998-1023, 1046-1058 in Digest of decisions and principles;

Paras. 244-253 in General Survey 1994.

- Includes acts of interference in collective bargaining and/or insufficient promotion of collective bargaining and acts of interference according to collective agreements.
- Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining include:
 - Legislation that infringes the free and voluntary character of collective bargaining and allows any undue interference in the negotiation process;
 - Legislation that does not guarantee the autonomy of parties to collective bargaining (Digest, Para. 933.);
 - Lack of mechanisms for the promotion of collective bargaining (i.e. lack of machinery and procedures to facilitate bargaining);
 - 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;
 - Legislation which lays down mandatory bargaining and prevents the employer from withdrawing, irrespective of circumstances and at the risk of being disproportionately penalized (Digest, Para. 930.);
 - Legislation that determines and imposes the level of bargaining or entitles administrative authority to determine and impose the level of bargaining;
 - Legislation that sets unreasonable and discouraging time-limits for bargaining;
 - Legislation that infringes the rights of employers' organizations to choose which delegates will represent them in collective bargaining or that regulates the composition of the representatives of the parties (Digest, Paras. 981-983.);
 - Legislation that as part of the government's economic stabilization policy allows restrictions on future collective bargaining for instance on wage rates or wage increases beyond the level of the increase in the cost of living, except if such restriction is imposed as an exceptional measure and only to the extent that is necessary (e.g. not exceeding sectors actually facing an emergency situation), without exceeding a reasonable period and if it is accompanied by adequate safeguards to protect workers' living standards (Digest, Paras. 1024-1032.).
- *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.).
- *Does not include* legislation that allows for the employers' side in the negotiation process, where it represents the public administration to seek the opinion of the Ministry of Finances or an economic and financial body that verifies the financial impact of draft collective agreements, provided that the employers and trade union organizations can express their points of view through consultations (Digest, Paras. 1037., 1039.).

- *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.)
- *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 an 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 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. This is not the case of legislative provisions which, on the grounds of the economic situation of a country, impose unilaterally, for example, a specific percentage increase and rule out any possibility of bargaining, in particular by prohibiting the exercise of means of pressure subject to the application of severe sanctions. (...) The Committee (...) takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected.’” (Digest, Para. 1038.)
- Acts of interference according to collective agreements include:
 - Legislation that allows intervention in drafting collective agreements (e.g. observance of criteria pre-established by the law);
 - Legislation that allows the unilateral alteration of the content of collective agreements by public authorities (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);
 - 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), unless the parties agreed on the suspension/cancellation;
 - Legislation that allows/requests prior approval of collective agreements by public authorities (system of previous administrative authorization) 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, Para. 251.);
- Legal provisions on the obligation to renegotiate existing collective agreements (e.g. forced renegotiation of collective agreements for reasons of economic crisis);
 - 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.);
 - Legislation that sets an excessive statutory period for the duration in force of collective agreements (Digest, Paras. 1047-1049.);
 - Legislation that allows the extension of a collective agreement contrary to the views of the organization representing most of the employers 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.).
 - *Does not include* 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, as long as the relationship between individual contracts and the collective agreement has been agreed between the employer and the trade union organizations (Digest, Paras. 1054-1056.).
 - *Does not include* a “procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion”. (General Survey, Para. 253.).

160. Infringements of the consultation with employers’ organizations (de jure)

[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 establishment of new labour, social or economic policy (e.g. refusal to permit the participation of employers’ organizations in the preparation of new legislation affecting their interests).

161. Lack of guarantee of due process of law re IXa (de jure)

- 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 de jure lack of guarantee of due process of law with regard to de jure right to collective bargaining, as listed under evaluation criteria nos. 155-160.

IXb. Right to collective bargaining, de facto

162. Prohibition, restrictions on/exclusion from the right to collective bargaining (de facto)

Article 4-6 of Convention No. 98;

Paras. 880-911 in Digest of decisions and principles;

Paras. 235-236, 260-264 in General Survey 1994.

- Includes obstacles to the free and voluntary negotiation in practice;
- Includes major difficulties, restrictions in practice on the right to collective bargaining;
- Includes the explicit or indirect exclusion/restriction of employers or their organizations from the right to collective bargaining;
- Includes exclusion/restriction based on race, political opinion, nationality or on occupational categories.

163. Exclusion/restriction of subjects covered by collective bargaining (de facto)

Article 4 of Convention No. 98;

Paras. 912-924 in Digest of decisions and principles;

Para. 250 in General Survey 1994.

- Includes infringements by setting in practice the subjects covered by collective bargaining unilaterally by public authorities;
- Includes arbitrary refusal in practice to bargain collectively on certain issues.
- *Does not include* the exclusion from the subjects covered by negotiations of matters which are for the employer to decide upon as part of the freedom to manage the enterprise.
- *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.)

164. Compulsory arbitration accorded to collective bargaining (de facto)

[Article 4 of Convention No. 98;](#)
[Paras. 925-928, 992-997 in Digest of decisions and principles;](#)
[Paras. 254-259 in General Survey 1994.](#)

- *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 directly 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;
- 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 (except cases, when authorities might be justified to step in when it is obvious that the deadlock in bargaining will not be broken without some initiative on their part).

165. Infringements on the determination/recognition of employers' organizations entitled to collective bargaining (de facto)

[Article 4 of Convention No. 98;](#)
[Paras. 944-983 in Digest of decisions and principles;](#)
[Paras. 238-243 in General Survey 1994.](#)

- Includes cases where the determination of the representative organization is based on the discretionary decision of public authorities in practice;
- Includes the discretionary refusal to recognize an employers' organization, the non-recognition of the most representative organizations and the infringement of the right to determine the employers' organization(s) entitled to negotiate;
- Includes the discretionary rejection of the request for a 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 practices applied in order to delay the recognition process (excessive, lengthy and complicated procedure);
- Includes legislation that grants exclusive collective bargaining rights to an organization (e.g. the Chamber of Commerce) which is created by law and to which affiliation is compulsory (Digest, Para. 983.).

166. Acts of interference in collective bargaining and collective agreement (de facto)

Article 4 of Convention No. 98;

Paras. 880-881, 925-938, 940-943, 984-991, 998-1023, 1046-1058 in Digest of decisions and principles;

Paras. 244-253 in General Survey 1994.

- Includes acts of interference in collective bargaining and/or insufficient promotion of collective bargaining and acts of interference according to collective agreements;
- Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining in practice include:
 - Infringements in practice of the principle of free and voluntary bargaining, 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;
 - Mandatory bargaining and prevention of the employer from withdrawing, irrespective of circumstances and at the risk of being disproportionately penalized (Digest, Para. 930.);
 - Refusal to bargain collectively, to use the mechanisms promoting and facilitating collective bargaining;
 - Unilateral determination of the level of bargaining and the setting of unreasonable and discouraging time-limits for bargaining;
 - Infringements on the rights of employers' organizations to choose which delegates will represent them in collective bargaining (Digest, Paras. 984-985.);
 - Restrictions on future collective bargaining as part of the government's economic stabilization policy for instance on wage rates or wage increases beyond the level of the increase in the cost of living, except if such restriction is imposed as an exceptional measure and only to the extent that is necessary (e.g. not exceeding sectors actually facing an emergency situation), without exceeding a reasonable period and if it is accompanied by adequate safeguards to protect workers' living standards (Digest, Paras. 1024-1032.).
- *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.).
- *Does not include* legislation that allows for the employers' side in the negotiation process, where it represents the public administration to seek the opinion of the Ministry of Finances or an economic and financial body that verifies the financial impact of draft collective agreements, provided that the employers and trade union organizations can express their points of view through consultations (Digest, Paras. 1037., 1039.).
- *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.).
- *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 an 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 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. This is not the case of legislative provisions which, on the grounds of the economic situation of a country, impose unilaterally, for example, a specific percentage increase and rule out any possibility of bargaining, in particular by prohibiting the exercise of means of pressure subject to the application of severe sanctions. (...) The Committee (...) takes full account of the serious financial and budgetary difficulties facing governments, particularly during periods of prolonged and widespread economic stagnation. However, it considers that the authorities should give preference as far as possible to collective bargaining in determining the conditions of employment of public servants where the circumstances rule this out, measures of this kind should be limited in time and protect the standard of living of the workers who are the most affected.’ (Digest, Para. 1038.).

- Acts of interference according to collective agreements in practice include:
 - Failure to recognize and/or implement a collective agreement, even on a temporary basis;
 - Infringements of collective agreements in practice (e.g. intervention by public authorities in drafting collective agreements; the unilateral alteration of the content of collective agreements or the recourse to renegotiation or unilaterally imposing the duration of collective agreements);
 - Discretionary refusal by public authorities to approve a collective agreement; unilateral suspension/cancellation of collective agreement (unless the parties agree on the suspension/cancellation);
 - Prior approval of collective agreements in practice;
 - Unilateral extension of the period for which collective agreements are in force;
 - Discretionary or unilateral extension of a collective agreement if contrary to the views of the organization representing most of the employers 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.).
- *Does not include* 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, as long as the relationship between individual contracts and the collective agreements has been agreed between the employer and the trade union organizations (Digest, Paras. 1054-1056.).

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- *Does not include* a “procedure to draw the attention of the parties in certain cases to considerations of general interest that might call for further examination by them of proposed agreements, provided, however, that preference is always given to persuasion rather than coercion”. (General Survey, Para. 253.).

167. Infringements of the consultation with employer’s organizations (de facto)

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

- Includes infringements on 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 establishment of new labour, social or economic policy (e.g. refusal to permit the participation of employers’ organizations in the preparation of new legislation affecting their interests);
- 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).

168. Lack of guarantee of due process of law re IXb (de facto)

- 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.
- *Note:* Includes de facto lack of guarantee of due process of law with regard to de facto right to collective bargaining, as listed under evaluation criteria nos. 162-167.

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Annex I. Coding Spreadsheet

	Trade Unions	Year
	Ia. Fundamental civil liberties, de jure	
1	Arrest, detention, imprisonment, charging and fining of trade unionists	
2	Infringements of trade unionists' basic freedoms	
3	Infringements of trade union's right to protection of their premises and property	
4	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	
5	Lack of guarantee of due process of law re Ia	
	Ib. Fundamental civil liberties, de facto	
6	Murder or disappearance of trade unionists	
7	Committed against trade union leaders re 6	
8	Lack of guarantee of due process of law and/or impunity re 6	
9	Severity (widespread and/or systematic) re 6	
10	Other violent actions against trade unionists	
11	Committed against trade union leaders re 10	
12	Lack of guarantee of due process of law and/or impunity re 10	
13	Severity (widespread and/or systematic) re 10	
14	Arrest, detention, imprisonment, charging and fining of trade unionists	
15	Committed against trade union leaders re 14	
16	Lack of guarantee of due process of law and/or impunity re 14	
17	Severity (widespread and/or systematic) re 14	
18	Infringements of trade unionists' basic freedoms	
19	Committed against trade union leaders re 18	
20	Lack of guarantee of due process of law and/or impunity re 18	
21	Severity (widespread and/or systematic) re 18	
22	Attacks against trade union premises and property	
23	Committed against trade union leaders re 22	
24	Lack of guarantee of due process of law and/or impunity re 22	
25	Severity (widespread and/or systematic) re 22	
26	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	
27	Lack of guarantee of due process of law and/or impunity re 26	
28	Severity (widespread and/or systematic) re 26	
	Ila. Right of workers to establish and join organizations, de jure	
29	General prohibition on the right of workers to establish and join organizations	
30	Exclusion/restriction of workers from the right to establish and join organizations	
31	Previous authorization requirements	
32	Restrictions on the freedom of choice of trade union structure and composition	
33	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
34	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
35	Prejudice or discrimination with regard to employment because of trade union membership/ legitimate activities	
36	Lack of adequate legal guarantees against anti-union discriminatory measures re 35	
37	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
38	Lack of adequate legal guarantees against anti-union discriminatory measures re 37	
39	Acts of interference of employers and/or public authorities	
40	Lack of adequate legal guarantees against acts of interference	
41	Infringement of the right to establish and join federations/confederations/international organizations	
42	Other de jure acts of prohibitions, infringements and interference re Ila	
43	Lack of guarantee of due process of law re Ila	
	Ilb. Right of workers to establish and join organizations, de facto	
44	Obstacles towards the development of independent workers' organizations in practice	
45	Exclusion/restriction of workers from the right to establish and join organizations	
46	Previous authorization requirements	
47	Restrictions on the freedom of choice of trade union structure and composition	

48	Imposed trade union unity and/or favouritism/discrimination among workers' organizations	
49	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
50	Prejudice or discrimination with regard to employment because of trade union membership/legitimate activities	
51	Committed against trade union leaders re 50	
52	Lack of guarantee of due process of law re 50	
53	Discriminatory dismissal/suspension because of trade union membership/legitimate activities	
54	Committed against trade union leaders re 53	
55	Lack of guarantee of due process of law re 53	
56	Acts of interference of employers and/or public authorities	
57	Lack of adequate guarantees against acts of interference	
58	Infringement of the right to establish and join federations/confederations/international organizations	
59	Other de facto acts of prohibitions, infringements and interference re IIb	
60	Lack of guarantee of due process of law re IIb	
	IIla. Other union activities, de jure	
61	Infringements on the right to freely draw up constitutions and rules	
62	Infringements on the right to freely elect representatives	
63	Infringements on the right to freely organize and control internal and financial administration	
64	Infringements on the right to freely organize activities/programmes	
65	Other de jure acts of prohibitions, infringements and interference re IIIa	
66	Lack of guarantee of due process of law re IIIa	
	IIlb. Other union activities, de facto	
67	Infringements on the right to freely draw up constitutions and rules	
68	Infringements on the right to freely elect representatives	
69	Infringements on the right to freely organize and control internal and financial administration	
70	Infringements on the right to freely organize activities/programmes	
71	Other de facto acts of prohibitions, infringements and interference re IIIb	
72	Lack of guarantee of due process of law re IIIb	
	IVa. Right to collective bargaining, de jure	
73	General prohibition on the right to collective bargaining	
74	Exclusion/restriction of workers from the right to collective bargaining	
75	Exclusion/restriction of subjects covered by collective bargaining	
76	Compulsory arbitration accorded to collective bargaining	
77	Infringements on the determination/recognition of trade unions entitled to collective bargaining	
78	Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining	
79	Acts of interference according to collective agreements	
80	Infringements of the consultation with workers' organizations	
81	Other de jure acts of prohibitions, infringements and interference re IVa	
82	Lack of guarantee of due process of law re IVa	
	IVb. Right to collective bargaining, de facto	
83	Obstacles towards collective bargaining in practice	
84	Exclusion/restriction of workers from the right to collective bargaining	
85	Exclusion/restriction of subjects covered by collective bargaining	
86	Compulsory arbitration accorded to collective bargaining	
87	Infringements on the determination/recognition of trade unions entitled to collective bargaining	
88	Acts of interference in collective bargaining and/or insufficient promotion of collective bargaining	
89	Acts of interference according to collective agreements	
90	Infringements of the consultation with workers' organizations	
91	Other de facto acts of prohibitions, infringements and interference re IVb	
92	Lack of guarantee of due process of law re IVb	
	Va. Right to strike, de jure	
93	General prohibition on the right to strike	
94	Exclusion/restriction of workers from the right to strike	
95	Exclusion/restriction based on the objective of the strike	
96	Exclusion/restriction based on the type of the strike	

97	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	
98	Infringements on the determination of minimum services	
99	Compulsory arbitration accorded to strikes	
100	Infringements of the prerequisites lawfully required for exercising the right to strike	
101	Acts of interference during the course of strike action	
102	Imposing excessive sanctions in case of legitimate and peaceful strikes	
103	Other de jure acts of prohibitions, infringements and interference re Va	
104	Lack of guarantee of due process of law re Va	
	Vb. Right to strike, de facto	
105	Obstacles to strike actions in practice	
106	Exclusion/restriction of workers from the right to strike	
107	Exclusion/restriction based on the objective of the strike	
108	Exclusion/restriction based on the type of the strike	
109	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	
110	Infringements on the determination of minimum services	
111	Compulsory arbitration accorded to strikes	
112	Infringements of the prerequisites lawfully required for exercising the right to strike	
113	Acts of interference during the course of strike action	
114	Imposing excessive sanctions in case of legitimate and peaceful strikes	
115	Committed against trade union leaders re 114	
116	Other de facto acts of prohibitions, infringements and interference re Vb	
117	Lack of guarantee of due process of law re Vb	
	Employers' Organizations	
	Vla. Fundamental civil liberties, de jure	
118	Arrest, detention, imprisonment, charging and fining of members of employers' organizations	
119	Infringements of employers' organizations' basic freedoms and/or of their right to protection of their premises and property	
120	Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	
121	Lack of guarantee of due process of law re Vla	
	Vlb. Fundamental civil liberties, de facto	
122	Murder or disappearance of members of employers' organizations	
123	Committed against leaders of the organization re 122	
124	Lack of guarantee of due process of law and/or impunity re 122	
125	Severity (widespread and/or systematic) re 122	
126	Other violent action and/or arrest, detention, imprisonment, charging and fining of members of the employers' organizations	
127	Committed against leaders of the organization re 126	
128	Lack of guarantee of due process of law and/or impunity re 126	
129	Severity (widespread and/or systematic) re 126	
130	Infringements of employers' organizations' basic freedoms and/or attacks against their premises and property	
131	Committed against leaders of the organization re 130	
132	Lack of guarantee of due process of law and/or impunity re 130	
133	Severity (widespread and/or systematic) re 130	
134	Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	
135	Lack of guarantee of due process of law and/or impunity re 134	
136	Severity (widespread and/or systematic) re 134	
	VIIa. Right of employers to establish and join organizations, de jure	
137	Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	
138	Restrictions on the right of employers to establish and join to organizations of their own choosing	
139	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
140	Acts of interference of workers' organizations and/or public authorities	
141	Lack of adequate legal guarantees against acts of interference	
142	Infringement of the right to establish and join federations/confederations/international organizations	
143	Lack of guarantee of due process of law re VIIa	
	VIIb. Right of employers to establish and join organizations, de facto	
144	Prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	

145	Restrictions on the right of employers to establish and join to organizations of their own choosing	
146	Dissolution/suspension of legally functioning organizations by public authorities and/or legislation	
147	Acts of interference of workers' organizations and/or public authorities	
148	Lack of adequate guarantees against acts of interference	
149	Infringement of the right to establish and join federations/confederations/international organizations	
150	Lack of guarantee of due process of law re VIIIb	
VIIIa. Other activities of employers organizations, de jure		
151	Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes	
152	Lack of guarantee of due process of law re VIIIa	
VIIIb. Other activities of employers organizations, de facto		
153	Infringements on the right to freely draw up constitutions, rules and to organize their administration, activities, programmes	
154	Lack of guarantee of due process of law re VIIIb	
IXa. Right to collective bargaining, de jure		
155	Prohibition, restrictions on/exclusion from the right to collective bargaining	
156	Exclusion/restriction of subjects covered by collective bargaining	
157	Compulsory arbitration accorded to collective bargaining	
158	Infringements on the determination/recognition of employers' organizations entitled to collective bargaining	
159	Acts of interference in collective bargaining and collective agreement	
160	Infringements of the consultation with employers' organizations	
161	Lack of guarantee of due process of law re IXa	
IXb. Right to collective bargaining, de facto		
162	Prohibition, restrictions on/exclusion from the right to collective bargaining	
163	Exclusion/restriction of subjects covered by collective bargaining	
164	Compulsory arbitration accorded to collective bargaining	
165	Infringements on the determination/recognition of employers' organizations entitled to collective bargaining	
166	Acts of interference in collective bargaining and collective agreement	
167	Infringements of the consultation with employers' organizations	
168	Lack of guarantee of due process of law re IXb	

Annex II. Supplementary document for workers' organizations

Severity

Issue of non-compliance	Severity
6. Murder or disappearance of trade unionists	
10. Other violent actions against trade unionists	
14. Arrest, detention, imprisonment, charging and fining of trade unionists	
18. Infringements of trade unionists' basic freedoms	
22. Attacks against trade union premises and property	
26. Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	

Excluded Sectors

Issue of non-compliance	Reference to original source
30. De jure exclusion/restriction of workers from the right to establish and join organizations	
45. De facto exclusion/restriction of workers from the right to establish and join organizations	
74. De jure exclusion/restriction of workers from the right to collective bargaining	
84. De facto exclusion/restriction of workers from the right to collective bargaining	
94. De jure exclusion/restriction of workers from the right to strike	
106. De facto exclusion/restriction of workers from the right to strike	

Other acts of prohibitions, infringements and interference

Issue of non-compliance	Reference to original source
42. Other de jure acts of prohibitions, infringements and interference re IIa	
59. Other de facto acts of prohibitions, infringements and interference re IIb	
65. Other de jure acts of prohibitions, infringements and interference re IIIa	
71. Other de facto acts of prohibitions, infringements and interference re IIIb	
81. Other de jure acts of prohibitions, infringements and interference re IVa	
91. Other de facto acts of prohibitions, infringements and interference re IVb	
103. Other de jure acts of prohibitions, infringements and interference re Va	
116. Other de facto acts of prohibitions, infringements and interference re Vb	

Notes

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Annex III. Supplementary document for employers' organizations

Severity

Issue of non-compliance	Severity
122. Murder or disappearance of members of employers' organizations	
126. Other violent action and/or arrest, detention, imprisonment, charging and fining of members of the employers' organizations	
130. Infringements of employers' organizations' basic freedoms and/or attacks against their premises and property	
134. Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	

Excluded Sectors

Issue of non-compliance	Reference to original source
137. De jure prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	
144. De facto prohibition, restrictions on/exclusion from the right of employers to establish and join organizations	
155. De jure prohibition, restrictions on/exclusion from the right to collective bargaining	
162. De facto prohibition, restrictions on/exclusion from the right to collective bargaining	

Notes

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