

# The ILO supervisory system

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## LESSON 4

# International labour law sources

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- ILO Constitution and its general principles, as interpreted by its supervisory system (case law)
- Conventions
- Recommendations
- Resolutions

# Conventions and Recommendations

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The conventions impose **international obligations** on the Member States **ratifying** them.

The recommendations do not create legal obligations, but provide **guidelines** for the application of principles and rules in the world of work.

# How conventions are adopted

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Their adoption does not take place through diplomatic negotiations, typical of international treaties, but through a parliamentary process. They are the final product of assembly **discussions** between the **three parties involved** (governments, trade unions, business associations: **tripartism**).

Their approval does not require unanimity (2/3 of the votes in the International Labour Conference).

# Interpretation of the ILO conventions

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Interpretation of the ILO Conventions can only be done by the **International Court of Justice**.

# their enforcement in the Member States

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Governments are required to submit conventions approved by the ILC to the competent authorities, normally Parliaments, for **ratification**.

Member States are obliged - where required by the ILO - to draw up **reports on measures taken** at national level **to implement** ratified (but also unratified) Conventions.

# The system for monitoring the enforcement of conventions

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A unique international supervisory system:

-ILO **regularly reviews the application** of the rules in the Member States and identifies areas where they could be better implemented

-ILO helps countries in difficulty through **social dialogue** and **technical assistance**

# Article 19 ILO Constitution

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## OBLIGATIONS OF MEMBERS IN RESPECT OF CONVENTIONS

### 5. In the case of a Convention:

- (a) the Convention will be *communicated to all Members for ratification*;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, *bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action*;
- (c) Members *shall inform the Director-General* of the International Labour Office *of the measures taken* in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
- (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will *communicate the formal ratification of the Convention to the Director-General* and will take such action as may be necessary *to make effective the provisions of such Convention*;
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member *except that it shall report to the Director-General* of the International Labour Office, at appropriate intervals as requested by the Governing Body, *the position of its law and practice* in regard to the matters dealt with in the Convention, showing the extent to which *effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.*

# OBLIGATIONS OF MEMBERS IN RESPECT OF RECOMMENDATIONS.

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## 6. In the case of a Recommendation:

- (a) the Recommendation will be **communicated to all Members** for their consideration with a view **to effect being given to it by national legislation or otherwise**;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, **bring the Recommendation before the authority** or authorities within whose competence the matter lies **for the enactment** of legislation or other action;
- (c) the Members **shall inform the Director-General** of the International Labour Office **of the measures taken in accordance** with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and **of the action taken by them**;
- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that **they shall report to the Director-General** of the International Labour Office, **at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation**, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

## EFFECT OF CONVENTIONS AND RECOMMENDATIONS ON MORE FAVOURABLE EXISTING PROVISIONS

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8. *In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.*

## *Article 22 Annual reports on ratified Conventions*

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*1. Each of the Members agrees to make **an annual report** to the International Labour Office **on the measures which it has taken to give effect to the provisions of Conventions** to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.*

# Supervisory bodies

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The **Committee of Experts** on the Application of Conventions and Recommendations (**CEACR**) and the **Commission on the Application of Standards** (**CAS**) regularly review the application of international labour standards in the Member States.

# Committee on Freedom of Association (CFA)

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In a special procedure, the Commission on Freedom of Association (CFA) **reviews complaints concerning violations of the freedom of association**, irrespective of whether a state has ratified the relevant conventions.

# Duty to report on measures taken

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Each country that has ratified a convention must **report regularly** to the ILO on the measures taken to implement it.

**Every two years**, they must submit **detailed reports** on the state of implementation in case law and practice of each of the **eight fundamental conventions** and the **four priority** conventions ratified.

For the other conventions, reports should be submitted **every five years**.

# Duty to inform social partners

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Governments are required to **submit copies** of their reports **to workers' and employers' organisations**. These may **express their views** on government reports and **send comments** on the application of the conventions directly to the ILO.

# The CEACR

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Established in 1926 to **examine** the growing number of government **reports on ratified conventions**, is now composed of **20 eminent jurists** appointed by the ILO Governing Body for a period of 3 years.

They are lawyers from different geographical areas, expression of different legal systems and cultures. The CEACR provides **an impartial and technical assessment of the state of implementation** of international labour standards.

The annual report of the CEACR, adopted in December, is presented to the International Labour Conference the following June, where it is examined by the **Committee for the Application of Standards (CAS)**, which selects a number of comments for **discussion**.

# Proceedings and Conclusions

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The governments to which the comments refer are **invited to respond** to the Conference Committee and **to provide information** on the situation in question.

The Committee of the Conference often draws **conclusions recommending**

a) that governments take **specific measures** to remedy a given problem

b) or invite **ILO missions**

c) or request **technical assistance**

The discussions and conclusions of the situations examined by the Conference Committee are **published in its report**, where situations of particular concern are highlighted.

# The Annual Survey

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The ECACR shall draw up an in-depth **annual general survey** of Member States' laws and practices on a subject selected by the Governing Body.

These surveys are mainly **based on reports** submitted by Member States and **informations submitted by workers' and employers' organisations** and enable the Committee to examine the **impact** of the Conventions and Recommendations, to analyse the difficulties encountered by governments in applying them and to identify ways of overcoming them.

# Recent examples of general surveys

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Instruments for setting minimum wages (2014)

Freedom of association and rural workers (2015)

Instruments related to migrant workers (2016)

Health and safety at work (2017)

Working hours (2018)

Recommendation on national basic social protection systems (2019)

# Comments and requests from the CEACR

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In examining the application of international labour standards, the CEACR shall formulate **observations** and **direct requests**.

The observations contain **comments** on key issues and are published in the Committee's annual report;

Direct requests refer to **technical issues** or demands for further information, which are communicated directly to the governments concerned.

# Other instruments

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**Technical assistance:** ILO officials and experts help countries to solve legislative and practical implementation problems in order to bring them into line with the obligations specified in the ratified instruments

e.g.: consultancy and direct contact missions, promotional activities such as national seminars and workshops to disseminate knowledge of the standards, developing the knowledge of national actors to apply them; assistance in drafting national legislation in line with international standards

# The ways to favour better enforcement

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The CEACR has monitored cases in which it has contributed to the **improvement of national legislation and practices**: since 1964 more than 2500 cases.

The CEACR also **monitors compliance** with the obligation to present the instruments adopted by the ILO to their legislative bodies for examination.

Member States shall examine the comments of the ECACR on the legislation of other countries with a view to **amending their legislation** and practice in order to avoid similar problems and to **imitate good practices**.

# Through tripartism and social dialogue

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The CEACR calls on governments to review the application of a standard and to **share its observations with the social partners**, who can **provide information**.

The establishment of **social dialogue** practices can help to prevent or resolve further problems.

# Representation procedure: artt. 24-25

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The representation procedure entitles an industrial **association of employers or workers** to submit **complaints** to the ILO Governing Body against any **Member State** which, in their opinion, "has failed to secure in any respect the **effective observance** within its jurisdiction of any Convention to which it is a party".

A **special tripartite committee of the GB** examines the complaint and the related response of the government concerned. This committee shall submit a **report** to the GB, setting out the legal context and practical aspects of the case, examining the information submitted and making **recommendations**. If the response of the government concerned is not considered satisfactory, the GB **publishes the complaint and the response (reputational sanction ?)**.

## *Complaints of non-observance: artt. 26-34*

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Any of the **Members States** shall have the right to file a **complaint** with the International Labour Office if it is not satisfied that **any other Member** is securing the **effective observance** of any Convention which both have ratified.

The **Governing Body** may adopt the same procedure either of its **own motion** or on receipt of a complaint from **a delegate to the Conference**.

# The Commission of Inquiry

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The Governing Body may **appoint a Commission of Inquiry** to consider the complaint and to report thereon.

The Commission of Inquiry is composed of **three independent members** and must carry out a complete examination of the complaint, **ascertaining the facts** of the case and drawing up **a report** containing **recommendations on the measures to be taken** to address the problems raised by the complaint.

# When and why?

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The Committee of Inquiry is the **highest level of inquiry** in the ILO procedure. It is formed when a State is accused of having committed **serious and persistent violations** and has **repeatedly refused to remedy** them.

The report of the Commission of Inquiry is **submitted to the Governing Body** and the accused government **has three months to accept or not the recommendations** addressed to it.

If it **does not accept** the recommendations, the Commission of Inquiry may **refer the dispute to the International Court of Justice**, which will decide on the matter.

# Art. 33 ILO Constitution

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## FAILURE TO CARRY OUT RECOMMENDATIONS OF COMMISSION OF INQUIRY OR ICJ

*1. In 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.*

# ILO Governing Body opens the way for unprecedented action against forced labour in Myanmar

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Press release | **17 November 2000** GENEVA (ILO News) - Measures to compel the Government of Myanmar (Burma) to meet its obligations to eliminate forced labour in the country will go forward, following deliberations by the International Labour Organization's (ILO) [Governing Body](#) at its 279<sup>th</sup> session which concluded here today.

The Governing Body effectively opened the way for the full implementation of a resolution of the International Labour Conference, adopted in June of this year, **aimed at compelling the Government of Myanmar to comply with Convention No. 29 on forced labour. Burma ratified Convention No. 29 in 1955.**

The unprecedented [resolution](#) under **the never-before invoked article 33 of the ILO Constitution** allows for a series of measures to take effect on 30 November and calls on **Myanmar to "take concrete actions" to implement the recommendations** of a [1998 Commission of Inquiry](#), which found that resort to forced labour in the country **was "widespread and systematic"**.

On the basis of a report from an ILO technical cooperation mission which visited Myanmar in October, the Governing Body as a whole considered that it was not satisfied that actions taken by Myanmar met the recommendations of the Commission of Inquiry, and that therefore there was no agreement to consider that the implementation of one or more measures under article 33 of the Constitution "has become inappropriate".

**Those recommendations were that legislation, in particular the Village and Towns Acts, be brought into line with the terms of the Forced Labour Convention, 1930 (No. 29) which Myanmar (Burma) has ratified; that no more forced or compulsory labour be imposed by the authorities, particularly by the military; and that penalties which may be imposed for the exaction of forced labour be strictly enforced, with thorough investigation, prosecution and punishment of those found guilty.**

# The supervisory procedure carried out by the Committee on Freedom of Association (CFA)

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Conventions 87/1948 and 98/1949 on freedom of association and the right to collective bargaining - one of the **founding principles of the ILO** - are subject to further monitoring by the CFA to ensure **compliance** with these conventions **in countries that have not ratified** them.

Complaints against a Member State may be lodged **by workers' and employers' organisations**. The CFA is a tripartite body. If it decides to examine a case, it reconstructs the facts in dialogue with the government concerned. If the CFA finds a violation, it **reports** to the Governing Body and makes **recommendations** on how to remedy it. Governments are also invited to report on the effective implementation of the recommendations.

If a country has **ratified the relevant conventions**, the case can be referred to the **CEACR**. Most of the more than 3000 cases examined by the CFA concern complaints made by trade unions.