

## Monitoring Freedom of Association and the right to Collective Bargaining: SDGs indicator No. 8.8.2

### Background note

INTRODUCTION: the 2030 Agenda, Goal No. 8, Targets and Indicators..... 1  
 FOCUS OF THE DEBATE ..... 2  
 INFORMAL BIPARTITE CONSULTATIONS ..... 2  
 TECHNICAL MEETING OF EXPERTS AND THE WAY FORWARD..... 6

### INTRODUCTION: the 2030 Agenda, Goal No. 8, Targets and Indicators

In December 2015, the UN Member States adopted the 2030 Agenda for achieving sustainable development. The Agenda contains 17 Sustainable Development Goals (SDGs) to address and tackle the world’s biggest challenges, taking into account their economic, social and environmental dimensions.

All SDGs connect in some way to the ILO’s mandate and its decent work agenda. Goal No. 8 is especially relevant.

SDG GOAL No. 8 reads as follows:  
*Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all*

Specific **targets** have been defined for each of the SDGs.

A follow-up and review mechanism for the implementation of the 2030 Agenda requires a **framework of indicators** and statistical data to monitor progress, inform policy and ensure accountability of all stakeholders. The global indicator framework was adopted by the General Assembly on 6 July 2017.

Target No. 8.8	Indicators for target No. 8.8
<b>Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment</b>	<p><b>8.8.1</b> Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status</p> <p><b>8.8.2</b> Increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status</p>

The ILO is the custodian Agency for various indicators related to goal No. 8.

## FOCUS OF THE DEBATE

With regards to indicator No. 8.8.2 *“Increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status”* the discussion is ongoing on **whether** and **how** the ILO should be the custodian Agency responsible for collecting and reporting data and monitor the progress made in achieving SDG Goal No. 8 on Labour Rights.

The ILO being the custodian Agency for this indicator means that it is responsible for providing the outside world with an overview of the application of freedom of association (FoA) and the right of collective bargaining (CB), and to establish the methodology for this role to be played.

On this basis, the ILO office would provide a very general global report – which in principle do not raise any problem, and regional/national reports.

## INFORMAL BIPARTITE CONSULTATIONS

Informal bipartite consultations took place in October and November 2017.

During these exchanges with the Office and the Workers, the Employers have tried to understand the implications for the ILO Office being the custodian of this indicator on FoA and the right to CB, the methodology proposed and the related challenges.

### **The original methodology**

The Office proposed to build a statistical methodology to keep track of progress based on the already existing **Labour Rights Indicators** elaborated under the auspices of the Global Labour University and the Center for Global Workers’ Rights at Penn State University.

This database provides numerical and textual information on country-level compliance with FoA and CB rights that is comparable between countries and over time. It has an almost-universal coverage. **Countries are scored between 0 – the best possible score and 10 – the worse possible score.**

The database can be found here: <http://labour-rights-indicators.la.psu.edu/>

It contains general and detailed information on the type of violation, per country, per year.

### **The customized methodology**

The ILO Office proposed to customize this database to the needs of the SDGs indicator No. 8.8.2.

The new methodology would not take into account sources of information that are different from ILO sources, such as the ITUC report on “trade union rights violations” and the “U.S. Department of State’s Country Reports on Human Rights Practices”.

Therefore, the sources of information proposed under the customised methodology would be the following:

- a. Reports of the CEACR (this includes the General Reports and General Surveys)

- b. Reports of the Committee on the Application of Standards
- c. Country baselines under the Annual Review, based on the ILO Declaration on Fundamental Principles and Rights at Work
- d. Representations under Article 24 of the ILO Constitution
- e. Complaints under Article 26 of the ILO Constitution
- f. Reports of the Committee on Freedom of Association
- g. National legislation (only taken into account if the country has not ratified the Conventions)

### **Flaws of the methodology**

The methodology has certain shortcomings and limitations that may distort outcomes:

- The evaluation of information and scoring are built on the ILO Supervisory system sources, which are **not all tripartitely agreed sources** (the CEACR reports raise problems with this regard) or do not have a proper basis (the tracking of information related to CFA cases is built on the ILO Office – older version of the – Digest of principles and decisions of the CFA). Some ILO Resolutions are also presented in the original methodology and it is not clear how those will be used.
- **The coding is based on 108 evaluation criteria** (for trade union rights). 78 further evaluation criteria have been proposed for employers’ rights (but they need to be revised since they do not respond well to the types of violations affecting employers’ organisations and employers’ representatives).

The 108 evaluation criteria are grouped under five broader categories – in law and in practice, namely:

- I. Fundamental Civil Liberties
- II. Right of workers to establish and join organisations
- III. Other union activities
- IV. Right to collective bargaining
- V. Right to strike (this contains 25 evaluation criteria).

The evaluation criteria go into a level of detail that is not based on any ILO Conventions but just on their interpretations (for instance: “exclusion from workers of EPZs from the right to collective bargaining” can be found only in the CEACR interpretations of Convention No. 98). Thus, the coding exercise has a basis that has not been agreed tripartitely and provides the wrong foundation for the whole task (it is based on the ILO Office CFA Digest, or the CEACR interpretations, ILO Resolutions).

- **Contradictory information within a source is not coded.** This means that a long-standing contradiction between workers and employers in the CAS (on the right to strike for instance) will not be coded and the very basic reasons for this contradiction will be lost.
- **The 6 (+1) sources of information have all equal weight.** This means that the CEACR views are on the same level as CFA reports, or Annual reports. This does not

correspond to the ILO Supervisory System whereby an article 26 complaint procedure has not the same weight as a CEACR observation, or a country that has not ratified a Convention has not the same obligations of a ratifier ILO Member State.

- In certain countries **trade unions are particularly active** (or rather hindered) to raise allegations of violations of FoA and the right to CB at ILO level.
- **The methodology does not allow to reflect differences in the severity of violations** (“killing of trade unionist” would be considered on the same degree as the lack of promotion of collective bargaining).

### **Employers’ position and proposal**

The Employers have been quite critical with the customised methodology that could significantly lower the reliability of the measurements and have provided alternatives to address the above-mentioned shortcomings.

The following challenges were highlighted:

- 1- The need to be consistent with the employers’ position on various matters and not to be forced to agree on a procedure that would prove contradictory.
- 2- The need to establish a methodology that is accepted by all constituents and is able to get tripartite support. This will add legitimacy and ownership to the methodology and the outcome of the measurement will not be questioned by any of the ILO Constituents. Indeed, based on the SDGs indicators measurements and scores, Governments may find themselves subject to less favorable tariffs or sanctions in international trade.
- 3- The importance for this methodology not to be considered as a new supervisory mechanism.

The Employers have been providing **alternatives to overcome the flaws of the methodology**.

- A. **The main proposal aims at tackling the problem of the evaluation criteria** – that are the foundation of the scoring exercise –, since the texts used to elaborate them have no tripartitely agreed basis. Therefore, it was proposed to modify the basis for the evaluation criteria.

### **Where to take evaluation criteria allowing the coders to pick up the relevant information on compliance with FoA and the right to CB?**

This is quite simple, and the ILO tripartite constituents have been already elaborating a solution that has been working for more than 60 years. The solution is already part of the system and does not need to explore other methodologies.

The criteria can indeed be found in the report forms developed for [Conventions 87](#) and [98<sup>1</sup>](#) (for the ratifying member states) and on the questionnaire that constitutes the basis for the [annual report](#) (for the non-ratifying countries).

These report forms constitute a solid and tripartitely agreed source and remain general whereas the [existing evaluation criteria](#) are very detailed, sometimes with no clear basis. The report forms and the questionnaire are not contested by any part within the ILO and are not built on interpretations, resolutions, or office compilations (such as the CFA Digest).

The forms provide a simple, relatively limited number of topics to impartially assess the compliance with the Conventions, if ratified, or with the principles of the 1998 declaration.

If the evaluation criteria are changed, then the coders can find the relevant information (based on the new criteria) in the 6(+1) ILO sources proposed. So, among all the information contained in the ILO sources, it is for the coders to pick up only the information needed<sup>2</sup>.

- B. With regards to **the right to strike** new elaborated evaluation criteria would effectively miss the possibility to track violation of this right. The Employers could decide to open on this matter and have proposed to create a general evaluation criterion based on the first sentence of the Joint Statement of Workers' and Employers' Groups of February 2015: *"The right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation"*.
- C. **A tripartite validating committee:** If the ILO is the custodian of this indicator, some sort of tripartite discussion is needed at some point of this exercise. The Employers have requested that ultimately a tripartite committee validates this monitoring.

### **Workers' position and proposal**

The Workers had no objection to the Office proposed methodology and had no active engagement in appropriate ways to overcome the flaws of the methodology. The only opening

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<sup>1</sup> Article 19 report forms can be found here:

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO::>

<sup>2</sup> Example of a new evaluation criteria. Taken from the report form of C.87 (Article 2):

**Right of workers and employers to establish and join organisations of their own choosing without previous authorisation.**

This right shall be evaluated using the assessment contained in the ILO 6 sources of the following information:

1. The substantive or formal conditions that must be fulfilled by workers' and employers' organizations when they are being established.
2. The existence of any special legal provisions regarding the establishment of organizations by certain categories of workers (other than members of the armed forces and the police) and, in particular, by public officials and employees of publicly owned undertakings.
3. The special legal provisions which apply as regards the establishment, functioning and dissolution of such organizations.

These 3 elements and the assessment that is done on this basis by the ILO sources seem to be extensive enough to evaluate and score the right of workers and employers to establish and join an organisation of their own choosing.

was related to the tripartite committee to exchange on the outcome of the coding (but without any possibility of challenging it).

They were simply not accepting the employers' proposals.

Their only offered to add a chapeau/disclaimer somewhere in the webpage of this indicator.

The text proposed is:

*“SDG indicator 8.8.2 seeks to measure the level of national compliance with fundamental labour rights (freedom of association and collective bargaining). It is based on six International Labour Organization (ILO) supervisory body textual sources and also on national legislation. National law is not enacted for the purpose of generating a statistical indicator of compliance with fundamental rights, nor were any of the ILO textual sources created for this purpose. Indicator 8.8.2 is compiled from these sources regardless of differences in point of view that exist among constituents with respect to their conclusions”.*

This simple disclaimer is not solving the main problem of the methodology, that is being based on not-tripartitely-agreed evaluation criteria and texts.

#### TECHNICAL MEETING OF EXPERTS AND THE WAY FORWARD

A tripartite technical meeting of experts has been planned on the 16-17 April 2018 to discuss:

- Whether the ILO Office should be the custodian Agency responsible for collecting and reporting data on Indicator No. 8.8.2
- The methodology that can be used for this purpose

6 governments will be involved in this discussion.

The technical meeting of experts will provide a final recommendation for the International Conference of Labour Statisticians (October 2018) and will be endorsed by the ILO Governing Body in November 2018.

This recommendation will be finally presented to the body established under the SDGs to review and approve the indicators, that is the Inter-Agency and Expert Group on Sustainable Development Goal Indicators (IAEG-SDGs).

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