

1. Introduction

Since its foundation in 1919, the ILO has maintained and developed a system of minimum social standards, known as international labour standards (ILS), to enable women and men to gain decent and productive work under conditions of freedom, fairness, security and dignity. ILS principally ensure economic growth and development remain focused on improving human lives.

Today's globalised world, in which increasing interaction between different countries has led to growing international integration, including in trade, has created opportunities for many people. However, it has also displaced workers and caused financial instability, such as that which led to the 2008 global economic crisis. ILS are vital to ensure the growth of the global economy benefits all. They provide a level playing field that discourages governments and employers from neglecting human rights and lowering labour standards, which is detrimental to all in the long-term.

Indeed, the implementation of ILS often attracts foreign trade and investment. Recent decades have seen an increasing use of free trade agreements (FTAs) that include conditions relating to labour rights, either in the agreements themselves or parallel agreements. Growing interest in corporate social responsibility (CSR) and ethical trade in global supply chains (GSCs) has led to the incorporation of human rights provisions (including those relating to labour rights) into many bilateral agreements, particularly those signed by the EU, United States and Canada, and companies' codes of conduct. Compliance with ILS can therefore open channels for access to new international markets and collaboration with new trading partners. This can result in increased potential to export domestic goods and services on a larger scale. Furthermore, the promotion of ILS is often connected with more satisfied workers, lower turnover of staff and increased productivity, as well as a better-trained workforce and higher levels of employment, which can attract foreign direct investment (FDI). Studies have shown that investors place priority on well-trained workers and political and social stability in choosing which economies to invest in as compared to, for example, low labour costs.¹

As an upper-middle income country currently experiencing a significant economic slow-down, Mongolia therefore stands to improve its chances of attracting more foreign trade and investment by increasing its efforts to ensure the application of ILS. Such efforts correspond with Sustainable Development Goal 8 to promote inclusive and sustainable economic growth, employment and decent work for all.

2. International labour standards

ILS are legal instruments prepared by the International Labour Organization's (ILO) tripartite constituents, namely governments, workers' representatives and employers' representatives. The legal instruments that make up ILS take the form of Conventions, Recommendations and Protocols. Conventions can be ratified by member States and are legally binding, Recommendations provide more detailed guidance and are non-binding, and Protocols amend or add new provisions to older Conventions. A Recommendation is often adopted at the same time as a Convention on the same subject, providing guidance on its application, or it can be adopted as a standalone instrument.

These instruments are prepared by the ILO's tripartite constituents, and then adopted at the annual International Labour Conference (ILC). Following their adoption, member States are required to submit them to parliament to consider their ratification. Once a Convention has been ratified, it will generally come into force a year later.

Ratification obliges member States to bring their national laws in line with the Convention, ensure its application in practice and regularly report on such matters to the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). It is the CEACR's role to provide technical comments on the extent to which ILS have been applied. As regards a government's failure to ensure compliance with ratified Conventions, workers' representatives and employers' representatives may make representations to the ILO Governing Body, and other member States that have ratified the same Convention, delegates to the ILC, or the ILO Governing Body itself may make similar complaints.

In total, there are 189 Conventions and 204 Recommendations as of May 2016. 8 of the Conventions are categorised by the ILO Governing Body as "fundamental Conventions", and relate to the four fundamental principles and rights at work: freedom of association and collective bargaining, the elimination of forced labour, the abolition of child labour and the elimination of employment discrimination. The 8 fundamental Conventions, all of which have been ratified by Mongolia, are as follows:

- **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);** and
- **Discrimination (Employment and Occupation) Convention, 1958 (No. 111).**

There are also 4 “governance Conventions” relating to labour market governance. Mongolia has ratified 2 of them, but is yet to ratify those 2 relating to labour inspection. They are as follows:

- **Labour Inspection Convention, 1947 (No. 81);**
- **Employment Policy Convention, 1964 (No. 122);**
- **Labour Inspection (Agriculture) Convention, 1969 (No. 129);** and
- **Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).**

3. Free trade agreements

FTAs are international agreements intended to open up trade between public and private entities by reducing or removing trade barriers. Such barriers include trade tariffs and quotas. They are also used to create a minimum social foundation for developing trade. FTAs often provide for the reduction or removal of barriers based on, for example, adherence to ILS.

Trade liberalisation (opening up economies to increased foreign trade and investment) can create sustained economic growth; reduce the risk of countries going to war; lead to better labour standards, increased employment rates, less poverty and increased stability; and benefit all parties, even countries at different levels of development. Underlying the linking of trade liberalisation to compliance with ILS, however, is the WTO’s fundamental principle that trade liberalisation must bring benefits to all partners. As set out in the ILO’s **Declaration on Fundamental Principles and Rights at Work (1998)**, ILS should not be enforced for protectionist purposes or to call into question the comparative advantage of member States. Furthermore, as set out in the ILO’s **Declaration on Social Justice for a Fair Globalization (2008)**, member States should not seek comparative advantage in the violation of fundamental standards. The 2008 Declaration also requires the ILO to assist member States “who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations”.

For many reasons, it is in Mongolia’s interests to liberalise trade. The national economy suffers from a lack of diversification, being heavily reliant on imports and exports with China and Russia (over 90% of exports go to China), as well as its mining industry, which accounts for 20% of GDP and almost 90% of exports. The composition of the economy exposes Mongolia to cycles of boom and bust based on the mineral market and the Chinese economy.²

For Mongolia to successfully negotiate new FTAs and develop new trading partners, it needs to enhance its commitment to ILS, particularly the fundamental

Conventions, the implementation of which are commonly required (see below).

EU’s advanced Generalised Scheme of Preferences

The EU’s approach to both its bilateral and multilateral FTAs focuses on social development objectives within a cooperative framework. For example, it offers the reduction or removal of tariffs for developing countries that respect ILS through its Generalised Scheme of Preferences (GSP) and advanced Generalised Scheme of Preferences (GSP+). On 1 January 2014, Mongolia became one of the 10 countries to benefit from the GSP+. In order to maintain its benefits, Mongolia is required to show a progressive application of ILS. Ongoing beneficiary status yields significant preferential margins over other countries. For example, cashmere pullovers from Mongolia enjoy 0% tariffs compared to 15% on those from China. Given Mongolian exports to the EU amounted to over EUR 75.6 million in 2014 (an increase of almost 8% compared to 2013), the implementation of ILS is particularly important in preserving GSP+ status and developing further trade.³

United States free trade agreements

The United States has included labour provisions in all its FTAs since 1994. More recently, the New Trade Policy for America (2007) stipulated that future FTAs must include an obligation to adopt, maintain and enforce in their laws and practice the fundamental principles and rights at work, as set out in the 1998 Declaration. Mongolia does not benefit from any FTAs with the United States.

Canadian free trade agreements

Canada has signed various FTAs that refer to labour provisions, including those concentrating on the fundamental principles and rights at work. Some of Canada’s FTAs, including the Canada-Chile agreement on Labour Cooperation, also include protections regarding employment conditions, rules on employment promotion and protections for migrant workers. Mongolia does not benefit from any FTAs with Canada.

4. Global supply chains and corporate social responsibility (GSCs and CSR)

GSCs refer to international networks created by different companies involved in producing, handling and distributing goods. CSR involves the self-regulation of businesses to ensure compliance with national and international laws (including ILS) and ethical standards to increase profits through good public relations, raise ethical standards to mitigate business and legal risk, and build shareholders’

trust by businesses taking responsibility for their actions. CSR is now commonplace in GSCs.

Companies increasingly insist on trading partners complying with supplier codes of conduct. Although such codes are not a recent phenomenon, they are no longer limited to specific sectors, have evolved significantly and are increasingly formalised.⁴ In 2012, the UN Conference on Trade and Development (UNCTAD) conducted research into 100 leading companies from 10 different industries, selected from the Morgan Stanley Capital International (MSCI) All World Index, including McDonalds, Starbucks and Apple.⁵ It found more than three quarters had supplier codes of conduct. Most suppliers are now required to contractually bind themselves to terms set out in such a code to engage in business with customers, and customers can terminate contracts with suppliers due to a failure to meet the conditions. Given lengthening GSCs due to globalisation and offshore production, a supplier code of conduct can also be applied to several levels of a supply chain.

In studies carried out by the ILO,⁶ Organization for Economic Co-operation and Development (OECD)⁷ and UN Research Institute for Social Development (UNRISD),⁸ over 98% of the codes of conduct examined addressed labour practices and all addressed human rights. Companies with CSR codes of conduct that generally deal with a broader range of labour standards include those involved in the textiles, garments and electronic devices industries.⁹ (Mongolia's textile industry accounts for almost a quarter of its manufacturing sector.¹⁰)

The ILO fundamental Conventions are often used in codes of conduct. Some companies even insist on suppliers using ILS as minimum standards, including where domestic laws provide fewer protections. In addition, the ILO's **Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2006)**, commonly referred to as the MNE Declaration, provides direct guidance to enterprises, governments, workers' organisations and employers' organisations on social policy and inclusive, responsible and sustainable workplace practices.

Mongolia's adoption and implementation of ILS, particularly the fundamental Conventions and those ensuring income security, better working conditions and secure employment relationships, are therefore likely to play an increasing role in establishing trade relations between suppliers and foreign businesses.¹¹

Case study: Ethical Trading Initiative

The Ethical Trading Initiative (ETI) is a prominent group of global companies with thousands of suppliers, international trade union bodies, specialised labour rights organisations and development charities. Its members include companies such as Marks and Spencer, Tesco, BBC Worldwide and H&M, and have a combined turnover of over US\$240 billion. The code of conduct to which its members subscribe, known as

the ETI Base Code, is founded on ILO Conventions, including those relating to forced labour, freedom of association, collective bargaining, working conditions, child labour, wages, working hours and non-discrimination.¹²

5. Foreign direct investment

Ratifying and implementing ILS is conducive to decent work, and thus a workforce operating under better conditions with higher levels of satisfaction. The right to collective bargaining can be particularly important in this regard, enabling workers to secure higher wages and better employment relationships. Studies have shown that, in the long-term, foreign investors often prefer the stability of high-skill, low-turnover industries, and politically and socially stable economies as opposed to just low wages. Indeed, neglecting ILS is a short-sighted approach that is likely to restrict FDI to low-tech, labour-intensive industries, stunt the development of human capital and technology, and leave workers vulnerable to exploitation from multinational corporations.¹³

Economic growth in Mongolia slowed from an average of 14% between 2011 and 2013 to 8% in 2014. One of the key drivers of this slow-down was a sharp decline in FDI.¹⁴ 80% of Mongolia's annual FDI relates to the mining sector, and investor interest has reduced in part due to falling global copper and coal prices. From a peak of US\$4.7 billion in 2011, FDI fell by 85% through the first quarter of 2015.¹⁵ Observance of ILS should play a long-term role in rebuilding FDI in Mongolia.

6. Implementation of international labour standards

In Mongolia, 10 per cent of children aged 5 to 17 (over 56,000 children) perform child labour,¹⁶ particularly in the agriculture sector, but also in horse racing, construction and mining. Although data collection and monitoring in respect of child labour are significant barriers to its abolition, no legal requirement currently exists for employers to keep a register of workers under 18. The CEACR noted the lack of such a requirement in a 2015 observation, stating that one should be introduced compelling employers to record the names and ages (or dates of birth) of all under 18s whom they employ.¹⁷

Legislative protections exist in relation to prisoners' labour, but according to some reports, they are sometimes paid below minimum wage, do not receive their full salaries and perform work for private employers, contrary to Convention No. 29.¹⁸¹⁹ Conscripts are also used to perform non-military work in breach of Conventions Nos. 29 and 105,²⁰ and certain reports suggest that some Chinese and North Korean migrant workers may face conditions tantamount to forced labour in Mongolia.²¹²²

There is no systematic collection of information about labour strikes, but strikes were reported frequently in 2015

on issues of wages and working conditions. The National Human Rights Commission of Mongolia (NHRCM) reported that some employers attempt to dissolve trade unions and discriminate against their members in the workplace,²³ and the ability of migrant workers to access representation by workers' organisations is unclear.

Women continue to be paid less than men in most sectors.²⁴ Although the concept of equal pay for work of equal value is not reflected in the current **Labour Law (1999)**, it has been incorporated into the draft revised Labour Law. Implementation will be key, and Mongolia is working with ILO support to establish job evaluation methods leading to the full application of this principle.²⁵

Due to rapid urbanisation and lack of infrastructure, informality in small and medium-sized enterprises (SMEs) is common: some studies suggest the informal economy may constitute 35% of Mongolia's total GDP.²⁶ This large-scale informality is a barrier to applying labour legislation governing employment relationships and the rights and social protection of workers.

7. Recommendations

Respect for ILS benefits foreign trade and investment by demonstrating good governance, political stability, commitment to the reputation of global brands and their

investors, an appreciation of the concerns of consumers and the fulfilment of the legitimate expectations of trading partners. In order to ensure the progressive application of ILS in Mongolia, the following actions are recommended:

- Ratification of Conventions Nos. 81 and 129 (priority Conventions on labour inspection) and the **Protocol of 2014 to the Forced Labour Convention, 1930 (P29)**, which addresses gaps in the implementation of Conventions Nos. 29 and 105
- Promote freedom of association and collective bargaining to enable vulnerable workers, such as migrant workers, including irregular migrants, to join workers' organisations;
- Amend the Labour Law to require all employers to keep a register of workers under the age of 18;
- Strengthen labour inspection capacity to ensure compliance with international Conventions, improved occupational safety and health, and increased productivity;
- Raise awareness among children, parents and employers of issues surrounding child labour, including its harmful effects on safety, health, education and personal development; and
- Allocate sufficient funds and conduct regular research on the application of the fundamental principles and rights at work to ensure evidence-based approaches to policy formulation.

¹ D. Kucera: "Core labour standards and foreign direct investment", in *International Labour Review* (2002, Vol. 141, No. 1-2), p. 33.

² European Commission: *The EU special incentive arrangement for sustainable development and good governance ("GSP+") covering the period 2014-2015*, (2016), p. 172.

³ *Ibid.*, p. 186.

⁴ L. Riisgaard: 'Global Value Chains, Labor Organization and Private Social Standards: Lessons from East African Cut Flower Industries', in *World Development* (2009, Vol. 37, no. 2), pp. 326–340.

⁵ UNCTAD: *Corporate social responsibility in global value chains: Evaluation and monitoring challenges for small and medium sized suppliers in developing countries* (Geneva, 2012), Geneva, section I.A.

⁶ I. Mamic: *Business and code of conduct implementation: How firms use management systems for social performance*, (Geneva, ILO, Management and Corporate Citizenship Programme, 2003).

⁷ OECD: "Codes of Corporate Conduct: Expanded Review of their Contents", *OECD Working Papers on International Investment*, 2001/06, OECD Publishing.

⁸ R. Jenkins: *Corporate codes of conduct: Self-regulating in a global economy* (Geneva, UNRISD, 2001).

⁹ UNCTAD, op. cit., section I.E.

¹⁰ <http://www.finpro.fi/documents/10304/c70534f3-b1ef-4c7f-a850-b1316b37757c> (p9)

¹¹ UNCTAD, op. cit., section I.F.

¹² <http://www.ethicaltrade.org>

¹³ R. Sarna: *The impact of core labour standards on foreign direct investment in east Asia* (Tokyo, The Japan Institute for Labour Policy and Training, 2005), draft paper, p. 28.

¹⁴ European Commission, op. cit., p. 172.

¹⁵ <http://mongolia.usembassy.gov/ics2015.html>

¹⁶ Understanding Children's Work (UCW): *The twin challenges of child labour and educational marginalisation in the South-East and East Asia region: Preparing for a post 2015 world* (Rome, UCW, 2015), p. 6.

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http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3255384:NO

¹⁸ NHRCM: *13th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbataar, NHRCM, 2014), pp. 38-42.

¹⁹ ILO and NHRCM, *Prison labour and employment conditions of convicts in Mongolia: An empirical study* (Ulaanbataar, NHRCM, forthcoming).

²⁰ NHRCM: *13th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbataar, NHRCM, 2014), pp. 29-38.

²¹ <http://survey.ituc-csi.org/Chinese-migrant-workers-forced.html>

²² <http://survey.ituc-csi.org/North-Korean-workers-exploited.html>

²³ NHRCM: *14th Status Report on Human Rights and Freedoms in Mongolia* (Ulaanbataar, NHRCM, 2015), p. 60.

²⁴ European Commission, op. cit. (2016), p. 180.

²⁵ See e.g.: ILO: *Promoting Equity: Gender-neutral job evaluation for equal pay: A step-by-step guide* (Geneva, ILO, Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, 2008).

²⁶ Mongolbank: *Shadow economy* (Ulaanbataar, Booklet 8, 2013), p. 22.