

1. Introduction

Collective bargaining refers to negotiations between workers and employers to agree mutually beneficial terms and conditions of work and employment, and relations between workers, employers and their respective representatives. Workers are normally represented by trade unions to which they belong, while employers may participate in discussions individually or in groups, whether represented by an employers' organization or not. Collective bargaining agreements (CBAs) reached through these negotiations act as labour contracts between workers' representatives and employers. Freedom of association without government interference allows workers and employers to join, participate in, and leave these organizations, which take collective action in their members' interests. Strong freedom of association and collective bargaining ensure workers and employers have an equal voice in negotiations.

Collective bargaining is a tool that can benefit workers, employers, the economy and society as a whole. It can promote democratic, harmonious and productive workplaces, reduce occupational accidents, reduce labour disputes, promote stability and increase export competitiveness. It can increase demand for goods and services in the economy at a rate compatible with labour productivity, which in turn can drive an increase in wages. Research suggests countries with strong collective bargaining procedures tend to have less wage inequality, lower unemployment, and fewer and shorter strikes.

Mongolia, as a member of the European Union's (EU) enhanced Generalised Scheme of Preferences (GSP+), benefits from trade incentives dependent on compliance with international Conventions, including on collective bargaining and freedom of association. As a lower-middle income country currently experiencing a significant economic slow-down, Mongolia therefore stands to benefit from increased efforts to strengthen freedom of association and promote collective bargaining. Such efforts correspond with Sustainable Development Goal 8 to promote inclusive and sustainable economic growth, employment and decent work for all.

2. ILO instruments

The **Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, ratified by Mongolia in 1969, allows workers and employers to establish and join organizations of their choosing without previous authorisation, draw up their constitutions and rules,

elect representatives, organize their administration and activities, and formulate their programmes. It also prohibits the State from interference that would restrict these rights and protects organizations from dissolution or suspension by administrative authorities.

The **Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**, also ratified by Mongolia in 1969, guarantees workers protection from anti-union discrimination in respect of their employment. It prohibits employers from imposing conditions of employment that require workers not to join trade unions or relinquish their existing membership, and from dismissing or otherwise prejudicing workers due to union membership or participation (either outside working hours or, with the consent of the employer, during working hours). Such participation includes activities such as strike action and "whistleblowing" (exposing illegal or unethical activities within the organization). Convention No. 98 also protects workers' and employers' organizations from interference by each other in their establishment, functioning or administration, and requires measures to be taken where necessary to encourage the voluntary negotiation of CBAs.

Protections under Conventions Nos. 87 and 98 extend to all workers, including migrants and those in the informal economy, except members of the armed forces, police and, in the case of Convention No. 98, public servants engaged in the administration of the State. Other relevant International Labour Organization (ILO) instruments include:

- the **Workers' Representatives Convention, 1971 (No. 135)**,* and Recommendation No. 143;
- the **Rural Workers' Organisations Convention, 1975 (No. 141)**;
- the **Labour Relations (Public Service) Convention, 1978 (No. 151)**, and Recommendation No. 159;
- the **Collective Bargaining Convention, 1981 (No. 154)**, and Recommendation No. 163;
- Recommendations Nos. 91, 92, 94, 113, 129 and 130 on industrial relations; and
- the Resolution of 1970 concerning Trade Union Rights and Their Relation to Civil Liberties.

**Ratified by Mongolia*

Mongolian legislation

Article 16 of the **Constitution of Mongolia** guarantees citizens freedom of thought, speech and expression, the right to favourable working conditions, to form a party, association or other public organization, and to hold peaceful meetings and demonstrations.



Discrimination against individuals for joining or being members of parties or organizations is prohibited.¹ The **Labour Law (1999)**² sets out relations to be regulated by CBAs, who may participate in collective bargaining, how it shall be conducted and regulations on strike action.³ The **Law on the Rights of Trade Unions (1991)** deals with forming and joining unions, prohibits discrimination due to union membership or non-membership, sets out the rights of unions and prevents employers' interference with union activities.⁴ Public servants are banned from participating in unions and strike action under the **Law on Public Service (1995)**. Migrant workers do not appear to enjoy the right to organize and collective bargaining under Mongolian law. Relevant articles of the Constitution and the Law on the Rights of Trade Unions refer only to the rights of "citizens", contrary to Conventions Nos. 87 and 98.

In 2015, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) made a number of direct requests related to freedom of association and collective bargaining. Under Convention No. 87, it invited the Government to provide information on the independence of employers' organizations in respect of the law on the legal status of employers currently being drafted.⁵ Under Convention No. 98, it noted ongoing reforms to the Labour Law "with interest", requesting information on their impact on the application of the Convention, including the negotiation of CBAs without State interference.⁶ Finally, under Convention No. 135, it urged the Government to include protections for workers' representatives in the amended Labour Law, including the freedom to attend union events, and publish and distribute their own information to workers and the public.⁷

3. Scope and conduct of collective bargaining

Subjects open to collective bargaining are not limited to issues such as working time and wages, but include managerial issues such as promotions, transfers and dismissal without notice. Matters must be primarily or essentially related to terms and conditions of work and employment. Issues primarily or essentially related to the management and operation of government business are outside the scope of bargaining. For example, setting broad education policy would be excluded from negotiations in the public education sector.⁸ As regards the conduct of bargaining, the ILO's Committee on Freedom of Association (CFA) set out the following principles:⁹

- It is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties;
- The principle that both employers and trade unions should negotiate in good faith and make efforts to reach

an agreement means that any unjustified delay in the holding of negotiations should be avoided;

- While the question as to whether or not one party adopts an amenable or uncompromising attitude towards the other party is a matter for negotiation between the parties, both employers and trade unions should bargain in good faith making every effort to reach an agreement; and
- Agreements should be binding on the parties.

Bargaining between workers and employers must be voluntary in that the State must not affect the outcome. However, employers may be legally required to engage in negotiations with reasonable time limits and proportionate sanctions may be imposed if a party does not act in good faith or uses unfair practices.¹⁰ Governments should invest in means of facilitating bargaining, such as dispute resolution services.

Governments must not interfere in the drafting of CBAs, unless exclusively providing technical assistance. They may refuse to approve them due to errors of pure form or procedural flaws, or if minimum standards set out in legislation have not been met. The approval of CBAs may not be refused due to incompatibility with government policies or official directives on wages or working conditions. Governments must also not suspend CBAs without the parties' agreement, interrupt already negotiated agreements, require freely concluded CBAs to be renegotiated, or annul CBAs and force their renegotiation. In future negotiations, free wage fixing may be restricted if the national economic situation requires stabilization measures. Such measures should only be taken exceptionally and to the extent necessary, follow consultations with workers and employers, be accompanied by safeguards to protect workers' living standards and not exceed a reasonable period.

4. Benefits

Strong freedom of association and collective bargaining benefit workers, employers and society in general. Negotiating collectively enables workers to redress the balance of power with their employers and engage in better dialogue. Safety in numbers allows them to express their views without fear of reprisals, which improves the value of their contributions and enables employers to make better-informed decisions. Improved communication can lead to more cooperative relationships, better occupational safety and health, and more efficient practices. Such improvements are likely to improve workers' morale, leading to higher productivity and innovation, fewer and shorter strikes, and lower staff turnover. This enables skills retention and development, reducing the costs of recruitment, training and dealing with disputes.

Higher productivity can enhance export competitiveness of labour intensive goods, which can also improve when trading partners are confident exports are produced under market conditions. For example, partners do not need to impose anti-dumping duties to compensate for suppressed wages.¹¹ In contrast, suppressing or failing to encourage

wage bargaining in favour of employer-dominated wage fixing may expose businesses to dumping allegations. Freedom of association and collective bargaining can also benefit society as a whole by promoting democratic organization and the realisation of other human rights, as well as contributing to broad economic and social development by improving living and working conditions.

Gender equality and non-discrimination

Workers' organizations can negotiate protections for vulnerable workers who may otherwise struggle to realise their rights, such as women, migrants and persons with disabilities. For example, the Network of Trade Union Officials for Equality, a body of the General Workers' Union of Catalonia in Spain, trains delegates to combat sex discrimination in all its forms in the workplace.¹² CBAs can incorporate a gender perspective, addressing issues such as occupational segregation and wage inequality between women and men, maternity and paternity leave and pay, training and career progression for women, part-time and flexible working arrangements, and sexual harassment. Collective bargaining can thus help to eliminate deep-rooted, structural inequalities.

Freedom of association and collective bargaining in Mongolia

The Confederation of Mongolian Trade Unions (CMTU) is the national trade union centre, with 214,620 active members from a wide range of professions. It has 35 member unions, comprising 22 territorial unions and 13 professional unions.¹³ The Mongolian Employers' Federation (MONEF) encompasses 21 regional employers' associations, 12 sectoral associations and 41 professional associations, representing around 8,100 businesses in total.¹⁴

Collective bargaining in Mongolia is both bipartite (between workers and employers) and tripartite (between workers, employers and the government). Although Mongolia has used bargaining positively to address labour disputes, the economic downturn has posed challenges such as the suspension of CBAs. Laws protecting freedom of association and bargaining are generally enforced – the Labour Dispute Settlement Committee resolves most disputes and the rest are referred to the courts.¹⁵ However, according to the CMTU, some workers have difficulty forming or joining unions and some employers take steps to weaken unions by prohibiting workers from participating in their activities during working hours (despite their legal right to do so), dismissing workers for participation, withholding salary deductions for union dues or refusing to conclude CBAs.¹⁶

5. Informal economy

The abovementioned ILO Conventions on freedom of association and collective bargaining apply equally to workers in the informal and formal economies. However, in practice, workers in the former are more likely to suffer from low incomes, long hours, unsafe working conditions, low productivity, lack of training and limited or no access to social protection. Workers in the rural economy in particular often suffer from high levels of informality. Without organization and representation, these workers are unable to pursue their employment interests through bargaining and lobbying policymakers.

Governments and trade unions can encourage rural and agricultural workers to establish, join and participate in cooperatives – independent, democratic enterprises jointly run by their members – to promote their interests, strengthen their position in the agricultural food chain and support development of the rural economy. Cooperatives may engage in bargaining in their own right or be represented by established trade unions. In respect of workers in the informal economy in general, governments and trade unions can organize outreach programmes to teach them about the benefits of collective representation, and include them in CBAs. They can be offered services including information on their legal rights, legal aid, medical insurance, and credit and loan schemes. However, these activities are not a replacement for formal bargaining protections, which States should ensure extend to these workers while increasing efforts to formalise enterprises.

Workers in Mongolia's informal economy

Some trade unions have been formed in the informal economy, according to a 2005 report by the National Human Rights Commission of Mongolia (NHRCM). However, they did not have regular activities or sufficient funding, being reliant on support from foreign programmes. Nonetheless, some larger, formal unions have supported the establishment of smaller unions in the informal economy, such as the Trade Union of Transportation Workers helping to establish unions for shuttle bus and taxi owners.¹⁷

6. Right to strike

Strikes involve workers' collective refusal to work. They are often called in response to economic conditions or labour practices when disputes with employers or the government cannot be solved by negotiation. Although not specifically mentioned in its text, the CEACR and CFA have recognised that Convention No. 87 encompasses the right to strike. This right does not extend to the armed forces, police, public servants who exercise authority for the State, such as the judiciary and prison guards, and workers who provide essential services. (Public servants who do not exercise authority for the State, such as those employed by State enterprises, do enjoy the right to strike.) Public servants without the right to strike should have sufficient guarantees to protect their interests, such as proper conciliation and arbitration procedures. Essential services are those "the interruption of which would endanger the life, personal

safety or health of the whole or part of the population”. This will depend on the prevailing circumstances in the country, but includes hospitals, air traffic control, and electricity, water supply and telephone services. Other than essential services (for which strikes may not be prohibited) and non-essential services (for which they may be prohibited), there are also services of fundamental importance or public utility, for which strikes may not be banned but standards of minimum service may be set. According to the CFA, a general prohibition of strike action can be justified in an acute national emergency, such as serious conflicts, insurrections or natural disasters, in which the normal conditions for the functioning of society are absent. However, this may only be imposed for a limited period and to the extent necessary to meet the requirements of the situation. Strikes may also be subject to legal procedural restrictions that do not substantially limit the right to strike.

Compulsory arbitration usually refers to a procedure imposed by the government when workers and employers fail to reach agreement in a bargaining dispute. It is generally prohibited, as it conflicts with the voluntary nature of negotiations. However, according to the CEACR, if a certain number of days of strike action has passed, the State may impose such arbitration if a *first* CBA is being concluded (as opposed to the renewal of a previous CBA). This is because concluding first CBAs can be an especially difficult step in establishing a bargaining relationship.¹⁸

Strike action in Mongolia

Both public and private sector workers exercise the right to strike, particularly since Mongolia’s recent economic difficulties. Information on strikes is not systematically collected, but they are frequently reported among both blue collar and white collar workers, including miners, transport workers, doctors and scientists. The current Labour Law places various conditions on strike action, including a requirement on trade unions to indicate the proposed duration of a strike, although workers have declared indefinite strikes in practice. The current Labour Law also prohibits strikes concerning matters not regulated by a CBA. In its 2015 direct request under Convention No.

87, the CEACR sought to clarify that unions can in fact call strikes over problems posed by major social and economic policy trends, as well as have recourse to sympathy strikes (strikes in which participants do not express any grievance against their own employers, but act in solidarity with another group of workers).

Recent strike action includes strikes by coal miners at Erdenes Tavan Tolgoi JSC in October and November 2015 in protest against a decision to transfer them to a privately owned Chinese company (TTJVCo) for fear they would subsequently be dismissed.¹⁹

7. Recommendations

Mongolia should seek to strengthen its commitment to freedom of association and collective bargaining, not only to ensure it upholds fundamental human rights and international labour standards, but also to advance its economic interests, maintaining trade benefits with the EU and attracting further trade. The following actions are recommended:

- Amend domestic legislation to ensure freedom of association and collective bargaining protections extend to migrants and those in the informal economy, and amend the Labour Law to include protections for workers’ representatives as detailed by the CEACR;
- Increase efforts to ensure workers do not have difficulty forming, joining or participating in trade unions;
- Increase investment in dispute resolution services;
- Encourage workers’ organizations to negotiate protections in CBAs for vulnerable workers, such as women, migrants and persons with disabilities;
- Ensure unions can call strikes in relation to disputes arising from social and economic problems, as well as have recourse to sympathy strikes;
- Increase efforts to formalise enterprises, particularly small and medium-sized enterprises (SMEs); and
- Organize outreach programmes to teach workers in the informal economy about the benefits of collective representation, provide key services, and encourage rural and agricultural workers to establish, join and participate in cooperatives.

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http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/legaldocument/wcms_117392.pdf

² Labour Law is currently undergoing revision

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<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/57592/65206/E99MNG01.htm>

4

<http://www.ilo.org/dyn/natlex/docs/SERIAL/35023/29144/F1022696078/MN/G35023.pdf>

5

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3253304:NO

6

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3253310:NO

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http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3253307:NO

⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087931.pdf (p24)

⁹ <http://learning.itcilo.org/ilo/jur/en/bibl/Decisions.pdf> (paras 815–818)

¹⁰ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087931.pdf (p29)

¹¹ “Dumping” means charging prices for goods in a foreign market that are lower than the prices charged in the domestic market, or lower than the cost of production

¹²

http://genderpaygap.eu/documents/2016_guide_equal_pay_and_collective_bargaining.pdf (p23)

¹³ <http://mad-intelligence.com/where-does-the-trade-unions-money-go/>

¹⁴ <http://monef.mn/en/index.html>

¹⁵ <http://www.state.gov/documents/organization/220425.pdf> (p30)

¹⁶ <http://www.state.gov/documents/organization/220425.pdf> (pp29–30)

¹⁷ NHRCM (2005), *Status of the Right to Freedom of Association, and the Right to Organize and Collective Bargaining: Study, Research Report* (unpublished) (p44)

¹⁸ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087931.pdf (pp39–40)

¹⁹ <http://www.news.mn/r/225457>