

UnFAIR LABOUR Practices, anti-union Discrimination, and workplace violence

Module 3: International Labour Standards and Best Practices



Structure of this module:

- C081 - Labour Inspection Convention, 1947 (No. 81).
- What are the International Labour Standards around protection against anti-union discrimination?
- How are “union activities” defined in international labour standards?
- What is Freedom of Association?
- Overview of ILO Conventions Nos. 87 and 98.
- Freedom of Association and what does it look like in practice?
- Protection against Acts of Interference.
- The relationship between Collective Bargaining and Freedom of Association.
- Unfair labour practices according to ILO Principles.
- Global examples of effective union protection mechanisms.

C081 - Labour Inspection Convention, 1947 (No. 81)



Article 1

Each Member of the International Labour Organisation for which this Convention is in force shall **maintain a system of labour inspection** in industrial workplaces.

- Ratified by Bangladesh on 22 Jun 1972.

Article 2

1. The system of labour inspection in industrial workplaces shall apply to **all workplaces** in respect of which legal provisions relating to **conditions of work** and the **protection of workers** while engaged in their work are enforceable by labour inspectors.

Article 3

1. The functions of the system of labour inspection shall be:
 - a) to secure the **enforcement** of the legal provisions relating to **conditions** of work and **the protection of workers** while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and **other connected matters**, in so far as such provisions are **enforceable by labour inspectors**;

Article 3

1. The functions of the system of labour inspection shall be:
 - b) to supply **technical information** and **advice** to **employers and workers** concerning the most effective means of **complying** with the legal provisions;

Article 3

1. The functions of the system of labour inspection shall be:
 - c) to bring to the notice of the competent **authority defects or abuses not specifically covered by existing legal provisions.**

Article 3

2. **Any further duties** which may be entrusted to labour inspectors shall not be such as to **interfere** with the effective discharge of their primary duties or to **prejudice** in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - a) to **enter freely** and **without previous notice** at any hour of the day or night any **workplace** liable to inspection;

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - b) to enter by day any premises which they may have **reasonable cause to believe** to be liable to inspection; and

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - c) to carry out any **examination, test or enquiry** which they may consider necessary in order to satisfy themselves that the legal provisions are being **strictly observed**, and in particular —

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - c) to carry out any **examination, test or enquiry** which they may consider necessary in order to satisfy themselves that the legal provisions are being **strictly observed**, and in particular —
 - i. to interrogate, alone or in the presence of witnesses, the **employer** or the **staff** of the undertaking on any matters concerning the **application of the legal provisions**;

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:

c) to carry out any **examination, test or enquiry** which they may consider necessary in order to satisfy themselves that the legal provisions are being **strictly observed**, and in particular —

ii. to require the production of any **books, registers** or other **documents** the keeping of which is prescribed by national laws or regulations relating to **conditions of work**, in order to see that they are in **conformity** with the legal provisions, and to copy such documents or make extracts from them;

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - c) to carry out any **examination, test or enquiry** which they may consider necessary in order to satisfy themselves that the legal provisions are being **strictly observed**, and in particular —
 - iii. (iii) to enforce the **posting of notices** required by the legal provisions;

Article 12

1. Labour inspectors provided with proper credentials shall be empowered:
 - c) to carry out any **examination, test or enquiry** which they may consider necessary in order to satisfy themselves that the legal provisions are being **strictly observed**, and in particular —
 - iv. to take or remove for **purposes of analysis** samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

Article 12

2. On the occasion of an inspection visit, inspectors shall **notify** the employer or his representative of their presence, **unless they consider that such a notification may be prejudicial** to the performance of their duties.

Article 18

Adequate **penalties** for **violations** of the legal provisions enforceable by labour inspectors and for **obstructing** labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

What are the International Labour Standards around protection against anti-union discrimination?



What are the international labour standards around protection against anti-union discrimination?

Protection against acts of anti-union discrimination is enshrined in several international labour standards, but its first recognition is to be found in a fundamental ILO Convention, **the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**, Article 1:

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

Convention No. 98

Also specifies the three abovementioned forms of discrimination:

- discrimination in relation to **hiring**,
- discrimination during **employment**, and
- discrimination in relation to **dismissal**.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87):

To ensure the right of workers and employers to establish and join organizations of their own choosing freely, **without interference or reprisal** for the representation and protection of their own interests.

The Workers' Representatives Convention, 1971 (No. 135)

The Workers' Representatives Convention, 1971 (No. 135) supplements the worker protections of Convention No. 98 by specifically protecting workers' representatives from “any act prejudicial to them, including **dismissal**, based on their status or activities as a workers' representative or on union membership or participation in union activities” (Art. 1).

Convention No. 135 applies to **all types of workers' representatives**, union and non-union alike.

The Workers' Representatives Convention, 1971 (No. 135)

The Workers' Representatives Convention, 1971 (No. 135) complements Convention No. 135 by explicitly providing for **protection against discriminatory treatment against workers' and trade union representatives** alike at the level of the undertaking.

It also provides a detailed list of measures that should be put in place in order to ensure that protection against discriminatory treatment is effective and is granted in practice.

The Labour Relations (Public Service) Convention, 1978 (No. 151)

The Labour Relations (Public Service) Convention, 1978 (No. 151) also explicitly protects public employees against acts of **anti-union discrimination in respect of their employment**, using the same wording as Convention No. 98, and again specifies the three above-mentioned forms of discrimination:

- discrimination in relation to **hiring**,
- discrimination during **employment**, and
- discrimination in relation to **dismissal**.

The Termination of Employment Convention, 1982 (No. 158)

The Termination of Employment Convention, 1982 (No. 158) reinforces the provisions of Conventions Nos. 98 and 135 by specifying that trade union membership, participation in trade union activities or holding or seeking office as a workers' representative **shall not count as valid reasons for dismissal.**

How are “union activities” defined in international labour standards?



While protection against acts of interference relates to **employers' and workers' organizations**, protection against anti-union discrimination applies in the first instance to individuals, in particular to **workers who suffer a threat or a retaliation** by reason of union membership, of holding or seeking office in a trade union or because they engage in union activities.

Union activities may include but may not be limited to:

- forming a union and/or recruiting members (outside working hours or within working hours, with the permission of the employer);
- distributing, with the permission of the management of the undertaking, trade union news sheets, pamphlets, publications and other documents in the undertaking;
- collecting trade union dues in the undertaking;
- displaying union flags at meetings in the workplace;
- signing petitions or participating in union rallies;

Union activities may include but may not be limited to:

- participating in collective bargaining;
- calling and participating in lawful peaceful strike actions;
- representing individual workers in disciplinary or grievance proceedings;
- presenting collective grievances on behalf of other workers; and
- making a recommendation to workers with respect to an employer proposal in the context of collective bargaining.

What is Freedom of Association?



Freedom of Association (FoA) refers to the right of workers and employers to freely form organizations, a prerequisite for sound collective bargaining (CB) and social dialogue.

- **Core value** for the ILO.
- Preamble to the Constitution, 1919.
- Declaration of Philadelphia, 1944.
- Declaration on Fundamental Principles and Rights at Work, 1998, as amended in 2022.
- Declaration on Social Justice for a Fair Globalization, 2008.
- Centenary Declaration for the Future of Work, 2019.

- Right of workers and employers to:
 - **establish and join organizations** of their own choosing without previous authorisation, and without interference or reprisal.
 - **draw up their constitutions and rules**, elect their representatives in full freedom, organise their administration and activities and formulate their programmes **without interference** from the government or employers.
- Workers' and employers' organizations shall **organize freely** and not be liable to be dissolved or suspended by the administrative authority, and they shall have the right to **establish and join federations and confederations**, which may in turn affiliate with international organizations of workers and employers

Freedom of Association is not only a fundamental **LABOUR** and **HUMAN RIGHT** but a **DEVELOPMENT POLICY**.

To achieve **SOCIAL JUSTICE** and **SUSTAINABLE ECONOMIC GROWTH**.

Freedom of Association (FoA) together with **Collective Bargaining (CB)** have a role in economic development promoting:

- **Sharing in growth.**
- **Fair redistribution to workers of the wealth they have helped to generate.**
- **It is a human right recognizing that,** “Everyone has the right to freedom of peaceful assembly and association.” (Art. 20 Universal Declaration of Human Rights) and as a labour right entails the freedom of “workers and employers, **with no distinction whatsoever**, to form and join organizations of their own choosing without previous authorization (art.2 ILO C87).

Why is Freedom of Association considered an enabling and fundamental right?

Essential pillar of democracy:

- Freedom of speech
- Freedom of expression
- Peaceful assembly and demonstration

Fundamental civil right universally recognized.

Enabling right: **effective participation of non-state actors in economic and social policy.**

Key role: support of struggles for **independence** and **democracy** around the world.

Overview of ILO Conventions

Nos. 87 and 98.

Co87 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Go to article : [1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#) [16](#) [17](#) [18](#) [19](#) [20](#) [21](#)

Preamble
The General Conference of the International Labour Organisation, Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948; Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session; Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace; Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress"; Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation; Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions; adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:
PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation

Co98 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

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Preamble
The General Conference of the International Labour Organisation, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and Having determined that these proposals shall take the form of an international Convention, adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) –

C87: Objective and Scope

Objective -

To ensure the right of workers and employers to establish and join organizations of their own choosing freely, without interference or reprisal for the representation and protection of their own interests.

Scope of application -

- Employers and workers with **no distinction whatsoever**.
- Armed forces and police (narrowly defined) not covered.

C87: Art. 2

- Right of workers and employers to establish and join organizations **without distinction** on those entitled to it
- Exceptions/exclusions based on employment status, sex, colour, race, religion, nationality, political opinion or other grounds are to be considered in breach of the Convention
- Only possible exceptions (to be interpreted in the strict sense of the term)
 - Armed forces and police

C87: Art. 2 (cont'd)

- Right of workers and employers to **establish and join organizations** without previous authorization.
- Legal formalities and/or specific requirements for the establishment and registration of an organization are acceptable, but they don't have to be complex or long.
- Registration procedures should be expeditious, transparent and not subject to arbitrary refusal.
- Right to appeal before impartial and independent courts against refusal.

C87: Art. 2 (cont'd)

- Right of workers and employers to establish and join organizations of their **own choosing**.
- Minimum membership: acceptable requirement although it must not be so high as to hinder in practice the establishment of trade union organizations.
- Trade union pluralism.

C87: Art. 3

- Right of organizations to **draw up** their constitutions and rules.
- Only formal requirements.
- No prior approval, simply verification of formal requirements by the authorities

C87: Art. 3 (cont'd)

Right of organizations **to elect** their representatives in full freedom.

- Intervention restricted to provisions promoting democratic principles within trade unions or ensuring proper conduct of the process.
- Elections and results not subject to acceptance or approval.
- Need to ensure that the electoral process is carried out free from external pressure and interference from management, public authorities or other third parties.
- Right of **organizations to organize their administration.**
- Autonomy.

C87: Art. 3 (cont'd)

- Financial independence.
- Protection of assets and property.
- Right of organizations to **organize their activities and formulate their programmes.**
- Examples:
 - Right to hold meetings
 - Right of trade union officers to access the workplace and communicate with management
 - The right to organize certain political activities
 - The right to strike

The right to strike -

- Basic means available to workers and their organizations to protect their **economic and social interests**.
- Intrinsic corollary of the right to organize.

Strike Modalities -

- Any work stoppage, however brief and limited
- Also, sympathy strikes if the initial strike is lawful
- Purely political strikes do not fall within the scope of freedom of association
- Prerequisites admissible
 - Examples: Exhaustion of prior procedures like conciliation, mediation and voluntary arbitration; advance notice; quorum and majority

Permitted Restrictions -

- **Not an absolute right**, restrictions possible:
 - Armed forces and police, narrowly defined
 - Public servants exercising authority in the name of the State
 - Workers in essential services in the strict sense of the term
 - Acute national crisis, for a limited period and to the extent necessary to meet the requirements of the situation
- Compensatory guarantees to be provided to workers deprived (conciliation, mediation, arbitration)
- Prohibits penal sanctions for participating in peaceful strikes; penalties of imprisonment are also contrary to ratified ILO Convention No. 105

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) –

C98: Objective and Scope

Complements C.87, which deals with relations between workers and employers.

Objectives

- Protection against anti-union discrimination.
- Protection against interference in internal affairs.
- Promotion of collective bargaining.

Scope of application

- All workers and employers and their organizations
- Armed forces and police (**interpreted narrowly**) and public servants engaged in the administration of the State (**strictly defined**, on a case-by-case basis) **are not covered**.

C98: Art. 1

- Protection against acts of **anti-union discrimination**
 - **Before the existence of an employment relationship**
 - Making the employment of a worker subject to the condition that they shall not join a union or shall relinquish trade union membership
 - Denial of employment after information obtained through background checking regarding past trade union membership or activities

C98: Art. 1

- Protection against acts of **anti-union discrimination**
 - **During the employment relationship**
 - Dismissal or other prejudicial act by reason of union membership or because of participation in union activities
 - Examples: Transfer, relocation, demotion, non-renewal of employment contracts, withdrawal of benefits or other restrictions due to trade union membership or activities constitute acts of anti-union discrimination
 - In certain circumstances the use of fixed-term contracts for several years may affect the exercise of trade union rights

C98: Art. 1, Protection Measures

- Specific legal provisions forbidding acts of **anti-union discrimination**.
- Access to effective and rapid procedures to ensure enforcement of the protection in practice.
- Reversal of burden of proof.
- Effective and sufficiently dissuasive sanctions.

C98: Art. 2

- **Protections against acts of interference**
 - Acts designed to promote the establishment of workers' organizations under the domination of employers/their organizations
 - Acts designed to support workers' organizations by financial or other means, with the object of placing them under the control of employers/their organizations
 - Any other act hindering the free and independent creation or functioning of a trade union organization, including:
 - Acts from the public authorities

C98: Art. 2

- **Protections against acts of interference**
 - Acts from the public authorities:
 - Great restraint in relation to intervention in the internal affairs of trade unions
 - Example: **requirements regarding territorial competence and number of union members should be left for trade unions to determine in their own by-laws.** In fact, **any legislative provisions** that go **beyond formal requirements** may hinder the establishment and development of organizations and **constitute interference** contrary to Article 3, paragraph 2, of the Convention.

Freedom of Association and what does it look like in practice?



Freedom of Association (FoA) refers to the right of workers and employers without distinction whatsoever to freely form and join organizations of their own choosing and it represents a prerequisite for sound collective bargaining (CB) and social dialogue.

The **ILO Supervisory system*** has a crucial role in ensuring the application of FoA principles by monitoring how they are enforced both in law and in practice and providing recommendations and comments on cases of non-compliance with ratified standards or – in certain cases – with the principle of freedom of association and the right to collective bargaining as enshrined in ILO Constitution and Declarations

The ILO can support Member States in ensuring the application of freedom of association and other international labour standards (ILS) through technical assistance

[*See information about the ILO Supervisory system.](#)

THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

- ILO supervisory system on the application of ILS:
 - Is **multidimensional** and **unique**.
 - Is considered to be one of the **most developed** and **effective supervisory systems** at the international level.
 - It is composed of a regular system (CEACR + CAS) and special procedures. The former examines reports on the application in law and in practice sent by Member States and reports sent by Workers' Organisations and Employers' Organisations; the latter is based on the submission of representations or complaints, including a special procedure for complaints on FoA (Committee on Freedom of Association).

THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

- Two complementary components:
 - **Regular system of supervision** – takes place “regularly” following ratification
 - The Committee of Experts on the Application of Conventions and Recommendations (CEACR)
 - The International Labour Conference’s Tripartite Committee on the Application of Conventions and Recommendations (CAS)
 - **Special procedures** – when allegations of violations are made
 - Representations (art. 24, ILO Constitution)
 - Complaints (art. 26, ILO Constitution)
 - Committee on Freedom of Association (CFA)

THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

Committee on Freedom of Association (CFA):

- The mandate of the Committee consists in determining whether any given **legislation or practice** complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions.

THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

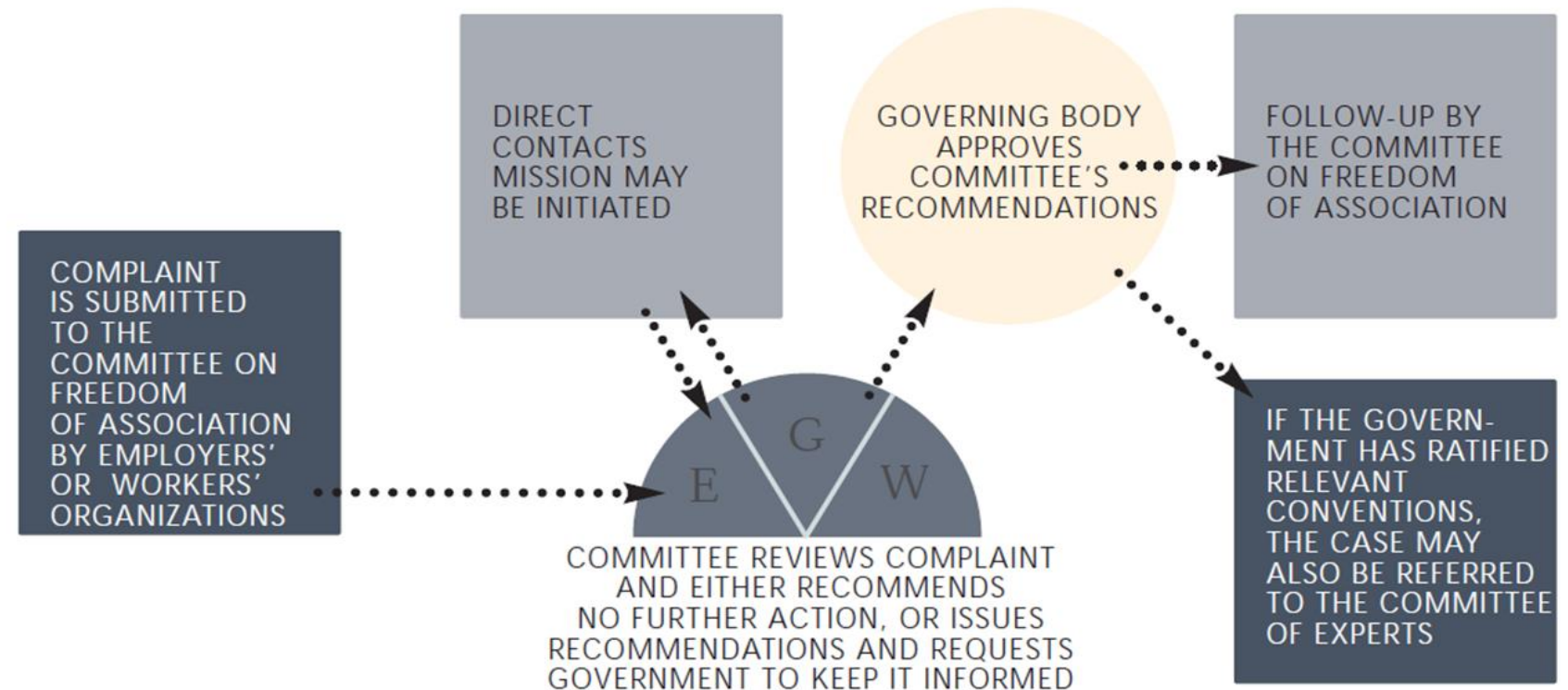
Committee on Freedom of Association (CFA):

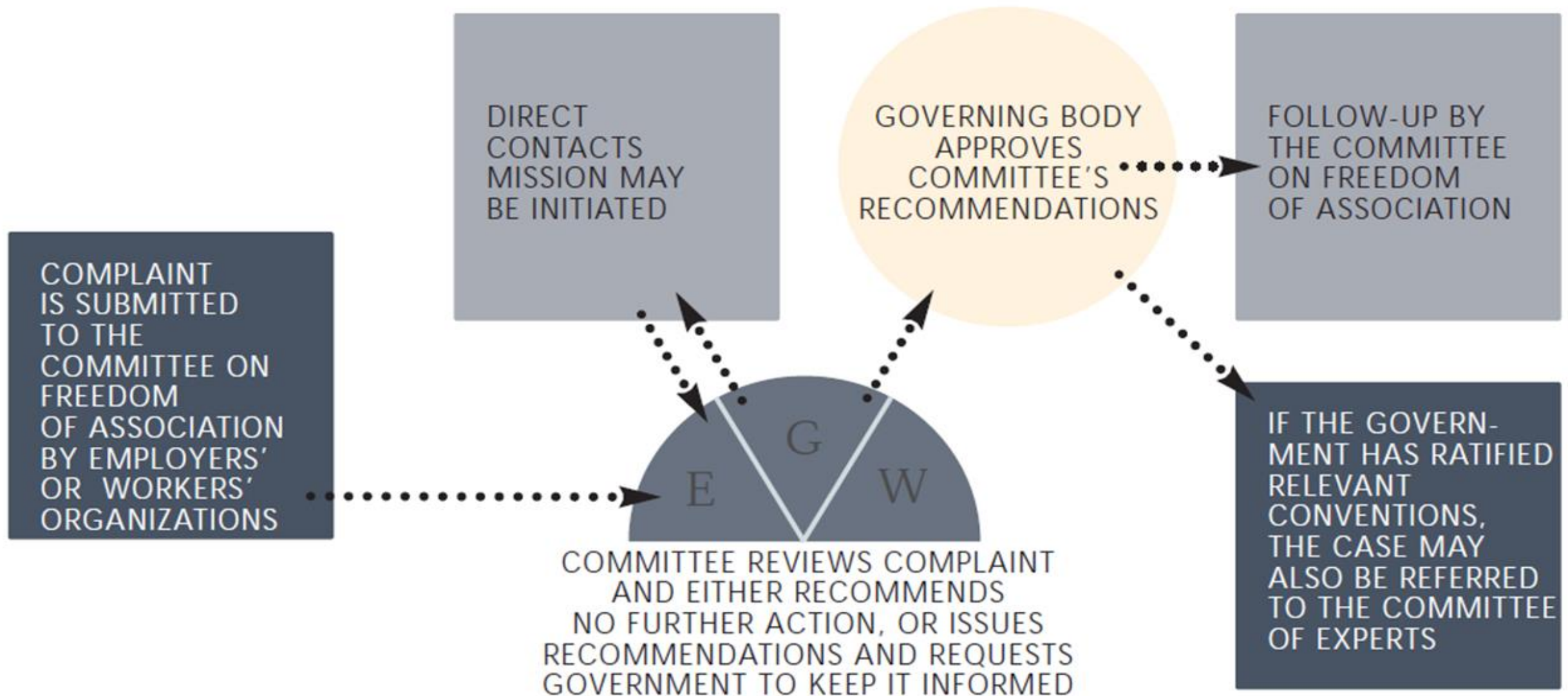
- Why a special Committee?
 - FOA is fundamental to the ILO.
- Which is its composition?
 - Tripartite.
- What does it produce?
 - Recommendations on how the situation could be remedied.

THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

Committee on Freedom of Association (CFA):

The Freedom of Association Procedure:

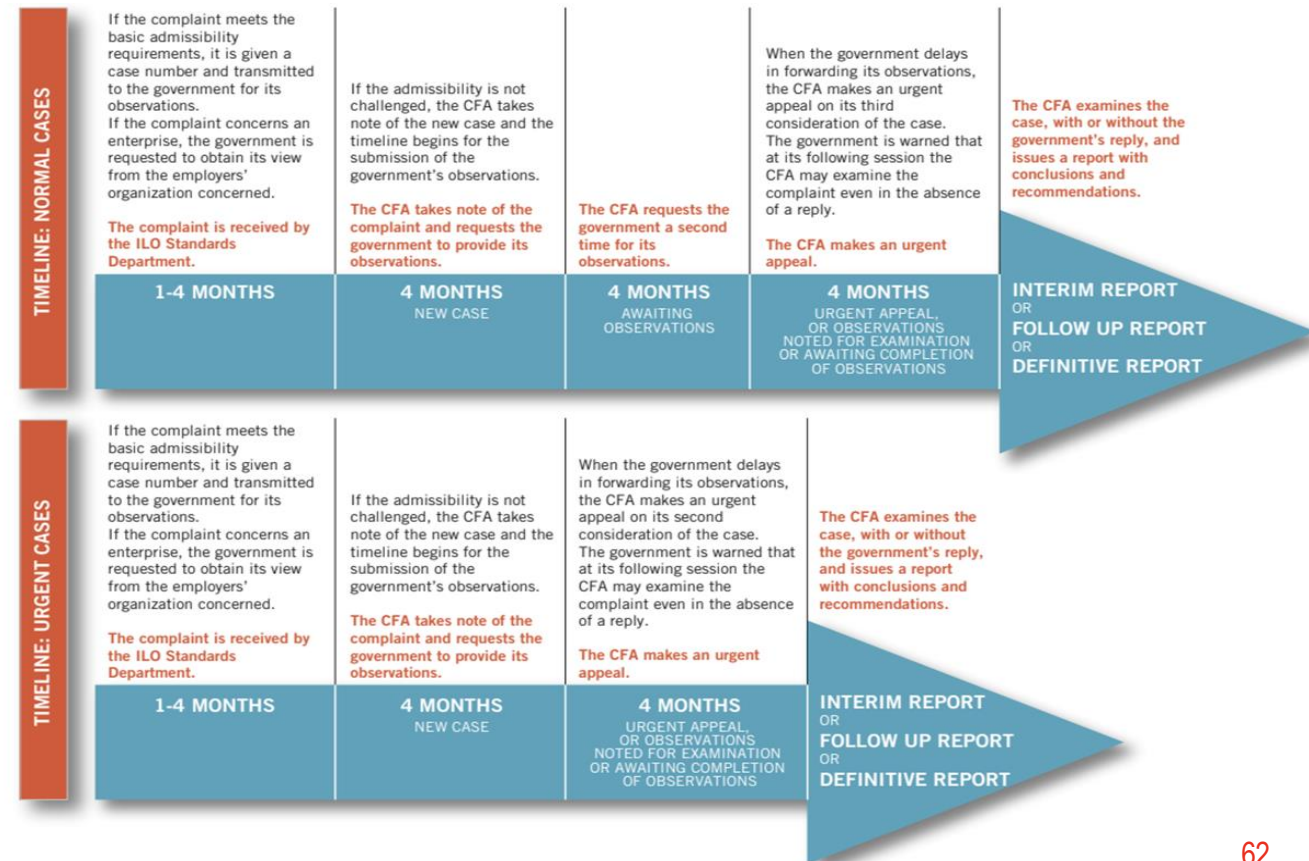




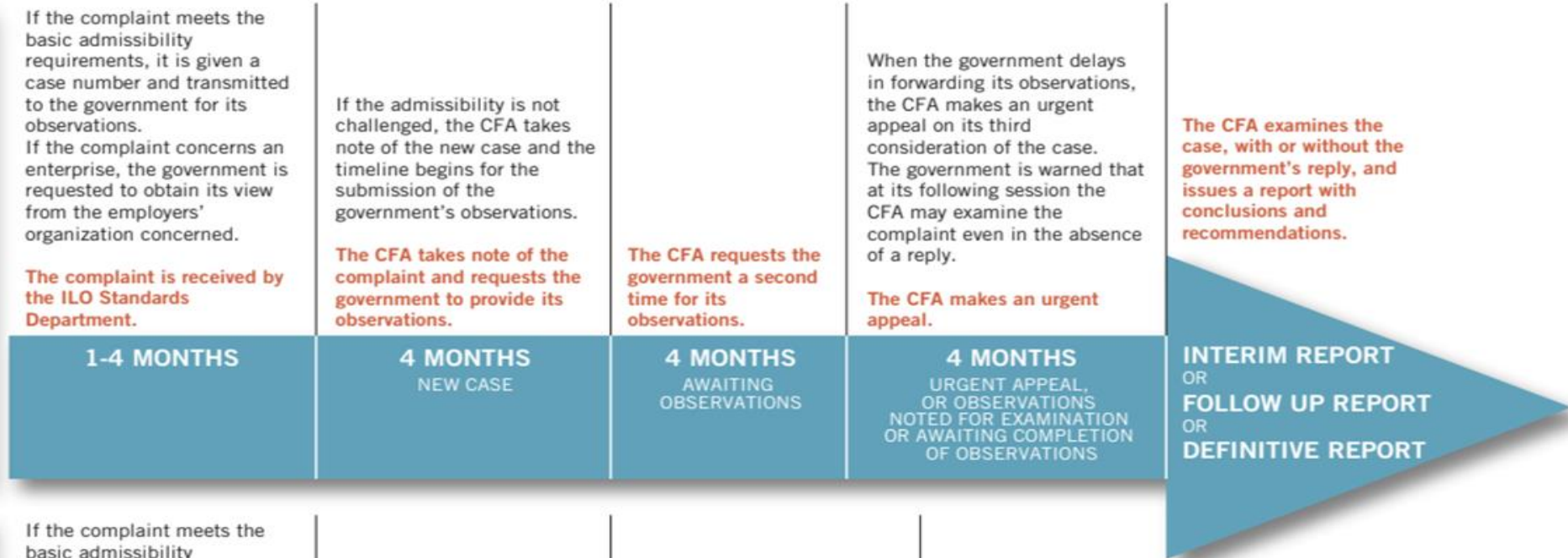
THE ILO SUPERVISORY SYSTEM IN A NUTSHELL

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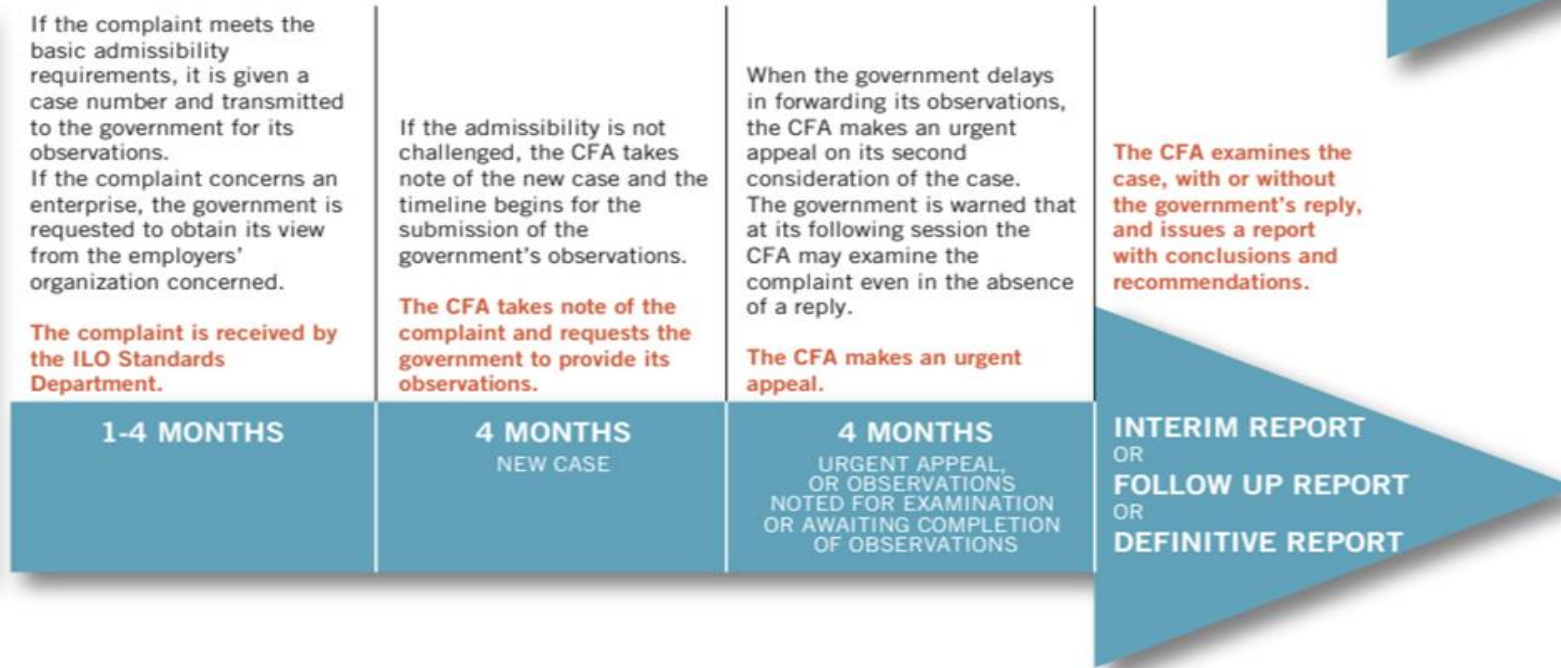
The Freedom of Association Procedure:



TIMELINE: NORMAL CASES



TIMELINE: URGENT CASES



The right to form and join organizations

Without distinction whatsoever

Principle of non-discrimination in trade union matters

- Regardless age, employment status, sex, colour, race, beliefs, nationality, political opinion, etc., including:
 - Private sector
 - Civil servants
 - Public service employees
 - National or Migrant Workers (documented or undocumented)
 - Domestic workers
 - Informal sector
 - ...

Exceptions:

- Armed forces and the police (national law or regulations)
- Narrowly defined

Art. 2 of Convention 87: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

The right to form and join organizations

Specific requirements compatible with the Convention:

- Simple formalities: e.g. deposit the rules (articles of association/bylaws) as a mere formality to ensure the rules are made public
- Opportunity to rectify any irregularities found in the documents

The legislation should establish the **precise conditions** which trade unions must fulfil in order to be entitled to registration and on the basis of which they may be refused or cancelled the registration.

Denying legal personality to an organization based on a **suspicion** that trade union leaders have committed acts which are punishable by law **is not compatible** with C. 87

Art. 2 of Convention 87: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

The right to form and join organizations

Without previous authorisation:

- Formalities are acceptable
- Must not be complex, such as to be equivalent in practice to previous authorisation
- Must not be an obstacle to establishing an organization:
 - **workers may establish workers' associations from the beginning of their contractual relationship**

A law providing that the right of association is subject to authorization granted by a government department purely in its discretion is incompatible with the principle of freedom of association

Art. 2 of Convention 87: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Protection against Acts of Interference



Forms of Interference

- Establishing unions under financial or other influence of the employer
- Intervening in the internal affairs of the trade union
- Engaging in attempts to persuade employees to withdraw membership given to a trade union
- Offering bribes to union members to encourage their withdrawal from the union
- Making efforts to create puppet unions or establish parallel unions by an employer
- Engaging in collective negotiations with bargaining representatives appointed by or under the domination of employers or their organizations
- Showing favouritism to one trade union over another influencing trade union membership of workers

How should protection be granted?

- National law prohibiting acts of interference
- Effective procedures to ensure implementation in practice
- Setting provisions for appeals
- Establishing dissuasive sanctions

Effective protection against acts of anti-union discrimination

- Government responsibility to ensure prompt and impartial procedures against anti-union acts | **remedies and penalties must exist and enforced**
- Protection during the process of forming a trade union, during its existence and after its dissolution
- Protection of workers against anti-union discrimination in the employment relationship | **reversal of burden of proof**
- Complaints examined by national machinery | **speedy process**
- Investigation and enforcement | **reinstatement of trade union leaders**

The role of governments in protecting the right to FoA:

All ILO Member States 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 right of freedom of association irrespective of whether or not they have ratified the relevant Conventions.

- Trade Union rights are basic human rights – minimum standards
- Exercise freely the right to organise

The relationship between Collective Bargaining and Freedom of Association

What is Collective Bargaining?

All negotiations which take place between an employer, a group of **employers** or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for-

- a) determining **working conditions** and terms of employment; and/or
- b) regulating **relations** between **employers and workers**; and/or
- c) regulating **relations** between employers or their organisations and a **workers' organisation or workers' organisations**

Benefits of Collective Bargaining:

- CB is the most effective way to channel collective disputes, avoid disruptive conflicts and build harmonious labour relationships
- CB is a very effective tool to reduce inequalities, ensure inclusive growth and expand domestic demand
- Through CB, the actors of the economy are able to set rules adequate to their practical realities

The relationship between CB & FoA:

- Collective bargaining (CB) and freedom of association (FOA) are intrinsically linked –
 - CB is the main activity through which workers' organizations are able to defend their interests.
 - FOA is an indispensable prerequisite without which CB cannot take place.

Main elements of CB: (1) voluntary negotiation

- CB must be free and voluntary and respect the principle of the autonomy of the parties
- Intervention by the authorities:
 - Prior approval
 - Powers: cancelling or modifying the content of collective agreements
 - Recognition of organizations for the purposes of CB
 - Compulsory Arbitration - contrary to the principles of collective bargaining (acceptable in certain specific circumstances).

Main elements of CB: (2) negotiate in good faith

- Recognizing representative organizations;
- Endeavouring to reach agreement;
- Engaging in real and constructive negotiations;
- Avoiding unjustified delays in negotiation; and
- Mutually respecting the commitments made and the results achieved through bargaining.

Unfair labour practices according to ILO Principles



Unfair labour practices according to ILO Principles - during Collective Bargaining and Strikes

- Requisitioning of strikers and hiring of external workers.
- Compulsory arbitration.
- Imposition of sanctions.
- Dismissal for strike action (right of reinstatement of strikers).

NOT: non-payment of wages corresponding to the period of strike.

Global examples of effective union protection mechanisms



Costa Rica

The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.

Unfair labour practices that hinder, prevent or restrict in any way the free exercise of freedom of association are prohibited
(section 363 of the Labour Code).



El Salvador

The general principle of non-discrimination on grounds of trade union activity and the prohibition of unfair labour practices.

The prohibition of unfair labour practices that might in any way obstruct, prevent or restrict the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (**Labour Code, sections 30.4, 30.5 and 205.c**). The labour practices expressly prohibited by the Labour Code are: the presence on a union executive committee of a trusted employee or employer's representative (**section 225.5**), transfer, imposition of inferior working conditions or disciplinary suspensions (**Constitution, article 47, and Labour Code, section 248**) and malicious or negligent withholding of part or all of a worker's trade union membership dues (**Labour Code, section 252**). Section 251 of the Labour Code makes it an offence for the employer by his or her conduct to jeopardize a trade union's right to exist, while the Penal Code specifies what are considered to be infringements of labour and trade union rights –withholding of union dues (**section 245**), coercion with regard to freedom of association and the right to strike (**section 247**) and any attempts to obstruct freedom to contract (**section 248**).



Guatemala

The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.

The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation; it is set forth in these general terms in the **Constitution (article 102.q)** and is recalled in the legislation (**sections 6.2c and 209 of the Labour Code**).



Honduras

The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.

The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (**sections 10 and 469 of the Labour Code**). The **Labour Code** expressly prohibits practices such as the following with regard to trade union activity: blacklists (**section 96.6**), wage discrimination (**section 367**) and job transfer preceding or following the establishment of a trade union (**section 517**).



Nicaragua

The general principle of non-discrimination on grounds of trade union activities and the prohibition of unfair labour practices.

The prohibition of unfair labour practices that hamper, prevent or restrict in any way the free exercise of freedom of association is derived from the general principle of non-discrimination in employment and occupation (**Basic Principles XII and XIII of the Labour Code**).

The unfair labour practices that are expressly prohibited in the **Labour Code** include the following: “discriminatory lists” (**section 17.b**); practices restricting or excluding employment opportunities (ibid.); denying access to the workplace by duly accredited trade union officers or advisers (**section 17.n**); refusal to provide relevant information related to labour matters and disputes to duly accredited trade union officers or advisers (ibid.); and job transfer preceding or following the establishment of a trade union (**section 232**).



Conclusion

In Conclusion: International Labour Standards and Protection Against Anti-Union Acts

- International Labour Standards provide a comprehensive framework for safeguarding workers against all forms of anti-union discrimination, from hiring to termination and beyond.
- Protection against anti-union discrimination is a fundamental principle firmly established in International Labour Standards, most notably ILO Conventions Nos. 87 and 98.
- These standards define the core right of Freedom of Association and outline crucial protections for workers exercising their union activities.
- Understanding these global benchmarks is essential for promoting and ensuring a workplace free from interference and reprisal.
- Effective implementation of these principles at national and workplace levels is vital for upholding workers' rights worldwide.

End of Module 3

See Activities 3.1 to 3.4