



International
Labour
Organization

Freedom of association and the right to collective bargaining: training guide and materials for military, police and security forces in the Philippines

INTERNATIONAL LABOUR ORGANIZATION
ILO Country Office for the Philippines

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International
Labour
Organization

INTERNATIONAL LABOUR ORGANIZATION COUNTRY OFFICE FOR THE PHILIPPINES

M E S S A G E

The ILO supports the Philippine government in taking important measures to enhance social dialogue and to strengthen application of freedom of association and the right to collective bargaining.

This module includes training materials aimed at further building the capacity of security forces, particularly the police and military, while realizing the principles of freedom of association and the right to collective bargaining. This reinforces the operationalization of Commitment signed by the government and labour sector to promote and protect workers' rights. The accompanying guidelines are important documents that provide context for this module, specifically:

- *2011 Joint Department of Labor and Employment (DOLE)- Philippine National Police (PNP)-and Philippine Economic Zone Authority (PEZA) guidelines in the conduct of PNP personnel, economic zone police and security guards, company security guards and similar personnel during labour disputes.*
- *2012 Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* adopted in May 2012.

These were products of extensive dialogue and tripartism at the national and regional levels involving consultations with employers, workers, government and security sector partners. Let me acknowledge as well the ILO International Labour

Standards Department (NORMES) for their technical support and collaboration, the Kingdom of Norway for funding this initiative and Mr David Tajman for his inputs as consultant.

The module is adapted to the Philippine context to address the challenges from the ground arising from the operations of the security forces, with respect to labour disputes and workers' concerted activities initiated. Importantly, the module addresses the challenges concerning the balance between ensuring the protection of trade union rights while maintaining peace and public order.

I look forward the successful implementation of the module, while reflecting as well practical changes on the ground towards building confidence and better relations among all the parties. I hope that training programme on workers' rights as human rights will be an important part of the curriculum of the AFP and PNP, to ultimately reach all officers, those with command authority, middle ranks and new recruits at the regional and up to the barangay level.

The ILO strongly support programmes like this to help guarantee respect for the principles of freedom of association and the right to collective bargaining. The ILO will further assist the government, employers' and workers' organizations along with the police and armed forces in enhancing social dialogue and creating an enabling environment. These are important elements in achieving sustainable and inclusive growth through decent and productive work.



LAWRENCE JEFF JOHNSON
Director
ILO Country Office for the Philippines



MESSAGE

On behalf of the Department of Labor and Employment (DOLE), I warmly thank the International Labour Organization (ILO) for its continuing support to the Philippine Government's efforts towards promoting and strengthening workers' rights to self-organization and collective bargaining. It is through the ILO's support that the DOLE was able to publish these training modules on this subject.

With the ILO's technical assistance, the Philippines has made significant progress in fulfilling its commitments to address issues and gaps, both in law and in practice, in the application of international labour standards, specifically: (a) those relating to violence, intimidation, threat and harassment of trade unionists; and (b) obstacles to the effective exercise of trade union rights.

To address such gaps, the DOLE through the ILO's support strengthened the capacities of relevant government agencies, namely, the Philippine National Police (PNP), Armed Forces of the Philippines (AFP), Philippine Economic Zone Authority (PEZA) and the DOLE itself, to promote and protect workers' rights and enhance social dialogue. Primarily, it has established tripartite monitoring bodies to ensure compliance with and application of the workers' rights to freedom of association and collective bargaining.

The development of these training modules complements—and will surely be very handy in—our continuing advocacy and capacity-building efforts to ensure the right balance in maintaining peace and order and security and respecting the free exercise of workers' and trade union rights. The inclusion of the guidelines (*Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel During Labour Dispute; Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities*) in this publication emphasizes the importance we place in facilitating the engagement between and among government agencies and representatives of management and workers in peacefully settling a potential or actual labour dispute and ensure observance of laws and regulations.

I urge workers and employers and our other partners to use these modules in maintaining good relations and close coordination between and among government, management and labour sectors through understanding and command of the application of International Labour Standards, particularly ILO Convention Nos. 87 and 98.


ROSALINDA DIMAPILIS-BALDOZ
Secretary



CHIEF OF STAFF
ARMED FORCES OF THE PHILIPPINES
CAMP GENERAL EMILIO AGUINALDO, QUEZON CITY

Message

The uniformed men and women of the Armed Forces of the Philippines (AFP) commit themselves to protect the welfare and the rights of Filipino workers. In the event of labour disputes, collective bargaining and the exercise of workers' rights to freedom of association, the AFP will unwaveringly uphold the International Humanitarian Law, Human Rights and Rule of Law.

The crafting of this training module, in line with the pronouncements of the International Labour Organization (ILO), amplifies our need to work together in performing our respective roles as vanguards of peace, democracy and human rights.

The AFP needs to work hand-in-hand and support the citizenry, government agencies and labour organizations to bring understanding, justice and stability in the labour sector. Indeed we need *Bayanihan* to attain the peace and development we all yearn for.

We value every Filipino worker, for we share the same culture of ingenuity and hardwork. Issues and challenges will continue to beset our country; however we can choose to work collectively in the spirit of *Bayanihan* to provide solutions to the problems at the grassroots level. Let us work to revive the spirit of *Bayanihan* among us and enjoy the peace and development our nation truly deserves.

Mabuhay ang Manggagawang Pilipino!

Mabuhay ang Sandatahang Lakas ng Pilipinas!


EMMANUEL T BAUTISTA
General AFP



Republic of the Philippines
NATIONAL POLICE COMMISSION
NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE
OFFICE OF THE CHIEF, PNP
Camp Crame, Quezon City

Message

We, in the Philippine National Police, highly extol the International Labour Organization (ILO) for its very timely and relevant publication on ***Freedom of Association and the Right to Collective Bargaining***.

As the country's premier law enforcement agency, the PNP has the solemn duty to uphold our nation's laws, respect and protect human rights, and assist in the promotion of social justice. In a developing nation like the Philippines, the extent to which the government is able to guarantee the protection of socio-economics rights, including fair working conditions and other labor rights, is a reflection of its commitment to democracy and rule of law. More than ever, the men and women of the PNP recognize their role in safeguarding workers' right to form and join organizations of their own choosing. Their ability to enter into collective bargaining agreements is also an essential mechanism to attain employment benefits and other entitlements as ensured by existing labor laws and standards. By helping promote and protect these rights, we are able to contribute to the monumental task of fighting poverty and inequality. In a truly free and open society, the police must be able to maintain peace and order while allowing the opportunity for workers and people in general to express their sentiments and opinions, or to exercise peaceful protest.

Therefore, the entire Philippine National Police shall remain committed to the education and training of our personnel about Freedom of Association and the Right to Collective Bargaining, as well as other fundamental rights recognized in the Philippines and by the international community.

Indeed, the protection of human rights --- including Workers' Rights --- is the first business of policing.


ALAN L. MADRID PURISIMA
Police Director General
Chief, Philippine National Police

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This publication was prepared for the
ILO Country Office for the Philippines
by David Tajgman.
Research assistance was provided by Helena Pérez Vázquez.

Introduction and background

This document contains training guide and materials on the rights to freedom of association and to collective bargaining as established through international labour standards adopted by the International Labour Organization (ILO).

Trainers are the immediate target group of this document. This group includes –

- officials within the Department of Labor and Employment (DOLE)
- human rights educators
- trainers working with employers' and workers' organizations
- trainers working within the institutions of ultimate target groups

The ultimate target group is security personnel in the Philippines, including private security personnel, and members of –

- the Armed Forces of the Philippines (AFP), including the Citizen Armed Force Geographical Unit (CAFGU), Active Auxiliaries (CAAs) and the Special CAFGU Active Auxiliaries (SCAAs)
- the Philippine National Police (PNP), including its Supervisory Office for Security and Investigation Agency (SOSIA)
- Barangay Peacekeeping Operations
- Barangay Tanod/Barangay Public Safety Officers (BPSO)

The document can be seen as a "mother document" to be used as a main document for training programmes aimed at the ultimate target group. All the details included here need not be used in every training programme. Training programme organizers can extract and adapt, or focus on specific elements depending on the profile of participants.

This training guide and materials has a background in several cases brought before the ILO's special supervisory body – the Committee on Freedom of Association – making serious allegations about respect for and protection of the rights to freely associate and to collectively bargain in the Philippines. Some of these allegations touched on the roles played by security personnel in the country. In this context, it has been agreed between the ILO and the Government of the Philippines that particular efforts are advisable to inform and sensitize security personnel about these rights, their importance in free and democratic societies, and the role of the security personnel in respecting, promoting and protecting citizens in their free and robust lawful exercise of them. Hence, this training guide and materials have been drawn together.

This is not a general course on the rights to freedom of association and collective bargaining; its' content is specifically aimed at the intermediate and ultimate target groups. General materials on these rights, produced by the ILO, are referenced throughout.

Training guide and materials

Since actual training events for the ultimate target group can easily range in time and format between a speech of 30 minutes by a high level commanding officer to a multi-day training event with hands on exercises, we present here both a training plan – presented in the form of a Training outline for each of the six critical subject areas treated here – and training materials that can be drawn upon for tailored events and subjects.

Six critical subject areas are presented in this document:

- About the ILO, freedom of association and human rights
- Freedom of association in a democratic society
- Insurrection, insurgency and freedom of association
- Public order and freedom of association
- Security personnel and the rights to organize and bargain collectively
- What security personnel should know about freedom of association supervisory mechanisms

The presentation within each of the critical subject areas is identical, consisting of:



A bulleted list of *learning objectives*. It should be possible to read each of these points with the preface “by the end of the training, the trainee can...” These objectives are reflected in evaluation materials.



Text outlining *key concepts* that are the very most important ideas presented in the subject area presentation.



A *glossary of terms* brought up and discussed in the presentation.



The *Training outline* consisting of a series of Standard lectures of varying time durations. The Standard lectures are intended to flow sequentially, but are arranged content-wise in such a way as to permit the omission as decided by a trainer.



A section on *evaluating impact*, which refers to evaluation forms found in appendices.



A brief list and description of *online resources*, of which there are ever growing amounts.



And a list of *references and reading* from which the presentation in the Training outline has been derived.

Indications are given, in addition, to:



A way for *getting started* in the presentation of the critical subject or a Standard lecture.



Optional exercises, discussion points and case discussions that could be used in appropriate circumstances to engage and involve the participants in training and prompt deeper thinking of the issues at hand.



An idea of *time frame* for Standard lectures and optional exercises. Note: The times indicated for the Standard lectures do not include the times for Optional exercises.

The content of these materials is substantially drawn from a vast body of ILO jurisprudence and published materials. Citations are provided throughout. The most important of these are presented in the first listing of references and readings, which appears on page 32.

Two Philippine documents – the 2011 *Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel During Labour Disputes* and the 2012 *Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities* – are particularly important for ultimate target group training. They are referenced in this document in the context of their relation to international standards and principles. They have also been integrated in several exercises. Copies should be secured and made available during any training of these groups.

Quoted material – mostly from ILO jurisprudence on freedom of association – are used in this training. This is done to: (a) assure the jurisprudence on the matters under discussion is properly reflected; and (b) give trainers case examples to illustrate points made.

Quoted materials that have parenthetical or secondary importance to the presentation, or are of a background character, are presented in a subdued colour and font different from the main text.

Acronyms and shortened references

The follow references are used throughout this document.

1994 General Survey ¹	General Survey of Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949, International Labour Conference, 81 st Session (1994)
1998 Declaration	1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up
2006 Digest	Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO (Fifth revised edition, 2006)
2012 General Survey	General Survey on the Fundamental Convention concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 101 st Session (2012)
CB	Collective Bargaining
CEACR	Committee of Experts on the Application of Conventions and Recommendations

¹ Each year the Committee of Experts on the Application of Conventions and Recommendations publishes an in-depth study on member States' national law and practice on a subject chosen by the Governing Body of the ILO. These *general surveys* are established on the basis of reports received from member States. They allow the CEACR to examine the effects of Conventions and Recommendations, to analyse the difficulties indicated by governments as raising obstacles to their application, and to identify means of overcoming these difficulties.

CFA	Committee on Freedom of Association of the ILO Governing Body
FoA	Freedom of Association
Guidelines on Workers' Rights	Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers' Rights and Activities
ILC	International Labour Conference
ILO	International Labour Organization or Office
ILS	International Labour Standards
Joint DOLE- PNP-PEZA Guidelines	Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and similar Personnel During Labour Disputes

I. About the ILO, freedom of association and human rights



Learning objectives

At the completion of this critical subject area presentation, participations will be able to:

- ✓ Explain the origins, composition and functions of the International Labour Organization.
- ✓ Explain the intention and obligations adhering to the Philippines' membership in the ILO.
- ✓ Explain what international labour standards are and the role they play in achieving the ILO's mandate.
- ✓ Understand the role freedom of association plays as a foundational element for the functioning of the ILO.
- ✓ Understand the role freedom of association plays in an occupational and non-occupational sense in democratic societies.
- ✓ Understand the role international human rights instruments play in supporting freedom of association globally.
- ✓ Outline the main international labour standards dealing with freedom of association and distinguish their purpose from other international human rights standards.
- ✓ Outline the position of the Philippines in respect of the ILO's freedom of association standards.
- ✓ Understand the position of the state, the police, the military and private security services in respecting, fulfilling and protecting the human rights of the people of the Philippines, including their freedom to associate.



Key concepts

The tripartite International Labour Organization is the international inter-governmental organization mandated to promote social justice, fair working conditions, related human and labour rights. It does this by making, promoting and supervising international labour standards treaties that are ratified by member States.

The ILO has adopted 189 Conventions and 202 Recommendations in its near century of existence. ILO member States have registered almost 7,850 ratifications of these instruments over the years.

Foremost among the ILO's standards are those on freedom of association and the right to collective bargaining. The standards on these subjects are critical to the ILO because its very existence relies on the existence of free, independent organizations of employers and workers established through the exercise of associational rights. Freedom of association rights are critical and fundamental because it is only through their exercise that workers and employers can give voice to their legitimate occupational interests at the workplace and in society.

International human rights standards include also the freedom of association, and complement the ILO's standards on the subject.



Glossary of terms

Convention

An international treaty adopted by the ILC and open to ratification by ILO member States.

Declaration on Fundamental Principles and Rights at Work

A declaration (not open to ratification, but binding on all ILO member States) adopted in 1998 by the International Labour Conference designating 4 areas as fundamental principles and rights at work. They include freedom of association and the effective recognition of the right to collective bargaining.

Fundamental Conventions

A designation given to Conventions dealing with principles that have been deemed by the ILO member States to be “fundamental” in the 1998 Declaration on Fundamental Principles and Rights at Work.

International Labour Conference

The primary organ of the International Labour Organization that meets annually.

International Labour Office

The secretariat to the International Labour Organization.

International Labour Organization

Tripartite, inter-governmental organization founded in 1919, mandated to promote social justice through a system of international labour standards.

Ratification

A formal procedure whereby a state accepts an ILO Convention as a legally binding obligation.

Recommendation

A non-binding instrument adopted by the ILC that is not open to ratification but serves as guidance in respect of its subject.

Tripartism / Tripartite

Reference to three parties; in the context of the ILO they are workers and their organizations, employers and their organizations and governments.



Training outline

Getting started: introduction



5 Minutes

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

Tell participants that in this set of presentations they will learn the basics of the ILO, and in particular its system of international labour standards (ILS). They will also hear about obligations under the ILO's system of standards, and in particular freedom of association principles. Finally, there will be a short presentation of how the Philippines reflects its respect of freedom of association, with particular reference to security forces.

	Title	Page	Minimum time (minutes)
Standard lecture 1	The ILO and its international labour standards	10	20
Standard lecture 2	The ILO's principles and standards on freedom of association	12	20
Standard lecture 3	Freedom of association and international human rights standards	16	10
Standard lecture 4	Obligations under ILO principles and standards on freedom of association	19	15
Standard lecture 5	Freedom of association obligations, the Philippines and its security forces	22	10

Standard lecture 1. The ILO and its international labour standards



20 Minutes

The International Labour Organization (ILO) is an international inter-governmental organization. It was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 185 member States.

The purpose or “mandate” of the ILO is to promote social justice and internationally recognized human and labour rights, pursuing its founding mission that labour peace is essential to prosperity. The ILO does this essentially in two ways: Through a system of international labour standards, and through technical or “field” work with its members. These are said to be the ILO’s “*means of action*”.

The ILO has a unique “*tripartite*” structure, which brings together representatives of governments, employers, and workers on an equal footing to address issues related to labour and social policy.

The ILO’s broad policies are set by the *International Labour Conference*, which meets once a year and brings together its constituents. The Conference also adopts new international labour standards and the ILO’s work plan and budget.

Between the sessions of the Conference, the ILO is guided by the *Governing Body*, which is composed of 28 government members as well 14 employer members and 14 worker members.

The ILO’s secretariat, the *International Labour Office*, has its headquarters in Geneva, Switzerland, and maintains field offices in more than 40 countries. The ILO was awarded the Nobel Peace Prize on its 50th anniversary, in 1969.

Optional Discussion Point

Ask participants if they could tell in their own words what “social justice” means.



15 Minutes

Returning to the ILO’s means of action, we can speak of the first: International labour standards (ILS).

ILS are legal instruments drawn up by the ILO’s constituents (governments, employers and workers) setting out basic principles and rights at work.

ILS take the form of *Conventions*, which are international treaties that are legally binding when ratified by member States, and *Recommendations*, which are not open to

ratification and thus non-binding guidelines. Both instruments are adopted by the ILC. In many cases, a Convention lays down the principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any Convention.

Conventions and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member States are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of Conventions, this means consideration for ratification. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the Convention in national law and practice and to reporting at regular intervals on measures taken to apply the Convention. In addition, representation and complaint procedures can be initiated against countries for failure to give full effect to a ratified Convention. (These are discussed in VI. What security personnel should know about freedom of association supervisory mechanisms, at page 116).

Categories of ILO Conventions and Recommendations

- Freedom of association
- Collective bargaining
- Forced labour
- Child labour
- Equality of opportunity and treatment
- Tripartite consultation
- Labour administration
- Labour inspection
- Employment policy
- Employment promotion
- Vocational guidance and training
- Employment security
- Social policy
- Wages
- Working time
- Occupational safety and health
- Social security
- Maternity protection
- Migrant workers
- Seafarers
- Fishers
- Dockworkers
- Indigenous and tribal peoples
- Other specific categories of workers

Ratification of ILO Conventions is a critical aspect of the ILO's system of labour standards. **Ratification** is a formal procedure whereby a state accepts the Convention as a legally binding instrument. Once it has ratified a Convention, a country is subject to the ILO's regular supervisory system responsible for ensuring that the Convention is applied. To date, there have been more than 7,780 ratifications of ILO Conventions.

Standard lecture 2. The ILO's principles and standards on freedom of association



20 Minutes

The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944) and the ILO Declaration on Fundamental Principles and Rights at Work (1998). It is also a right proclaimed in the Universal Declaration of Human Rights (1948).

Since the focus of our training is freedom of association and the right to collectively bargain, we need to take some time to explain what the ILO's principles and standards on these matters are. We will lay a foundation for our discussion now, and return to details further on.

A good starting place for our explanation is the three documents mentioned in the paragraph above: the ILO Constitution, the Declaration of Philadelphia and the ILO Declaration on Fundamental Principles and Rights at Work.

Let's consider the ILO Constitution first.

When a State decides to become a member of the Organization, it accepts the fundamental principles embodied in the Constitution, including the principles of freedom of association.²

Optional Discussion Point

Tell participants that without tripartism the ILO could not exist, and if it did exist without tripartism, its influence would be greatly reduced.

Then ask participants: Why is this? How is it that the involvement of free and independent workers' and employers' organizations in the work of the ILO could be so important? And how is the principle of freedom of association related to this?



5 Minutes

The principle of freedom of association is *essential* to the operation of the ILO. Without it a representative voice of employers and workers simply does not exist where they do not have the right to form organizations of their own choosing. If organizations do exist, then in the absence of full freedom of association, as history shows, such organizations are not independent of each other or of government. Thus, on becoming a member of the ILO, in accepting the ILO's constitution and tripartite composition, the member State must respect the principle of freedom of association. The ultimate

² 2006 Digest, para. 15.

responsibility for ensuring respect for the principles of freedom of association lies with the government.³

In 1944, the International Labour Conference adopted the Declaration of Philadelphia, which now forms part of the ILO Constitution. The Declaration reaffirmed that “freedom of expression and of association are essential to sustained progress” and emphasized that this was one of the “fundamental principles on which the Organisation is based”.

The world in 1944 was different from that in 1919, and in particular in respect of freedom of association. In socialist countries of Eastern Europe and elsewhere, workers’ and employers’ organization were not free and independent of the state – indeed, they were part of the state. In time the ILO member States found it necessary to create a mechanism to receive complaints about failure to respect the principles of freedom of association found in the ILO Constitution regardless of whether a country had ratified ILO Conventions on freedom of association. A tripartite Committee on Freedom of Association of the ILO Governing Body supervises this procedure; we will return to it and the way it operates later.

The tripartite **Committee on Freedom of Association** (CFA) was set up by the ILO in 1951 and exists today as a primary body engaged in tripartite supervision of the application of the ILO’s freedom of association principles. Details on this body and the other organs of supervision of ILS are found in VI What security personnel should know about freedom of association supervisory mechanisms, and more particularly in Standard Lecture 21 Special supervision – Freedom of association starting on page 122.

Optional Discussion Point

Tell participants that in some places in the world, among some groups of commentators, the ILO has been seen as some kind of “left-wing” extremist organization⁴.

In the light of the experience with socialist and communist countries during the Cold War as outlined above, and even today, would participants say that ILO principles supported centrally controlled social economic systems and the political arrangements that came with them? Would participants agree that freedom of association principles, in fact, run contrary to state control of employers’ and workers’ organizations? (In fact, they do).



10 Minutes

³ Freedom of Association Digest, p. 9, see 304th Report, Case No. 1852, para. 492.

⁴ See Melanson, Richard A., *Human Rights and the American Withdrawal from the ILO*, Universal Human Rights, Vol. 1, No. 1 (Jan.- Mar., 1979), p. 43-61 (Johns Hopkins University Press).

The idea of an obligation to respect the principle of freedom of association regardless of ratification of any ILO Convention, is seen once again, in the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

In 1998, the International Labour Conference adopted a declaration which made clear that "all [ILO] Members, even if they have not ratified the Conventions in question, 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 rights which are the subject of those Conventions". Those fundamental rights include freedom of association and the effective recognition of the right to collective bargaining.

Optional Question

Can trainees say whether the Philippines has ratified any ILO Conventions on freedom of association?

The Philippines ratified C. 87 and C. 98 in 1953.



2 Minutes

In 2008 the ILO adopted the Declaration on Social Justice for a Fair Globalization. This is the third major statement of principles and policies adopted by the ILC since 1919. It builds on the Philadelphia Declaration of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998, expressing the contemporary vision of the ILO's mandate in the era of globalization.

With this foundation laid, we can introduce international labour standards on freedom of association.

For our purposes, we are able to focus on two fundamental ILO Conventions on the subject of freedom of association.

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

This fundamental Convention sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization. Workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by 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.

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

This fundamental Convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker not join a union or relinquish trade union membership for employment or dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. The Convention also enshrines the right to collective bargaining and obliges its promotion.

Formally speaking, the ILO has adopted eight Conventions and 10 Recommendations that have been placed in a category of standards called "freedom of association, collective bargaining and industrial relations". They are all listed below.

- Right of Association (Agriculture) Convention, 1921 (No. 11)
- Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Workers' Representatives Convention (No. 135) and Recommendation, 1971 (No. 143)
- Rural Workers' Organisations Convention (No. 141) and Recommendation, 1975 (No. 149)
- Labour Relations (Public Service) Convention, 1978 (No. 151)
- Collective Bargaining Convention, 1981 (No. 154)
- Collective Agreements Recommendation, 1951 (No. 91)
- Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)
- Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94)
- Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)
- Communications within the Undertaking Recommendation, 1967 (No. 129)
- Examination of Grievances Recommendation, 1967 (No. 130)
- Labour Relations (Public Service) Recommendation, 1978 (No. 159)
- Collective Bargaining Recommendation, 1981 (No. 163)

Convention Nos. 87 and 98, are "fundamental" insofar as the principles they contain are the subject of the ILO's 1998 Declaration on Fundamental Principles and Rights at Work⁵. Thus, all member States of the ILO are bound to be respecting those principles, and countries that have ratified these Conventions – like the Philippines – are obliged in international law to be applying their provisions in domestic law and practice.

These Conventions are widely ratified: Convention No. 87 has been ratified by 151 ILO member States and Convention No. 98 has been ratified by 161 member States (as of 20 October 2012).

⁵ Along with principles on the elimination of forced and child labour and equality.

Standard lecture 3. Freedom of association and international human rights standards



10 Minutes

In addition to the ILO, other international human rights instruments recognize the right to freedom of association.

Universal Declaration of Human Rights

Article 20, paragraphs 1 and 2 of the Universal Declaration says that “Everyone has the right to freedom of peaceful assembly and association” and that “No one may be compelled to belong to an association”.

Article 23, paragraph 4 says, “Everyone has the right to form and to join trade unions for the protection of his interests”.

! Note: There is a critically important relationship between the rights of basic civil liberties – the right to free expression, to assemble, to due process of law, to be free to move, etc. – and freedom of association involving the representation of occupational and economic interests. The 2012 *Guidelines on Workers’ Rights* recognize this explicitly as a matter of general policy. We will return to this very important point in detail.

International Covenant on Economic, Social and Cultural Rights

Article 8, paragraph (1) of the Covenant says,

“The States Parties to the present Covenant undertake to ensure:

- (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.
- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations.

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Noted that neither of these instruments explicitly provide for the right to collective bargaining – this is something that the ILO's Conventions uniquely cover.

Civil society and occupational freedom of association – two sides of the same coin

Indeed, it is possible to distinguish the idea of freedom of association for what we might call “civil society” purposes on the one hand and for occupational purposes on the other. The idea behind the civil society freedom of association is that people must be able to join peacefully together to express their views and interests, their complaints and their acclamation, for the purpose of informing the democratic institutions of government. The idea of freedom of assembly is closely related to freedom of association in the civil society sense. In fact, one could call the exercise of civil society freedom of association an exercise in expressive association because its primary purpose is typically exercised through written or spoken words, physical presence, votes and other similar means, setting forth the will of the persons exercising the right.

The idea behind occupational freedom of association rights – rights leading to the establishment and operation of organizations of workers and employers – is very similar to civil society freedom of association. They overlap to the extent those persons exercise their right aiming to influence government action and public policy. The important difference though is that in free market capitalist countries the expressive character of occupational freedom of association is usually aimed at private persons or other organizations. This implies that the exercise of the right by one group can impact on rights of another. Hence, states regulate occupational freedom of association – and military, police, and security personnel become important actors in respect for these human rights obligations. It must be recognized however, that the exercise of even

occupational freedom of association contribute to the establishment and proper functioning of a democratic state and institutions.⁶

Optional Discussion Point

Tell participants international human rights instruments recognize freedom of association as a human right. Ask:

How do you think this recognition can be used in practice? What does it mean, practically speaking?

Persons, organizations and states are able to use all available mechanisms associated with the enforcement of human rights to insist of their respect in practice. Advocates and civil society are able to use the legitimacy granted by the designation of a human right to insist on their respect in practice.



10 Minutes

⁶ Poland's transition from a non-democratic socialist state to a democratic, market economic country at the end of the 1980's can be at least partially attributed to the significant decade-long exercise of freedom of association rights by the Solidarity Trade Union in opposition to the regime then in power.

Standard lecture 4. Obligations under ILO principles and standards on freedom of association



15 Minutes

What are the obligations under ILO principles and standards on freedom of association?

! The first very important idea here is that the ultimate responsibility for ensuring respect for the principles of freedom of association lies with the government.⁷ The police and the military are instrumentalities of the State and thus have a primary responsibility to respect the principles themselves, to protect individuals and groups from their infringement and to fulfil through positive action these rights in practice.

“Facts imputable to individuals bring into play the State’s responsibility owing to the State’s obligation to prevent violations of human rights. Consequently, governments should endeavour to meet their obligations regarding the respect of individual rights and freedoms, as well as their obligation to guarantee the right to life of trade unionists”⁸.

Optional Discussion Point

Tell trainees that the State is ultimately responsible for ensuring respect for principles of freedom of association.

Then ask:

What does this idea mean in practice? How can a State do this practically speaking, considering all the potential actors involved?

Should trainees respond, “well, we do not know the details of what freedom of association means”, ask them to speculate and assume what it might mean, and respond from that perspective. (The objective here is active involvement of the training group).



10 Minutes

Now, there are two essential contexts for establishing the obligation under ILO principles and standards on freedom of association: In cases of ratification and in cases of non-ratification of the relevant ILO Conventions.

⁷ Digest, p. 9, 304th Report, Case No. 1852, para. 492.

⁸ 1996 Digest, paras. 19 and 50; and 308th Report, Case No. 1934, para. 135.

Where a country has *ratified* the relevant Conventions – as has the Philippines – the State must: (a) take steps to apply the Conventions both in law and in practice; and (b) report to the ILO periodically about the steps it is taking to apply the Conventions.

The “respect, protect and fulfil ” paradigm is used to describe from a human rights perspective the duty of the State. This applies also to ratified ILO Conventions.

“International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.

- The obligation to *respect* means that States must refrain from interfering with or curtailing the enjoyment of human rights.
- The obligation to *protect* requires States to protect individuals and groups against human rights abuses.
- The obligation to *fulfil* means that States must take positive action to facilitate the enjoyment of basic human rights.

Through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level”⁹.

⁹ <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx>



10

! NOTE: Ratified ILO Conventions are applicable to the entire territory of the ILO member State. This includes special economic zones, areas hit by natural disasters, areas where there are civil disturbances, etc.

Where an ILO member State has *not ratified* the relevant Conventions, it is their obligation to “respect, promote and realize” the principles concerning the fundamental rights of freedom of association and effective recognition of the right to collective bargaining. This is according to the 1998 Declaration. Since ILO member States are not obliged to ratify ILO Conventions, and because the principles of freedom of association are so very critically important, the 1998 Declaration makes a point of saying that all member States have to respect these principles and, implicitly if they are not fully respected, strive constantly to do so.

In both cases, an ILO member State is subject to the special supervisory mechanism mentioned above, involving the Committee on Freedom of Association. We will return to this latter.

Since this training has a very special target group in the Philippines, we will be teaching what these standards on freedom of association require from that group in the context of their work.

¹⁰ Source: <http://www.unfpa.org/rights/approaches.htm>

Standard lecture 5. Freedom of association obligations, the Philippines and its security forces



10 Minutes

The Philippines has been a member of the ILO since 15 June 1948. The principles at the heart of the ILO are held as well by the Philippines. This can be seen in, for example, the provisions of the 1987 Constitution and in particular its Article III, Bill of Rights.

Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or *when public safety or order requires otherwise as prescribed by law*.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

...

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired *except in the interest of national security, public safety, or public health, as may be provided by law*.

...

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes *not contrary to law* shall not be abridged.

...

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Yet even some of these important Constitutional provisions give explicit leeway for lawmakers to establish exceptional circumstances when rights are permissibly constrained. This is common and in most situations reasonable, both in law and in practice. Indeed, as we will see in further detail, even the ILO principles and standards, and jurisprudence on them, give certain leeway.

The problem can develop where in the heat of the moment exceptional circumstances continue without real justification or the laws setting conditions or requirements for

the respect of rights go too far, so as to unacceptably infringe on the exercise of rights. The balancing that must be made between national security – where this is the motivation for laws in question – and individual rights is often not an easy one. The point to be remembered is this:

! International instruments and mechanisms for their supervision and enforcement have been conclusively shown to play an extremely important role in holding – or returning – states to the right path. And for this reason a certain understanding of them and their relation to domestic approaches to the respect for rights is really very important.

So, while the 1987 Philippine Constitution recognizes that:

...“[t]he Armed Forces of the Philippines is the protector of the people and the State[. and that i]ts goal is to secure the sovereignty of the State and the integrity of the national territory,” ...

a full appreciation of these provisions needs to take international obligations into consideration. Here too, the Declaration of Principles and State Policies of the 1987 Philippine Constitution alludes to this idea, as well as others supporting its implications.

Article II

...

Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally *accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

...

Section 9. The State shall *promote a just and dynamic social order* that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

Section 10. The State shall *promote social justice* in all phases of national development.

Section 11. The State values the *dignity of every human person and guarantees full respect for human rights*.

...

Section 18. The State affirms labor as a primary social economic force. It shall *protect the rights of workers and promote their welfare*.

Perhaps the strongest and most direct statement of Philippines' policy on the relation between the exercise of freedom of association rights and broader rights set down in international law is now very clearly found in the 2012 *Guidelines on Workers' Rights*.

II. Workers' rights relative to the exercise of freedom of association

Workers' rights relative to the exercise of freedom of association shall be respected and protected at all times", and that they include:

- 1) The *right to establish and join organizations* without discrimination to include the right of trade unions/workers' organizations or their leaders or members not to be prejudiced by reason of their actual or potential membership in a political party that is in opposition to a political party in power;
- 2) The *right to life and personal safety* shall include the right of trade unions and workers' associations to carry out their activities in full freedom in accordance with labor and other related laws and to be protected from threats of or actual violence committed by persons or organizations opposed to their trade union activities;
- 3) The *right to freedom and security from arbitrary arrest and detention* shall include the right of persons and properties of trade unions and workers' associations to be secured from unreasonable and unlawful searches and seizures and to due process of law;
- 4) The *right to freedom of opinion and expression* shall include the right of every worker/trade unionist to freely and publicly express his/her personal opinions, orally or in writing, on matters affecting his/her rights; and
- 5) The *right to freedom of assembly* shall include the right of workers and trade unions to engage in peaceful concerted actions in accordance with law and the International Labour Standards.

So, without diminishing the importance of the role played by the police, military, and private security personnel in keeping the peace and securing the sovereignty of the nation, we will attempt in this training to help you see your duties in a light that allows you to give the broadest possible respect to human rights, and in particular, rights to freedom of association and collective bargaining.

Optional Exercise and Discussion Point

After explaining the clarity provided in the Guidelines on Workers' Rights, ask trainees the following question and record responses on a presentation board.

- *What conduct or actions by the police or military would interfere with the five particular rights specified in part II of the Guidelines?*

(It is important that the specificity of the language associated with each of the five rights be looked at in this exercise).

With the list generated by the group, ask the following question.

- *What can be done to assure that these examples of conduct or actions do not occur in practice?*

(With this exchange the relationship set for discussion should be brought home to the participants).



25 Minutes

Optional Exercise and Discussion Point

After explaining the clarity provided in the Guidelines on Workers' Rights, ask trainees the following question and record responses on a presentation board.

- *What conduct or actions by the police or military would interfere with the five particular rights specified in part II of the Guidelines?*

(It is important that the specificity of the language associated with each of the five rights be looked at in this exercise).

With the list generated by the group, ask the following question.

- *What can be done to assure that these examples of conduct or actions do not occur in practice?*

(With this exchange the relationship set for discussion should be brought home to the participants).



25 Minutes



Optional exercise

The aim of lectures in this Training outline is to give a normative foundation for deeper discussion by participants in training of the rights to freedom of association and collective bargaining, and the role played by police, military and security forces in its application. It should be possible in places like the Philippines (democratic, free market oriented, capitalist countries) to do this with only a very essential elaboration of the content of the normative standards. To deepen participants understanding and appreciation of the challenge facing them, that is, assuring respect for rights while at the same time protecting society, participants may be divided into small groups and asked to discuss the question:

When does the exercise of freedom of association rights exceed the boundaries of international standards?

The answer to this question is, of course, a somewhat complicated and legalistic one, particularly if one is versed in the international standards themselves. For novices in the area, the “simple” responses that arise in the discussion may well be rather correct, and the opportunity for discussion before the contents of international standards are laid down gives the opportunity for personal reflection of the matters at hand.



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: About the ILO, freedom of association and human rights appearing in Appendix 1 at page 130. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

About the ILO, its history, mandate, the way it works:

<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>

About ILO supervisory mechanisms:

<http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>

About the 1998 ILO Declaration on Fundamental Principles and Rights at Work:

<http://www.ilo.org/declaration/thedeclaration/lang--en/index.htm>

List of publications on international labour standards offered by the ILO:

<http://www.ilo.org/global/standards/information-resources-and-publications/publications/lang--en/index.htm>



References and readings

About the ILO's system of international labour standards:
ILO, *Rules of the Game* (2009), available for download at:

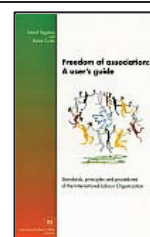
http://www.ilo.org/global/publications/WCMS_084165/lang-en/index.htm



About ILO freedom of association standards (in lay terms):

Tajgman, D. and Curtis, K., *Freedom of Association: A user's guide* (2000), available for download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087990/lang-en/index.htm



About freedom of association, in full detail, most recently, from the CEACR:

ILO, *Giving globalization a human face, General Survey on the fundamental Convention* (2012), available for download at:

http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174846/lang-en/index.htm



About actual cases of the Committee on Freedom of Association:

ILO, *Freedom of association - Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006), available for download at:

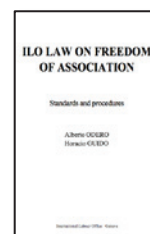
http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/WCMS_090632/lang-en/index.htm



About ILO freedom of association standards:

Odero, A. and Guido, H., *ILO Law on Freedom of Association: Standards and procedures* (1995), available for download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087994/lang--en/index.htm



About the Governing Body Committee on Freedom of Association:

Gravel, E., Duplessis, I., and Gernigon B., *The Committee on Freedom of Association: Its impact over 50 Years* (2002), available for download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087814/lang--en/index.htm



A collection of the 8 fundamental ILO Conventions and the text of the 1998 Declaration on Fundamental Principles and Rights at Work:

The International Labour Organization's Fundamental Conventions (2004), available for download at:

http://www.ilo.org/declaration/info/publications/WCMS_095895/lang--en/index.htm



About the relation between human rights and freedom of association:

Swepton, L. Human rights law and freedom of association: Development through ILO supervision, in *International Labour Review*, Vol. 137 (1998), No. 2, available for download at:

<http://www.ilo.org/public/english/revue/download/pdf/swepton.pdf>



II. Freedom of association in a democratic society



Learning objectives

At the completion of this critical subject area presentation, participants will be able to:

- ✓ Tell who has the right to freedom of association under international standards and who does not.
- ✓ Explain what freedom of association is under ILO Convention No. 87.
- ✓ Explain how freedom of association gives “voice” to employers’ and workers’ interests in a democratic society.
- ✓ Explain the role played by the “law of the land” in the exercise of freedom of association rights.
- ✓ Understand that the same rights of freedom of association under international standards apply to employers as well as workers.
- ✓ Explain what is meant by “programmes and activities” in the exercise of freedom of association, their scope and limits under international
- ✓ Explain the role played by political activities undertaken by workers and employers organizations in the exercise of freedom of association rights.
- ✓ Explain how police, military and security personnel may be able to have the freedom of association under international standards.
- ✓ Explain the idea of the right to strike, its purpose, and its limits, from an international and national perspective.
- ✓ Explain limits placed by international standards on the dissolution of workers’ and employers’ organizations.



Key concepts

In democratic societies, where civil liberties and the rule of law are respected, freedom of association has a chance to flourish. The military, police and security personnel can and should be among the democratic society institutions that help make this happen by knowing why it is important for it to happen. That is, because freedom of association practiced consistent with international standards strengthens democratic society and institutions.

All employers and workers have the right to freedom of association (except armed forces and police), and their organizations have certain guarantees under international standards.

In a free society, the normal exercise of freedom of association is a democratic right and is not tantamount to treason or revolution. Treason and violent revolution are not protected by international standards on freedom of association. Respect for the line between these, and equally energetic efforts to protect society in both instances – support for lawful freedom of association and protection from unlawful activities – is an absolutely critical point in this training.

The lawful activities and programmes of both employers' and workers' organizations, consistent with international standards, should not be subjected to intervention or interference, either by the State or by each other. This includes lawful political activities including the holding of rallies, undertaking of marches, and the strike.

Only judicial authorities should have the power to decide the lawfulness of activities of workers' and employers' organizations; only they should be authorized to decide if organizations are to be dissolved or suspended.



Glossary of terms

Dissolution	The removal of legal personality of an organization, having legal consequences that differ from country to country, including the use and ownership of organizational property and assets, and protections of members of the organization in their activities.
Essential services	Services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.
Previous authorization	Requirements typically set up by public administrative orders or law that must be complied with in order to establish the lawfulness of actions, such as the founding of an organization or the holding of public meetings.
Right to strike	The right to workers to stop work to promote and defend their economic and social interests.
Suspension	A form of temporary dissolution, with legal effects specific to the country, usually affecting the rights of the organization to use assets and property, and for it to engage in its programme of activities.
Sustainable development	Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.



Training outline



10 Minutes
(plus participant
introduction)

Getting started: introduction

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

Tell participants that in this set of presentations – you will, of course, tailor the presentations' content to your needs and training event constraints – you will begin to go into the substance of ILO standards on freedom of association. You can tell the participants that you will endeavour to relate the standards you are discussing with their work, to make it “relevant” to them. Depending on the circumstances, you may encourage the participants to ask questions or to hold questions for the completion of your presentation.

In this group of Standard lectures we are looking at aspects of freedom of association that are related because they contribute to a robust democratic society and, when fully respected, reflect a democratic society where “voice” is respected and given space to be heard.

	Title	Page	Minimum time (minutes)
Standard lecture 6	Freedom and the association of employers and workers	34	20
Standard lecture 7	Freedom of association for armed forces and police	38	15
Standard lecture 8	Social progress and the right to association	41	10
Standard lecture 9	The rights of workers' and employers' organizations, including political activities	45	15
Standard lecture 10	The right to strike	50	15
Standard lecture 11	Dissolution of organizations	53	10

Standard lecture 6. Freedom and the association of employers and workers



20 Minutes

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) starts off with a very simple idea: All workers and all employers have the freedom to associate. Article 2 says:

“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”.

This absolute provision has only one proviso, found in Article 9.

“The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations”¹¹.



NOTE: The right to associate, to form organizations of “their own choosing”, applies to employers as well as it applies to workers. This Convention is not only about workers’ rights, it is about employers’ rights as well.

Let’s sharpen the absoluteness of this idea by mentioning some examples.

These guarantees apply to all employers and workers in the private and public sectors, including –

- seafarers
- agricultural workers
- migrant workers
- domestic workers
- apprentices
- subcontracted workers
- dependent workers
- workers employed in export processing zones and in the informal economy
- self-employed workers¹²

In deciding on a case involving the denial of the right to organize to migrant workers in an irregular situation – those illegally present in the country – the tripartite Committee on Freedom of Association has recalled (*even*) that Convention No. 87 covers all workers, with the sole exception of the armed forces and the police¹³.

¹¹ 2012 General Survey, paras. 53 and 54.

¹² 2012 General Survey, p. 34.

¹³ Digest, p. 46, 327th Report, Case No. 2121, para. 561.

An independent, expert body called the *Committee of Experts on the Application of Conventions and Recommendations* (CEACR) was set up by the ILO in 1926 and exists today as a primary body engaged in supervising the application of international labour standards. Details on this body and the other organs of supervision of ILS are found in VI What security personnel should know about freedom of association supervisory mechanisms, and more particularly in Standard lecture 20 found on page 120.

In practice, this provision impacts on what states often do to arrange for organizations to establish themselves. The reference to “without previous authorization” is all about this point. Convention No. 87 does not tell states precisely what they should do to establish freedom of association; in practice, the bodies that supervise the ILO Conventions need to tell states that what they have done in law or in practice has the effect of impeding the right that is set out in Convention No. 87. The CEACR has said, “... the Convention does not contain specific stipulations with regard to its method of application. [T]he Convention does not necessarily require States to adopt legislation for the implementation of its provisions”¹⁴. So, potentially infringing legislation, rules or practices have to do with¹⁵:

- Requirements for registration of organizations
- Limits on who may join or establish an organization – occupational groups, locations of work, economic sectors of employment, nationality, political opinions, criminal convictions, etc.
- Requirements for the content of constitutions
- Structure and composition of organizations, including legislated organizational monopolies, de facto favouritism, etc.

Now, what does this idea mean in practice, for you?

Police and security personnel are engaged in enforcing the laws of the land. These authorities and personnel should be aware of international supervision that urges the government to change laws, rules or practices that are contrary to international obligations.

This is not to suggest that police or security personnel not enforce the laws of the land. As you will see later on in training, the ILO’s ILS system is sophisticated enough to appreciate the fact that changes in laws and practices can take some time, and that there can be disagreements about what the international standards mean in particular circumstances. The ILS system functions on the basis of transparency and moral suasion. It is important that police and security personnel benefit from the transparency that the ILS system brings to possible divergences between national laws and practices, and international obligations. Thus, be aware of those laws and rules you are asked to enforce which are the subjects of international criticism.

¹⁴ 2012 General Survey, para. 55

¹⁵ For details, see 2012 General Survey, paras. 63-99.

For example, be aware that...

"The right of occupational organizations to hold meetings in their premises to discuss occupational questions, without prior authorization and interference by the authorities, is an essential element of freedom of association and the public authorities should refrain from any interference which would restrict this right or impede its exercise, unless public order is disturbed thereby or its maintenance seriously and imminently endangered"¹⁶.

Optional Discussion Point

Tell trainees that the test according to international standards by which a meeting of persons seeking to set up a workers' and employers' organizations may be interfered with is where "public order is disturbed thereby[by the meeting] or its maintenance seriously and imminently endangered" .

Then ask:

How does this standard conform to current national law?

Can you describe concrete circumstances where this international standard would be satisfied?



10 Minutes

International jurisprudence acknowledges the possibility that workers or employers could come together and seek to form an organization that would be *unlawful according to national law*. Convention No. 87 itself says –

"In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land".

With the proviso that –

"The law of the land shall not be such as to impair, nor shall it be so applied as to impair the guarantees provided for in this Convention"¹⁷.

And international jurisprudence has held that:

"Freedom of association implies not only the right of workers and employers to form freely organizations of their own choosing, but also the right for the organizations themselves to pursue lawful activities for the defence of their occupational interests"¹⁸.

¹⁶ 2006 Digest, para. 130.

¹⁷ Article 8, para. 1 and 2.

¹⁸ 2006 Digest, para. 495.

Organizations can be rightfully found to be falling outside freedom of association rights where they pursue purely political interests or, for example, call for the violent overthrow of the government. An organization is, however, entirely within the bounds of freedom of association rights if it calls for non-violent reform. The defence of occupational and economic interests concerns not only better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy question¹⁹. We will be returning to these issues in detail throughout the training.

¹⁹ 1996 Digest, para. 479.

Standard lecture 7. Freedom of association for armed forces and police



15 Minutes

Since this training has the military, police and security personnel as its ultimate target group, it is probably interesting to give some time to explain those persons' rights under Convention No. 87.

As mentioned previously, the only exceptions to freedom of association rights under Convention No. 87 are members of the armed forces and police²⁰. These were exceptions justified when the Convention was first adopted on the basis of the responsibility of these two categories of workers for the external and internal security of the State.

Optional Discussion Point

- Tell trainees that the armed forces and police were not given freedom of association rights as set out in Convention No. 87 because they have responsibility for the internal and external security of the State.

- Then ask:

Are you, individually, a member of the armed forces or police with job responsibilities for maintaining the internal or external security of the State?

- Then ask:

If you do not have these responsibilities, do you think that you too should not have the right to freely associate with your colleagues to be able to pursue lawful activities for the defence of your occupational interests?

(In fact, the limitation as to police and armed forces is conditioned on the fact that the persons employed in those services are actually engaged in maintaining the internal and external security of the State).



5 Minutes

How would the CFA handle police trying to exercise freedom of association rights? See CFA case number 2240, Report No. 332 (November 2003), involving Argentina.

"The Committee [on Freedom of Association] observes that the complainant organizations allege that the national administrative authority refused the applications for trade union registration of the Buenos Aires Police Union (SIPOBA) and the Santa Fe Provincial Police Professional Association (APROPOL). In addition, the complainant organizations allege that as a reprisal, after the formation of SIPOBA, one of the members of its Executive Committee, Principal Officer Nicolás Alberto Masi, was dismissed and the General Secretary of APROPOL, Mr. Miguel Orlando Salazar, was

²⁰ Article 9, para. 1.

dismissed for claiming payment of wage arrears and complaining of the lack of police equipment on behalf of the workers. The Committee notes the general reply of the Government with respect to the right to organize of the police.

The Committee recalls that Argentina has ratified Convention No. 87, Article 9 of which provides that “The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations”.

In the light of this text, there is no doubt that the International Labour Conference intended to leave it up to each State to decide the extent to which it considered it appropriate to apply the rights envisaged in the Convention to members of the armed forces and the police, in other words, by implication, that States which have ratified the Convention are not obliged to recognize the rights set out therein for those categories of workers. Nevertheless several member States have recognized the right to organize of the police and the armed forces.

In these circumstances, taking into account that the Convention left the issue up to member States to decide, the Committee recommends to the Governing Body that it should decide that the case does not require further consideration”.

According to the CEACR, the exceptions made for “the armed forces and the police” must be construed in a restrictive manner. They do not include –

- civilian personnel in the armed forces
- fire service personnel
- prison staff
- customs and excise officials
- civilian employees in the industrial establishments of the armed forces
- civilian employees in the intelligence services
- employees of the legislative authority

Nor do the exceptions automatically apply, in the view of the CEACR, to all employees who may carry a weapon in the course of their duties, who cannot *a priori* be excluded from the scope of the Convention²¹.

In a case involving El Salvador, the CFA has recalled –

“that, in accordance with the principles of freedom of association only the armed forces and the police can be excluded from the right to establish trade unions – which is a fundamental right. Consequently, all other workers, including private security agents should freely be able to establish trade union organizations of their own choosing”²².

Respect given to the freedom of association of workers in private security firms in El Salvador²³.

²¹ 2012 General Survey, para. 67.

²² CFA Case No. 2299, Report No. 333, para. 562.

²³ CEACR Direct Request, adopted 2011, C. 87.

“The [CEACR] also asked the Government [of El Salvador] in its previous comments to take the necessary steps to ensure that workers in private security firms enjoy the right to establish or join trade union organizations. The Committee notes with interest the Government’s statement that all requests to grant legal personality to trade unions originating from workers in the private security sector have received a positive response and that three trade unions and six branch unions have been registered”.

In practice, as it is not always easy to determine whether workers belong to the military or to the police, in the view of the CEACR, workers should be considered as civilians in case of doubt. For example, it considers that workers in private security firms and members of the security services of civil aviation companies should be granted the right to establish organizations, in the same way as workers engaged in security printing services and members of the security or fire services of oil refineries, airports and seaports²⁴.

Although Convention No. 87 does not grant freedom of association rights to the armed forces and police, States and governments may do so if they wish. For example, several jurisdictions around the world permit freedom of association for police; in the United States an International Union of Police Associations is a member of that country’s trade union federation, the AFL-CIO. And several countries in Europe permit degrees of freedom of association for their military personnel.

A regional organization, the European Organisation of Military Association (EUROMIL), is an umbrella organization for military trade unions and staff organizations. Its informational leaflet points out –

“EUROMIL emphasises particularly the right of servicemen and women to join trade unions and independent staff associations. Soldiers are highly skilled employees who have the legitimate right to promote their social and professional interests like other workers do. Decade-long experience in many countries has shown that military associations are reliable partners of the defence administration. Military associations fully respect the chain of command and do not condone insubordination within armed forces”.

! POINT: The exercise of freedom of association by the forming and joining of workers’ and employers’ organizations is not tantamount to revolution, sedition or treason. Under national laws even the armed forces and police can responsibly exercise these rights, even where they are not granted by international standards.

! NOTE: Rights to freedom of association granted in a country is not in all cases coextensive with the right to strike; a group may have freedom of association rights without having full rights to strike.

²⁴ Pakistan, Observation, adopted 2009, C. 98.

Standard lecture 8. Social progress and the right to association



10 Minutes

It is perhaps a good idea to step back from the essence of the standards to reflect on the connection between the right to association and social progress. In sum, one cannot exist without the other, and this is why protection of, and respect for, the right to associate is so important.

The 1944 Declaration of Philadelphia, which forms part of the Constitution of the ILO, affirms that “freedom of expression and of association are essential to sustained progress” and emphasizes that they are among the “fundamental principles on which the Organisation is based”.

The ILO Helpdesk for Business on International Labour Standards answers real questions asked by business about international labour standards. Here is one.

Question: Why is freedom of association important?

Answer: In addition to being a right, freedom of association enables workers and employers to join together to protect better not only their own economic interests but also their civil freedoms such as the right to life, to security, to integrity, and to personal and collective freedom. As an integral part of democracy, this principle is crucial in order to realize all other fundamental principles and rights at work.

Businesses face many uncertainties in this rapidly changing global market. Establishing genuine dialogue with freely chosen workers' representatives enables both workers and employers to understand each other's problems better and find ways to resolve them. Security of representation is a foundation for building trust on both sides. Freedom of association and the exercise of collective bargaining provide opportunities for constructive dialogue and resolution of conflict, and this harnesses energy to focus on solutions that result in benefits to the enterprise and to society at large. The meaning of freedom of association has been defined to a greater extent than any other right by the ILO supervisory machinery. In many, but not all cases, these decisions are useful to employers in order to understand them²⁵.

A recent ILO publication, *Freedom of association and development*, articulates why freedom of association is so important for development and social progress. It gives case examples showing that respect for these principles is an essential tool for improving people's lives everywhere. Two important overview pages are reproduced below.



²⁵ http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang--en/index.htm

Why is freedom of association important for development?

Sustainable development and poverty reduction are complex and challenging processes that require progress on many different fronts at the same time. It is widely accepted that economic growth is essential to the development process. However, inclusive growth and governance are needed to ensure that economic development contributes to the well-being of the greatest number of people, particularly poorer segments of society.

Working out of poverty

Participation and empowerment are increasingly recognized as vital to poverty reduction. Trade unions, employers' organisations and government departments, public agencies and local authorities, as well as community organisations, play a central role in creating an environment in which increasing opportunities for decent work lead to social inclusion and improved livelihoods [...]

A strong commitment by the ILO's tripartite constituents can make an enormous difference for those women and men striving to find opportunities to work out of poverty."

ILO Director-General's report to the 2003 International Labour Conference

There are a number of ways in which strong and independent trade unions and employer organisations can contribute to development. For example:

- ❖ Worker and employer organisations can help to ensure robust debate on economic and social policy issues, facilitate consultation with a broad cross-section of different interest groups and spur employment-rich growth;
- ❖ Where government reaches agreement with employers' and workers' organisations, this can help to ensure broad-based support for policy and legal reforms across a variety of social and economic areas;
- ❖ Trade unions and employers' organisations can help to enable a more equitable distribution of income through collective negotiations; and

- ❖ Workers' ability to join together in organisations and collectively defend their interests helps them to ensure that other labour standards – such as working time, health and safety or wages – are put into practice.

Overall, as membership organisations, trade unions and employer organisations can provide an effective and independent vehicle for voicing and representing the interests of their members, who often represent a broad and diverse cross-section of the community.

Freedom of association is necessary to ensure that trade unions and employer organisations can contribute fully to development processes: the ability of trade unions and employer organisations to participate is only possible where their representatives can speak freely and advocate on behalf of their members. This means that the right conditions must be provided for their operation:

- ❖ Trade unions and employer organisations must be free to conduct their activities without interference or harassment;
- ❖ Workers must be free to sign up with the union of their choice; and
- ❖ Trade unionists must not fear dismissal, intimidation or persecution by virtue of their trade union membership or activities.¹

In addition to its status as a basic human right, freedom of association should be recognised as an *enabling* right that underpins sustainable development and the decent work strategy. Freedom of association empowers individuals to realise their potential and safeguard a whole series of other rights at work; for example, by enabling collective negotiations to ensure fair wages and working hours.² Respect for rights at work and decent working conditions enable individuals and communities to achieve their full human potential and claim their fair share of economic and social development.³ As such, freedom of association is not just a desired outcome of development, but an integral part of the broader *process* of development and a critical component of all free and open societies. Without it, there can be no genuine or effective dialogue or cooperation between workers, employers and government on development and labour issues.

¹ FNV Mondiaal, *Trade unions, poverty eradication and development*, 2008, p 13.

² ILO, *Freedom of association in practice: lessons learned*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, 2008, p ix.

³ ILO, *Organisation, bargaining and dialogue for development in a globalising world*, report for the Governing Body, GB.279/WP/SDG/2, November 2000.

Note the implications of the first four points in the absence of free and strong workers' and employers' organizations.

- Debate of economic and social policy issues is unlikely to be robust; unfettered consultation with broad interest groups is difficult.
- Broad based support cannot be achieved through agreements with representatives of these important actors in society.
- Income cannot be equitably distributed through processes of collective negotiation.
- It is difficult to establish and maintain reasonable labour standards.

In the light of the role they play for development, it is rather important to highlight the fact that *both employers and workers and their organizations benefit from principles of freedom of association.*

In a serious case involving employers in Venezuela,²⁶ the CFA has noted –

“Taking into account the nature of the allegations presented and the Government’s reply, the Committee expresses generally its serious concern about the poor situation of the rights of employers’ organizations, their representatives and their members. The Committee draws the Government’s attention to the fact that the rights of workers’ and employers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations; the Committee also underlines that freedom of association can only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, due process and the protection of premises and property belonging to workers’ and employers’ organizations, are fully respected and guaranteed. The Committee urges the Government to fully guarantee these principles in the future”.

In a case involving Serbia, the government there was asked by the CFA to repeal law provisions making membership compulsory in one particular employers' organization, thus infringing on employers' right to establish and join the organization of their own choosing²⁷.

In a case involving Paraguay, the CFA condemned the search of an employers' organization headquarters and the taking of property therefrom as being inconsistent with the view that the premises of organizations of workers and employers are inviolable and an essential element of freedom of association rights under Convention No. 87. The CFA reiterated that "public authorities may not insist on entering premises without a judicial warrant authorizing them to do so", condemned the government's actions, demanded return of the taken property, an inquiry in order to clarify the circumstances surrounding the action and, where appropriate, punishment of those responsible²⁸.



²⁶ CFA, Venezuela, Case No. 2254, Report No. 334, para. 1089, June 2004.

²⁷ CFA Case No. 2146, Report 327 (March, 2002), para. 895.

²⁸ CFA Case No. 1790, Report 300 (November 1995), para. 296.

Optional Exercise

- Ask trainees:

Can you agree that benefits for society can come from respect for freedom of association, in particular in regard to employers and workers?

- If there is general agreement with this proposition, ask:

Is your agreement conditional in any way?

Chances are that any conditions raised by the trainees will be co-extensive with freedom of association rights, i.e. non-violent exercise of freedom of association rights, and that others will be attributable to the results of the exercise of freedom of association rights which can only be possible if freedom of association is respected (i.e. "if there is agreement between workers and employers' organizations, then I can see benefits – but we never have agreement)".



15 Minutes

Standard lecture 9. The rights of workers' and employers' organizations, including political activities



15 Minutes

Conventions Nos. 87 and 98 says nothing, *per se*, about the political activities of workers' and employers' organizations.

! NOTE: In a moment, you will see that Article 3 of Convention No. 87 refers to four areas of rights having to do with the operation of employers' and workers' organizations. We focus here on their "activities" – specifically political activities – because it is most relevant to our target audience. Understand this as you proceed with the content that follows.

The fact is, however, that groups of workers and groups of employers in practice engage in political activities as part of their activities. It goes without saying that enactment of favourable laws or pursuit of favourable public policy can be just as effective in achieving the occupational objectives of these organizations as efforts at the workplace.

The 2012 *Guidelines on Workers' Rights*, addressed to the security community, reaffirms workers' rights, including rights to-

"... establish and join organizations without discrimination to include the right of trade unions/workers' organizations or their leaders or members not to be prejudiced by reason of their actual or potential membership in a political party that is in opposition to a political party in power"²⁹.

²⁹ *Guidelines on Workers' Rights*, part II.

Optional Exercise

- Ask trainees and record responses on a presentation board:

What do employers' and workers' organizations – effectively speaking their officers and agents – concretely do when they are engaging in political action?

Answers would include running for political office, campaigning for political parties or politicians, canvassing members for support of political parties, fund raising, contacting and lobbying politicians, speaking out to promote legislation or public policies, organizing meetings or demonstrations to show support or opposition for public policy, circulating petitions, etc.



10 Minutes

- Working with the list developed, ask trainees and record responses on a presentation board:

Can you distinguish these activities from others that the same organizations do in furtherance of their organizations' objectives? What are these "other actions"?

(Answers should focus on action in the workplace, i.e. collective bargaining).

Article 3 of Convention No. 87 says that –

"1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

This is the provision that, among other things, has been used for decades as a basis for these organizations to insist on being permitted to engage in political activities.

The CEACR has said about these four areas of operational rights (emphasis in original) –

"... [W]orkers' and employers' organizations should have the right to organize their activities in full freedom and to formulate their programmes with a view to defending the occupational interests of their members, while respecting the law of the land. This includes in particular the right to hold trade union meetings, the right of trade union officers to have access to places of work and to communicate with management, the right to organize protest action, as well as certain political activities (such as expressing support for a political party considered more able to defend the interests of members). The authorities should refrain from any interference which would restrict freedom of assembly or impede the

lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order. ...”³⁰.

“With regard to the political activities of organizations, *the [CEACR] is of the view that both legislative provisions which establish a close relationship between trade union organizations and political parties, and those which prohibit all political activities by trade unions, give rise to difficulties with regard to the principles of the Convention.* Noting that the existence of a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country, the Committee considers that some degree of flexibility in legislation is therefore desirable, so that a reasonable balance can be achieved between the legitimate interests of organizations in expressing their point of view on matters of economic or social policy affecting their members or workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities, on the other”³¹.

So, in the area of political activity, where laws make occupational organizations an organic part of the State, the independence of workers’ and employers’ organizations is removed, contrary to principles of freedom of association. Freedom of association principles are likewise infringed where governments step in to unduly restrict political activities of these organizations.

The ILC adopted a resolution in 1952 concerning the independence of the trade union movement that spoke directly to this point. It says (emphasis added) –

- “1. The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.
2. The trade unions also have an important role to perform in cooperation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.
3. To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.
4. A condition for such freedom and independence is that **trade unions be constituted as to membership without regard to race, national origin or political affiliations** and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.
5. When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish **relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions** irrespective of political changes in the country.

³⁰ 2012 General Survey, para. 115.

³¹ 2012 General Survey, para. 116.

6. **Governments** in seeking the cooperation of trade unions to carry out their economic and social policies should recognize that the value of this cooperation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and ***should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political part***".

Optional Discussion Point

- Ask trainees:

In respect of which political activities of workers' and employers' organizations (you may refer to the results of the previous optional exercise) would you be called upon to do your work?

(The results should show that only a small number of political activities touch the work of military, police and private security personnel).



10 Minutes

About the defence of occupational interests implicitly in the context of political action, the CEACR has taken a broad view, saying that (*emphasis added*) –

"It was pointed out during the preparatory work on Convention No. 87 that ***trade union activities cannot be restricted solely to occupational matters***, since a government's choice of a general policy is usually bound to have an impact on workers (remuneration, leave, working conditions, functioning of the enterprise, social security, etc.). This relationship is obvious in the case of a national economic policy (for example, the impact of budgetary austerity programmes or price and wage restrictions; structural adjustment policies, etc.), although for workers in particular it may also appear in the form of broader political or economic options (for example, bilateral or multilateral free trade agreements; the application of directives of international financial institutions, etc.) or even decisions taken at the supranational level (for example, the effects of the delocalization of enterprises on employment and wages). Although the ***promotion of working conditions by collective bargaining remains a major feature of trade union action***, the Committee believes that the development of the trade union movement and the increasing recognition of its role as a social partner in its own right mean that ***workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy***"³².

³² 1994 General Survey, para. 131.

On the second point, any interference by public authorities with activities that have occupational interest at their core can only be justified under international standards if the exercise of these rights causes a “serious and imminent threat to public order”. Exactly what that means is taken up on a case-by-case basis. We will return to this in some detail further on.

! IMPORTANT: Employers' and workers' organizations have the right to dissent. In practice this is often their role and function – to act as a counterweight to existing authorities. In a democratic society it is a proper role to be played, for all the reasons suggested in this training. That right has been agreed specifically in the 2012 *Guidelines on Workers' Rights*:

"Workers and employers have the right to life, liberty and property and enjoy the right to political dissent within the bounds of the law"³³.

The CFA has acknowledged limits to political activities. For example...

In the case of an employers' organization, in Panama –

"The Committee notes that, according to the Government, the employers' organizations and the employers' leaders implicated in the present case had their rights curtailed within the framework of a criminal investigation because of their links with the National Civil Crusade and their presumed criminal activities within the movement, whose members include various occupational organizations. [The employers' leaders were accused of sedition and the attempted overthrow of the Government whereas in fact CONEP (according to the complainant employers' organization itself), on behalf of its 28 groups of affiliated employers representing almost all the business world in the country, had simply protested publicly against the suspension of constitutional guarantees, and in particular freedom of the press, the brutal repression practiced by the armed forces during peaceful, popular demonstrations for the restoration of civil liberties, government incitement to class conflict, and the economic paralysis of the country and its long-term effects on employment]. The Committee takes note of the Government's explanations concerning the nature and objectives of the National Civil Crusade, but observes that some of these objectives comprise aspects of interest to occupational organizations, such as the restoration of civil liberties and constitutional guarantees and the fight against the paralysis of the economy. However, there is nothing to indicate that the National Civil Crusade is protected by the guarantees afforded by the Conventions respecting freedom of association. It is, nevertheless, the responsibility of the Committee to determine to what extent the measures taken by the authorities to punish the activities organized or carried out in support of the objectives of the National Civil Crusade have hampered the exercise of the rights of employers' organizations and their leaders"³⁴.

! NOTE: Once again, we want to make you aware of these standards so that you can understand your duties in the context of international legal norms.

³³ *Guidelines on Workers' Rights*, part I.

³⁴ CFA Case No. 1419, Panama, Report No. 253, paras 394 and 419.

Standard lecture 10. The right to strike



15 Minutes

The “right to strike” is not mentioned in either Convention No. 87 or 98. The CEACR has most recently ...

... reaffirm[ed] that the right to strike derives from the Convention [No. 87]. The Committee highlights that the right to strike is broadly referred to in the legislation of the great majority of countries and by a significant number of constitutions, as well as by several international and regional instruments, which justifies the Committee’s interventions on the issue.

The CEACR has gone on to note that –

Strikes are essential means available to workers and their organizations to protect their interests, but there is a variety of opinions in relation to the right to strike. While it is true that strike action is a basic right, it is not an end in itself, but the last resort for workers’ organizations, as its consequences are serious, not only for employers, but also for workers, their families and organizations and in some circumstances for third parties. In the absence of an express provision in Convention No. 87, it was mainly on the basis of Article 3 of the Convention, which sets out the right of workers’ organizations to organize their activities and to formulate their programmes, and Article 10, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed ... by the Committee on Freedom of Association as a specialized tripartite body ..., and by the Committee of Experts. ...³⁵.

The supervisory bodies of the ILO have thus developed over the years a large body of jurisprudence dealing with the right to strike, the detailed substance of which is not appropriate content in a course for military, police and security personnel. The essentials are laid out here, and details relevant to policing and security activities are discussed later on.

As with other aspects of international standards on freedom of association, the contours of the right to strike have been developed by the ILO supervisory bodies, in their handling of cases involving national laws and practices. Since there is no explicit definition in an ILO instrument, a picture of the right to strike has been drawn by reference to its shadow rather than its actual image; we know what the right to strike is by having cases that tell us what it is *not*.

So, we know that, according to the CEACR,

“...the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87. That being said, the Committee emphasizes that...the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by

³⁵ 2012 General Survey, para. 117.

provisions laying down conditions for, or restrictions on, the exercise of this fundamental right”³⁶.

Would a general prohibition of strikes – either as a matter of law, or under emergency or exceptional powers – be acceptable under international standards?

“... Inasmuch as general prohibitions of this kind are a major restriction of one of the essential means available to workers and to their organizations for furthering and defending their interests, such measures cannot be justified except in a situation of acute national crisis and then, only for a limited period and to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural disaster in which the normal conditions for the functioning of society are absent”³⁷.

Would restrictions on who can strike be acceptable, under international standards? For example, can restrictions (which are common) relating to the public service be acceptable? The CEACR has said that –

“[a]lthough [it] cannot overlook the special characteristics and legal and social traditions of each country, it must, however, endeavour to establish fairly uniform criteria in order to examine the compatibility of legislation [restricting public servants right to strike] with the provisions of Convention No. 87. It would be futile to try to draw up an exhaustive and universally applicable list of categories of public servants who should enjoy the right to strike or be denied such a right. As it has already noted, the Committee considers that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State”³⁸.

Would it be acceptable – as is done in many countries – to restrict strikes in essential services? The CEACR has noted that ...

“[n]umerous countries have provisions prohibiting or limiting strikes in essential services, a concept which varies from one national legislation to another. They may range from merely a relatively short limitative enumeration to a long list which is included in the law itself. Sometimes the law includes definitions, from the most restrictive to the most general kind, covering all activities which the government may consider appropriate to include or all strikes which it deems detrimental to public order, the general interest or economic development. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. The principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner. As an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should

³⁶ 1994 General Survey, para. 151.

³⁷ 1994 General Survey, para. 152.

³⁸ 1994 General Survey, para. 158. See also 2012 General Survey, paras. 129-130.

be defined restrictively: the Committee therefore considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population”³⁹.

And finally, would it be acceptable to establish certain prerequisites before a strike could be deemed legal? Yes, says the CEACR, but there too, each case is handled on its own merits. The cases have involved, among others, such prerequisites as:

- exhaustion of prior procedures (conciliation, mediation and voluntary arbitration);
- advance notice, cooling-off periods and the duration of strikes;
- quorum and majority required to call a strike; and
- prior approval and supervision of strike ballots.

Generally speaking, prerequisites are permissible, provided they do not have the effect of making a lawful and meaningful strike impossible in practice⁴⁰.

In respect of the conduct of strikes, the supervisory bodies have also made comments on such matters as picketing, the replacement, requisitioning or termination of lawful strikers, and compulsory arbitration being imposed. Since these have a closer connection to the work of police and security personnel, we will look at them in more detail in other presentations.

! NOTE: International principles on the right to strike apply to lawful strikes, provided that finding is consistent with international standards. The CEACR has addressed this point clearly and directly.

“The principles developed by the supervisory bodies in relation to the right to strike are only valid for lawful strikes, conducted in accordance with the provisions of national law, on condition that the latter are themselves in conformity with the principles of freedom of association. They do not cover the abusive or unlawful exercise of the right to strike, which may take various forms and may give rise to certain sanctions. If the strike is determined by a competent judicial authority to be unlawful on the basis of provisions that are in conformity with freedom of association principles, proportionate disciplinary sanctions may be imposed against strikers (such as reprimands, withdrawal of bonuses, etc.). The question of determining whether or not a strike is lawful is therefore essential. In the view of the Committee, responsibility for declaring a strike illegal should not lie with the government authorities, but with an independent body which has the confidence of the parties involved”⁴¹.

³⁹ 1994 General Survey, para. 159. See also 2012 General Survey, paras. 131-135.

⁴⁰ 2012 General Survey, paras. 144-148 for details.

⁴¹ 2012 General Survey, para. 157.

Standard lecture 11. Dissolution of organizations



10 Minutes

One final area for examination is the conditions placed by international standards on dissolution or suspension of organizations. Police are typically involved in enforcing orders of dissolution or suspension.

Article 4 of Convention No. 87 explicitly focuses on action by administrative authorities. It says –

“Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority”.

The ILO supervisory bodies, again through years of handling cases, have confirmed that if an organization is to be suspended or dissolved, proper judicial authorities must do it. It is not for an ordinary civil servant, a military officer, or even a minister or president to decide.

From CFA cases –

“Dissolution by the executive branch of the government pursuant to a law conferring full powers, or acting in the exercise of legislative functions, like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee and which the Committee considers essential”⁴².

“Legislation which accords the minister the complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association”⁴³.

The supervisory bodies have emphasized that intervention by judicial authorities is proper where the right to defence is fully guaranteed through due process of law, including the right to appeal to the courts against an order of dissolution or suspension⁴⁴. The CEACR has gone on to say that –

“[i]t is preferable for legislation not to allow dissolution or suspension of workers' and employers' organizations by administrative authority, but if it does, the organization affected by such measures must have the right of appeal to an independent and impartial judicial body which is competent to examine the substance of the case, to study the ground for the administrative measure and,

⁴² CFA Case No. 1849 (Belarus), Report No. 302, para. 209.

⁴³ CFA Case No. 2181 (Thailand), Report No. 329, para. 760.

⁴⁴ 2006 Digest of Decisions, paras. 699-701.

where appropriate, to rescind such measure; moreover the administrative decision should not take effect until a final decision is handed down”⁴⁵.

Assuming dissolution or suspension can only be order through a proper judicial authority, the CEACR has summarized global guidance on possible grounds.

“While Article 4 of the Convention completes the guarantees relating to the establishment and functioning of organizations by affording them guarantees against arbitrary dissolution or suspension by administrative authority, it does not grant them any immunity with regard to the ordinary law; organizations and their members, under Article 8(1) of the Convention, are bound to respect the law of the land. Thus, for example, an organization seeking to undermine the internal and external security of the State cannot invoke the principles of freedom of organization in order to evade the application of the rules laid down in the ordinary law which are applicable to all unlawful associations. The corollary of this obligation imposed on organizations and their members is that, under Article 8(2), the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention”⁴⁶.



Optional exercise

The aim of the Standard lectures in the Training outline are to influence negative attitudes possibly held by the target audience in respect of freedom of association and of those who exercise it. This is done by informing trainees about the scope and contents of international freedom of association standards. These premises can be shared with participants; the desired shift in mind-set is illustrated in Diagramme 1: Mutually reinforcing arguments, below.

If we can show that freedom of association is composed of important and reasonable rights, that they do not protect violence and violation of ordinary law, and that good results can come from their exercise, then we may be able to convince all of our trainees that they should act with as much effort in protecting freedom of association as they might in assuring security and protecting against criminality.

To deepen participants’ understanding and appreciation of this premise, participants may be divided into small groups asked to do the following task:

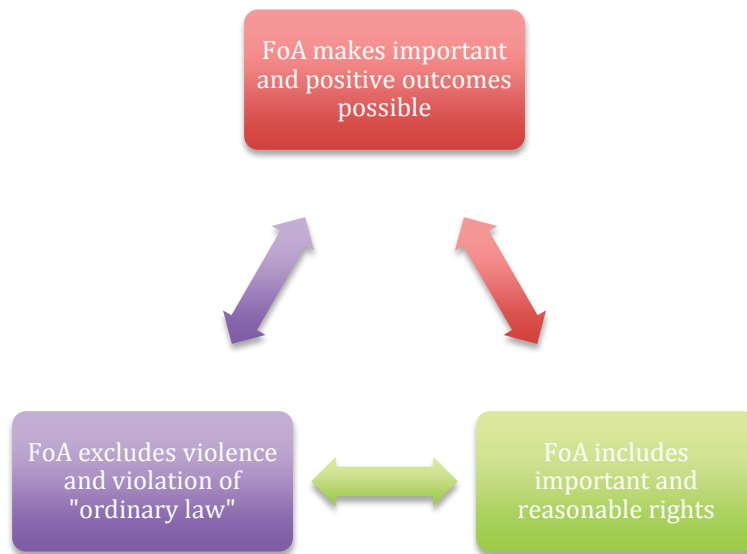
⁴⁵ 1994 General Survey, para. 185.

⁴⁶ 1996 General Survey, para. 181.

Rank these three mutually reinforcing arguments from the weakest/least convincing to the strongest/most convincing, recording in a single sentence (each): (a) why you judged each argument in the way done; and (b) what could be done in respect of each argument to change your judgement?

Bring the results of the groups' discussions back to plenary and discuss.

Diagramme 1: Mutually reinforcing arguments



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: Freedom of association in a democratic society in Appendix 2 on page 131. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

About European Organisation of Military Associations:

<http://www.euromil.org/>

About International Union of Police Associations:

<http://www.iupa.org/>

! NOTE: Reference to these organizations is entirely for educational purposes and does not imply an endorsement of any kind.



References and readings

About the role freedom of association plays in sustainable development:

ILO, *Freedom of association and development* (2009), available for download at:

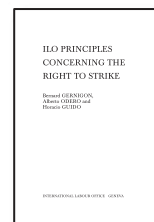
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_160208.pdf



About the right to strike:

Gernigon, B., Odero, A., and Guido, H., *ILO Principles concerning the right to strike* (2000), available for download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087987/lang-en/index.htm



III. Insurrection, insurgency and freedom of association



Learning objectives

At the completion of this critical subject area presentation, participants will be able to:

- ✓ Explain what it means that there are no derogations or suspensions permitted under Conventions Nos. 87 and 98.
- ✓ Explain the relation between civil liberties and military operations in areas of insurrection or insurgency.
- ✓ Explain what rights one has to exercise rights to freedom of association and collective bargaining in areas affected by insurgency.
- ✓ Explain the distinction between lawful and unlawful exercise of freedom of association, and the importance of the distinction in the context of counter insurgency operations.
- ✓ Explain what measures can be taken to protect those who lawfully exercise freedom of association rights even in areas affected by insurgency.
- ✓ Understand the role of a declared policy of respecting, protecting, and promoting freedom of association, and the importance of reflecting that policy in community and other operations.



Key concepts

The rights to freedom of association and collective bargaining guaranteed by the ILO Conventions are binding and applicable always and everywhere within the territory of a state. The same applies to the principles derived from the ILO Constitution.

In practice, cases alleging infringement of freedom of association rights dealt with by the ILO's supervisory bodies take account of situations of civil unrest, revolution, natural disaster and similar, allowing latitude to the authorities in applying international standards, which should be strictly limited in time to the period of actual emergency.

Regardless of emergency-type situations, efforts should be taken to respect and protect the exercise of rights to freedom of association and collective bargaining. These efforts should be intensified in situations where the exercise of rights is threatened by military or police operations motivated by security concerns. This can be done by, for example, insulating workers, employers, their organizations and their organizations' leaders from measures taken to maintain the security of the state, assuring always due process of law to the fullest extent possible.



Glossary of terms

Abrogation	To annul or repeal a law or treaty in its entirety.
Belligerency	The state of being at war or in conflict; the status of a legally recognized belligerent state or nation.
Derogation	Partial revocation or abrogation of a law or treaty.
Insurgency	A condition of revolt against a government that is less than an organized revolution and that is not recognized as belligerency.
Insurrection	An act or instance of revolting against civil authority or an established government.
Suspension	A temporary stop of a right.



Training outline



5 Minutes

(not including time
for participant
introduction)

Getting started: introduction

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

Tell participants that in this set of presentations you will discuss freedom of association and the right to collective bargaining in situations where the armed forces or police may be involved in anti-insurgency activities or other operations designed to protect the State against violent revolution, insurrection or insurgency.

	Title	Page	Minimum time (minutes)
Standard lecture 12	Derogation and suspension of obligations under ILO standards	61	20
Standard lecture 13	Avoiding a climate of violence and impunity	66	15

Standard lecture 12. Derogation and suspension of obligations under ILO standards



20 minutes

To discuss the application of freedom of association and collective bargaining rights in situations of insurgency, we need first to ask the question: *Are there any situations where there can be derogation or suspension of these rights?* The answer is **No**.

“The Committee on Freedom of Association has recalled that the Committee of Experts on the Application of Conventions and Recommendations has emphasized that **the freedom of association Conventions do not contain any provision permitting derogation from the obligations arising under the Convention, or any suspension of their application**, based on a plea that an emergency exists”⁴⁷.

The problem for respect for freedom of association and the right to collective bargaining is that in situations of insurrection or insurgency civil liberties may be restricted or removed, compromised or ignored. As pointed out by the supervisory bodies, freedom of association and the right to collective bargaining cannot be exercised in these circumstances, contrary to the obligation that their exercise be protected and respected. Here is where the connection between the existence of basic civil liberties and the exercise of freedom of association comes most fully to the fore. There will be a compromise in the rights to associate and to bargain collectively wherever there has been a compromise in respect for civil liberties.

⁴⁷ 2006 Digest, para. 193.

Optional Exercise and Discussion Point

After explaining the dilemma for freedom of association activities in the absence of civil liberties, ask trainees the following question and record responses on a presentation board.

- *What conduct or actions by the police or military reflect the absence of civil liberties?*

(Responses would center around “takings” without due process of law. That is, the taking of property, of freedom of movement, and of life without recourse to normal independent, prompt judicial review. This is a legalistic explanation, but summarizes what actually happens).



15 Minutes

With the list generated by the group, ask the following question.

- *Which of these have a connection with the exercise of freedom of association?*

(With this exchange the relationship set for discussion should be brought home to the participants).

Now, you might say that the State has every right to suspend civil liberties, including freedom of association and the right to collective bargaining where its integrity has to be protected. This is not really the point of this discussion. There is no challenge to this proposition.

! The point we are looking at here is what is done in situations of insurrection or insurgency to respect and protect rights to the fullest extent possible while at the same time permitting the State to take measures to protect its integrity against violent revolution. (An analogy may be made to using an umbrella to keep dry in a rainstorm).

Let's look deeper at this.

In practice, the ILO supervisory bodies have reviewed cases involving states of emergency declared by governments of countries, having the effect of suspending civil liberties. While each case is unique, the international standards to be applied are the same. First, the CFA has noted the connection between the absence of civil liberties during states of emergency and the exercise of freedom of association rights.

“In cases of repeated renewals of the state of emergency, the Committee has pointed out that the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference in 1970, states that “the rights conferred upon workers’ and employers’ organizations must be

based on respect for (...) civil liberties (...) and that the absence of these civil liberties removes all meaning from the concept of trade union rights”⁴⁸.

Yes, the supervisory bodies are realistic and practical in these situations – a concrete sign of the value of tripartism in the supervision of these international standards – saying that –

“As regards countries which are in a state of political crisis or have just undergone grave disturbances (civil war, revolution, etc.), the Committee has considered it necessary, when examining the various measures taken by governments, including some against trade union organizations, to take account of such exceptional circumstances when examining the merits of the allegations”⁴⁹.

Thus, for example, ...

“Restrictions on the right to strike and on freedom of expression imposed in the context of an attempted coup d’état against the constitutional government, which gave rise to a state of emergency called in accordance with the constitution, do not violate freedom of association on the grounds that such restrictions are justified in the event of an acute national emergency”⁵⁰.

Or ...

“The enactment of emergency regulations which empower the government to place restrictions on the organization of public meetings and which are applicable not only to public trade union meetings, but also to all public meetings, and which are occasioned by events which the government considered so serious as to call for the declaration of a state of emergency, does not in itself constitute a violation of trade union rights”⁵¹.

Yet, ...

“If a revolutionary government suspends constitutional safeguards, this may constitute serious interference by the authorities in trade union affairs, contrary to Article 3 of Convention No. 87, except where such measures are necessary because the organizations concerned have diverged from their trade union objectives and have defied the law. In any case, such measures should be subject to appropriate judicial guarantees that may be invoked without delay”⁵².

⁴⁸ 2006 Digest, para. 194.

⁴⁹ 2006 Digest, para. 202.

⁵⁰ 2006 Digest, para. 198.

⁵¹ 2006 Digest, para. 196.

⁵² 2006 Digest, para. 204.

But, ...

“Noting in one case that conditions approaching civil war prevailed, the Committee considered that special restrictions for the purpose of eliminating sabotage in public utility undertakings should not in any case be such as to give rise to anti-union discrimination”⁵³.

So what we see here is the development of an idea of *insulating and protecting* the exercise of *bona fide* trade union or freedom of association rights from military interventions designed to protect the state in the event of a true national emergency. You might see this as an “absolute minimum infringement of rights” or basic “respect for certain rights” – call it what you will.

Keeping in mind that situations differ, we can note a distinction between actions responding to insurrection or insurgency that have a non-discriminating impact on the population versus those taken that are aimed directly at trade union or employer association activities. We are returned to basic principles now: *There should be no interference with lawful, peaceful, freedom of association rights.*

“Emergency legislation aimed at anti-social disruptive elements should not be applied against workers for exercising their legitimate trade union rights”⁵⁴.

The *Guidelines on Workers’ Rights* make very clear that AFP/PNP operations are to “respect, protect and advance” workers’ rights and civil liberties, and name four activities specifically aimed at trade union activities, telling that they shall not take place.

- “1. Shall not stigmatize/label workers’ organizations/associations, labour leaders, members or organizers as front or members of certain conflict armed group/s;
2. Shall not hold or assist in any manner whatsoever in the conduct of information drive or seminars, inside and outside the company premises especially during the 60-day freedom period until the actual conduct of certification election, to dissuade workers from organizing a union or participating in the certification election campaign, or from voting/supporting specific trade union organization;
3. Shall not issue invitation to workers, organizers, or union officials on their alleged links or support to certain armed group/s; however, the PNP, in furtherance of criminal investigations, may invite them to shed light; and
4. Shall not force them to renounce membership in their trade union organization”⁵⁵.

⁵³ 2006 Digest, para. 777.

⁵⁴ 2006 Digest, para. 201.

⁵⁵ *Guidelines on Workers’ Rights*, part VIII.

! NOTE: If the exercise of freedom of association is non-violent and otherwise lawful on its face, in geographic areas of insurgency any interference with that right, even if done in a military action, should be subject to ordinary due process protections in law.

To focus on the practical meaning of "respecting, protecting and advancing workers' rights and civil liberties" despite internal peace and security operation, particularly useful is the idea that ...

"When a state of emergency has continued over a period of several years, entailing serious restrictions on trade union rights and civil liberties that are essential for the exercise of such rights, the Committee has considered that it is necessary to safeguard the exercise specifically of trade union rights such as the establishment of employers' and workers' organizations, the right to hold trade union meetings in trade union premises and the right to strike in non-essential services"⁵⁶.

In order to do this, there needs to be respect for workers' and employers' rights and a decided effort to protect their rights *despite* the need to engage in counter insurgency and similar operations. That means that there needs – and can be – efforts to separate the "wheat from the chaff". If there is the will to do this, efforts can be made, the situation can be improved. It can be done.

! NOTE: Keep centered on the point that "trade unionist ~~≠~~ violent revolutionary". This idea must be effectively transmitted during the training course; it needs to be readily accepted among participants. Monitor the quickness with which participants revert to "Yes, but..." It should be possible to see the violent trade unionist as the exception to the rule and not the reverse.

⁵⁶ 2006 Digest, para. 195.

Standard lecture 13. Avoiding a climate of violence and impunity



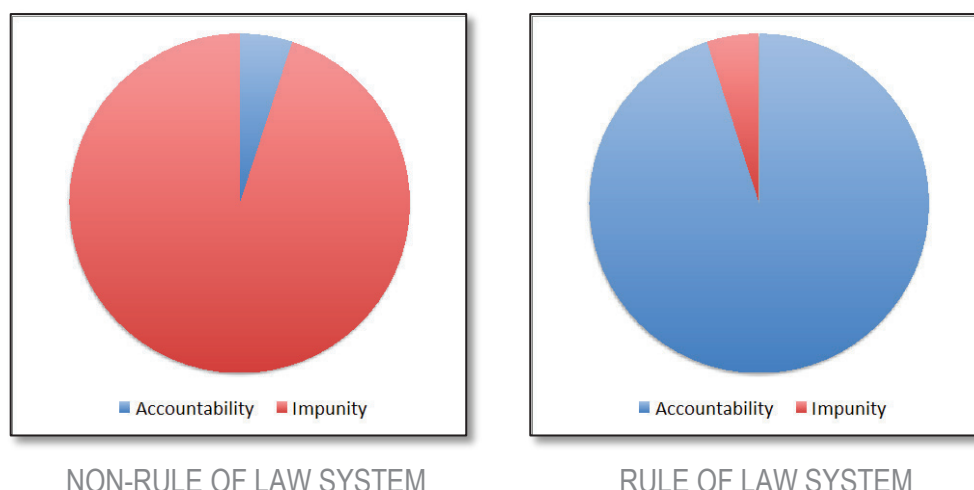
15 Minutes

So, what can be done to respect and protect rights to freedom of association and collective bargaining while at the same time fighting insurgency?

It may be good to think in terms of immediate and longer-term objectives. The longer-term objectives are certainly to maintain or re-establish in insurgency areas a climate free of violence and avoid an atmosphere of impunity in infringement of civil liberties and freedom of association rights. In the shorter term, immediate objectives may be taking measures aimed at building confidence by showing a commitment to rights and being seen to actually take action that is consistent by respecting rights.

Accountability and impunity: Rule of law and non-rule of law systems

"The diagram demonstrates that within a rule of law system, while there can be many serious defects, these defects can be dealt with within the framework of a well-established system of policing, prosecutions and judiciary supported also by a very viable form of expression of public opinion and protest" ⁵⁷.



The long-standing case of respect for freedom of association in Colombia can be drawn upon for ideas. The challenges faced in that country, like those faced in all, are unique. A review of the situation there can nevertheless give some ideas to improve the respect for freedom of association rights in difficult circumstances. These ideas are

⁵⁷ ASIA: Protection of human rights in non-rule of law countries - institutional reforms in the administration of justice must be given primacy of place, December 8, 2008. <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-042-2008> (accessed 11 October 2012).

offered in random order⁵⁸. (Some may just seem to be a slight variation on a theme; that variation may, however, make sense in circumstances where action of one type might not be possible, but the variant is).

Set measures to locate and judge perpetrators⁵⁹

After establishing an understanding for rights in the ranks, set up procedures and take measures to locate, judge and discipline perpetrators infringing on rights.

Set measures to avoid reprisals

In situations where the state has difficulties investigating offences, including the silence of witnesses on account of fear of possible reprisals, establish measures to avoid, detect and punish reprisals and threats of reprisal.

Set measures to ensure that recognition of unions and decision on issues related to collective bargaining processes are expedited

With a view to building confidence, to show the commitment of the state to the rule of law and due process, and to respect for rights to freedom of association and collective bargaining, measures could be taken to assure that determinations on union recognition and related issues are expedited in troubled areas.

Ensure that government agencies and officials are respecting government policy

Where government has difficulties convincingly explaining that occurrences of infringement on rights by state actors do not reflect state policy, government agencies including the military and police can make efforts to assure that their officials know what government policy is and are respecting it.

Support private social responsibility initiatives, and the development of related activities to promote respect for freedom of association and collective bargaining

The private sector should be drawn into reflecting their commitment to respect freedom of association principles, as well as civil liberties in general. This is the trend internationally and would serve very important purposes in troubled areas, particularly where alleged infringements are seen to benefit employers. Involving trade unions in activities – making them bi- or tripartite affairs – can be considered.

Raise awareness amongst ministry officers and public officials, government officials with regards to human rights, fundamental rights and international labour standards

Raising awareness of persons in government and the military can go beyond formal training activities. Posters, announcements, events of all kinds can help both education and remind responsible official of their responsibly not only to safeguard the security of the state, but also to protect and respect the rights that that state stands for.

⁵⁸ These ideas are derived from an examination of recent comments by the CEACR and Governing Body document GB.291/TC/7.

⁵⁹ See *Guidelines on Workers' Rights*, parts IX-X.

Promote the dissemination of good practice case studies

The appropriate officials can be given responsibility to look for and collect examples of good practice – practices that are designed to minimize infringement in civil rights during periods of insurrection, and particularly in respect of freedom of association and collective bargaining activities – so that they can be systematically disseminated and replicated.

Raise awareness amongst employers and employers' organizations with regards to human rights, fundamental rights at work and international labour standards

Actors external to employers and employers' organizations may be called on to raise awareness of these issues within the employers' ranks. Military and government personnel, but civil society actors as well, including the church, NGOs, the press, academics could potentially be involved.

Strengthen the processes of social dialogue, improvement of labour relations and respect for the rights of freedom of association and collective bargaining, among employers and among trade unions

Positive effects can flow from increased confidence and capacity in the private sector for engaging in collective bargaining and industrial relations in ways that respect freedom of association rights. This can have flow on effects – flowing out from the private sector and into the public where connections of that nature permit; this can have positive knock on effects for infringements on these rights.

Organise/promote workshops/seminars/trainings with the private sector and unions regarding negotiation, communication, consultation and the settlement of labour disputes

Bilateral exercises, where they can be arranged, are potent mechanisms for building confidence between the parties to collective bargaining, often leading to improved relations and respect for rights – again with potential outflow to the military and security sector.

Install mechanisms of registration of unions and collective agreements, including number of workers covered by collective agreements

Being able to monitor and say that workers are having the opportunity to organize and collectively bargaining in areas affected by insurgency can be quite important, particularly for assuring those who want to exercise their rights, that they can. Even if similar mechanism exist in advance, special expedited mechanisms – collecting information every few months, for example – can have a very useful influence.

Create or reactivate tripartite consultative/advisory committees on social/labour issues/policies

Giving representatives of employers and workers the opportunity to consult with government and military officials about conditions on the ground in areas touched by insurgency can send a powerful confidence-building message. Useful ideas can also come forward on ways of minimizing infringement of civil liberties and the rights to freedom of association and collective bargaining.

Organize workshops/seminars/trainings of bipartite and tripartite natures

Having any types of activities of a bipartite or tripartite character can help avoid a climate of violence and impunity. Consideration can be given to this option – where the important element is bringing together in a positive setting actors who might otherwise be seen as opponents in other circumstances.

Create systems to report and register violence against union adherents and organizations

It can be important to monitor possible infringements. Where the military or government is not able to establish such a system with the confidence of the parties involved, other organizations might be called upon to do so. The church or other religious organs is a first possibility. Information collected can lead to investigations and remedy, transparently effectuated with a view to building confidence in the population.

Train and raise awareness on reporting violations

Once places for reporting possible infringements with civil liberties and freedom of association are established, it will be important to make sure that people know what and how to report violations. Having specifics of incidents makes investigation more possible and effective. People have to be informed how to do this.

Maintain clear, specific statistics of the cases, verdicts involving violence against trade unionists

Related to the ideas above, actually collect, maintain, and publish relevant statistics in a transparent fashion. This provides the baseline for improvement as well as potentially builds confidence within the civil society.

Adopt measures to combat violence and impunity

Very specific measures can be taken in this vain to, for example, provide protection to union leaders, to trade union activists, to workers who have not been able to establish a union due to the threats received. The same measures could be applied to employers in the relevant situation.

Create relevant education opportunities

Where possible, introduce rights promoting education opportunities in general, middle, higher and professional education. These could range from small additions or supplements to existing education or the development of specific degrees in labour rights or negotiation, mediation and dispute settlement, or related. This idea can be applied in military and police training institutions. To strengthen impact, involve workers' and employers' representatives in development and implementation of programmes.

Train investigators and prosecutors

Both civil and military investigators and prosecutors can benefit from training on applying freedom of association rights in areas where civil liberties are exercised in limited fashion on

account of military operations. Properly trained and equipped investigators and prosecutors should be deployed in affected areas wherever possible.

Create systems to speed up processes for the investigation and prosecution of violations

Investigation and prosecution of violations of civil liberties should be occurring wherever possible, even in situations of insurgency. That they are seen to be occurring is important. Ways of expediting investigation and prosecution without jeopardizing the quality of both should be considered and would be very important for preventing a climate of violence and impunity.

Adopt and publicize commitments to respect and promote freedom of association where it is lawfully exercised⁶⁰

Where the perception exists that government or military has targeted all trade unionists or adherents, specifically acknowledging and undertaking efforts to distinguish, respect and protect lawful, non-violent exercise of associational rights and following through on the commitment in transparent ways can have an important impact.

Optional Exercise

After giving the examples offered here, participants can be given the opportunity to develop a program of initiatives for protection and promotion of freedom of association for a particular troubled geographic area. This is, of course, a very serious exercise, and thus should probably only be used where the results are intended to be used for real.

Participants should use the Guidelines on Workers' Rights as point of reference insofar as many of its provisions are relevant. They may be asked to elaborate localized provisions for implementing particular paragraphs in the Guidelines. For example, concerning ongoing dialogue with workers/unions/federations,⁶¹ promotion of provisions for remedy in case of violation,⁶² and similar, as appropriate to the training setting.



60 Minutes
or more

⁶⁰ For example, the Guidelines on Workers' Rights.

⁶¹ Part XI, (3).

⁶² Part IX.



Optional exercise

It has been suggested in this Training outline that respect for freedom of association and the right to collective bargaining must be protected as fully as possible in situations of insurrection and insurgency. With this principle in mind, address the following question in plenary or group-based discussion. (Reference *Guidelines on Workers' Rights*, particularly parts VIII, and onward).

Should military operating in areas suffering from insurgency attempt to “infiltrate” local communities for the purpose of learning who in the community has trade union sympathies and would vote in favour of having a trade union represent workers in an enterprises where they work? What steps could be taken in this situation to respect and promote freedom of association rights while achieving at the same time military objectives?



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: insurrection, insurgency and freedom of association in Appendix 3 on page 132. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

None



References and readings

About human rights law applicable in internal armed conflict:

Abresch, W. A Human Rights Law of Internal Armed Conflict: The European Court of Human Rights in Chechnya, in *European Journal of International Law*, Vol. 16, Issue 4, pp. 741-767, available for download at:

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IV. Public order and freedom of association



Learning objectives

At the completion of this critical subject area presentation, participants will be able to:

- ✓ Distinguish between different contexts in which public order concerns arise, as related to the exercise of freedom of association and collective bargaining rights.
- ✓ Explain the single basic condition on which international guarantees to freedom of association and collective bargaining rights rests.
- ✓ Compare the difference between the focus of purpose of Convention No. 87 and that of Convention No. 98.
- ✓ Explain two ways in which a climate free of violence and intimidation may be promoted in situations where the keeping of public order is of concern to police or security personnel.
- ✓ Note the inherently forceful character of security forces' presence on lawful associational activities.
- ✓ Explain how international labour standards can come to guide the conduct of private enterprises.
- ✓ Understand international labour principles on public authority restrictions placed on gatherings, and authority in respect of protecting ingress and egress to workplaces in the context of freedom of association right.
- ✓ Explain what rights non-strikers have to enter the premises of the enterprise and how it compares to the right of striking picketers to incite them to join the strike.



Key concepts

State actors in the Philippines, including the PNP and AFP – and by extension Barangay Peacekeeping Operations – are obliged both to protect workers and employers, and their organizations in the exercise of freedom of association rights and their right to engage in collective bargaining, as well as to assure security and public order. Principles of international standards oblige the same of private security guards, agencies and their agents.

The 2012 *Guidelines on Workers' Rights*, in line with international standards, affirm that rights to freedom of association and collective bargaining can only be fully exercised in a climate free from violence, pressure, intimidation or threats of any kind. Public order operations must take this, the mandate to keep public order, and the obligation to protect rights of all the parties, all into account. Innovative approaches based on communication and transparency may be considered.

Situations potentially threatening public order where the exercise of rights to freedom of association and collective bargaining are involved are essentially private matters. Neutrality towards outcomes and equal protection of all parties' rights should be objectives, alongside keeping public order. Moderation and proportionality should be key words. Operational rules and procedures should highlight these ideas.

Rights to leaflet, picket and otherwise communicate should be at least as broad for workers' and employers' organizations as it is for other members of the public exercising rights to assembly, expression and petition.



Glossary of terms

Labour dispute	Any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee ⁶³ .
Leafleting	Distributing a document or hand-out, usually outside a place of work or location of dispute or grievance, informing recipients of the grievance or dispute.
Lockout	The temporary refusal of an employer to provide work as a result of an industrial or labour dispute ⁶⁴ .
Picketing	The right of workers to freedom of expression, peaceful assembly, and concerted actions consisting of the marching to and fro before the premises of an establishment involved in a labour dispute, generally accompanied by the carrying and display of signs, placards or banners with statements relating to the dispute ⁶⁵ .
Representational activities	Work done by trade union or other worker representatives presenting the position or interest of a worker or group of workers to management. Representational activities can include presentation on behalf of one or many workers, depending on the circumstances.
Strike	Any temporary stoppage of work by the concerted action of the employees as a result of an industrial or labour dispute, or to express positions on socio-economic matters affecting workers' interests ⁶⁶ .

⁶³ *Guidelines on Workers' Rights*, part IV, (11); *Joint DOLE-PNP-PEZA Guidelines*, part II.(2)(g).

⁶⁴ *Guidelines on Workers' Rights*, part IV, (14).

⁶⁵ *Ibid.*, part IV, (18).

⁶⁶ *Ibid.*, part IV, (20).



Training outline



5 Minutes

(not including time
for participant
introduction)

Getting started: introduction

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

The training in this Training outline focuses on things done, usually by police and private security personnel intending to keep the peace or public order, that impact on the exercise of freedom of association rights.

Much of what we want to do in this training is to sensitize trainees to –

- How what they do to keep public order influences the exercise of rights to freedom of association and collective bargaining.
- How they can change what they do to keep public order so that it does not interfere with the exercise of these fundamental rights.
- The importance of minimizing interference, while at the same time doing their job to maintain public order.

	Title	Page	Minimum time (minutes)
Standard lecture 14	Private matters and public order: organizing, collective bargaining and representation	77	25
Standard lecture 15	Leafleting, picketing and other forms of expression	87	15
Standard lecture 16	Strikes and lockouts	93	15

Standard lecture 14. Private matters and public order: organizing, collective bargaining and representation



25 Minutes

Events can develop in the context of the exercise of rights on freedom of association and collective bargaining where police and/or private security personnel are called upon to intervene to maintain the peace. As a point of departure for our discussion, you will recall that there is a basic obligation of all parties to act peacefully in order to benefit from protections guaranteed by international standards. In addition to this basic condition, several standards and principles deriving from Convention No. 98 are relevant to particular situations, and need to be brought to your attention.

There are roughly three circumstances in which public order may potentially come to be threatened and thus have an impact on the exercise of freedom of association and collective bargaining rights. They are –

- During organizing campaigns, where employers or workers – usually the latter – are engaged in organizing themselves or their colleagues.
- During collective bargaining processes, where recognition by the employer is sought in order to be able to engage in collective bargaining or where a dispute arises as a result of deadlock in collective bargaining.
- During representational activities, where employers' or workers' organizations – usually the latter – are actually doing representational work, often at a workplace.

Each of these circumstances are rather different, calling into play somewhat different considerations. Yet, it is *very important* to keep in mind that labour matters such as the organization of workers in an enterprise, and the processes of collective bargaining and representation are largely private matters. The *ordinary* public dimension of these matters is usually only one possibly of inconvenience.

! IMPORTANT: The *Joint DOLE-PNP-PEZA Guidelines* and the *Guidelines on Workers' Rights* both stress that labour disputes are within the "sole jurisdiction of the Department of Labor and Employment (DOLE)" while "matters involving peace and order" and "protection of the people and the State and securing the sovereignty of the State and integrity of the national territory" are under the jurisdiction of the PNP and AFP respectively. Labour disputes are 100 per cent private matters – AFP and PNP should leave any state involvement in labour disputes entirely to DOLE unless or until the jurisdiction of the other actors is invoked as a result of events.

Indeed, the ILO's supervisory bodies see collective bargaining very much as a voluntary, private process, where the role of the state is one of promotion, facilitation and conciliation in case of disputes. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) is based on this idea, calling on the state, for example, ...

“... to protect workers' exercise of their right to organize vis-à-vis employers and to protect workers' and employers' organizations against interference by each other”⁶⁷.

Thus, as compared with Convention No. 87's focus on state interference in the freedom of association, Convention No. 98 obliges the state to place itself between the private parties, tasked with protecting against acts of anti-union discrimination and with promoting collective bargaining.

Optional Exercise

- Tell participants that there are differences between the three circumstances – **organizing**, **collective bargaining** (and strike) and **representation** – that can have an impact on the role they are asked to play in maintaining public order.
- Ask trainees and record on a presentation board:

Can you identify some differences between these circumstances? Think, perhaps, from the perspective of employer and worker actors involved, as well as from your own perspective in respect of the context of possible disruption to public order.

(A few ideas: During **organizational** activities, the workers' organization is often working discreetly to build support in a workplace. The role played by private security agencies is potentially large here, as they could be called on to “spy” on activities. Police become more involved in **collective bargaining** where labour disputes may arise and where pickets, marches and strikes can occur near or on public thoroughfares. During **representational** activities, private security guards will again potentially be in the forefront, although conflicts over access to premises and other matters related to escort functions could take place on public property, engaging the police).

NOTE: The definition of “labour dispute” in the Guidelines on Workers' Rights and Joint DOLE-PNP-PEZA Guidelines encompasses the three circumstances; examining them from within the single definition may be useful.



15 Minutes

Before moving into some detail on those standards as they relate to the work of the military, police and security persons, we need to highlight the point emphasized repeatedly by ILO supervisory bodies on freedom of association. It has to do with what has been called the “climate of violence”.

“The rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected”⁶⁸.

⁶⁷ 1994 General Survey, para. 199.

⁶⁸ 2006 Digest, para. 44.

The number of cases in which this point has been made by the international supervisory machineries are legion, including some involving the Philippines. The 2012 *Guidelines on Worker's Rights* acknowledge and reiterate this point and lay down directions for seeing that such a climate does not exist in the Philippines in the future.

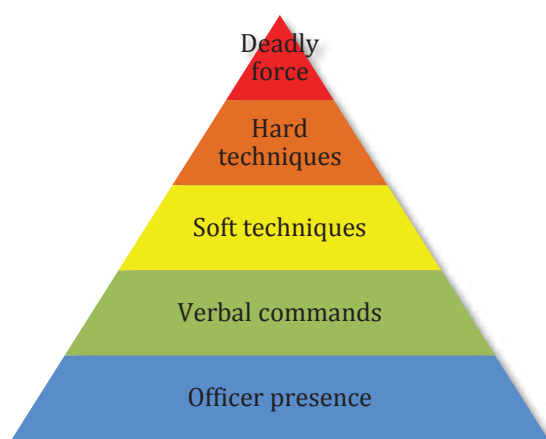
A first “problem” is that police and security personnel inherently carry with them a coercive authority in keeping public order. That activity must be tempered to avoid creating a climate that the government is obliged to ensure does not exist, that is, a climate of violence, pressure and threats. That is what this training, at its foundation, is about.

P.L.A.N

See Appendix 8: Maintaining law and order: basic policing principles and user of force – “P.L.A.N” (excerpt from Commonwealth Manual on Human Rights Training for Police) at page 139 for a well-developed operational framework for maintaining public safety and order within a human rights framework.

The well-known “use of force continuum”, illustrated in Diagramme 3 and used in your professional training, acknowledges that the very *presence* of policing authority has an element of force that requires discretion in its exercise. Indeed, PNP operational guidelines holding police presence back from potential flash points at demonstrations brings home this point.

Diagramme 2: Use of force continuum



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

A second “problem” is that the police, as a state actor, are obliged to assure to the extent that it can in its work, that workers are *protected* in their exercise of freedom of association rights.

So under principles of international labour standards police need to both –

- temper their show of force as much as possible in order to avoid creating a “climate of violence” in ordinary maintenance of peace activities, and
- protect workers and employers in their exercise of freedom of association rights.

“For the contribution of trade unions and employers’ organizations to be properly useful and credible, they must be able to carry out their activities in a climate of freedom and security”⁶⁹.

⁶⁹ 2006 Digest, para. 36.

Photo 1: UK Trade Union Congress march in general strike of 1926



Optional Discussion Point

- Ask trainees:

Please give examples from your current work in maintaining public order of how a climate of violence is avoided and persons are protected in the exercise of their rights?



10 Minutes

Photo 2: A labour liaison unit



Optional Case Discussion

Present the following scenario to participants in plenary or groups:

You are a management representative in a PEZA enterprise. Your company is engaged in collective bargaining with trade union X. You want to request zone police assistance to escort the CEO to a negotiating round on a particular day of scheduled bargaining. What do you do?

(Participants should refer to the Joint DOLE-PNP-PEZA Guidelines definition of "labour dispute" as well as section III, para 5 of the Guidelines).

Follow up questions for the participants:

- What does the Economic Zone Office do?
- What does DOLE do?

Does the situation change if:

- The CEO is coming to announce that a deadlock on negotiations has been reached.
- If the CEO is going to announce that there will be a lockout starting the next workday.

Does the situation change if it this is not a PEZA enterprise?

(See Guidelines on Workers' Rights, part V).



30 Minutes

Returning to the mandate to keep the peace when called upon to do so, police, need to be interested in labour issues insofar as they are by nature highly charged, unpredictable and potentially volatile situations. While police must certainly be neutral in respect of the **outcomes** of industrial relations processes, they nevertheless must fulfil their mandate to deal with breaches of the peace, criminal conduct, and threats to public order and safety.

The *Joint DOLE-PNP-PEZA Guidelines* and the *Guidelines on Workers' Rights* set this idea out:

"In the exercise of their peace-keeping functions, members of the team shall at all times ... observe courtesy and strict neutrality, bearing in mind that the parties to the labour dispute are not their adversaries but their partners in the quest for industrial peace and human dignity"⁷⁰.

⁷⁰ Part V, 9(b) (ii) and Part V, A.(2)(b)(iii), respectively.

The Committee notes the allegation of the use of police and security forces to break workers' strikes. In this respect, the Committee recalls that the use of police for strike-breaking purposes is an infringement of trade union rights and that "the authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive adequate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order⁷¹.

Where do private security services stand in this regard? Are security guards able to feign disinterest in the outcome of industrial relations matters, and have a concern only for the protection of private property and safety? To the extent they are clothed with public responsibilities, private security services certainly ought to exercise neutrality in respect of the public order side effects of industrial relations process.

History at least shows us, however, that private security personnel often have close relations with management personnel when it comes to labour matters. This is, of course, understandable insofar as security personnel indeed have a responsibility to see that private company assets are secure and that productive operations are undisturbed, even by events surrounding lawful collective bargaining.

⁷¹ 2006 Digest, para. 647.

The Ford Motor Company's Service Department

It is an undisputed fact of American labor history that Henry Ford resisted organization of his factory workers by the United Auto Workers (UAW).

"By early 1937, after sit-down strikes had paralyzed production, G[eneral] M[otors] and Chrysler recognized the UAW. Ford was the final and most difficult target. Henry Ford hated unions, and he gave Harry Bennett, chief of Ford Motor's notorious Service Department, the task of stopping the UAW. Bennett stocked his private police force with ex-convicts and gangsters"⁷².

Photo 3: Battle of the overpass, 1937



"Battle of the Overpass"—UAW organizers, including Walter Reuther (third from right) on an overpass near Ford Rouge factory just before they were attacked by members of the Ford Service Department on May 26, 1937. THE ARCHIVES OF LABOR AND URBAN AFFAIRS, WAYNE STATE UNIVERSITY

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Yet international standards do in fact help resolve this question. Freedom of association principles oblige private security personnel, just as they do company management, to respect freedom of association rights, and not to harass or discriminate against trade union adherents or workers trying to organize.

⁷² <http://www.autonews.com/apps/pbcs.dll/article?AID=/20030616/SUB/306160748>

⁷³ <http://aliciapatterson.org/stories/nothing-fails-success>

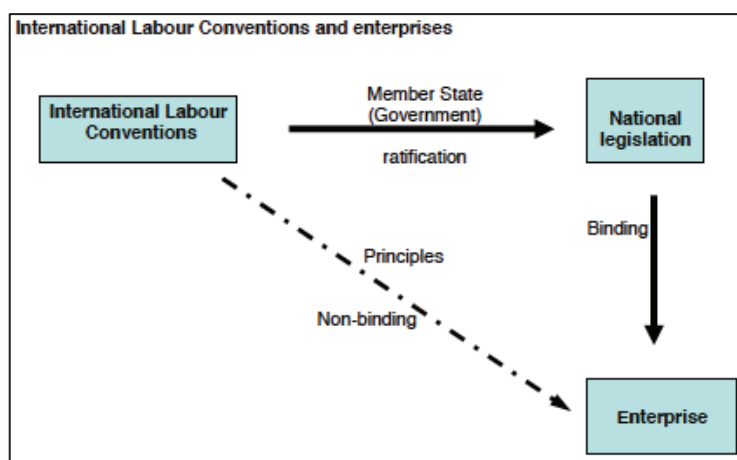
Private security guards found guilty of homicide in Caloocan City

On 28 May 2012, in *People of the Philippines vs. Edgar Domingo Edgar Domingo y Nicor, Gilbert Castromayor y Gas, Herminio Sedoco y Becidan (a.k.a. Herminio Seduco y Becinan), Nonic Gabrillos y Espiragoza, Willy Estorco y Pena, Jomar Galin y Galicha, and Filipina Mandap* (Case No. C-73909) heard by the Regional Trial Court, Judicial Region Branch 121, Caloocan City), the three defendant private security guards and one defendant plant manager over whom the court had authority (*italicized above*) were found guilty of homicide, and civilly liable, for the shooting death of a striking worker on 13 September 2005. The four were found to have conspired to commit the crime by having acted in concert in having ordered and shot at strikers. All were thus found guilty of the crime, despite it not having been possible to determine which of the three security guards had fired the fatal shots. The court found that only security guards were armed at the scene of the crime, that the victim had died of shotgun wounds fired from behind, that the defendant plant manager had ordered the guards to fire on the strikers, and that shots had actually been fired. The defense of self-defense was dismissed since there was "nothing at all" in the evidence that would have convincingly made it out.

To be technically clear on the point, the ILO's Conventions speak to States parties to them, setting obligations for States to apply in national law and practice. They do not directly address either employers or workers. In recent years, corresponding to the development within the international business community of ideas of social responsibly, it is widely acknowledged that the ILO's freedom of association and collective bargaining standards are the appropriate source of principles to which employers and workers can hold themselves socially accountable.

The ILO Helpdesk for Business on International Labour Standards illustrates the point as shown in Diagramme 3⁷⁴.

Diagramme 3: Principles of Conventions applied to enterprises



⁷⁴ ILO Helpdesk Circular No. 1, The ILO and Corporate Social Responsibility

With these preliminaries in place, that is –

- labour disputes are private matters in which the State's role (including the police) is to promote resolution of the dispute through agreement of the parties;
- sustainable resolution of disputes can only take place in a climate free of violence, pressure and threats;
- police are thus obliged to avoid a climate of violence by acting with deliberate neutrality, tempering its interventions as much as possible; and
- private security personnel obliged by modern managements' acceptance of social responsibilities that include respect for fundamental principles and rights at work are obliged to act with restraint just as police...

– we can turn to some specific situations.

Standard lecture 15. Leafleting, picketing and other forms of expression



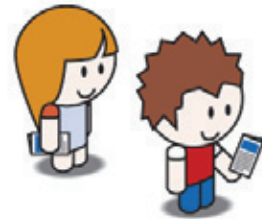
15 Minutes

Let's talk about leafleting, picketing and other forms of expression that workers' and employers' organizations might engage in.

First, we need to note that such activity falls squarely within a programme or activity covered by Article 3 of Convention No. 87. The rights involved are rooted a bit deeper in human and civil liberties as well.

"The International Labour Conference has pointed out that the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers constitute civil liberties which are essential for the normal exercise of trade union rights"⁷⁵.

Police interference with something like peaceful *leafleting* on public property would have to be justified by grounds no less than those applied to other persons or organizations exercising the right to expression in the country. Police should not be able to put a halt to peaceful picketing purely on the basis of the content of the message.



⁷⁵ ILC Resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session, 1970.

There may be instances where police interference with *picketing* – usually a tense situation where public order might be breached – might be justifiable. But the requirements are nevertheless strict.

“The action of pickets organized in accordance with the law should not be subject to interference by the public authorities”⁷⁶.

What conditions or restrictions could be placed in provisions of law and still be acceptable under international standards?

“The Committee has considered legitimate a legal provision that prohibited pickets from disturbing public order and threatening workers who continued work”⁷⁷.

“The requirement that strike pickets can only be set up near an enterprise does not infringe the principles of freedom of association”⁷⁸.

At what stage does regulation or interference go too far, such that it actually unacceptably undermines organizations’ freedom of association rights?

“Taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work;...⁷⁹

⁷⁶ 2006 Digest, para. 648.

⁷⁷ 2006 Digest, para. 650.

⁷⁸ 2006 Digest, para. 653.

⁷⁹ 2006 Digest, para. 651.

Optional Case Discussion

Present the following scenario to participants:

A group of 40 workers are picketing outside a struck enterprise, in accord with a local Inter-Agency Coordinating and Monitoring Committee (ICMC) social accord governing the parties involved in the labour dispute. They are chanting protest slogans while parading along the sidewalk. When persons come on foot to enter the premises, two worker representatives – following the social accord – systematically approach persons with a printed flyer to urge them not to enter the premises. A PNP peace-keeping team has been deployed.

On a particular occasion, four worker representatives move to intercept the pedestrian, one carrying a picket sign.

Is "violence imminent" What could police/security personnel be expected/justified to do in this situation?

(Participants should refer to the definition of "labour dispute" as well as section V, para 9 of the Joint DOLE-PNP-PEZA Guidelines and part V of the Guidelines on Workers' Rights).



30 Minutes

! NOTE: The point of this discussion is not how to act to minimize as much as possible the rights of workers and their organizations to express themselves and to peacefully picket without actually infringing on international standards. In fact, the point is the reverse: How to act to maximize the possibility for peaceful exercise of rights. As with other areas, the only way we know the limits of what state actors – like police – can do without infringing international standards is by referring to cases on similar matters handled by the CFA. Ideally, the parties to industrial relations in a country are mature enough to broadly respect each other rights and to permit leafleting and picketing in many different types of situations without feeling the need to contact police or security personnel. That is to say, only where things truly look to be turning violent would police or security personnel be called to interfere. The *Joint DOLE-PNP-PEZA Guidelines* are certainly intended to move the social partners in the Philippines in this direction.

Optional Discussion Point

- Ask trainees:

In an ideal world, how would you see workers or workers' organizations and an employer or employers' organization engaging in picketing or leafleting activities, taking into account the legitimate interests and rights of these groups?



10 Minutes

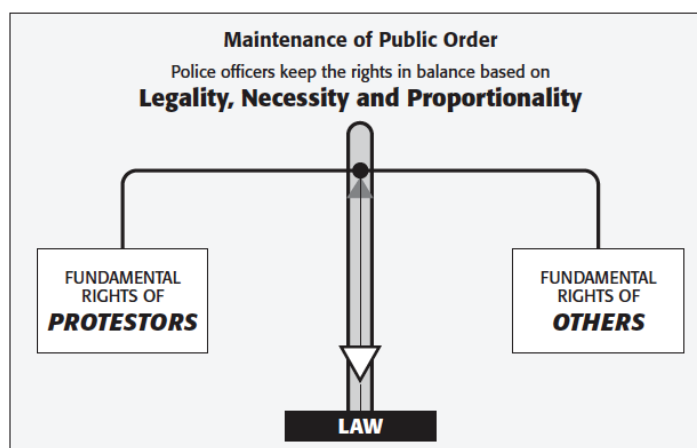
Principles of proportionality and moderation are invoked by the supervisory bodies where they have handled cases involving police or security force intervention, and that would apply to picketing and leafleting as well.

“In general, the use of the forces of order during trade union demonstrations should be limited to cases of genuine necessity”⁸⁰.

“The police authorities should be given precise instructions so that, in cases where public order is not seriously threatened, people are not arrested simply for having organized or participated in a demonstration”⁸¹.

Similar rules and ideas are applied for any demonstration, as illustrated by the Maintenance of Public Order balance shown below in Diagramme 4⁸².

Diagramme 4: Maintenance of public order balance



⁸⁰ 2006 Digest, para. 50.

⁸¹ 2006 Digest, para. 151.

⁸² Commonwealth Secretariat, *Commonwealth Manual on Human Rights Training for Police*, p. 104 (2006).

Optional Case Discussion

Present the following two scenarios to participants (you may set up two groups for their individual discussion and comparison):

Company A has just brought in a new policy on annual, sick and maternity leave. There is no trade union organized at the workplace, but several workers are members of Union X.

You are a trade unionist working for Union X. You want to picket Company A over the new policy on annual, sick and maternity leave. When do you make contact with the PNP? With the company? With the DOLE?

(Participants should refer to the definition of "labour dispute" as well as section V, para 9 of the Joint DOLE-PNP-PEZA Guidelines and part V of the Guidelines on Workers' Rights).

You are a management representative and have heard from one of your workers that a trade union with some members at the workplace wants to picket the enterprise in protest of the new policy. What do you do?

(Participants should keep in mind the training – is contact to be made with the PNP, DOLE, the trade union?)



30 Minutes

Standardized operational procedures of all kinds – covering such matters as the use of force, the placement of personnel and equipment, the prerequisites for search, protocol for contact with parties in collective bargaining, etc. – reflecting these principles of balance and proportionality are critically important.

"Searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for a penal offence and on condition that the search be restricted to the purpose in respect of which the warrant was issued"⁸³.

PNP operational procedures – along with provisions in the *Guidelines on Workers' Rights*⁸⁴ and *Joint DOLE-PNP-PEZA Guidelines*⁸⁵ – are, of course, a good example of this⁸⁶.

⁸³ 2006 Digest, para. 185.

⁸⁴ Part V, A and B.

⁸⁵ Part V, 9.

⁸⁶ March 2010.

RULE 19: RULES ON LABOR DISPUTES

SECTION. 1. Applicable Legal Parameters

The pertinent provisions of the Public Assembly Act of 1985 (Batas Pambansa Bilang 880), the Labor Code of the Philippines, as amended and other applicable laws, shall be observed during rallies, strikes, demonstrations or other public assemblies. Law enforcement agents shall, at all times:

- a. *Exercise maximum tolerance.*
- b. *In case of unlawful aggression, only reasonable force may be employed to prevent or repel it.*
- c. The employment of tear gas and water cannons shall be made under the control and supervision of the Ground Commander.
- d. *No arrest of any leader, organizer, or participant shall be made during the public assembly, unless he violates any pertinent law as evidence warrants.*

SECTION 2. General Policy

- a. The involvement of PNP personnel during strikes, lockouts and labor disputes in general shall be *limited to the maintenance of peace and order, enforcement of laws and implementation of legal orders of the duly constituted authorities.*

...

- d. PNP personnel detailed as peace-keeping force in strike or lockout areas shall be in prescribed uniform at all times.

- e. They shall exercise *maximum tolerance* and when called for by the situation or when all other peaceful and non-violent means have been exhausted, police officers may employ such means as may be necessary and reasonable to prevent or repel an aggression.

SECTION 3. Peace-keeping

The peace-keeping detail shall not be stationed in the picket line (or confrontation line) but should be stationed in such manner that their presence may deter the commission of criminal acts or any untoward incident from either side. The members of the peace-keeping detail shall stay outside a 50-meter radius from the picket line. In cases where in the 50-meter radius includes a public thoroughfare, they may station themselves in such public thoroughfare for the purpose of ensuring the free flow of traffic.

...

SECTION 6. Additional Guidelines

- a. The matter of determining whether a strike, picket or lockout is legal or not should be left to Department of Labor and Employment (DOLE) and its appropriate agencies. *PNP personnel should not interfere in a strike, picket or lockout, except as herein provided.*

- b. No personal escort shall be provided to any of the parties to the controversy unless upon written request from DOLE. Whenever escorts are to be provided, the other party shall be informed accordingly. All escorts shall be in prescribed uniform at all times.

- c. During the pendency of a strike/lockout, the police personnel concerned are prohibited from socializing with any of the parties involved in the controversy.

- d. *Liaison shall be established and maintained with the representatives of DOLE, management and the union in the strike/lockout area for the purpose of maintaining peace and order, as well as to maintain a continuing peaceful dialogue between the parties to the strike/lockout.*
-

Standard lecture 16. Strikes and lockouts



15 Minutes

As mentioned earlier, the right to strike is an exercise of freedom of association rights. The same goes for lockouts.

The role of police and security personnel during strikes and lockouts are to keep public order, to respect the rights of the parties, and to promote the parties' finding the accommodation they see fit to resolving the dispute that gave rise to the industrial action in the first place. You do this – particularly the last – by helping maintain as best as possible essential peace and calm during the dispute.

As regards the intervention of the police during a strike, the CFA has stated the opinion that,

- while workers and their organizations have an obligation to respect the law of the land,
- the intervention by security forces in strike situations should be limited strictly to the maintenance of public order, and
- resort to the use of force only in grave situations where law and order is seriously threatened⁸⁷.

The *Guidelines on Workers' Rights* set the conditions for intervention⁸⁸:

"1) ... The AFP and PNP may intervene [in labour disputes] only in the following cases:

- a) Expressly requested in writing either through mail, e-mail, fax or any similar means by the DOLE, through its Regional Offices,
- b) A criminal act has been committed, is being committed, or is about to be committed through overt acts in accordance with Rule 113 of the Revised Criminal Procedures whether or not it arises out of the labor dispute, or
- c) In cases of actual violence arising out of a labour dispute.

2) Request for presence of AFP personnel/units in a workplace where strike, picketing or lockout has been declared and in progress should be based on a security situation, and only for the purpose of extending support to the PNP, or in the extreme situation when no other law enforcement agency in the area is available to perform the following:

- a) Maintain peace and order within the community/general vicinity of the labour dispute area.

⁸⁷ 2006 Digest, paras. 644 and 645.

⁸⁸ Part V.

- b) Provide security for both workers and management.
- c) Prevent violence or prevent escalation of ongoing violence.
- d) Prevent the commission of other crimes, the nature of which are not related to the labor dispute on hand.
- e) Provide emergency assistance during post-incident situations.

The AFP personnel/units shall stay away from the 50-meter radius picket/strike/lockout area except in situations stated in 1 (b) and (c) above. In case the 50-meter radius includes a public thoroughfare, traffic police shall ensure the free flow of traffic".

The PNP Operational Procedures once again come into play.

PNP Operational Procedures

RULE 19: RULES ON LABOR DISPUTES

...

SECTION 4. Service of Lawful Orders or Writ

The service of Department of Labor and Employment (DOLE), court, or other lawful orders or writs is the primary concern of the DOLE representative, sheriff and representative of the government agency issuing the order, respectively. The role of the PNP is only supportive. Only when specifically stated and requested in the order or writ shall the PNP enforce such orders or writs.

SECTION 5. Prohibited Labor Activities

No personnel of the PNP shall:

- a. Bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises or a strike area, or
- b. Work in replacement of the strikers.

...

SECTION 6. Additional Guidelines

- a. The matter of determining whether a strike, picket or lockout is legal or not should be left to Department of Labor and Employment (DOLE) and its appropriate agencies. *PNP personnel should not interfere in a strike, picket or lockout, except as herein provided.*
 - b. No personal escort shall be provided to any of the parties to the controversy unless upon written request from DOLE. Whenever escorts are to be provided, the other party shall be informed accordingly. All escorts shall be in prescribed uniform at all times.
 - c. During the pendency of a strike/lockout, the police personnel concerned are prohibited from socializing with any of the parties involved in the controversy.
 - d. Liaison shall be established and maintained with the representatives of DOLE, management and the union in the strike/lockout area for the purpose of maintaining peace and order, as well as to maintain a continuing peaceful dialogue between the parties to the strike/lockout.
-

Optional Case Discussion

Present the following scenario to participants:

A strike has been called at a workplace after 30 days of DOLE mediation have been held. The strike is scheduled to start in three days. There are no signs that the strike will be violent, that premises will be occupied, that the strike will in any way be unlawful. Management expects that pickets will be set up around the enterprise.

In respect of security, police, and similar –

- *As management, what do you do?*
- *As the trade union, what do you do?*

(Several approaches can be taken in responding to this scenario, all of which are consistent with the Guidelines on Workers' Rights and Joint DOLE-PNP-PEZA Guidelines. As facilitator, look for those that maximize the potential for resolution of the labour dispute, maintenance of labour peace, and promotion of constructive labour relations in the future).



30 Minutes

What about other forms of industrial action, such as occupation of premises? What role do the police and security personnel play in these circumstances? Keeping the peace continues to be the controlling factor, along with assuring egress and ingress even where public order is intact.

The CEACR has recently observed ...

... [s]trike action is often accompanied by the presence, at the entry to the workplace, of strike pickets aimed at ensuring the success of the strike by persuading the workers concerned to stay away from work. In the view of the Committee, in so far as the strike remains peaceful, strike pickets and workplace occupations should be allowed. **Restrictions on strike pickets and workplace occupations can only be accepted where the action ceases to be peaceful.** It is however necessary in all cases to guarantee respect for the freedom to work of non-striking workers and the right of the management to enter the premises. In practice, while certain countries establish very general rules which are confined to avoiding violence and protecting the right to work and the right to property, others explicitly limit or prohibit the right to establish strike pickets or the occupation of the workplace during a strike. The Committee considers that, in cases of strikes, the authorities should only resort to the use of force in exceptional circumstances and in situations of gravity where there is a serious threat of public disorder, and that such use of force must be proportionate to the circumstances.

And the CFA ...

... has concluded that requesting police assistance in order to allow **access by members of management to the enterprise** when occupied by strikers does not represent a violation of the principles of freedom of association. ... the Committee has established the right of employers and

managerial staff to enter the installations of the enterprise and to exercise their activities during a strike⁸⁹.

...

The exercise of the right to strike should respect the freedom to work of non-strikers, ... as well as the right of the management to enter the premises of the enterprise⁹⁰.



Optional exercise

It has been suggested in this Training outline that respect for freedom of association and collective bargaining rights requires a climate free from violence and intimidation. This should be the objective of police and private security personnel in conducting public order maintenance operations. The knowledge of freedom of association and collective bargaining rights, and the importance of their maintenance and promotion, should help you formulate steps that could be taken to operationalize this consideration.

Draft three "fundamental rules" that could be followed in all situations to help minimize the possibility of creating a climate of violence and intimidation while at the same time promoting public order in situations involving the exercise of freedom of association and collective bargaining rights.

On the basis of the rules, prepare a list of "do's and don'ts" for use as examples in operational training your military, police or private security personnel.

⁸⁹ 2000 Right to Strike, p. 47.

⁹⁰ 2006 Digest, para. 652.



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: Public order and freedom of association in Appendix 4 on page 133. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

International Centre for the History of Crime, Policing and Justice, Police and Public Order:

<http://www.open.ac.uk/Arts/history-from-police-archives/Met6Kt/PublicOrder/poIntro.html>

United States Institute of Peace, Guiding Principles for Stabilization and Reconstruction (the Web version), Rule of Law, Public Order:

<http://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/public-order>

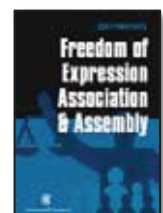


References and readings

About international human rights standards on these subjects, in a user friendly format:

Commonwealth Secretariat, *Freedom of Expression, Assembly and Association: Best Practice* (2002). Search on-line for pdf version. Available for purchase at:

<http://publications.thecommonwealth.org/freedom-of-expression--association-and-assembly-150-p.aspx>



V. Security personnel and the rights to organize and bargain collectively



Learning objectives

At the completion of this critical subject area presentation, participants will be able to:

- ✓ Distinguish between the influence played by concern for freedom of association right on public order operations and that played on other work done by police and private security personnel.
- ✓ Describe the obligation to protect against anti-union discrimination, to whom it applies and how.
- ✓ Know whether it is consistent with international labour standards to facilitate the keeping of a blacklist of workers sympathetic to workers' organization.
- ✓ Outline the main content of international labour standards on collective bargaining.
- ✓ Define collective bargaining.
- ✓ Understand the role of played by the state in collective bargaining, under international labour standards and practically.
- ✓ Tell who has the right to collective bargaining under international standards, and who does not.
- ✓ Define interference and tell why it is contrary to freedom of association principles.
- ✓ Explain how an understanding of Recommendations for making facilities available for workers' representatives can play a role in the work of security personnel.
- ✓ Explain why the possibility for a strike is important for collective bargaining to function.



Key concepts

Convention No. 98 contains provisions designed to protect workers against the actions of employers and vice versa. This includes protection against anti-union discrimination, and protection against employers' domination or interference with workers' organizations, and vice versa. The state is given the obligation to establish these protections. Employers and workers and their organizations, should respect these principles of non-discrimination and non-interference.

The promotion of collective bargaining is an obligation placed on the state by Convention No. 98. The voluntary nature of collective bargaining lays the foundation for the establishment of frameworks within which the private parties, employers and workers, can meet to negotiate collective bargaining agreements regulating terms and conditions of employment. All workers with the exception of armed forces, police and public servants engaged in the administration of the State have the right to collectively bargain under Convention No. 98.

Police and private security personnel can become involved in conduct contrary to freedom of association and collective bargaining principles. Knowledge of these principles can help them avoid this and, in some circumstances promote better respect and application of these principles.



Glossary of terms

Collective bargaining

Negotiations between an employer or group of employers and one or several workers' organizations aimed at reaching an agreement regulating terms and conditions of employment of a group of workers.

Collective bargaining agreement

The result of collective bargaining, usually in the form of a written agreement that is legally binding.

Compulsory arbitration

A process whereby a labour dispute involving two parties is placed before a third party – an arbitrator – for decision, usually final and binding, and usually with the effect that the parties cannot resort to strike or lockout as a means of resolving the dispute placed before the arbitrator.

Conciliation

A process whereby the parties to a dispute receive the services of a person or persons for the purposes of assisting the parties resolve the dispute.

Interference

Actions by an employer designed to promote the establishment of workers' organization under the domination of the employer or to support workers' organizations by financial or other means.

Negotiation in good faith

Negotiating with intent and desire to reach an agreement.

Recognition for purposes of collective bargaining

Acknowledgement, usually by the employer, of a workers' organization with which it is willing to engage in collective bargaining.



Training outline



10 Minutes

(not including participant introduction)

Getting started: introduction

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

The training in this Training outline focuses on things that may be done by police and private security personnel that impact on the exercise of freedom of association rights and particularly on rights to collective bargaining.

We distinguish our discussion here from the one in the previous Training outline, which focused on *actions taken to maintain public order*. In the Standard lectures to follow we look at things done – unfortunately sometimes intentionally – to interfere with freedom of association and collective bargaining rights.

On account of this change in focus our discussion here targets private security personnel. As suggested earlier, there is an inherent closeness between security personnel's mandate to protect private property and normal business operations and threats that *may* arise from the exercise of rights discussed here.

! NOTE: Disruption to normal business operations is not an automatic outcome of the exercise of freedom of association and collective bargaining rights. It *can* occur where there is an industrial dispute or worker grievances, in the presence of a trade union or not. In mature industrial relations environments, the presence of workers' representatives and good industrial relations practices can actually improve the work and industrial relations environment. The nuances of improving industrial relations practices are beyond the scope of this training; it is also beyond the mandate of military, police and security personnel. Respect for basic rights is within our purview, and is an essential first step if we as a society are to build sustainable, durable and responsible industrial relations practices.

	Title	Page	Minimum time (minutes)
Standard lecture 17	Protection against anti-union discrimination	102	25
Standard lecture 18	Protection against acts of interference	106	15
Standard lecture 19	The obligation to promote collective bargaining	108	25

Standard lecture 17. Protection against anti-union discrimination



25 Minutes

As mentioned earlier, states have the obligation under Convention No. 98 to protect workers against acts of anti-union discrimination. Such acts could be those taken by employers or their agents, or by agents of the state itself.

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

And as explained earlier, through the extension of international labour standards' principles, private actors including management representatives and private security personnel should not engage in acts of anti-union discrimination against workers.

The ILO Helpdesk for Business on International Labour Standards has answered questions posed by business about applying international labour standards principles. Some are very relevant to our purposes as they are applicable also to private security agents and agencies⁹¹. You are directed to Appendix 7: ILO helpdesk on anti-union discrimination, on page 136, which should be reproduced and distributed for study and discussion as part of this Standard lecture.

In conclusion, as can be seen from the Helpdesk clarification, following ILS principles essentially means that security guards should have a "neutral" approach when it comes to any situation that could amount to anti-union discrimination.

⁹¹ http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang--en/index.htm

Optional Exercise

Divide the trainees into two small groups (or an even number of groups).

- Ask one group to make a list of tasks or actions that should clearly be avoided if ILS principles are to be respected.

- Ask the second group to make a list of tasks or actions that could be considered “close calls”, that is, where there is some doubt about whether doing the task or action would amount to anti-union activity.

(You may advise trainees that they may need or want to make note of contexts or circumstances surrounding tasks, which would make a difference for their conclusions).

Bring the groups together to discuss conclusions.



45 Minutes

Certain tasks private security guards are asked to perform, or circumstances under which they are asked to perform them, can raise questions about anti-union discrimination. Each case needs to be considered individually; hard and fast rules for all possible situations are difficult to set down. That is why it is important for you to understand the principle we are speaking about here.

One area of question might be the gathering of intelligence about union activities at a workplace. What *legitimate purpose* would be served by managers asking security personnel to report about who is organizing for a trade union? (Compare with being asked to find out and report if there are any workers planning to steal from the company, or planning to tell competitors about production process secrets). Respect for rights means rejecting requests for spying on trade union or worker organizing activities in the workplace.

“All practices involving the blacklisting of trade union officials or members constitute a serious threat to the free exercise of trade union rights and, in general, governments should take stringent measures to combat such practices”⁹².

“In no case should it be possible to dismiss a trade union officer merely for having presented a list of dispute grievances; this constitutes an extremely serious act of discrimination”⁹³.

⁹² 2006 Digest, para. 803.

⁹³ 2006 Digest, para. 808.

Optional Case Discussion

Present the following scenario to participants:

You are a private security guard employed by a security agency. You are stationed at a factory that makes food products. There is no trade union organized at the enterprise.

Through your contacts with workers you come to learn that several workers in the enterprise have spoken with other workers during lunch breaks, coming and going to work, and other non-working time at and away from the workplace about the need for having a representative at the workplace. They want a representative to talk to management about terms and conditions of employment. Apparently, some think that it might be a good thing to call up a union to formally organize workers.

What do you do?

What do you do if the enterprise management has told you that it is part of your job to let them know if ever you hear about worker dissent or union organizing?

What do you do if your security guard agency has told you it is part of your job to tell them if you ever hear about workers at a place you are stationed speaking about organizing a union?

What is your position on this scenario if you are a company manager? If you are a security agency owner or manager?



45 Minutes

You may ask whether international standards permit employers to express their opinions about workers' desire to organize a trade union. The CFA has received cases on this point and expressed its view.

“While having stressed the importance which it attaches to freedom of expression as a fundamental corollary to freedom of association and the exercise of trade union rights on numerous occasions, the Committee also considers that they must not become competing rights, one aimed at eliminating the other. While noting that the national process [in this case] did not find interference with freedom of association, the Committee expresses a general concern at the use of “shred it” buttons [the expression used by the employer in this case] in this regard. While providing all relevant ballot information, including how to vote against a union, would be acceptable as part of the process of a certification election, the Committee considers that the active participation by an employer in a way that interferes in any way with an employee exercising his or her free choice would be a violation of freedom of association and disrespect for workers' fundamental right to organize.

In this regard, the Committee wishes to recall that it has had the opportunity to review the question of employers' freedom of expression in a recent case where, observing that the protection afforded by unfair labour practices in the country included protection against freedom of speech that would interfere with the formation of any labour organization or with the selection of a trade union as a representative for the purpose of bargaining collectively, found that the principles of freedom of association did not appear to be violated (Case No. 2654, 356th Report, para. 381). In addition, it has requested a Government in another case to ensure that employers do not express opinions which would intimidate workers in the exercise of their organizational rights, such as claiming that the establishment of an association is unlawful, or warning against affiliation with a higher-level organization, or encouraging workers to withdraw their membership (Case No. 2301, 356th Report, para. 80). The Committee draws the Government's attention to the importance of providing for specific and effective protection in relation to the right to organize and the selection of a collective bargaining agent and requests it to review the current application of the RLA [relevant law], in respect of the issues raised in this specific case, with the social partners with a view to taking the necessary measures so as to ensure full respect for these principles in practice"⁹⁴.

See the reference to this same case, involving Delta Airlines in the United States, in Appendix 7 at page 136, where the example is used as one for urging respect for the right to association and organize.

⁹⁴ CFA Case No. 2683, paras. 584 and 585.

Standard lecture 18. Protection against acts of interference



15 Minutes

According to Article 2 of Convention No. 98 –

“1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article”.

What does this mean?

“Acts of interference are deemed to include acts which are designed to promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations”⁹⁵.

Optional Discussion Point

After explaining what interference is, ask participants.

- *Could you describe a situation in which an employer would want to interfere with a workers' organization in the way described?*
- *Could you imagine a role you could play in helping with such interference or in helping prevent such interference?*



15 Minutes

Security guards are well positioned to help interfere with workers' organizations. They usually work very close to the shop floor and are able to make easy and informal contact with workers, including workers interested in organizing. Unscrupulous employers can tap into this contact with an aim to interfere with nascent workers' organization. Neither employers nor security guards should do this.

⁹⁵ 2012 General Survey, para. 194.

As regards allegations of anti-union tactics in the form of bribes offered to union members to encourage their withdrawal from the union and the presentation of statements of resignation to the workers, as well as the alleged efforts made to create puppet unions, the Committee considers such acts to be contrary to Article 2 of Convention No. 98, which provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents in their establishment, functioning or administration"⁹⁶.

Respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything, which might seem to favour one group within a union at the expense of another⁹⁷.

Interference is against freedom of association principles simply because it upsets the independence that is necessary to have workers' organizations properly represent workers' interests. In the same way that governments' political linkage with trade unions made it impossible for those organizations to robustly represent workers' interests in communist countries, employers' domination of workers' organizations has the same effect.

⁹⁶ 2006 Digest, para. 858.

⁹⁷ 2006 Digest, para. 859.

Standard lecture 19. The obligation to promote collective bargaining



25 Minutes

According to Article 4 of Convention No. 98 –

“Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements”.

The Convention gives no further guidance on what precisely the state – the Philippines – is obliged to do.



NOTE: The principles of ILS should instil in employers a positive inclination to voluntary collective bargaining.

Like Convention No. 87, the ILO supervisory bodies have had the opportunity over many years to explain what is meant by Article 4 by having reference to the many arrangements made in national legislation to make collective bargaining possible and happen smoothly. The CEACR and CFA have dealt with many areas of legislation and mechanisms created by countries all over the world. These provisions deal with –

- Who has the right to collectively bargain
- What it means to promote collective bargaining
- Procedures for recognizing trade unions for the purposes of collective bargaining
- Machinery and procedures to facilitate collective bargaining
- The autonomy of the parties and voluntary character of their bargaining
- The level at which collective bargaining may or should take place
- Restrictions on the scope of collective bargaining
- Interventions by the authorities in the party's collective bargaining
- Procedure for mediation, conciliation, arbitration and compulsory arbitration.

Once again, only some of these principles are relevant to the work of the military, police and private security personnel.

Do supervisors have the right to collectively bargain? Do they even have the right to freedom of association? Yes to both questions. National legislation can set up requirements to separate supervisor unions from others.

The CFA has said:

“It is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to establish their own associations to defend their interests and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership.”⁹⁸

Is anyone excluded from the right to collectively bargain? Yes. **Only** the armed forces, the police and public servants engaged in the administration of the State are specifically excluded from Convention No. 98.⁹⁹

The CEACR has noted that ...

... recognition of the right to collective bargaining is general in scope and all other organizations of workers in the public and private sectors must benefit from it. However the recognition of this right in law and practice continues to be restricted or non-existent in certain countries. This situation has given the Committee cause to recall that the right to collective bargaining should also cover organizations representing the following categories of workers: prison staff, fire service personnel, seafarers, self-employed and temporary workers, outsourced or contract workers, apprentices, non-resident workers and part-time workers, dockworkers, agricultural workers, workers in religious or charity organizations, domestic workers, workers in EPZs and migrant workers”¹⁰⁰.

According to international standards, what facilities should be afforded to workers’ representatives? Do they have a right to access to workers and the workplace?

The Workers’ Representatives Recommendation, 1971 (No. 143) says that facilities in an undertaking should be afforded to workers’ representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

The facilities to be afforded to workers’ representatives include:

- the necessary time off from work, without loss of pay or social and fringe benefits, for carrying out their representative functions;
- where necessary, access to all workplaces, to the management of the enterprise and to management representatives empowered to take decisions;
- authorization to collect trade union dues on the premises of the enterprise;
- the posting of trade union notices;
- the distribution of documents among workers; and

⁹⁸ 2006 Digest, para. 247.

⁹⁹ Articles 5 and 6.

¹⁰⁰ 2012 General Survey, para. 209.

- material facilities and information as may be necessary for the exercise of their functions.

Trade union representatives who are not employed in the enterprise, but whose trade union has members employed in it, should be granted access to the enterprise¹⁰¹.

Optional Discussion Point

Ask participants if they have experience in granting workers' representatives access: (a) to the workplace; (b) to particular workers; and (c) to management. Ask what that experience was and if they believe that experience was consistent with ILS principles. If so, why? If not, why not? Finally, ask how might that situation be handled differently in the light of the training received.



15 Minutes

Shouldn't collective bargaining lead to a collective agreement? Why should strikes be permitted? Shouldn't the government intervene through conciliation or even arbitration to resolve disputes before they lead to strikes?

These questions are difficult, but the principles that underlie the answers are very clear.

First, the right to strike is here to stay; it has clearly been recognized to exist by the ILO supervisory bodies. Without the right to strike, collective bargaining amounts to "collective begging".

Second, governments are encouraged by international standards to do what they can to support resolution of industrial disputes through the voluntary negotiation of the parties involved.

The CEACR has recently reiterated –

*"Under the terms of Article 4 of the Convention, collective bargaining must be free and voluntary and respect the principle of the autonomy of the parties. However, the public authorities are under the obligation to ensure its promotion. Interventions by the authorities which have the effect of cancelling or modifying the content of collective agreements freely concluded by the social partners would therefore be contrary to the principle of free and voluntary negotiation. The detailed regulation of negotiations by law would also infringe the autonomy of the parties. However, in the view of the Committee, machinery to support bargaining, such as information, conciliation, mediation or voluntary arbitration, is admissible. Such measures exist in many countries"*¹⁰².

¹⁰¹ Recommendation No. 143, Art. 17.

¹⁰² 2012 General Survey, para. 200.

Government imposition of solutions that should be found through negotiation is generally contrary to international labour standards principles.

For all the following reason, the CFA has not seen compulsory arbitration as consistent with ILS principles¹⁰³.

“In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term”.

...

“A provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining”.

...

“The right to strike would be affected if a legal provision were to permit employers to submit in every case for compulsory arbitral decision disputes resulting from the failure to reach agreement during collective bargaining, thereby preventing recourse to strike action”.

...

“... [A] system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers’ organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association”.

Conciliation services and obligations to bargain in good faith are common approaches taken by governments to help the parties find solutions.

“The principle of negotiation in good faith, which is derived from Article 4 of the Convention, takes the form, in practice, of various obligations on the parties involved, namely: (i) recognizing representative organizations; (ii) endeavouring to reach agreement; (iii) engaging in real and constructive negotiations; (iv) avoiding unjustified delays in negotiation; and (v) mutually respecting the commitments made and the results achieved through bargaining”¹⁰⁴.

Unions compete with each other for members and recognition. That causes a lot of disruption and conflict at the workplaces. Does ILS permit that?

International standards gives governments – in their role of intermediary between employers and workers – the possibility to create systems to minimize this problem through rules and mechanisms for recognizing organizations for the purposes of collective bargaining. Principles of freedom of association also permit governments to

¹⁰³ 2006 Digest, paras. 565-568.

¹⁰⁴ 2012 General Survey, para. 208.

make different types of arrangements for minority unions, often with a view to creating a framework within which turbulent industrial relations can be tempered.¹⁰⁵

! NOTE: Good faith and recognition of basic rights by the employer and its agents optimizes the operation of these systems.

“By virtue of Article 4 of the Convention, the right to collective bargaining rests with workers’ organizations and employers and their organizations. Accordingly, recognition by an employer of the main unions represented in the enterprise or bargaining unit, or the most representative of these unions, constitutes the very basis for any procedure of collective bargaining at the enterprise level. Consequently, unjustified refusal to recognize the most representative organizations, or the imposition of a high percentage requirement for the recognition of a collective bargaining agent, may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. The determination of the criteria for the designation of bargaining agents is therefore a central issue. Although the Committee allows a certain flexibility, it considers that, at the very least, in the event of controversy, the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity on the basis of two criteria: representatively and independence”¹⁰⁶.

What if an employer wants to replace striking workers? Is that against international labour standards? What if I am called to escort strikebreakers into the factory? Doesn’t the employer have a right to operate?

International standards do not directly address this question. The CEACR has, however given some indications that support the idea.

“Several complaints have been presented by employers’ organizations to the Committee on Freedom of Association concerning issues relating to the right to strike. The principal subjects have consisted of the management being prevented from having access to the premises of the enterprise during the strike, the conditions relating to the payment of wages to striking workers, the freedom of work of non-striking workers and the modalities governing compulsory arbitration by unilateral decision of trade union organizations. The Committee has considered that the requirement by law of the closing down of the enterprise, establishment or business in the event of a strike could be an infringement of the freedom of work of non-strikers and could disregard the basic needs of the enterprise (maintenance of equipment, prevention of accidents and the right of directors and managerial staff to enter the installations of the enterprise and to exercise their activities), and accordingly raises problems of compatibility with the Convention. It has also considered that a stable labour relations system should take account of the rights and obligations of both workers’ organizations and of employers and their organizations. In this context, the Committee has noted with satisfaction, for example, the amendment of the legislation in

¹⁰⁵ 2012 General Survey, paras. 225-226.

¹⁰⁶ 2012 General Survey, para. 224.

Panama, which now provides that the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence productive activities (the access of non-striking workers to the enterprise is not, however, mentioned)¹⁰⁷.

But when it comes to strike replacements, the CEACR ...

“... considers that provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike, particularly where striking workers are not able in law to return to their employment at the end of the dispute. The legislation should provide for genuine protection in this respect”¹⁰⁸.

What do these provisions mean for you as a police or private security guard? Be aware of these ideas where –

- you are asked to escort workers’ representatives from company premises;
- you are asked to “observe” and report on workers gathering to discuss a trade union, or similar activities;
- you are called upon to escort replacement workers into a workplace;
- etc.

¹⁰⁷ 2012 General Survey, para. 150.

¹⁰⁸ 2012 General Survey, para. 152.



Optional exercise

The aim of the lectures in this Training outline is to give insights, particularly to private security guards and company personnel, into the ideas of anti-union discrimination, interference, and the promotion of collective bargaining. It would not be correct to suggest that factory and workplace guards decide matters that play out in harassment, anti-union discrimination, strike breaking, or negotiation collapse. They may, unfortunately, play a role in giving effect to such decisions. And thus it is important that they know what international standards have to say about what they may be asked to do.

In this light, the question may be put to discussion:

What decisions would you take if you were asked to take them on blacklisting workers desiring to bring a trade union into the workplace, “finding” grounds for dismissing workers who air a grievance with management, or deciding whether to “play hard ball” in negotiations over a new contract with a trade union despite it not being justified by the economic and competitive position of the company?



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: Security personnel and the rights to organize and bargain collectively in Appendix 5 on page 134. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

About what business should do to respect international labour standards having to do with collective bargaining, *ILO Helpdesk for Business on International Labour Standards, Q and A on business and collective bargaining*:

http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_CB_FAQ_EN/lang-en/index.htm



References and readings

About the promotion of collective bargaining:

Olney, S. and Rueda, M., *Convention No. 154: Promoting Collective Bargaining*. (2005), available for download at:

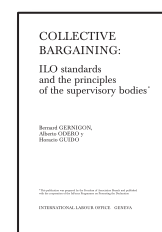
http://www.ilo.org/public/libdoc/ilo/2005/105B09_268_engl.pdf



About ILO standards on collective bargaining:

Gernigon, B., Odero, A. and Guido, H. *Collective Bargaining: ILO standards and the principles of the supervisory bodies* (2000), available for download at:

http://www.ilo.org/beijing/what-we-do/publications/WCMS_087931/lang-en/index.htm



VI. What security personnel should know about freedom of association supervisory mechanisms



Learning objectives

At the completion of this critical subject area presentation, participants will be able to:

- ✓ Explain regular ILO supervisory mechanisms for international labour standards.
- ✓ Explain special ILO supervisory mechanisms for international labour standards.
- ✓ Explain all the ILO special supervisory mechanisms applicable to freedom of association standards.
- ✓ Explain the role ratification plays in the use of ILO supervisory mechanisms in respect of international labour standards generally and freedom of association particularly.
- ✓ Describe the different organs of the ILO engaged in supervision of freedom of association
- ✓ Describe how and why the different supervisory procedures are used in combination.
- ✓ Understand how actions by military, police, and private security personnel can be involved in cases of supervision of international labour standards.
- ✓ Understand the role of ILO supervision of international labour standards in a broader global context, i.e. bilateral relations with other nations.



Key concepts

The ILO's supervisory mechanisms are classified into regular and special systems. Regular supervisory mechanisms are based on ratification of an ILO Convention and operate on the basis of the obligation of the ratifying State to report periodically to the ILO on the measures taken to implement the Convention concerned. Special supervisory mechanisms are allegation based and require ratification of the Convention concerned – with the exception of a special system of supervision on freedom of association matters, which does not require ratification.

The involvement of expert and tripartite social partners is implicated in the supervisory mechanisms; see the descriptions that follow for details. These two elements are important in that they give the opportunity for both independent and objective (expert) review of application and interest-based (tripartite) comments and review.

All these systems of supervision are designed to objectively expose problems in the application of international labour standards in a way that encourages dialogue with the social partners and, ultimately, improved application of the standards involved.

The special system of supervision in respect of freedom of association matters exceptionally operates regardless of ratification because of the centrality of freedom of association to the operation of the ILO. Membership in the ILO means acceptance of freedom of association principles and susceptibility to supervision if allegations are brought to the tripartite Committee on Freedom of Association.



Glossary of terms

Committee of Experts on the Application of Conventions and Recommendations

Independent group of 20 international experts mandated by the ILO Governing Body to review governments' periodic reports on the application of Conventions and provide comments on the application of the Conventions involved.

Committee on Freedom of Association

Tripartite committee of the ILO Governing Body mandated to receive allegations on violation of freedom of association principles made against ILO member States.

Conference Committee on the Application of Standards

Standing tripartite committee of the International Labour Conference mandated by the Conference to receive the annual report made by the CEACR on the application of ratified (and unratified) ILO Convention and to discuss the application of international labour standards by member States.

Direct request

A comment or question made by the CEACR to a government about the application of a Convention ratified by the country involved, and published on the internet.

International Labour Conference

The primary organ of the International Labour Organization that meets annually.

Observation

A comment, usually involving a serious or longstanding problem, made by the CEACR to a government about the application of a Convention ratified by the country involved, and published in the CEACR's annual report.

Periodic reports

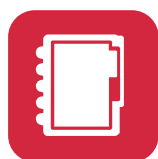
Reports required under Article 22 of the ILO Constitution from governments of States that have ratified an ILO Convention, requested periodically according to a plan approved by the ILO Governing Body.

Regular system of supervision

System of supervision based on reports provided periodically by ILO member States on Conventions ratified by them.

Special systems of supervision

Allegations based systems of supervision found in Articles 24 and 26 of the ILO Constitution and the special mechanism for allegations on freedom of association matters.



Training outline

Getting started: introduction



10 Minutes
(not including
participant
introduction)

Introduce yourself as trainer. Where appropriate, ask participants at the training event to introduce themselves to each other.

The training in this Training outline explains the essential elements of the mechanisms for supervising international labour principles and standards. The idea behind all these mechanism is to use transparent systems of public exposure by objective international bodies as a tool for getting states give effect to their ILS obligations.

Military, police and security personnel are not typically involved in the workings of these supervisory mechanisms. They can, however, be involved in allegations made in respect of them. It is thus appropriate that the subject be taken up in this training.

We start by noting that the ILO's supervisory mechanisms are classified into regular and special systems.

- Regular supervisory mechanisms are based on ratification of an ILO Convention and operate on the basis of an obligation of the ratifying State to report periodically to the ILO on the measures taken to implement the Convention concerned.
- Special supervisory mechanisms are allegation-based and require ratification of the Convention concerned – with the exception of a special system of supervision on freedom of association matters, which does not require ratification.

	Title	Page	Minimum time (minutes)
Standard lecture 20	Regular supervision	120	15
Standard lecture 21	Special supervision – Freedom of association	122	10
Standard lecture 22	Special supervision – Constitutional procedures	123	10
Standard lecture 23	Use of procedures in practice for freedom of association matters	125	10
Standard lecture 24	Impact of the procedures	127	10

Standard lecture 20. Regular supervision



15 Minutes

The ILO's regular system of supervision principally involves two organs (or bodies) engaged in receiving, reviewing, commenting on and discussing government reports required periodically on the application of ratified Conventions.

Once a country has ratified an ILO Convention, it is obliged to report regularly on measures it has taken to implement it. Every three years governments must submit reports telling of the steps they have taken in law and practice to apply any of the eight fundamental and four priority Conventions they may have ratified; for all other Conventions, reports must be submitted every five years, except for Conventions that have been "shelved" (no longer supervised on a regular basis). The Governing Body of the ILO sets the regular schedule for governments' reporting. Reports on the application of Conventions may be requested at shorter intervals according to established guidelines used by the ILO supervisory bodies. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of Conventions directly to the ILO.

Once received, the reports work their way through review and comments as illustrated in Diagramme 5: Regular system of supervision, below.

The Committee of Experts on the Application of Conventions and Recommendations

The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified Conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three- year terms. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

When examining the application of international labour standards, the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular Convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned¹⁰⁹.

The Committee's annual report consists of three parts. Part I contains a General Report, which includes comments about member States' respect for their Constitutional obligations. Part II contains the observations on the application of international labour standards, while Part III is a General Survey¹¹⁰.

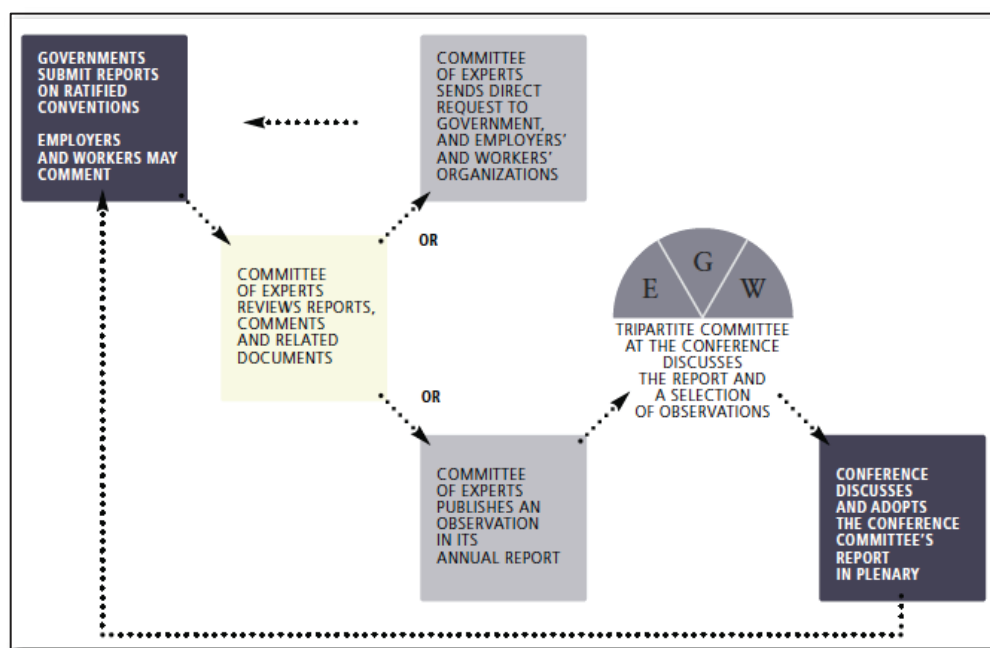
¹⁰⁹ All comments are available on the internet in a database called NORMLEX, found at www.ilo.org/dyn/normlex/en.

¹¹⁰ See footnote 1.

Conference Committee on the Application of Standards

The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.

Diagramme 5: Regular system of supervision



More than 2,000 reports are reviewed annually by the CEACR. Each year about 25 individual cases are selected the Conference Committee for public discussion, where the governments concerned are asked to inform the Committee in person about the steps being taken to apply the Conventions concerned.

All the documentation involved in the operation of the regular system (not including government reports) is available on the ILO website.

Standard lecture 21. Special supervision – Freedom of association



10 Minutes

Freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of Conventions Nos. 87 and 98 on freedom of association and collective bargaining, the ILO came to the conclusion that the principle of freedom of association needed a further supervisory procedure to ensure compliance with it in countries that had not ratified the relevant Conventions. As a result, in 1951 the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions.

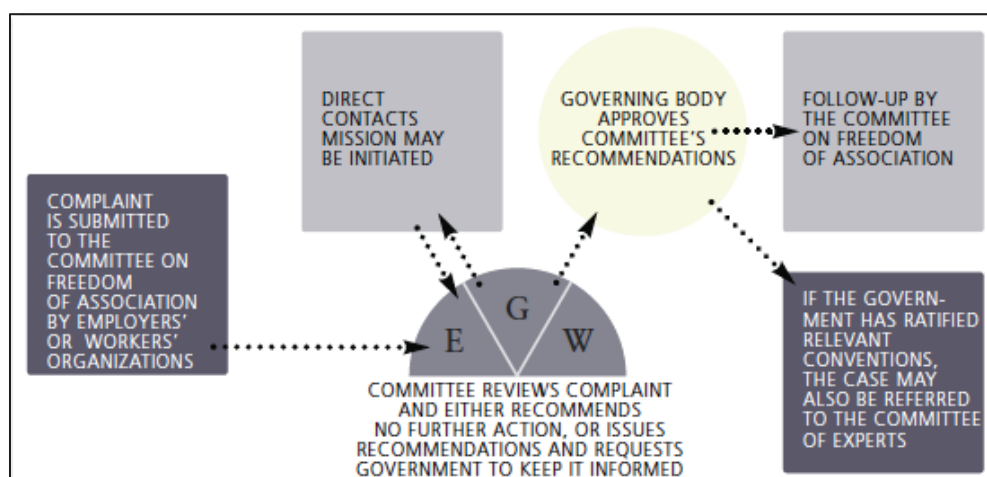
Complaints alleging violations of freedom of association may be brought against a member State by employers' and workers' organizations. The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers and workers. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes Recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations.

In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts. The CFA may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and the social partners through a process of dialogue.

The special mechanism for freedom of association allegations and the operation of the CFA is illustrated in Diagramme 6: Special procedure on freedom of association below.

In nearly 60 years of work, the CFA has examined over 2,700 cases. More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments with regard to freedom of association during the past 25 years (since records of this have been kept).

Diagramme 6: Special procedure on freedom of association



Standard lecture 22. Special supervision – Constitutional procedures



10 Minutes

The ILO Constitution has several Articles that give the possibility for bringing allegations about the failure to apply Conventions ratified by ILO member States.

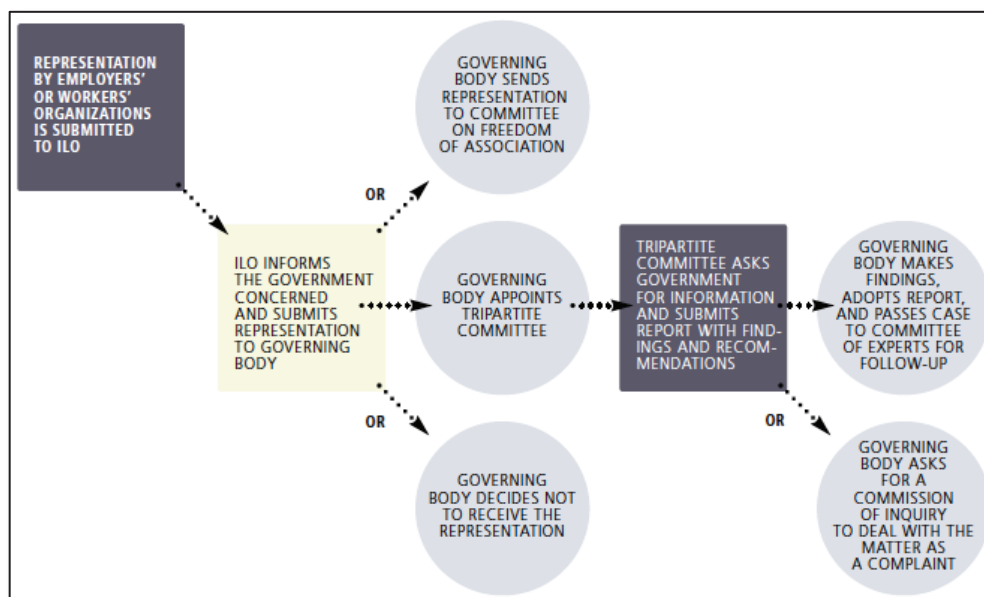
Representations

Articles 24 and 25 of the ILO Constitution govern the representation procedure. It grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member State, which, in its view, “has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party”. National and international employers’ and workers’ associations may make representations under Article 24. Individuals cannot make representations directly to the ILO but can pass on relevant information to their workers’ or employers’ organization, as applicable.

A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government’s response. The report that the committee submits to the Governing Body states the legal and practical aspects of the case, examines the information submitted, and concludes with recommendations. Where the government’s response is not considered satisfactory, the Governing Body is entitled to publish the representation and the response. Some 125 representations have been made over the years.

Representations concerning the application of Conventions Nos. 87 and 98 are usually referred for examination to the Committee on Freedom of Association.

Diagramme 7: Representations procedure

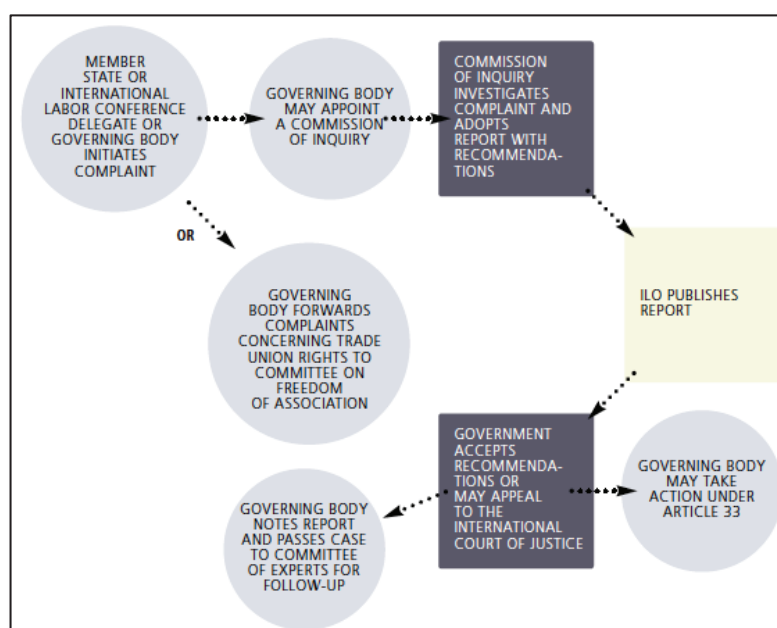


Complaints

Articles 26 to 34 of the ILO Constitution govern the complaint procedure. Under these provisions a complaint may be filed against a member State for not complying with a ratified Convention by another member State, which ratified the same Convention, a delegate to the International Labour Conference, or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, some 26 complaints have been made leading to some 12 Commissions of Inquiry having been established.

When a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can take action under Article 33 of the ILO Constitution. This provision states that “[i]n the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.” Article 33 was invoked for the first time in ILO history in 2000, when the Governing Body asked the International Labour Conference to take measures to lead Myanmar to end the use of forced labour. An Article 26 complaint had been filed against Myanmar in 1996 for violations of the Forced Labour Convention (No. 29), 1930, and the resulting Commission of Inquiry had found “widespread and systematic use” of forced labour in the country.

Diagramme 8: Complaints procedure



Standard lecture 23. Use of procedures in practice for freedom of association matters



10 Minutes

The following observations can be made about the use of the ILO's supervisory mechanisms in respect of freedom of association and the right to collective bargaining.

- This is the substantive area to which the **ILO's constituents attach most attention and interest** and therefore it can be said to be the one most important subject area for ILO supervision, generally generating the most sensitive, most investigated, and well developed jurisprudence within the ILO.
- The **CEACR is usually seized with problems of application that can be seen in laws**. It's mandate and means of operation do not make it a mechanism used for cases involving facts that raise issues of application of FoA principles or standards. Remember also that the CEACR supervises individual countries which have ratified Conventions.
- The ILO constituents bring **problems with application of freedom of association and collective bargaining matters grounded in factual situations to the CFA**, whether the country involved has ratified relevant Conventions or not. Problems with provisions of law can and are also taken to the CFA, but they risk being sent directly the CEACR if the country involved has ratified the relevant Convention.
- The **ILO constituents are very involved** in freedom of association cases, particularly in the CFA – obviously so insofar as the Committee is a tripartite body.
- In light of the foregoing, **supervisory mechanisms are used in tandem** by the ILO constituents with a view to exerting optimal pressure on the government concerned to respect the obligations they have voluntarily undertaken as a result of ratification, or (in the case of freedom of association issues) are bound to by virtue of being a member of the ILO. Examples of important cases can be seen where the matter began with an allegation to the CFA, followed up for some time by the CEACR, leading in time to a representation and on to a complaint.
- **Ratification is a critical element in supervision** insofar as it makes possible the bringing of constitutional procedures (although in at least one case, involving a "friendly" government – in a newly democratic South Africa – the ILO's supervisory bodies and good offices were welcomed without a ratification, in the form of a Fact-Finding and Conciliation Commission on Freedom of Association¹¹¹). Without ratification, only the CFA is able to deal with a matter.

¹¹¹ This is a procedure that does not require ratification, rarely used insofar as the governments concerned must agree to the jurisdiction of the body. Only six cases have occurred. See http://www.ilo.org/global/standards/information-resources-and-publications/WCMS_160778/lang-en/index.htm. This subject is beyond the scope of training for this target group.

Conduct by police, military, private security guards and other personnel is subject to allegations of infringement of rights to freedom of association and collective bargaining. Cases involving private actors – private security guards – implicate governments' responsibility to protect freedom of associate rights. Cases involving agents of the state – military and police – are especially serious, regardless of the character of the conduct giving rise the alleged violations; they invoke government's obligation to itself respect freedom of associate rights of its citizens.

A selection of CFA cases involving allegations against military or police...

"In one case where it was alleged that the military police had sent out a questionnaire to undertakings in which it was asked whether there were any natural leaders among the employees, strike instigators, trade union delegates or workers' organizations in the undertaking, the Committee considered that such an inquiry could involve a risk of being put to improper use by the military authorities or the police in the event of a labour dispute. For example, workers might be taken into custody simply because they were on a list of persons thus established, even though they had not committed any offence. The Committee also considered that, because of the atmosphere of mistrust that it created, such a procedure was hardly favourable for the development of harmonious industrial relations"¹¹².

... "The entry by police or military forces into trade union premises without a judicial warrant constitutes a serious and unjustifiable interference in trade union activities"¹¹³.

... "The following provisions are incompatible with the right to hold free elections, namely those which involve interference by the public authorities in various stages of the electoral process, beginning with the obligation to submit the candidates' names in advance to the ministry of labour, together with personal particulars, the presence of a representative of the ministry of labour or the civil or military authorities at the elections, including the approval of the election of the executive committee by ministerial decision, without which they are invalid"¹¹⁴.

... "In cases in which the dispersal of public meetings by the police has involved loss of life or serious injury, the Committee has attached special importance to the circumstances being fully investigated immediately through an independent inquiry and to a regular legal procedure being followed to determine the justification for the action taken by the police and to determine responsibilities"¹¹⁵.

... "The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights"¹¹⁶.

... "Even if police intervention in trade union premises may be justified in particularly serious circumstances, such intervention should in no case entail the ransacking of the premises and archives of an organization"¹¹⁷.

... "The use of police for strike-breaking purposes is an infringement of trade union rights"¹¹⁸.

¹¹² 2006 Digest, para. 176.

¹¹³ 2006 Digest, para. 181.

¹¹⁴ 2006 Digest, para. 437.

¹¹⁵ 2006 Digest, para. 49.

¹¹⁶ 2006 Digest, para. 68.

¹¹⁷ 2006 Digest, para. 187.

¹¹⁸ 2006 Digest, para. 643.

Standard lecture 24. Impact of the procedures



10 Minutes

The ILO has produced several recent studies on the impact of the supervisory mechanisms; they are included in the Reference and Readings section below.

In the last 15 years parties outside of the ILO – most notably in the context of bilateral inter-governmental trade relations, but also by businesses in their own social responsibilities initiatives, and trade unions in their campaigns for better working conditions – have made increased use of the work of the supervisory bodies. The ILO's supervisory mechanisms are unparalleled for their objectivity and independence, particularly taking into account the sometimes political content inherent in activities of workers' or employers' organizations. The combination of tripartite and expert inputs in these mechanisms leads to, at very least, a full and public airing of all sides of issues, which can be used by parties outside of the Organization as a basis for their own work.

The modern potency of these supervisory mechanisms gives good reason for actors making decisions and doing things that impact on respect for freedom of association and collective bargaining rights at any and all levels – be it in enterprises, on the streets, in rural areas or legislative or judicial chambers – to pause and think twice before they act.



Optional exercise

Where police or military have been involved in alleged infringement of freedom of association or collective bargaining rights, the ILO's supervisory bodies have "attached special importance to the circumstances being fully investigated immediately through an independent inquiry" and for "regular legal procedure being followed to determine the justification for the action taken".

*What particular justification can be given to the particular emphasis of this point?
Is there a particular relevance to that point in the Philippine context? What can
be done to assure both that such investigation occurs after the fact and, more
importantly, what might be done to prevent reoccurrence?*



Evaluating impact

Prior to closing the session, ask participants to take a moment to complete the Learning objective evaluation: What security personnel should know about freedom of association supervisory mechanisms in Appendix 6 on page 135. Upon completion, ask participants to turn them in. Tabulate the responses to gauge overall instructor effectiveness and the extent to which specific learning objectives were attained. Take time to specifically note where the lecture and learning experience could have been enriched to enhance learning.



Online resources

NORMLEX is a new information system that brings together information on International Labour Standards, such as ratification information, reporting requirements, comments of the ILO's supervisory bodies:

<http://www.ilo.org/dyn/normlex/en>



References and readings

For a description of the composition and functioning of the CEACR and a review of cases of progress:

Gravel, E. and Charbonneau-Jobin, C., *The Committee of Experts on the Application of Conventions and Recommendations: its dynamic and impact* (2003), available for download at:

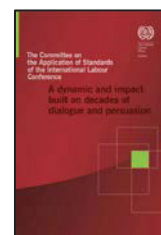
http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087808/lang-en/index.htm



For an examination of the institutional dynamic and impact of the Conference Committee on the Application of standards:

ILO. *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (2011), available for download at:

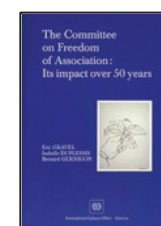
http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_154192/lang-en/index.htm



For an examination of the manner in which the Committee on Freedom of Association carries out its supervisory role:

Gravel, E., Duplessis, I., and Gernigon, B. *The Committee of Freedom of Association: Its impact over 50 years* (2002), available for download at:

http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_087814/lang-en/index.htm



Appendix 1. Learning objective evaluation: about the ILO, freedom of association and human rights

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Explain the origins, composition, and functions of the International Labour Organization.			
Explain the intention and obligations adhering to the Philippines' membership in the ILO.			
Define international labour standards and explain the role they play in achieving the ILO's mandate.			
Explain the role freedom of association plays as a foundational element for the functioning of the ILO.			
Understand the role freedom of association in an occupational and non-occupational sense plays in democratic societies.			
Explain the role freedom of association in an occupational and non-occupational sense play in Philippine society, legally and practically.			
Understand the role international human rights instruments play in supporting freedom of association globally.			
Outline the main international labour standards dealing with freedom of association and distinguish their purpose from other international human rights standards.			
Outline the position of the Philippines in respect of the ILO's freedom of association standards.			
Understand the position of the state, the police, the military, and private security services in respecting, fulfilling and protecting the human rights of the people of the Philippines, including their freedom to associate.			

Appendix 2. Learning objective evaluation: freedom of association in a democratic society

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Tell who has the right to freedom of association under international standards and who does not.			
Explain what freedom of association is under ILO Convention No. 87.			
Explain how freedom of association gives “voice” to employers’ and workers’ interests in a democratic society.			
Explain the role played by the “law of the land” in the exercise of freedom of association rights.			
Understand that the same rights of freedom of association under international standards apply to employers as well as workers.			
Explain what is meant by “programmes and activities” in the exercise of freedom of association, their scope and limits under international labour standards.			
Explain the role played by political activities undertaken by workers and employers organizations in the exercise of freedom of association rights.			
Explain how police, military and security personnel may be able to have the freedom of association under international standards.			
Explain the idea of the right to strike, its purpose, and its limits, from an international and national perspective.			
Explain limits placed by international standards on the dissolution of workers’ and employers’ organizations.			

Appendix 3. Learning objective evaluation: insurrection, insurgency and freedom of association

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Explain what it means that there are no derogations or suspensions permitted under Conventions Nos. 87 and 98.			
Explain the relation between civil liberties and military operations in areas of insurrection or insurgency.			
Explain what rights one has to exercise rights to freedom of association and collective bargaining in areas affected by insurgency.			
Explain the distinction between lawful and unlawful exercise of freedom of association, and the importance of the distinction in the context of counter insurgency operations.			
Explain what measures can be taken to protect those who lawfully exercise freedom of association rights even in areas affected by insurgency.			
Understand the role of a declared policy of respecting, protecting, and promoting freedom of association, and the importance of reflecting that policy in community and other operations.			

Appendix 4. Learning objective evaluation: public order and freedom of association

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Distinguish between different contexts in which public order concerns arise, as related to the exercise of freedom of association and collective bargaining rights.			
Explain the single basic condition on which international guarantees to freedom of association and collective bargaining rights rests.			
Compare the difference between the focus of purpose Convention No. 87 and that of Convention No. 98.			
Explain two ways in which a climate free of violence and intimidation may be promoted in situations where the keeping of public order is of concern to police or security personnel.			
Explain how and why the inherently forceful character of security forces' presence on lawful associational activities needs to be taken into account in public order operations involving labour matters.			
Explain how international labour standards can come to guide the conduct of private enterprises.			
Understand international labour principles on public authority restrictions placed on gatherings, authority in respect of protecting ingress and egress to workplaces in the context of freedom of association right.			
Explain what rights non-strikers have to enter the premises of the enterprise and how it compares to the right of striking picketers to incite them to join the strike.			

Appendix 5. Learning objective evaluation: security personnel and the rights to organize and bargain collectively

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Distinguish between the influence played by concern for freedom of association right on public order operations and that played on other work done by police and private security personnel.			
Describe the obligation to protect against anti-union discrimination, to whom it applies and how.			
Know whether it is consistent with international labour standards to facilitate the keeping of a blacklist of workers sympathetic to workers' organization.			
Outline the main content of international labour standards on collective bargaining.			
Define collective bargaining.			
Understand the role of played by the state in collective bargaining, under international labour standards and practically.			
Tell who has the right to collective bargaining under international standards, and who does not.			
Define interference and tell why it is contrary to freedom of association principles.			
Explain how an understanding of recommendations for making facilities available for workers' representatives can play a role in the work of security personnel.			
Explain why the possibility for a strike is important for collective bargaining to function.			

Appendix 6. Learning objective evaluation: what security personnel should know about freedom of association supervisory mechanisms

Please take a moment to help us understand how well the course prepared you to perform the following tasks.

Task	Poorly	Some what	Very well
Explain regular ILO supervisory mechanisms for international labour standards.			
Explain special ILO supervisory mechanisms for international labour standards.			
Explain all the ILO special supervisory mechanisms applicable to freedom of association standards.			
Explain the role ratification plays in the use of ILO supervisory mechanisms in respect of international labour standards generally and freedom of association particularly.			
Describe the different organs of the ILO engaged in supervision of freedom of association.			
Describe how and why the different supervisory procedures are used in combination.			
Understand how actions by military, police, and private security personnel can be involved in cases of supervision of international labour standards.			
Understand the role of ILO supervision of international labour standards in a broader global context, i.e. bilateral relations with other nations.			

Appendix 7. ILO helpdesk on anti-union discrimination

Freedom of association: general¹¹⁹

“Question: What can companies do to respect freedom of association at the workplace?

Answer: International instruments identify a number of things that companies can do to respect freedom of association and the right to collective bargaining:

Do not interfere with an employee’s decision to associate. Recognise that all workers are free to form and/or join a trade union of their choice.

No anti-union discrimination. Ensure that company policies, procedures and practices do not discriminate against individuals because of their views on trade unions or for their trade union activities.

Do not interfere with the activities of workers’ representatives while they carry out their functions in ways that are not disruptive to regular company operations.

Question: What can companies do to uphold freedom of association?

Answer: Companies can take action at different levels:

In the workplace:

Respect the right of all workers to form and join a trade union of their choice without fear of intimidation or reprisal, in accordance with national law.

Put in place non-discriminatory policies and procedures with respect to trade union organization, union membership and activity in such areas as applications for employment and decisions on advancement, dismissal or transfer.

Provide worker representatives with appropriate facilities to assist in the development of effective collective agreement.

In the community of operation:

Take into account the role and function of the representative national employers’ organizations.

Take steps to improve the climate in labour-management relations, especially in those countries without an adequate institutional and legal framework for recognizing trade unions and for collective bargaining.

¹¹⁹ http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang--en/index.htm

Question: A company engages a consultancy firm that claims to assist companies, "staying union free through preventive programs as well as counter recognition and union organising campaigns". At the consultancy's advice the company engaged in a range of activities to dissuade workers from voting in favour of recognising a trade union in the workplace. Is the consultancy firm breaching ILO standards and/or the ILO MNE Declaration, and if so how?

Answer: A worker should be free to establish and join the workers' organisation of his or her own choosing without previous authorisation. This right is not incompatible with the reasonable exercise by the employer of the right of expression.

The employer should not prevent, prohibit or interfere in the exercise of workers' right to organize; nor should he or her make any direct or indirect threat, create an atmosphere of intimidation or fear or adopt reprisals linked with it. "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment (...);"¹²⁰ "workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment (...)"¹²¹.

The ILO Committee on Freedom of Association has indicated that "acts of harassment and intimidation carried out against workers by reason of trade union membership or legitimate trade union activities, while not necessarily prejudicing workers in their employment, may discourage them from joining organizations of their own choosing, thereby violating their right to organize"¹²².

The Committee on Freedom of Association has recently stated:¹²³

Even more troubling is the increasingly common practice among employers such as Delta Air Lines, Inc. of waging sophisticated and aggressive campaigns to suppress employee turnout in representation elections. A key element of such campaigns is a pervasive communications strategy, which takes advantage of the employer's unique position as the only entity in regular and predictable contact with a travelling workforce to inundate workers with anti-union messages. The goal of these campaigns is not just to convince employees to oppose unionization on its merits, but to prevent employees from participating in the election at all. These voter suppression campaigns include coordinated and persistent instructions from employers to their employees to destroy their ballots or the government-issued balloting information they need to participate in the election. In these campaigns, it is the ballot, the official balloting instructions, and the voting process itself that employers seek to transform into objects of derision, disdain, and fear. Employers direct their employees to rip up or shred the ballot and balloting instructions, warn them not to click or dial into the Internet and telephone voting systems, and alert them to beware of supposed ballot tampering or voter fraud.

According to the complainants, through such campaigns, employers hope to avoid an honest debate among employees regarding the potential benefits of unionization. Once an employee

¹²⁰ Right to Organize and Collective Bargaining Convention, 1949 (No. 98), Article 1(1).

¹²¹ Convention No. 98, Article 2, 1

¹²² 2006 Digest, para. 786

¹²³ CFA, Case No. 2683, paras. 442-443.

follows her employer's directions to destroy her balloting information, she is divested and disengaged from the election process. By destroying the balloting instructions, the employee has effectively cast a vote against representation before she has had time to discuss the merits of union representation with her co-workers or reflect upon what union representation may mean for her work life.

The ILO Declaration of Tripartite Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) states that “[o]rganizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration”. Therefore, any agent engaged by an MNE also is encouraged to refrain from interference with the workers’ right to organize”.

Appendix 8. Maintaining law and order: basic policing principles and user of force – "P.L.A.N" (excerpt from Commonwealth Manual on Human Rights Training for Police)

The following is an excerpt from the *Commonwealth Manual on Human Rights Training for Police* (London, 2006). It is offered here for comparative purposes. The excerpt is taken from Chapter 8, Maintenance of public order.

8.2. Maintaining law and order: basic policing principles and use of force – 'P.L.A.N.'

Sometimes, force is required to maintain public safety and order. However, even when force is applied, human rights principles dictate the manner and extent of the use of force.

As is set out in chapter 5, 'force' can have varying grades, and should be applied only insofar as it is necessary. The purpose for which it is used is also informed by human rights – force is to be used not to punish, provoke or persecute protestors, but to protect the public and property. It may be that police need to preserve a deterrent effect, but a reputation for 'fairness but firmness' is to be preferred. The regular disproportional use of force, provocation or punitive policing actions is, experience shows, likely to lead to loss of public respect for the police and an expectation of violence on the part of the public, and can make the job of the police harder to do. This can lead to a threat to the lives of police officers.

When police officers are present during marches, meetings or processions and particularly when force is to be applied in a deteriorating situation, it is important to take the following 'P.L.A.N.' principles, ..., into consideration: **Proportionality, Legality, Accountability, Necessity.**

'PROPORTIONALITY'

The principle of proportionality requires that the police consider the purpose of the limitation, its nature and extent as well as the **relationship** between the limitation and its purpose. It concerns the relationship between the means the police apply during a public order situation, and the end sought to be achieved. The police should suitably equip members according to the circumstances before they are deployed. Already during the planning phase, the police should determine which methods and equipment may be regarded as least forceful in the circumstances. This process should logically lead to a decision to use the **least forceful** (restrictive) methods to attain the lawful goal of maintaining public order. When the use of force is unavoidable, it must cease immediately once police members attain the objective of the operation.

'LEGALITY'

Before the police undertake any action, the operational commander will ask whether he or she has any legal authority to intervene. In other words: whether the police have the

necessary mandate according to local legislation. The authority to intervene and the restrictions on such intervention must be clear to the police **before** they take any measures. The principle of legality requires a clear legal framework **justifying** intervention by the police.

‘ACCOUNTABILITY’

Police officers may expect to be held **accountable** in law (and as a matter of internal discipline) for their use of force where it is **not necessary** to use such force, **not lawful**, or **out of reasonable proportion** to the threat.

‘NECESSITY’

This principle of ‘situational appropriateness’ requires that the police assess the prevailing circumstances of any particular situation to be able to respond appropriately and within a framework of legality. Every situation where a crowd needs to be managed will be different. Operational decisions should be based on the actions of the crowd, which should be anticipated and planned for, rather than rigid, pre-prescribed procedures. The principle of ‘optimisation’ concerns the optimal use of equipment and personnel to reach or obtain the goal set out in the planning phase, when different crowd behaviour is anticipated and catered for. The principle of situational appropriateness requires that police actions should be reasonable and justifiable and that all factors must be taken into account. Force should only be used when necessary to protect the person or property of others (including police officers), and even then, should be proportionate to the threat faced.

Basic Principle 14 of the UN’s Basic Principles on the Use of Force and Firearms by Law Enforcement Officers is of particular importance for ‘policing’ assemblies and demonstrations, and states that:

- ❖ In dispersing UNLAWFUL but NON-VIOLENT assemblies, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict the use of force to the minimum extent necessary.
- ❖ In dispersing VIOLENT assemblies law enforcement officials may use firearms only when less dangerous means are not practicable AND only to the minimum extent necessary AND ONLY under the conditions stipulated in Basic Principle 9:

Law enforcement officials shall not use firearms against persons except:

- in self-defence or defence of others against the imminent threat of death or serious injury;
 - to prevent the perpetration of a serious crime involving grave threat to life;
 - to arrest a person presenting such a danger and resisting their authority;
 - to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives; and
 - in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
- ❖ Basic Principle 14 does NOT allow indiscriminate firing into a violent crowd as an acceptable tactic for dispersing that crowd.

Appendix 9. Standard lecture memory checks

Memory check quizzes are found on the following pages, 1 for each of the 24 Standard lectures in these training materials. The quizzes are multiple choice questions, for which 1 answer is the best. In some instances several answers may be correct, but one will be best.

They may be distributed prior to or following a standard lecture, completed by participants, and returned to course organizers. They may alternatively be used for participants' individual and confidential self-evaluation. The results of the quizzes can be used as a check on trainer delivery as well as participants' absorption of training.

Solutions:

Standard Lecture Memory Quiz	Questions and Answers							
	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8
1	B	D	D	A	C	B	B	C
2	C	C	A	C	B	C	B	
3	B	C	B	C	B	A		
4	B	D	A	C	A	B		
5	D	B	B	C	D			
6	B	B	A	A	C	C		
7	A	B	D	B	C			
8	C	B	D	D	A			
9	A	A	A	A	A	C		
10	C	A	B	B	C	A	B	
11	A	D	C	C				
12	C	A	D	C	A			
13	B	D	B	B	B			
14	A	A	C	A	A	A	B	
15	D	D	A	A	B	D		
16	C	C	D	C	C	C		
17	A	B	B	B	A	C		
18	C	A	C	B	C			
19	A	D	B	C	A	B		
20	C	D	A	A	C	B	D	
21	C	D	A	B	A	C		
22	C	B	C	A	C	B	B	A
23	A	B	D	A	A			
24	A	B	C	C				

Memory Quiz
Standard lecture 1: The ILO and its international labour standards

Q1. The International Labour Organization was founded –

- ☐ A. to keep the peace after World War I
 - ☐ B. to promote social justice after World War I
 - ☐ C. to keep labour peace after World War I
-

Q2. International labour standards are –

- ☐ A. Conventions
 - ☐ B. Recommendations
 - ☐ C. legal instruments
 - ☐ D. all of the above
-

Q3. International labour standards are –

- ☐ A. adopted by governments
 - ☐ B. ratified by the employers, workers, and governments at the International Labour Conference
 - ☐ C. binding instruments
 - ☐ D. a means used by the ILO to promote social justice
-

Q4. The ILO's tripartite structure is –

- ☐ A. is unique among international organizations
 - ☐ B. involves all forms of non-governmental organizations
 - ☐ C. flexible
-

Q5. The ILO's Governing Body –

- ☐ A. is made up of governments
 - ☐ B. meets once a year, in June
 - ☐ C. guides the work of the ILO
-

Q6. The competent national authority –

- ☐ A. ratifies ILO standards according to the ILO Constitution
 - ☐ B. receives ILO standards according to the ILO Constitution
 - ☐ C. is usually the head of state according to the ILO Constitution
-

Q7. Ratification of an ILO convention –

- ☐ A. is required by ILO member States
 - ☐ B. obliges an ILO member State
 - ☐ C. is applied by an ILO member State
-

Q8. Once ratified, and ILO Convention must be –

- ☐ A. reported
 - ☐ B. practiced
 - ☐ C. applied
-

Memory Quiz

Standard lecture 2: The ILO's principles and standards on freedom of association

Q1. The principle of freedom of association is –

- ☐ A. absolute
 - ☐ B. enshrined in ILO standards and declarations
 - ☐ C. enshrined in ILO standards and declarations, regional and international human rights instruments
-

Q2. Tripartism depends on –

- ☐ A. international human rights instruments
 - ☐ B. full respect for freedom of association by governments
 - ☐ C. full respect for freedom of association by governments, employers and workers, and their organizations
 - ☐ D. the existence of workers' and employers' organizations
-

Q3. According to the ILO Declaration of Philadelphia –

- ☐ A. freedom of expression and of association are essential to sustained progress
 - ☐ B. workers and employers have equal standing with governments
 - ☐ C. freedom of association is a human right
 - ☐ D. freedom of association is subject to the right to collective bargaining
-

Q4. The ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)–

- ☐ A. says workers are to be protected against acts of anti-union discrimination by employers
 - ☐ B. says workers organizations are not to interfere with employers' organizations
 - ☐ C. says workers' and employers' organizations may not be dissolved by administrative authorities
-

Q5. The ILO's Right to Organise and Collective Bargaining Convention, 1949 (No. 98) –

- ☐ A. says all workers and employers shall have the right to form and join organizations of their own choosing
 - ☐ B. says collective bargaining is to be promoted
 - ☐ C. says the armed forces and police may have no right to organize
-

Q6. Conventions Nos. 87 and 98 –

- ☐ A. are guidelines
 - ☐ B. are universally ratified
 - ☐ C. contain principles fundamental to all ILO member States
-

Q7. The Philippines –

- ☐ A. has applied Conventions Nos. 87 and 98
 - ☐ B. has ratified Conventions No. 87 and 98
 - ☐ C. respects Conventions No. 87 and 98
-

Memory Quiz
Standard lecture 3: Freedom of association and international human rights standards

Q1. The full exercise of the right to freedom of association –

- ☐ A. depends on the existence of strong workers' and employers' organizations
 - ☐ B. depends on respect for basic civil liberties
 - ☐ C. depends on international human rights
-

Q2. International human rights instruments recognizing the right to freedom of association include –

- ☐ A. the Universal Declaration of Human Rights
 - ☐ B. the International Covenant on Economic, Social and Cultural Rights
 - ☐ C. both of the above
-

Q3. A right to strike is explicitly recognized by –

- ☐ A. the Universal Declaration of Human Rights
 - ☐ B. the International Covenant on Economic, Social and Cultural Rights
 - ☐ C. the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
 - ☐ D. all of the above
-

Q4. The right to collective bargaining is explicitly recognized by –

- ☐ A. the Universal Declaration of Human Rights
 - ☐ B. the International Covenant on Economic, Social and Cultural Rights
 - ☐ C. the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
 - ☐ D. all of the above
-

Q5. Under international human rights law, basic civil liberties –

- ☐ A. are subject only to the law of the land
 - ☐ B. include the rights to freedom of expression, association, and peaceful assembly
 - ☐ C. are set out in ILO Conventions Nos. 87 and 98
-

Q6. Civil liberties and occupational freedoms of association –

- ☐ A. are inherently interdependent in practice
 - ☐ B. are distinct in practice
 - ☐ C. is usually the head of state according to the ILO Constitution
-

Memory Quiz

Standard lecture 4: Obligations under ILO principles and standards on freedom of association

Q1. Ultimate responsibility for ensuring respect for the principles of freedom of association –

- ☐ A. cannot be placed on any one actor
 - ☐ B. lies with government
 - ☐ C. lies with employers
-

Q2. Since police and military are instrumentalities of the State, they –

- ☐ A. have a primary responsibility to respect freedom of association principles
 - ☐ B. are to protect individuals and groups from infringements of freedom of association principles
 - ☐ C. are to fulfil through positive actions freedom of association rights in practice
 - ☐ D. all of the above
-

Q3. Which are the two contexts that obligations under ILO principles and standards on freedom of association are established?

- ☐ A. ratification and non-ratification
 - ☐ B. submission and non-submission
 - ☐ C. application and non-application
-

Q4. The "respect, protect and fulfil" paradigm is –

- ☐ A. used to describe the duties of a State from a human rights perspective
 - ☐ B. applicable to freedom of association standards
 - ☐ C. both of the above
-

Q5. Ratified ILO Conventions are –

- ☐ A. applicable to the entire territory of the ratifying ILO member State
 - ☐ B. relevant to the entire territory of the ratifying ILO member State
 - ☐ C. applicable to that part of the territory of the ratifying ILO member State to which it applies
-

Q6. Where an ILO member State has not ratified the conventions on freedom of association and collective bargaining –

- ☐ A. it is nevertheless obliged to respect, protect and fulfil freedom of association principles under ILO Conventions
 - ☐ B. it is nevertheless obliged to respect, promote and realize the principles concerning the fundamental rights of freedom of association and effective recognition of the right to collective bargaining under the Declaration of Fundamental Principles and Rights at Work
 - ☐ C. it has no obligations in respect of freedom of association principles
-

Memory Quiz
Standard lecture 5: Freedom of association obligations, the Philippines and its
security forces

Q1. Which of the following is **not** provided for by the Philippine Bill of Rights?

- ☐ A. No person shall be deprived of life without due process of law
 - ☐ B. No law shall be passed abridging the freedom of expression
 - ☐ C. The right of people in the public sector to form unions shall not be abridged
 - ☐ D. none of the above (they are all in the Bill of Rights)
-

Q2. Which of the following is **not** subject to possible limitation, according to the Philippine Bill of Rights?

- ☐ A. the privacy of communication and correspondence
 - ☐ B. the right of the people to petition the government for redress of grievances
 - ☐ C. the right to travel
 - ☐ D. none of the above (they are all absolute rights)
-

Q3. Where a State imposes a state of emergency that partially or wholly suspends civil rights –

- ☐ A. a return to respect for civil rights immediately is called for by international standards
 - ☐ B. international standards call for a return to respect for civil rights at the earliest possible moment
 - ☐ C. a return to respect for civil rights is called for, according to international standards, when government alone determines the time is right
-

Q4. A society is based on the rule of law –

- ☐ A. when laws set down the rules
 - ☐ B. when citizens follow society's rules
 - ☐ C. when government and its agents act and make decisions on the basis of known rules
 - ☐ D. when the people make the rules
-

Q5. The Philippine Armed Forces and its members are –

- ☐ A. subject to the rule of law
 - ☐ B. subject to the Philippine Constitution
 - ☐ C. subject to international law
 - ☐ D. all of the above
-

Memory Quiz

Standard lecture 6: Freedom and the association of employers and workers

Q1. Which group of workers do not have a right to freedom of association under Convention No. 87?

- ☐ A. firefighters
 - ☐ B. police
 - ☐ C. domestic workers
 - ☐ D. self-employed persons
-

Q2. The phrase "without previous authorization" refers to the idea that –

- ☐ A. governments may not set rules for trade unions without previous authorization.
 - ☐ B. workers' and employers' organizations have the right to form their organizations without previous authorization.
 - ☐ C. workers may not strike without previous authorization from government.
 - ☐ D. all of the above
-

Q3. Government approval of a meeting by employers to form an association of employers –

- ☐ A. is contrary to international standards if the meeting is illegal without that approval
 - ☐ B. may be consistent with international standards if the meeting is to plan interference with workers' right to organize
 - ☐ C. is necessary according to international standards
-

Q4. Under international standards, freedom of association must be exercised in accordance with the law of the land, –

- ☐ A. provided the law of the land is consistent with international standards
 - ☐ B. even if the law of the land is not consistent with international standards
 - ☐ C. despite the law of the land being inconsistent with international standards
-

Q5. According to international standards, any mass rally designed to express workers' and employers' organization disapproval of government policy –

- ☐ A. can be conditioned on permission granted in accordance with any requirement set by government authorities
 - ☐ B. can be prohibited by the public authorities as they always pose a serious and imminent danger to the maintenance of public order
 - ☐ C. must be permitted by the public authorities as long as they do not pose a serious and imminent danger to public order
-

Q6. According to this training, military, police and private security personnel –

- ☐ A. should ignore orders given by superiors that are based on clear violations of international labour standards
 - ☐ B. should be aware that national laws they are called on to enforce can be contrary to international labour and human rights standards
 - ☐ C. should be aware of divergences between national laws and international labour and human rights standards raised by international supervisory bodies
-

Memory Quiz

Standard lecture 7: Freedom of association for armed forces and police

Q1. According to international standards, persons employed by the military who do not have responsibility for the internal or external security of the State –

- ☐ A. should benefit from the freedom of association
 - ☐ B. should not benefit from freedom of association because they are employed by the military
 - ☐ C. may benefit from freedom of association if national law provides
-

Q2. Security personnel who carry a weapon on the job –

- ☐ A. enjoy the right to freedom of association under international standards
 - ☐ B. are not automatically excluded from the right to freedom of association under international standards
 - ☐ C. do not have the right to freedom of association under international standards
 - ☐ D. none of the above
-

Q3. Under international standards, States may –

- ☐ A. give police the right to association
 - ☐ B. give members of the armed forces the right to association
 - ☐ C. give neither the police nor members of the armed forces the right to freedom of association
 - ☐ D. any of the above
-

Q4. Following the jurisprudence of international labour standards, the right to strike –

- ☐ A. is part and parcel of the right to freedom of association and thus the rights given to all must be the same
 - ☐ B. is distinct from the right to freedom of association and thus restrictions on the right to strike may differ for different groups of workers
 - ☐ C. may not be given to police or members of the armed forces
-

Q5. Exercise of a right to associate and form trade unions granted by national law –

- ☐ A. is not tantamount to treason, even if undertaken by police and/or members of the armed forces
 - ☐ B. is not tantamount to treason, if undertaken by any group of workers or employers having the right to freedom of association under international standards
 - ☐ C. both of the above
-

Memory Quiz
Standard lecture 8: Social progress and the right to association

Q1. Social progress –

- ☐ A. is measurable improvement in social, economic, political life in a country
 - ☐ B. is promoted by the ILO and its international labour standards
 - ☐ C. all of the above
-

Q2. The International Labour Organization's Declaration of Philadelphia (1944) affirmed –

- ☐ A. that freedom of the press is essential to sustained progress
 - ☐ B. that freedom of association is essential to sustained progress
 - ☐ C. all of the above
-

Q3. Freedom of association is important for social progress because –

- ☐ A. it permits workers and employers to join together to protect their interests, giving the possibility for consolidated voice to important actors in society
 - ☐ B. it permits workers and employers to join together to protect civil and other rights
 - ☐ C. it gives the opportunity for social partners to build trust and confidence in finding solutions to challenges of mutual interest, often related to social and economic progress
 - ☐ D. all of the above
-

Q4. The actions of members of the armed forces and police forces are important for social progress because –

- ☐ A. they protect the rights of citizens, including the rights to association, expression, assembly
 - ☐ B. they protect the physical security of the people
 - ☐ C. they protect to sovereignty of the State
 - ☐ D. all of the above
-

Q5. The actions of members of private security personnel are important social progress because –

- ☐ A. they can affect the practical exercise of the right to freedom of association
 - ☐ B. they are obliged to protect the rights of citizens, including the rights to association, expression and assembly
 - ☐ C. all of the above
-

Memory Quiz

Standard lecture 9: The rights of workers' and employers' organizations, including political activities

Q1. International labour standards on freedom of association do not protect –

- A. purely political activities of employers' and workers' organizations, that being narrowly defined
 - B. purely political activities of employers' and workers' organizations, that being broadly defined
 - C. any activities of employers' and workers' organizations outside of their occupational interests in working conditions and wages
-

Q2. A peaceful rally by workers called to express discontent with pension reforms –

- A. would fall within the scope of international freedom of association standards
 - B. would not fall within the scope of international freedom of association standards
 - C. could not be said to be within or outside of the scope of international freedom of association standards
-

Q3. Police and the armed forces are obliged to –

- A. protect participants in a peaceful rally called to express discontent with wage policy reforms
 - B. protect property from a peaceful rally called to express discontent with wage policy reforms
 - C. protect government from a peaceful rally called to express discontent with wage policy reforms
-

Q4. The ILO adopted a resolution in 1952 concerning the independence of the trade union movement with a view to assuring that –

- A. trade union activities are independent of government influence
 - B. government is independent of trade union influence
 - C. government is independent of employers' association influence
-

Q5. Government interference with activities that have occupational interests at their core are permissible under international labour standards only where –

- A. the exercise of those rights causes a serious and imminent threat to public order
 - B. the exercise of those rights threatens public safety and order
 - C. the exercise of those rights seriously undermines public safety and security
-

Q6. Employers' organizations –

- A. have greater rights to engage in political activities than workers' organizations under international labour standards, because their activities are more important for social progress
 - B. have less rights to engage in political activities than workers' organizations under international labour standards, because they have other means of conveying their views to the political elite
 - C. have rights to engage in political activities equal to those of workers' organizations, under international labour standards
-

Memory Quiz

Standard lecture 10: The right to strike

Q1. The right to strike –

- ☐ A. is mentioned in Convention No. 87 but not Convention No. 98
 - ☐ B. is mentioned in the 1998 Declaration on Fundamental Principles and Rights at Work
 - ☐ C. is not mentioned in any international labour standard of the ILO
-

Q2. According to ILO supervisory bodies, the right to strike –

- ☐ A. is an essential means available to workers and their organizations to protect their interests
 - ☐ B. is a right held by individuals, not trade unions
 - ☐ C. should never be subjected to conditions
 - ☐ D. none of the above
-

Q3. A general prohibition of strikes in national law –

- ☐ A. is consistent with international freedom of association standards
 - ☐ B. is not consistent with international freedom of association standards
 - ☐ C. is consistent with international freedom of association standards if it is established as a means to promote social justice
-

Q4. A prohibition of strikes in essential services is –

- ☐ A. consistent with international labour standards on freedom of association
 - ☐ B. consistent with international labour standards on freedom of association only to the extent they are services the interruption of which would endanger the life, personal safety or health of the whole or part of the population
 - ☐ C. inconsistent with international labour standards on freedom of association
-

Q5. The setting of conditions for the lawful exercise of a right to strike is consistent with international labour standards on freedom of association –

- ☐ A. only to the extent the conditions are imposed to protect the life, personal safety or health of the whole or part of the population
 - ☐ B. provided they do not have the effect of making it impossible to conduct a lawful strike
 - ☐ C. provided they do not have the effect of making a lawful and meaningful strike impossible in practice
-

Q6. The finding of a national court that a strike is unlawful under national law –

- ☐ A. should be consistent with international standards in order for the prohibition to be consistent with international standards
 - ☐ B. is always and unconditionally accepted by international supervisory bodies, since they respect the sovereignty of states' judicial system
 - ☐ C. can never be second guessed by international supervisory bodies
-

Q7. Under international freedom of association standards, civil servants should have the right to collectively bargain –

- ☐ A. but their right to strike can be restricted
 - ☐ B. but their right to strike can be restricted where they exercise the authority of the state in their occupation
 - ☐ C. as well as an unconditional right to strike equal to other workers
-

Memory Quiz

Standard lecture 11: Dissolution of organizations

Q1. The suspension or dissolution of an employers' or workers' organization, under international labour standards –

- A. may never be finally ordered by administrative authorities
 - B. may never be executed by administrative authorities
 - C. may never be executed by the police, on order of a court of law
-

Q2. Laws and/or regulations for the suspension or dissolution of employers' and workers' organizations –

- A. must give the possibility for the hearing of a defence against such action
 - B. must be made prior to their execution
 - C. must provide for the right to appeal against such action
 - D. all of the above
-

Q3. Laws and/or regulations for the suspension or dissolution of employers' and workers' organizations –

- A. may permit a dissolution order by administrative authorities
 - B. may permit a dissolution order by administrative authorities, provided there is the possibility of appeal to a judicial authority
 - C. may permit a dissolution order by administrative authorities, provided there is the possibility of appeal to a judicial authority and execution of the order is stayed pending appeal
-

Q4. Protections in international freedom of association standards against arbitrary dissolution or suspension by administrative authorities –

- A. does not grant workers' or employers' organizations exemption from the law of the land
 - B. does not grant workers' or employers' organizations immunity from the law of the land
 - C. does not grant workers' or employers' organizations immunity from the law of the land, provided that law is not such as to impair, nor applied as to impair guarantees provided for in international standards
-

Memory Quiz

Standard lecture 12: Derogation and suspension of obligations under ILO standards

Q1. What are the situations under which rights of freedom of association and collective bargaining can be derogated or suspended within the territory of a State having ratified the relevant ILO conventions?

- ☐ A. when peace and security are threatened
 - ☐ B. when peace and security has actually broken down
 - ☐ C. never
-

Q2. In areas where peace and security have broken down –

- ☐ A. respect for freedom of association rights are compromised because civil rights are compromised
 - ☐ B. respect for freedom of association need not be assured by the State
 - ☐ C. respect for freedom of association is more important than respect for civil rights
-

Q3. Where a state of emergency has been declared –

- ☐ A. measures should be taken to assured continued respect for freedom of association rights
 - ☐ B. a real state of emergency should actually exist
 - ☐ C. there is no automatic violation of trade union rights
 - ☐ D. all of the above
-

Q4. Security actions targeted indiscriminately against all trade unions in an area declared to be under a state of emergency –

- ☐ A. is contrary to freedom of association rights
 - ☐ B. should not interfere with basic civil liberties
 - ☐ C. all of the above
-

Q5. Efforts to respect freedom of association rights need to be made by police, military and private security personnel –

- ☐ A. despite the need to engage in counter insurgency
 - ☐ B. before and after the undertaking of counter insurgency actions
 - ☐ C. only when the security situation in an area permits it
-

Memory Quiz

Standard lecture 13: Avoiding a climate of violence and impunity

Q1. According to the jurisprudence of international standards, freedom of association –

- ☐ A. should be practiced in a way that does not challenge government policy
 - ☐ B. cannot be practiced in a climate of violence and impunity for the rule of law
 - ☐ C. all of the above
-

Q2. Efforts to –

- ☐ A. locate and judge perpetrators of infringement of civil rights directly combat a climate of impunity
 - ☐ B. raise awareness of freedom of association rights among government officials helps in their respect
 - ☐ C. speed up processes for the investigation and prosecution of civil rights violations helps ensure their respect
 - ☐ D. all of the above
-

Q3. The perception of violation of international standards on freedom of association –

- ☐ A. is irrelevant to their exercise in practice
 - ☐ B. can be countered by acknowledging them and undertaking transparent and concrete steps to respect and protect them
 - ☐ C. all of the above
-

Q4. Protecting witnesses from reprisals –

- ☐ A. is part of the rule of law
 - ☐ B. helps set the conditions for full respect of the armed forces' human rights policies
 - ☐ C. plays a small role in assuring freedom of association in environments where the armed forces are active
-

Q5. In respect of its impact on freedom of association, a climate of violence –

- ☐ A. is primarily the fault of insurgents, whose activities prompt the need for government's armed response
 - ☐ B. is primarily government's responsibility, in so far as it is obliged to take all possible measures to minimize violence and its effects on freedom of association
 - ☐ C. all of the above
-

Memory Quiz

Standard lecture 14: Private matters and public order: organizing, collective bargaining and representation

Q1. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) –

- ☐ A. injects the state between private parties engaged in collective bargaining
 - ☐ B. sets limitations on what states can do to interfere with freedom of association
 - ☐ C. all of the above
-

Q2. The coercive authority of police, military and private security personnel is –

- ☐ A. inherent
 - ☐ B. disruptive
 - ☐ C. concurrent
 - ☐ D. obstructive
-

Q3. According to the "use of force continuum", force can be exerted by police, military and private security personnel by all for the following except –

- ☐ A. verbal commands
 - ☐ B. physical presence
 - ☐ C. eye contact
 - ☐ D. soft techniques
-

Q4. Police, as a state actor, must –

- ☐ A. protect human rights, including exercise of freedom of association rights
 - ☐ B. resolve human rights, including exercise of freedom of association rights
 - ☐ C. preserve human rights, including exercise of freedom of association rights
-

Q5. Police, armed forces, and private security personnel must –

- ☐ A. be neutral in respect of the outcomes of industrial relations processes
 - ☐ B. protect property rights at all costs
 - ☐ C. engage with employers involved in industrial disputes to understand where risks to peace lie
-

Q6. Although private companies are not directly bound by international labour standards, it is widely acknowledged that the ILO's freedom of association and collective bargaining standards –

- ☐ A. are the appropriate source of principles to which employers can hold themselves socially responsible
 - ☐ B. can be used to challenge the actions of employers
 - ☐ C. can be used as inspiration for workers' demands in respect of employer industrial relations behaviour
-

Q7. P.L.A.N. stands for –

- ☐ A. Participation, Logistic, Action, Need
 - ☐ B. Proportionality, Legality, Accountability, Necessity
 - ☐ C. Planning, Localization, Animation, Necessity
 - ☐ D. Proportion, Localization, Action, Nearness
-

Memory Quiz

Standard lecture 15: Leafleting, picketing and other forms of expression

Q1. Picketing is different from leafleting – and therefore raises different security concerns – insofar as the first –

- ☐ A. usually involves a large number of persons, whereas the second often involves a small number
 - ☐ B. usually has more than the distribution of information as its objective, usually dissuading others from entering premises being picketed
 - ☐ C. usually involves communication by placards, sandwich signs, and picket signs
 - ☐ D. all of the above
-

Q2. Both picketing and leafleting are –

- ☐ A. activities falling within the protection of freedom of association rights
 - ☐ B. can be the subject of regulation designed to keep the peace
 - ☐ C. can be used by social movements other than workers' organizations
 - ☐ D. all of the above
-

Q3. Dialogue between social actors on the one hand and police and security forces on the other –

- ☐ A. is essential as a means of keeping the peace during picketing activities
 - ☐ B. can be used to delay the intervention of police or security forces where it is otherwise needed to keep the peace at a picketing scene
 - ☐ C. should start immediately upon arrival at a picketing scene
 - ☐ D. all of the above
-

Q4. According to the *Joint DOLE-PNP-PEZA Guidelines in the Conduct of PNP Personnel, Economic Zone Police and Security Guards, Company Security Guards and Similar Personnel During Labour Disputes* –

- ☐ A. labour disputes have peace and order implications
 - ☐ B. labour disputes may have peace and order implications
 - ☐ C. labour disputes are within the jurisdiction of Philippine National Police
-

Q5. According to jurisprudence of international standards on freedom of association –

- ☐ A. police authorities should make arrests of participants in picketing as the need arises
 - ☐ B. police authorities should make arrests of participants in picketing on the basis of precise instructions
 - ☐ C. police authorities should make arrests of participants in picketing on the basis of precise instructions where public order is not seriously threatened
-

Q6. A PNP peace-keeping team –

- ☐ A. shall exercise maximum tolerance regardless of the situation
 - ☐ B. shall at all times be in proper uniform, without lethal weapons and firearms, and with properly displayed nameplate
 - ☐ C. may employ only such means as may be necessary and reasonable to prevent or repel an aggression
 - ☐ D. all of the above
-

Memory Quiz

Standard lecture 16: Strikes and lockouts

Q1. According to the *Joint DOLE-PNP-PEZA Guidelines*, a PNP peace-keeping team shall be assigned in a picket/strike/lockout area -

- ☐ A. when requested by either DOLE or PEZA
 - ☐ B. when requested by both DOLE and PEZA
 - ☐ C. when requested in writing by either DOLE or PEZA
 - ☐ D. when requested in writing by both DOLE and PEZA
-

Q2. When Zone Police and PEZA Security Guards form peace-keeping teams to ensure peace and order during strikes, lockouts or labour disputes, they are bound by the all provisions of the *Joint DOLE-PNP-PEZA Guidelines*, **except** –

- ☐ A. they may not fraternize with any party involved in the controversy
 - ☐ B. observe neutrality insofar as they are engaged to protect the economic zone
 - ☐ C. keep a 50-meter radius from the picket/strike/lockout area
 - ☐ D. none of the above
-

Q3. As regards the role of police during a strike, the Committee on Freedom of Association has said that the intervention by security forces in strike situation should be –

- ☐ A. limited strictly to the maintenance of property rights
 - ☐ B. limited to the maintenance of public order
 - ☐ C. limited strictly to the maintenance of public order
 - ☐ D. limited strictly to the maintenance of public order and have resort to the use of force only where law and order is threatened
-

Q4. Keeping the climate free from violence and intimidation –

- ☐ A. is the overall aim of security personnel interventions in a labour dispute
 - ☐ B. is an overall aim of security personnel interventions in a labour dispute
 - ☐ C. is an overall aim of security personnel interventions in a labour dispute in accordance with international labour standards
-

Q5. The *Joint DOLE-PNP-PEZA Guidelines* –

- ☐ A. govern the conduct of members of the PNP, economic Zone Police, security guards and similar personnel during labour disputes
 - ☐ B. govern the conduct of all members of economic Zone Police and security guards, company security guards and similar personnel during labour disputes
 - ☐ C. govern the official conduct of all members of the PNP, economic Zone Police and security guards, company security guards and similar personnel during labour disputes
-

Q6. According to the Guidelines on Workers' Rights, the AFP and PNP may only intervene in labor disputes where –

- ☐ A. expressly requested by the DOLE
 - ☐ B. a criminal act has been committed, is being committed, or may be committed through overt acts in accordance with Rule 113 of the Revised Criminal Procedures whether or not it arises out of the labour dispute
 - ☐ C. in cases of actual violence arising out of a labor dispute
 - ☐ D. all of the above
 - ☐ E. any of the above
-

Memory Quiz

Standard lecture 17: Protection against anti-union discrimination

Q1. Under Convention No. 98, states have the obligation –

- ☐ A. protect workers against acts of anti-union discrimination
 - ☐ B. protect employers against acts of anti-employer discrimination
 - ☐ C. both of the above
-

Q2. Through extension of international labour standards' principles to private actors –

- ☐ A. trade unions should not harass employers
 - ☐ B. employers should not discriminate against workers for their trade union activities
 - ☐ C. all of the above
-

Q3. In following the spirit of international freedom of association principles, security guards –

- ☐ A. have the right to reflect management attitudes toward trade unions and workers seeking to organize trade unions, whatever they may be
 - ☐ B. should be neutral in respect of workers' exercise of freedom of association rights, including to form and join organizations of their own choosing
 - ☐ C. should be neutral in respect of workers' exercise of freedom of association rights, including to form and join organizations of their own choosing, on the condition that they can fulfil their responsibility to protect the property of their employers
 - ☐ D. all of the above
-

Q4. Is there a legitimate purpose to be served by private security personnel spying on the trade union activities of workers?

- ☐ A. yes
 - ☐ B. no
 - ☐ C. maybe
-

Q5. According to the ILO's supervisory bodies –

- ☐ A. blacklisting trade union members from employment constitutes a serious threat to the free exercise of trade union rights
 - ☐ B. blacklisting trade union members from employment may constitute a threat to the free exercise of trade union rights where the blacklist is kept among many employers
 - ☐ C. governments may rely on ordinary measures to combat blacklisting practices
-

Q6. According to international standards, protection against acts of anti-union discrimination apply in respect of acts –

- ☐ A. calculated to make the employment of a worker subject to the condition that he shall not join a union
 - ☐ B. calculated to make the employment of a worker subject to the condition that he shall relinquish trade union membership
 - ☐ C. all of the above
-

Memory Quiz

Standard lecture 18: Protection against acts of interference

Q1. Which of the following would not constitute interference of an employer with a workers' organization?

- ☐ A. employer payment to workers' representatives conditioned on their following employer instructions
 - ☐ B. a party held for trade union leaders, in order to influence the positions taken by the leaders
 - ☐ C. security personnel telling workers that the employer would give 5 days of paid leave to workers who became members of one union instead of another
 - ☐ D. none of the above; they are all acts of interference
-

Q2. Acts of interference infringe freedom of association by –

- ☐ A. disrupting the ability of the parties to act independently of each other
 - ☐ B. guaranteeing that a workers' organization does what the employer wants it to do
 - ☐ C. replacing a political party associated with the trade union by an employer
 - ☐ D. all of the above
-

Q3. Termination of a worker because of her trade union activities is not an example of interference in terms of Article 2 of Convention No. 98 because –

- ☐ A. does not involve an attempt by the employer to dominate a workers' organization
 - ☐ B. it is an example of anti-union discrimination
 - ☐ C. both of the above
-

Q4. An employer's conduct granting a benefit to representatives of one workers' organization, but not another may be inconsistent with Article 2 of Convention No. 98 where –

- ☐ A. the reason is to improve the ability of the representatives of the organization to represent their members
 - ☐ B. the object is to place the organization under the employer's control
 - ☐ C. the object is to dominate the other organization
 - ☐ D. none of the above
-

Q5. Termination of a worker because of his trade union activities would be an example of interference in terms of Article 2 of Convention No. 98 if –

- ☐ A. the object of the termination was to undermine workers' support for one organization in favour of another that is dominated by the employer
 - ☐ B. the employer wanted to set an example for other workers that the trade union supported by the terminated worker was not favoured by the employer
 - ☐ C. both of the above
-

Memory Quiz

Standard lecture 19: The obligation to promote collective bargaining

Q1. Which of the following would be consistent with the states' obligation to promote collective bargaining under Convention No. 98?

- ☐ A. regulate who has the right to collectively bargain
 - ☐ B. prohibit employer discrimination against workers for engaging in trade union activities
 - ☐ C. require the issuance of a warrant in any case involving the potential search by police of trade union premises
 - ☐ D. all of the above
-

Q2. Which group(s) of workers may be excluded from the right to collective bargaining, according to international labour standards?

- ☐ A. armed forces
 - ☐ B. police
 - ☐ C. civil servants engaged in the administration of the State
 - ☐ D. all of the above
-

Q3. Granting trade union representatives not employed in an enterprise access to the enterprise and its employees –

- ☐ A. is consistent with freedom of association principles and standards where the trade union representative is engaging in representational activities such as collective bargaining
 - ☐ B. would be consistent with freedom of association principles and standards where the trade union representative is engaging in representational activities such as collective bargaining as well as where the trade union representative is seeking to organize unorganized workers
 - ☐ C. is not required by international labour standards and it would not be inconsistent with them to deny access to trade union representatives even where that access is sought for representational purposes
-

Q4. The principle of promoting voluntary collective bargaining implies that government –

- ☐ A. should not impose compulsory arbitration in cases where the negotiating parties are at impasse
 - ☐ B. should not require government approval of results of negotiations in order for the collective bargain to come into force
 - ☐ C. both of the above
-

Q5. Creation, maintenance and operation of a public conciliation and mediation services –

- ☐ A. is consistent with the obligation to promote collective bargaining because it helps develop the confidence of the social partners in the collective bargaining process as a way of actually reaching an agreement on terms and conditions of employment
 - ☐ B. is required by the obligation to promote collective bargaining because it helps develop the confidence of the social partners in the collective bargaining process as a way of actually reaching an agreement on terms and conditions of employment
 - ☐ C. has nothing to do with the obligation to promote collective bargaining
-

Q6. National legislation requiring parties to bargain in good faith –

- ☐ A. is required by the obligation to promote collective bargaining because it helps assure that the social partners do not frustrate a bargaining process by blocking agreement for its own sake
 - ☐ B. is consistent with the obligation to promote collective bargaining because it helps assure that the social partners do not frustrate a bargaining process by blocking agreement for its own sake
 - ☐ C. has nothing to do with the obligation to promote collective bargaining
-

Memory Quiz

Standard lecture 20: Regular supervision

Q1. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) –

- ☐ A. is a tripartite committee of the International Labour Conference whose task it is to examine reports on ratified ILO conventions
 - ☐ B. is a tripartite committee of experts whose task it is to examine reports on ratified ILO conventions
 - ☐ C. is a committee of independent experts whose task it is to examine reports on ratified ILO conventions
 - ☐ D. makes binding decisions on the application of ILO conventions
-

Q2. The comments made by the CEACR –

- ☐ A. are the basis for consideration by the Conference Committee on the Application of Standards
 - ☐ B. take the form of published observations and requests sent directly to the countries involved
 - ☐ C. are not binding decisions
 - ☐ D. all of the above
-

Q3. Regular supervision of ratified ILO Conventions –

- ☐ A. is based on reports made by countries that have ratified the conventions concerned
 - ☐ B. is based on ad hoc allegations of non-compliance made by ILO member States
 - ☐ C. contributes to discussions in the Committee on the Application of Standards
 - ☐ D. all of the above
-

Q4. The ILO's tripartite structure is –

- ☐ A. reflected in the composition and work of the Conference Committee on the Application of Standards
 - ☐ B. involves all forms of non-governmental organizations
 - ☐ C. has the result of making ILO conventions flexible in their application and supervision
-

Q5. The ILO's Governing Body –

- ☐ A. decides the regular schedule for reporting on ratified ILO Conventions will be requested
 - ☐ B. appoints the members of the CEACR
 - ☐ C. both of the above
 - ☐ D. none of the above
-

Q6. The report of the CEACR –

- ☐ A. includes texts of published observations and the direct requests of the Committee
 - ☐ B. is received by the Conference Committee on the Application of Standards
 - ☐ C. is comprised of four parts
-

Q7. Ratification of an ILO convention –

- ☐ A. obliges the ratifying country to send reports on measures taken to apply the convention in law
 - ☐ B. obliges the ratifying country to send reports on measures taken to apply the convention in practice
 - ☐ C. obliges the ratifying country to take steps to apply the provisions of the convention in law
 - ☐ D. all of the above
-

Memory Quiz

Standard lecture 21: Special supervision – Freedom of association

Q1. In 1951, the ILO set up a Committee on Freedom of Association (CFA) –

- ☐ A. as a tripartite committee of the ILO Governing Body
 - ☐ B. for the purpose of examining allegations of violation of freedom of association principles
 - ☐ C. both the above
 - ☐ D. for the purpose of examining allegations of violations of freedom of association principles by an expert committee of the ILO Governing Body
-

Q2. Ratification of ILO conventions concerning freedom of association principles –

- ☐ A. is required for a finding that allegations made to the CFA involve government actions that are not consistent with the requirements of the ratified convention
 - ☐ B. is not required for the CFA to receive and decide on allegations concerning freedom of association principles made to it
 - ☐ C. implies regular supervision of application of the relevant convention by the Committee of Experts on the Application of Conventions and Recommendations
 - ☐ D. all of the above
-

Q3. The membership of the CFA –

- ☐ A. includes an independent expert
 - ☐ B. is made up of independent experts
 - ☐ C. changes with each case heard to assure that the panel has knowledge of the country involved
 - ☐ D. is decided by the International Labour Conference
-

Q4. Recommendations of the CFA –

- ☐ A. are legally binding on the government involved
 - ☐ B. are suggestions to the government involved for improving the respect of freedom of association principles
 - ☐ C. are flexible and subject to negotiation
-

Q5. The ILO's Governing Body –

- ☐ A. receives recommendations of the CFA
 - ☐ B. guides recommendations of the CFA
 - ☐ C. supplements recommendations of the CFA
-

Q6. The Committee of Experts on the Application of Conventions and Recommendations –

- ☐ A. can receive recommendations from the CFA
 - ☐ B. may follow up on recommendations of the CFA
 - ☐ C. may follow up on recommendations of the CFA if the country has ratified the freedom of association convention concerned
-

Memory Quiz

Standard lecture 22: Special supervision – Constitutional procedures:

Q1. Special procedures of supervision under the ILO Constitution –

- ☐ A. can be used only in respect of ratified ILO conventions, but not those on freedom of association as they have their own special system of supervision
 - ☐ B. can be used only in respect of allegations involving ILO conventions that both countries involved have ratified
 - ☐ C. can be used only in respect of *ad hoc* allegations of failure to implement ratified ILO conventions
-

Q2. Representations can be made only by –

- ☐ A. one government against another
 - ☐ B. industrial organizations of employers and workers
 - ☐ C. delegates to the International Labour Conference
 - ☐ D. all of the above
-

Q3. Complaints can be made by –

- ☐ A. one government against another, where both have ratified the ILO convention concerned
 - ☐ B. employers' and workers' delegates to the International Labour Conference
 - ☐ C. all of the above
-

Q4. A tripartite committee of the governing body –

- ☐ A. examines representations
 - ☐ B. examines complaints
 - ☐ C. examines both representations and complaints
-

Q5. A Commission of Inquiry is established –

- ☐ A. upon a complaint having been made
 - ☐ B. by decision of the ILO Governing Body
 - ☐ C. both of the above
-

Q6. If the government's response is not considered satisfactory –

- ☐ A. a Commission of Inquiry will be established
 - ☐ B. the Governing Body is entitled to publish the representation and the response
 - ☐ C. a three member tripartite committee will be established to examine the representation
-

Q7. When a country refuses to implement the recommendations of a Commission of Inquiry –

- ☐ A. the Governing Body can impose sanctions
 - ☐ B. the Governing Body can invoke article 33 of the ILO Constitution
 - ☐ C. the International Court of Justice must review the case
-

Q8. The Committee of Experts on the Application of Conventions and Recommendations –

- ☐ A. may follow up on recommendations resulting from representations and complaints
 - ☐ B. plays no role in special supervisory procedures
 - ☐ C. receives reports following representations and complaints and passes them to the Conference Committee on the Application of Standards
-

Memory Quiz

Standard lecture 23: Use of procedures in practice for freedom of association matters

Q1. Freedom of association is –

- ☐ A. one of the most important concerns to ILO constituents, and therefore is one of the most important areas of interest when it comes to the regular supervision of ratified standards
 - ☐ B. in application, often a matter involving questions of fact that are best treated by the Committee on Freedom of Association
 - ☐ C. one of the most important concerns to ILO constituents, and therefore has attached to it a system of supervision that does not require ratification of the ILO conventions involved
 - ☐ D. all of the above
-

Q2. In particular, in respect of standards on freedom of association and collective bargaining, ILO supervisory mechanisms are –

- ☐ A. expert in composition
 - ☐ B. used in tandem, to leverage optimum pressure on the government concerned
 - ☐ C. used in tandem, to assure timely handling of matters
 - ☐ D. adequate to the needs of the ILO constituents
-

Q3. Although principles concerning freedom of association and collective bargaining can be supervised in its absence, ratification of the conventions concerned –

- ☐ A. makes a heightened level of supervision possible
 - ☐ B. makes it possible to invoke supervisory procedures under the ILO Constitution
 - ☐ C. is a sovereign decision of ILO member States
 - ☐ D. all of the above
-

Q4. The conduct of police and military personnel (armed forces) –

- ☐ A. can be a direct subject of allegation of non-compliance with standards on freedom of association and collective bargaining as these persons are State actors
 - ☐ B. is explicitly excluded from the scope of Conventions Nos. 87 and 98
 - ☐ C. both of the above
-

Q5. The conduct of private actors, such as private security guards –

- ☐ A. can be a subject of allegation of non-compliance with standards on freedom of association and collective bargaining as the State has responsibility to assure the rights of persons within its territory from infringing acts of private actors
 - ☐ B. may be excluded from the scope of Conventions Nos. 87 and 98, as they stand in the shoes of police and armed forces
 - ☐ C. both of the above
-

Memory Quiz

Standard lecture 24: Impact of the procedures

Q1. Which of the following have made increased use of ILO supervisory mechanisms in recent years?

- ☐ A. businesses in the context of their own social responsibility initiatives
 - ☐ B. governments in the context of bilateral trade relations
 - ☐ C. workers' organizations in their campaigns for better working conditions
 - ☐ D. all of the above
-

Q2. ILO supervisory mechanisms are said to be –

- ☐ A. recent inventions in response to the challenges of globalization
 - ☐ B. unparalleled for their objectivity and independence
 - ☐ C. all of the above
-

Q3. The modern potency of the ILO's supervisory mechanisms –

- ☐ A. has enhanced the value of ILO standards
 - ☐ B. should give all actors involved in the system of international standards pause to consider their actions in the context of respect for international standards
 - ☐ C. should give all those making decisions and taking actions that have any impact on respect for international standards pause to consider their actions in this regard
-

Q4. The combination of tripartite and expert inputs in ILO supervisory mechanisms –

- ☐ A. is unique among international supervisory mechanisms
 - ☐ B. assures at very least a full and public airing of all sides of issues
 - ☐ C. both of the above
-

