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Room Document*: **1**

Methodology for SDG indicator 8.8.2 on labour rights

* This room document has not been formally edited

Proposed Methodology for SDG Indicator 8.8.2

SDG indicator 8.8.2: “Level of national compliance with labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status”

Contents

1. Background	2
2. Introduction	2
2.1. <i>Freedom of association and collective bargaining rights and their supervision</i>	2
2.2. <i>Measuring FACB rights</i>	3
3. Key premises	4
4. The evaluation criteria	5
5. Textual sources	13
6. Using the Delphi Method to Construct Evaluation Criteria Weights.....	14
7. Applying the weights, normalization and default scores	15
8. Amendments.....	17
9. Proposed Resolution of the 20 th . ICLS.....	19
References	20

1. Background

The process of developing SDG Indicators for the Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development was led by the UN Statistical Commission, through the Inter-Agency Expert Group on SDG (IAEG-SDG), a body of 28 member States. In early 2017, the IAEG on SDG proposed the final list of indicators covering the 17 goals and 169 targets of the Agenda. This was approved by the UN General Assembly in July 2017. In the case of Indicator 8.8.2, the IAEG-SDG requested that the methodology be discussed in the International Conference of Labour Statisticians (ICLS) in October 2018 in order to adopt an internationally-agreed methodology for this indicator. The custodianship of the indicator would be given to the ILO in view of its reliance on and use of ILO textual sources generated by various supervisory bodies of the organization. Pending the endorsement by the ICLS, the indicator is currently classified as Tier III indicator¹. The original indicator adopted by the UN General Assembly in July 2017 was based on a methodology that relies both on ILO and non-ILO sources.² Early in the process, however, member states of the IAEG-SDG agreed that for the purpose of the SDGs, only official sources should be used and therefore decided that the indicator should rely solely on ILO textual sources.

After the request of the IAEG-SDG in its March 2017 session of an endorsement by the ICLS, and with the purpose of attaining tripartite support for the methodology prior to the ICLS, the ILO and its constituents undertook a series of informal consultations, including three rounds of bipartite discussions in 2017 with representatives from Employers and Workers. Subsequently a tripartite consultation was convened in April 2018 with representatives from Governments, Employers and Workers. These consultations resulted in a number of amendments to the proposed indicator, which are reflected in this document. While some of these amendments refer to changes in the method per se, others refer to broader issues, such as how SDG indicator 8.8.2 will be reported. As such, the full set of amendments is presented in the final section of this paper. With these amendments, tripartite consensus was reached to submit the method for discussion and endorsement by the ICLS. The ICLS decision will be communicated to the IAEG-SDG to determine its adoption for the SDG global monitoring system.

2. Introduction

2.1. Freedom of association and collective bargaining rights and their supervision

The principles of freedom of association and collective bargaining (FACB) are and have long been at the core of the ILO's values. Their normative foundations have been established in the ILO's Constitution (1919), the ILO Declaration of Philadelphia (1944), in two key ILO Conventions (namely the *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)* and

¹ For the compilation of Metadata for the Proposed Global Indicators for the Review of the 2030 Agenda for Sustainable Development, see at: <https://unstats.un.org/sdgs/iaeg-sdgs/metadata-compilation/> (accessed on 08.08.2018)

² For the original methodology, see Kucera and Sari (forthcoming) at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/ilr.12084>; For data currently available, see at: <http://labour-rights-indicators.la.psu.edu/>

the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*) and the ILO Declaration on Fundamental Principles and Rights at Work (1998). They are also rights proclaimed in the Universal Declaration of Human Rights (1948) and other international and regional human rights instruments. With the adoption of the 1998 ILO Declaration, the promotion and realization of these fundamental principles and rights also became a constitutional obligation of all ILO member States.

FACB rights are considered as ‘enabling rights’, the realisation of which is necessary to promote and realise other rights at work. They provide an essential foundation for social dialogue, effective labour market governance and realization of decent work. They are vital in enabling employers and workers to associate and efficiently negotiate work relations, to ensure that both employers and workers have an equal voice in negotiations, and that the outcome is fair and equitable. As such they play a crucial role in the elaboration of economic and social policies that take on board the interests and needs of all actors in the economy. FACB rights are also salient because they are indispensable pillars of democracy as well as the process of democratization.

FACB rights, together with other international labour standards, are backed by the ILO’s unique supervisory system. The ILO regularly examines the application of standards in member States and highlights areas where those standards are violated and where they could be better applied. The ILO’s supervisory system includes two kinds of supervisory mechanisms: the regular system of supervision and the special procedures. The prior entails the examination of periodic reports submitted by member States on the measures taken to implement the provisions of ILO Conventions ratified by them. The special procedures, that is, representations, complaints and the special procedure for complaints regarding freedom of association through the Freedom of Association Committee, allow for the examination of violations on the basis of a submission of a representation or a complaint.

2.2. Measuring FACB rights

The ILO had previously developed a method for constructing country-level indicators of FACB rights, based on the coding of violations in textual sources (Kucera, 2002, 2007). In spite of its limitations, the method continues to be fairly-widely used among researchers. In their survey of related indicators, Peels and Develtere (2008) write:

From this overview, we conclude that so far the Kucera dataset on FACB [freedom of association and collective bargaining] rights is the best option if one wants to measure the policy involvement of trade unions. The main reasons are its extensive country coverage, its focus on FACB rights and more in particular on de facto FACB rights, and the high transparency in methodology (Peels and Develtere, 2008, p. 341).

In his survey of related indicators done for the US Department of Labor, Barenberg provides useful criticisms of this previous method and concludes:

In any event, Kucera’s methodology stands as the leading effort to measure compliance with freedom of association and collective bargaining rights...in light of social scientists’ use of the methodology. The *American Political Science Review*, as recently as November 2009, published an article by Greenhill et al., using Kucera’s methodology in modeling the trade-based diffusion of

labor rights (Greenhill, et al., 2009). For another use of Kucera's methodology by political scientists, see Mosley, et al. (2007) (Barenberg, 2010, p. 56).

In an effort to address some of the shortcomings of this previous method, the ILO developed an alternative coding scheme which provides the foundation for its new method of constructing labour rights indicators (Sari and Kucera, 2011). Among the most important improvements over the previous method are the following:

- Coding seven rather than just three textual sources and thus making full use of textual sources available through the ILO's supervisory system, as well as coding national legislation.
- Distinct evaluation criteria for violations of FACB rights in law (*de jure*) and in practice (*de facto*).
- Greater emphasis on violations of FACB rights regarding due process.
- Greater emphasis on violations of FACB rights committed against officials of workers' and employers' organizations.
- Eliminating catch-all evaluation criteria, such as "Other de jure acts of prohibitions, infringements and interference" or "Other de facto acts of prohibitions, infringements and interference".
- Coding violations against both workers and workers' organizations and employers and employer's organizations.
- Following from the prior points, an increase in the number of evaluation criteria from 37 to 180 (103 evaluation criteria for workers' organizations and 77 evaluation criteria for employers' organizations).
- More comprehensive definitions of what constitutes a violation of each of the evaluation criteria.
- The use of the Delphi method of expert consultation to derive weights for each of the evaluation criteria.
- Perhaps most fundamentally, whereas the previous method was the work of an economist, the new method was developed in equal measure by a labour lawyer and an economist working in close collaboration, with the coding done by labour lawyers rather than economists.

Regarding the main elements of the new method, the next sections of this paper address its key premises, the evaluation criteria, the textual sources coded, the use of the Delphi method to derive weights, and the rules for converting the coded information into normalized indicators ranging in value from 0 to 10 (best and worst possible scores, respectively).

3. Key premises

The key premises on which the indicators are based are: (i) definitional validity – the extent to which the evaluation criteria and their corresponding definitions accurately reflect the phenomena they are meant to measure; (ii) transparency – how readily a coded violation can be traced back to any given textual source; and (iii) inter-coder reliability – the extent to which different evaluators working independently are able to consistently arrive at the same results.

Definitional validity. As these are meant to be indicators of *international* FACB rights, the evaluation criteria and their corresponding definitions are directly based on the ILO Constitution, ILO Conventions No. 87 and 98 and the related body of comments of the ILO supervisory bodies.³ Given that the ILO supervisory system is also guided by these definitions, this facilitates the act of coding itself given the heavy reliance on ILO textual sources produced by the supervisory system.

Transparency. A key rationale for the large number of evaluation criteria is to eliminate catchall evaluation criteria for violations of FACB rights not elsewhere coded, that is, violations for which there are no explicit evaluation criteria. This addresses a criticism of the Kucera (2002, 2007) method and Sari and Kucera's (2011) prior work on these issues (Barenberg, 2010). More generally, the aim was to avoid pigeon-holing violations that are not of similar character or severity. This level of detail also facilitates the transparency of the method, in that very specific violations can be readily traced back to individual textual sources. This is made possible by the coding itself, in which violations are coded with the letters "a" through "g," with each letter standing for one of the seven textual sources coded, as discussed below.

Inter-coder reliability. The method is based on clear and comprehensive coding rules as well as definitions for each of the evaluation criteria with the aim of making the indicators reproducible. Inter-coder reliability was assessed in the process of training teams of lawyers (sequentially and independently of each other) to do the coding and in double-checking their coding, which resulted in a number of clarifications and refinements to the coding rules and definitions. This process led to the conclusion that the inter-coder reliability of the method depends first and foremost on the coders being sufficiently well-trained and in particular being sufficiently well-versed in the coding rules and definitions to be able to apply them consistently.

4. The evaluation criteria

Table 1 enumerates the evaluation criteria for workers and their organizations and Table 2 the evaluation criteria for employers and their organizations. As shown in these tables, the evaluation criteria are grouped into broad categories represented by Roman numerals, which are themselves split into violations of FACB rights in law and in practice. In other words, most of the evaluation criteria representing violations in law have a partner representing violations in practice, and vice versa.

- Violations in law refer to national legislation that is not in conformity with FACB rights as defined by the ILO as well as to actions taken on the basis of such legislation.
- Violations in practice refer to acts committed and in violation of the existing national legislation that is in conformity with FACB rights as defined by the ILO.⁴

³ The related body of comments of the ILO supervisory bodies are: *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (ILO, 2006); *Freedom of Association and Collective Bargaining: General Survey of the Reports on the Freedom of Association and the Right to Organise Convention (No. 87), 1948, and the Right to Organise and Collective Bargaining Convention (No. 98)* (ILO, 1994); *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008* (ILO, 2012).

⁴ In cases where there is no relevant national legislation, violations in practice refer to acts committed in violation of FACB rights as defined by the ILO.

Table 1: Evaluation Criteria, Delphi Method Results and Weights

Evaluation Criteria Workers and their organizations		Delphi method results				Weights (1 to 2)
		1st round		2nd round		
		Avg. (1 to 5)	Std. Dev.	Avg. (1 to 5)	Std. Dev.	
0	Establishment of a Commission of Inquiry under Article 26 of the ILO Constitution	NA	NA	NA	NA	2.00
Ia. Fundamental civil liberties in law						
1	Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities	4.92	0.27	5.00	0.00	2.00
2	Infringements of trade unionists' basic freedoms	4.46	0.76	4.71	0.47	1.93
3	Infringements of trade unions' and trade unionists' right to protection of their premises and property	3.85	0.83	3.93	0.62	1.73
4	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	3.68	1.09	3.64	0.63	1.66
5	Lack of guarantee of due process and/or justice re violations nos. 1-4	4.23	0.91	4.43	0.65	1.86
Ib. Fundamental civil liberties in practice						
6	Killing or disappearance of trade unionists in relation to their trade union activities	5.00	0.00	5.00	0.00	2.00
7	Committed against trade union officials re violation no. 6	4.92	0.27	5.00	0.00	2.00
8	Lack of guarantee of due process and/or justice re violation no.6	4.39	0.76	4.57	0.51	1.89
9	Other violent actions against trade unionists in relation to their trade union activities	4.16	0.70	4.29	0.47	1.82
10	Committed against trade union officials re violation no.9	4.16	0.70	4.29	0.47	1.82
11	Lack of guarantee of due process and/or justice re violation no.9	4.01	0.83	4.36	0.50	1.84
12	Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities	4.62	0.63	4.79	0.43	1.95
13	Committed against trade union officials re violation no.12	4.54	0.76	4.79	0.43	1.95
14	Lack of guarantee of due process and/or justice re violation no.12	4.23	0.83	4.50	0.52	1.88
15	Infringements of trade unionists' basic freedoms	4.23	0.73	4.29	0.47	1.82
16	Committed against trade union officials re violation no.15	4.23	0.73	4.29	0.61	1.82
17	Lack of guarantee of due process and/or justice re violation no.15	4.16	0.89	4.50	0.52	1.88
18	Attacks against trade unions' and trade unionists' premises and property	4.01	0.62	4.07	0.47	1.77
19	Committed against trade union officials re violation no.1	4.01	0.62	4.07	0.47	1.77
20	Lack of guarantee of due process and/or justice re violation no.18	4.08	0.77	4.07	0.62	1.77
21	Excessive prohibitions/restrictions on trade union rights in the event of state of emergency	3.68	1.02	3.79	0.43	1.70
22	Lack of guarantee of due process and/or justice re violation no.21	3.85	1.07	3.93	0.62	1.73

Ila. Right of workers to establish and join organizations in law						
23	General prohibition of the right to establish and join organizations	4.77	0.43	4.86	0.36	1.96
24	Exclusion of workers from the right to establish and join organizations	4.23	0.73	4.43	0.51	1.86
25	Previous authorization requirements	3.38	0.63	3.50	0.65	1.63
26	Restrictions on the freedom of choice of trade union structure and composition	3.46	0.76	3.50	0.65	1.63
27	Imposed trade union unity	3.83	0.93	3.71	0.61	1.68
28	Dissolution/suspension of legally functioning organizations	4.45	0.74	4.57	0.51	1.89
29	Provisions in law allowing for anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal	4.62	0.74	4.71	0.61	1.93
30	Lack of adequate legal guarantees against anti-union discriminatory measures	3.85	1.07	4.00	0.55	1.75
31	Provisions in law allowing for interference of employers and/or public authorities	4.08	0.83	4.21	0.70	1.80
32	Lack of adequate legal guarantees against acts of interference	3.62	1.01	3.79	0.70	1.70
33	Infringements of the right to establish and join federations/confederations/international organizations	3.85	0.77	3.93	0.73	1.73
34	Lack of guarantee of due process and/or justice re violations nos. 23-33	3.93	1.11	4.21	0.58	1.80
Ilb. Right of workers to establish and join organizations in practice						
35	General prohibition of the development of independent workers' organizations	4.54	0.65	4.71	0.61	1.93
36	Exclusion of workers from the right to establish and join organizations	4.39	0.51	4.43	0.51	1.86
37	Previous authorization requirements	3.77	0.70	3.79	0.43	1.70
38	Restrictions on the freedom of choice of trade union structure and composition	3.62	0.74	3.79	0.58	1.70
39	Imposed trade union unity	3.91	0.80	3.79	0.70	1.70
40	Dissolution/suspension of legally functioning organizations	4.58	0.52	4.79	0.43	1.95
41	Anti-union discriminatory measures in relation to hiring, during employment (e.g. transfers and downgrading) and dismissal	4.23	0.91	4.29	0.73	1.82
42	Committed against trade union officials re violation no. 41	4.39	0.65	4.57	0.51	1.89
43	Lack of guarantee of due process and/or justice re violation no. 41	3.93	1.18	4.21	0.58	1.80
44	Acts of interference of employers and/or public authorities	3.85	0.83	4.00	0.68	1.75
45	Lack of guarantee of due process and/or justice re violation no. 44	3.85	1.14	4.07	0.73	1.77
46	Infringements of the right to establish and join federations/confederations/international organizations	3.83	0.80	4.14	0.53	1.79
47	Lack of guarantee of due process and/or justice re violations nos. 35-46	3.93	1.11	4.07	0.62	1.77
IIla. Other union activities in law						

48	Infringements of the right to freely draw up constitutions and internal rules and administration	3.54	0.85	3.50	0.76	1.63
49	Infringements of the right to freely elect representatives	3.93	0.96	4.21	0.80	1.80
50	Infringements of the right to freely organize and control financial administration	3.46	0.94	3.36	0.93	1.59
51	Infringements of the right to freely organize activities/programmes	3.99	0.83	4.21	0.43	1.80
52	Prohibition of all political activities	3.62	1.34	3.93	0.92	1.73
53	Lack of guarantee of due process and/or justice re violations nos. 48-52	4.00	1.24	4.29	0.73	1.82
IIIb. Other union activities in practice						
54	Infringements of the right to freely draw up constitutions and internal rules and administration	3.92	0.77	4.00	0.55	1.75
55	Infringements of the right to freely elect representatives	4.16	0.70	4.29	0.61	1.82
56	Infringements of the right to freely organize and control financial administration	3.92	0.66	3.86	0.53	1.71
57	Infringements of the right to freely organize activities/programmes	4.07	0.96	4.14	0.77	1.79
58	Prohibition of all political activities	3.69	1.33	3.79	1.05	1.70
59	Lack of guarantee of due process and/or justice re violations nos. 54-58	3.85	1.17	4.14	0.86	1.79
IVa. Right to collective bargaining in law						
60	General prohibition of the right to collective bargaining	4.69	0.61	4.71	0.47	1.93
61	Insufficient promotion of collective bargaining	2.77	0.97	2.79	0.70	1.45
62	Exclusion of workers from the right to collective bargaining	4.15	0.77	4.29	0.47	1.82
63	Exclusion/restriction of subjects covered by collective bargaining	3.46	0.85	3.71	0.61	1.68
64	Compulsory arbitration accorded to collective bargaining	3.62	0.93	3.79	0.58	1.70
65	Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of trade unions entitled to collective bargaining	3.23	0.99	3.36	0.74	1.59
66	Acts of interference in collective bargaining	3.62	1.08	3.64	0.93	1.66
67	Violations of collective agreements	3.68	1.16	3.57	0.85	1.64
68	Infringements of the consultation with workers' organizations	3.46	1.02	3.43	0.94	1.61
69	Lack of guarantee of due process and/or justice re violations nos. 60-68	3.54	1.45	3.93	0.92	1.73
IVb. Right to collective bargaining in practice						
70	General prohibition of collective bargaining	4.54	0.65	4.57	0.51	1.89
71	Insufficient promotion of collective bargaining	2.92	0.83	2.79	0.70	1.45
72	Exclusion of workers from the right to collective bargaining	4.08	0.66	4.36	0.50	1.84
73	Exclusion/restriction of subjects covered by collective bargaining	3.38	0.50	3.36	0.50	1.59
74	Compulsory arbitration accorded to collective bargaining	3.69	0.93	3.71	0.47	1.68
75	Excessive requirements and/or lack of objective, pre-est and precise criteria for the determination/recognition of unions entitled to collective bargaining	3.62	0.84	3.57	0.76	1.64

76	Acts of interference in collective bargaining	3.77	0.97	3.57	0.85	1.64
77	Violations of collective agreements	4.07	0.88	3.93	0.73	1.73
78	Infringements of the consultation with workers' organizations	3.54	0.85	3.36	0.84	1.59
79	Lack of guarantee of due process and/or justice re violations nos. 70-78	3.85	1.23	3.86	0.86	1.71
Va. Right to strike in law						
80	General prohibition of the right to strike	4.62	0.74	4.79	0.43	1.95
81	Exclusion of workers from the right to strike	4.16	0.89	4.29	0.73	1.82
82	Exclusion/restriction based on the objective and/or type of the strike	2.77	1.25	2.86	0.95	1.46
83	Provisions in law allowing for the suspension and/or declaration of illegality of strikes by administrative authority	3.16	0.89	3.36	0.63	1.59
84	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	3.08	1.12	3.21	0.97	1.55
85	Infringements of the determination of minimum services	2.77	0.70	2.79	0.43	1.45
86	Compulsory arbitration accorded to strikes	3.54	1.22	3.57	0.94	1.64
87	Excessive prerequisites required for exercising the right to strike	3.54	0.85	3.86	0.53	1.71
88	Acts of interference during the course of strike action	3.31	1.07	3.43	0.65	1.61
89	Imposing excessive sanctions in case of legitimate strikes	4.08	1.07	4.29	0.73	1.82
90	Lack of guarantee of due process and/or justice re violations nos. 80-89	4.08	1.17	4.21	0.89	1.80
Vb. Right to strike in practice						
91	General prohibition of strikes	4.62	0.63	4.71	0.47	1.93
92	Exclusion of workers from the right to strike	4.16	0.58	4.29	0.61	1.82
93	Exclusion/restriction based on the objective and/or type of the strike	3.08	1.14	3.21	0.80	1.55
94	Suspension and/or declaration of illegality of strikes by administrative authority	3.77	0.70	3.79	0.58	1.70
95	Lack of compensatory guarantees accorded to lawful restrictions on the right to strike	3.17	0.90	3.36	0.74	1.59
96	Infringements of the determination of minimum services	3.08	0.73	3.07	0.62	1.52
97	Compulsory arbitration accorded to strikes	3.54	0.76	3.43	0.65	1.61
98	Excessive prerequisites required for exercising the right to strike	3.54	0.76	3.71	0.61	1.68
99	Acts of interference during the course of strike action	3.54	0.94	3.57	0.76	1.64
100	Imposing excessive sanctions in case of legitimate strike:	4.08	0.92	4.29	0.61	1.82
101	Committed against trade union officials re violation no. 100	4.08	0.92	4.21	0.70	1.80
102	Lack of guarantee of due process and/or justice re violations nos. 91-101	3.93	1.11	4.07	0.83	1.77
Average						
		3.90	0.85	4.01	0.62	1.75

Table 2: Evaluation Criteria, Delphi Method Results and Weights

Evaluation Criteria - Employers and their organizations	Delphi method results				Weights (1 to 2)
	1st round		2nd round		
	Avg. (1 to 5)	Std. Dev.	Avg. (1 to 5)	Std. Dev.	
0 Establishment of a Commission of Inquiry under Article 26 of the ILO Constitution	NA	NA	NA	NA	2.00
Ia. Fundamental civil liberties in law					
1 Arrest, detention, imprisonment, charging and fining of members of employers' organizations	4.92	0.27	5.00	0.00	2.00
2 Infringements of members of employers' organizations' basic freedoms	4.46	0.76	4.71	0.47	1.93
3 Infringements of employers' organizations' right to protection of their premises and property	3.85	0.83	3.93	0.62	1.73
4 Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	3.68	1.09	3.64	0.63	1.66
5 Lack of guarantee of due process and/or justice re violations nos. 1-4	4.23	0.91	4.43	0.65	1.86
Ib. Fundamental civil liberties in practice					
6 Killing or disappearance of members of employers' organizations in relation to their related activities	5.00	0.00	5.00	0.00	2.00
7 Committed against officials of employers' organizations re violation no. 6	4.92	0.27	5.00	0.00	2.00
8 Lack of guarantee of due process and/or justice re violation no.6	4.39	0.76	4.57	0.51	1.89
9 Other violent actions against members of employers' organizations in relation to their related activities	4.16	0.70	4.29	0.47	1.82
10 Committed against officials of employers' organizations re violation no.9	4.16	0.70	4.29	0.47	1.82
11 Lack of guarantee of due process and/or justice re violation no.9	4.01	0.83	4.36	0.50	1.84
12 Arrest, detention, imprisonment, charging and fining of members of employers' organizations in relation to their related activities	4.62	0.63	4.79	0.43	1.95
13 Committed against officials of employers' organizations re violation no.12	4.54	0.76	4.79	0.43	1.95
14 Lack of guarantee of due process and/or justice re violation no.12	4.23	0.83	4.50	0.52	1.88
15 Infringements of members of employers' organizations' basic freedoms	4.23	0.73	4.29	0.47	1.82
16 Committed against officials of employers' organizations re violation no.15	4.23	0.73	4.29	0.61	1.82
17 Lack of guarantee of due process and/or justice re violation no.15	4.16	0.89	4.50	0.52	1.88
18 Attacks against employers' organizations' premises and property	4.01	0.62	4.07	0.47	1.77
19 Committed against officials of employers' organizations re violation no.18	4.01	0.62	4.07	0.47	1.77
20 Lack of guarantee of due process and/or justice re violation no.18	4.08	0.77	4.07	0.62	1.77
21 Excessive prohibitions/restrictions on employers' organizations' rights in the event of state of emergency	3.68	1.02	3.79	0.43	1.70
22 Lack of guarantee of due process and/or justice re violation no.21	3.85	1.07	3.93	0.62	1.73
IIa. Right of employers to establish and join organizations in law					
23 General prohibition of the right to establish and join organizations	4.77	0.43	4.86	0.36	1.96
24 Exclusion of other employers from the right to establish and join organizations	4.23	0.73	4.43	0.51	1.86
25 Previous authorization requirements	3.38	0.63	3.50	0.65	1.63

26 Restrictions on the freedom of choice of employers' organizations' structure and composition	3.46	0.76	3.50	0.65	1.63
27 Imposed unity of employers' organizations	3.83	0.93	3.71	0.61	1.68
28 Dissolution/suspension of legally functioning organizations	4.45	0.74	4.57	0.51	1.89
29 Provisions in law allowing for interference of workers' organizations and/or public authorities	4.08	0.83	4.21	0.70	1.80
30 Lack of adequate legal guarantees against acts of interference	3.62	1.01	3.79	0.70	1.70
31 Infringements of the right to establish and join federations/confederations/international organizations	3.85	0.77	3.93	0.73	1.73
32 Lack of guarantee of due process and/or justice re violations nos. 23-31	3.93	1.11	4.21	0.58	1.80
IIb. Right of employers to establish and join organizations in practice					
33 General prohibition of the development of independent employers' organizations	4.54	0.65	4.71	0.61	1.93
34 Exclusion of employers from the right to establish and join organizations	4.39	0.51	4.43	0.51	1.86
35 Previous authorization requirements	3.77	0.70	3.79	0.43	1.70
36 Restrictions on the freedom of choice of employers' organizations' structure and composition	3.62	0.74	3.79	0.58	1.70
37 Imposed unity of employers' organizations	3.91	0.80	3.79	0.70	1.70
38 Dissolution/suspension of legally functioning organizations	4.58	0.52	4.79	0.43	1.95
39 Acts of interference of workers' organizations and/or public authorities	3.85	0.83	4.00	0.68	1.75
40 Lack of guarantee of due process and/or justice re violation no. 39	3.85	1.14	4.07	0.73	1.77
41 Infringements of the right to establish and join federations/confederations/international organizations	3.83	0.80	4.14	0.53	1.79
42 Lack of guarantee of due process and/or justice re violations nos. 33-41	3.93	1.11	4.07	0.62	1.77
IIIa. Other activities of employers' organizations in law					
43 Infringements of the right to freely draw up constitutions and internal rules and administration	3.54	0.85	3.50	0.76	1.63
44 Infringements of the right to freely elect representatives	3.93	0.96	4.21	0.80	1.80
45 Infringements of the right to freely organize and control financial administration	3.46	0.94	3.36	0.93	1.59
46 Infringements of the right to freely organize activities/programmes	3.99	0.83	4.21	0.43	1.80
47 Prohibition of all political activities	3.62	1.34	3.93	0.92	1.73
48 Prohibition of employers' access to their premises during industrial action	3.31	1.07	3.43	0.65	1.61
49 Lack of guarantee of due process and/or justice re violations nos. 43-48	4.00	1.24	4.29	0.73	1.82
IIIb. Other activities of employers' organizations in practice					
50 Infringements of the right to freely draw up constitutions and internal rules and administration	3.92	0.77	4.00	0.55	1.75
51 Infringements of the right to freely elect representatives	4.16	0.70	4.29	0.61	1.82
52 Infringements of the right to freely organize and control financial administration	3.92	0.66	3.86	0.53	1.71
53 Infringements of the right to freely organize activities/programmes	4.07	0.96	4.14	0.77	1.79
54 Prohibition of all political activities	3.69	1.33	3.79	1.05	1.70
55 Prohibition of employers' access to their premises during industrial action	3.54	0.94	3.57	0.76	1.64
56 Lack of guarantee of due process and/or justice re violations nos. 50-55	3.85	1.17	4.14	0.86	1.79
IVa. Right to collective bargaining in law					
57 General prohibition of the right to collective bargaining	4.69	0.61	4.71	0.47	1.93
58 Insufficient promotion of collective bargaining	2.77	0.97	2.79	0.70	1.45
59 Exclusion of employers from the right to collective bargaining	4.15	0.77	4.29	0.47	1.82
60 Exclusion/restriction of subjects covered by collective bargaining	3.46	0.85	3.71	0.61	1.68

61 Compulsory arbitration accorded to collective bargaining	3.62	0.93	3.79	0.58	1.70
62 Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of employers' organizations entitled to collective bargaining	3.23	0.99	3.36	0.74	1.59
63 Acts of interference in collective bargaining	3.62	1.08	3.64	0.93	1.66
64 Violations of collective agreements	3.68	1.16	3.57	0.85	1.64
65 Infringements of the consultation with employers' organizations	3.46	1.02	3.43	0.94	1.61
66 Lack of guarantee of due process and/or justice re violations nos. 57-65	3.54	1.45	3.93	0.92	1.73
IVb. Right to collective bargaining in practice					
67 General prohibition of collective bargaining	4.54	0.65	4.57	0.51	1.89
68 Insufficient promotion of collective bargaining	2.92	0.83	2.79	0.70	1.45
69 Exclusion of employers from the right to collective bargaining	4.08	0.66	4.36	0.50	1.84
70 Exclusion/restriction of subjects covered by collective bargaining	3.38	0.50	3.36	0.50	1.59
71 Compulsory arbitration accorded to collective bargaining	3.69	0.93	3.71	0.47	1.68
72 Excessive requirements and/or lack of objective, pre-established and precise criteria for the determination/recognition of employers' organizations entitled to collective bargaining	3.62	0.84	3.57	0.76	1.64
73 Acts of interference in collective bargaining	3.77	0.97	3.57	0.85	1.64
74 Violations of collective agreements	4.07	0.88	3.93	0.73	1.73
75 Infringements of the consultation with employers' organizations	3.54	0.85	3.36	0.84	1.59
76 Lack of guarantee of due process and/or justice re violations nos. 67-75	3.85	1.23	3.86	0.86	1.71
Average	3.95	0.83	4.05	0.61	1.76

The rough doubling of evaluation criteria by splitting them into violations in law and in practice makes their sizeable number more tractable for coders. Such branching relationships among the evaluation criteria extend to two additional types of evaluation criteria addressing “Lack of guarantee of due process and/or justice” and “Violations committed against trade union officials” and “Violations committed against officials of employers’ organizations”.

The evaluation criteria “Lack of guarantee of due process and/or justice” are incorporated into the main categories of evaluation criteria as the last-listed evaluation criteria within each, with the exception of category on “Fundamental civil liberties in practice”. This is based on the premise that the exercise of FACB rights depends on their effective protection defined in terms of fair and sufficiently prompt trials by an independent and impartial judiciary. Under the category of “Fundamental civil liberties in practice,” on the other hand, these evaluation criteria are attached to each of the six more specific evaluation criteria. This emphasis on fundamental civil liberties in practice is meant to reflect the emphasis of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA), in particular their view that a free and independent movement of workers and employers (and their organizations) can develop only to the extent that fundamental human rights are respected and where in the event of violations, measures are taken to identify, bring to trial and convict the guilty parties (ILO, 2006, Paras. 33 and 51). In addition, these criteria are attached to “Anti-union discriminatory measures” and “Acts of interference of employers and/or public authorities” and “Acts of interference of workers’ organizations and/or public authorities” under the category of “Right to establish and join organizations in practice”, motivated by Article 3 of ILO Convention 98

which states that “Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise...”.

The evaluation criteria “Violations committed against trade union officials” and “Violations committed against officials of employers’ organizations” are attached to the specific evaluation criteria under the category of “Fundamental civil liberties in practice” (the case of ‘excessive prohibitions/restriction in the event of state of emergency’ does not apply here). In addition, this criterion is attached to “Anti-union discriminatory measures” under the category of “Right of workers to establish and join organizations in practice” as well as to “Use of excessive sanctions in case of legitimate and peaceful strikes” under the category of “Right to strike in practice”. The emphasis on officials is motivated by the view that violations against them are particularly damaging to the exercise of FACB rights.

In keeping with the definition for SDG indicator 8.8.2, while all violations of FACB rights based sex or migrant status will be coded and embodied in the indicator, the textual information on which this coding is based will also be made available in a separate document in an effort to highlight such violations.

5. Textual sources

The present method makes use of six ILO textual sources: *Reports of the Committee of Experts on the Application of Conventions and Recommendations*; *Reports of the Conference Committee on the Application of Standards*; *Country Baselines Under the ILO Declaration Annual Review*; *Representations under Article 24 of the ILO Constitution*; *Complaints under Article 26 of the ILO Constitution* and *Report on the Committee on Freedom of Association*.

The method also codes relevant national legislation for non-ratifying countries. The coding of national legislation is particularly important to offset information asymmetries between ratifying and non-ratifying countries as regards FACB rights in law. Note that ratifying countries are defined as those that have ratified both Conventions 87 and 98, in which case its national legislation is not coded at present. Non-ratifying countries, on the other hand, fall into two categories, those that have ratified neither 87 nor 98 and those that have ratified only one of these Conventions. If a country has ratified only 87, its national legislation is coded for violations pertaining to 98, as violations under 87 fall under the remit of the ILO’s Committee of Experts as well as Committee on the Application of Standards. Similarly, if a country has ratified only 98, its national legislation is coded for violations pertaining to 87. Note that for federal states, only federal-level legislation is coded.

The seven textual sources are recapitulated in Table 3, along with the associated letters by which they are coded as well as whether these sources pertain to ratifying countries, non-ratifying countries, or both.

Table 3: Textual Sources

	Coding letter	Ratifying countries (Both C. 87 & C. 98)	Non-ratifying countries
<i>Reports of the Committee of Experts on the Application of Conventions and Recommendations</i>	a	X	
<i>Reports of the Conference Committee on the Application of Standards</i>	b	X	
<i>Country Baselines under the ILO Declaration Annual Review</i>	c		X
<i>Representations under Article 24 of the ILO Constitution</i>	d	X	
<i>Complaints under Article 26 of the ILO Constitution</i>	e	X	
<i>Reports of the Committee on Freedom of Association</i>	f	X	X
National legislation	g		X

6. Using the Delphi Method to Construct Evaluation Criteria Weights

The application of the Delphi method involved two rounds of surveys conducted via email of internationally-recognized experts in labour law having knowledge of the ILO's supervisory system and particular knowledge of FACB rights as defined by the ILO. Regional representation was another consideration. Experts remained anonymous with respect to each other throughout the process. Initial invitations to participate were sent to 37 experts, of whom 18 initially agreed to participate and of whom 14 went through both survey rounds. Of these 14 experts, 13 were lawyers and one a political scientist, with five based in Western Europe, one in Eastern Europe, three in the US, two in Latin America, two in Asia and one in Africa.

Experts were asked to provide ratings of 1, 2, 3, 4 or 5 for the evaluation criteria for workers' rights which are then applied to the comparable evaluation criteria for employers' rights in response to the following question:⁵

The Survey asks one overriding question: On a scale of 1 to 5, how would you rate the evaluation criteria in terms of the severity of their impact on the development of a free and independent trade union movement, voluntary collective bargaining and the exercise of trade union rights? (With 1 indicating least severe and 5 indicating most severe.) The severity of each of these violations depends, of course, on how frequently it occurs. For the purposes of responding to the survey, however, we ask experts to consider each violation in its own right independently of the frequency with which it might occur. Put in other words, the weights are meant to compare any single violation represented by a given evaluation criteria against any single violation represented by other evaluation criteria.

⁵ Given their expertise on these issues, experts were not provided with the full definitions for each of the evaluation criteria, but rather with a set of clarifying footnotes (available on request to statistics@ilo.org). Experts were also invited to make overall comments as well as comments on each of the evaluation criteria.

After having received the first round of replies, the average first round ratings among the experts for each evaluation criteria were sent back to each of the experts alongside their first round ratings. Experts were invited to make changes, if they wished, to their first round ratings. Final ratings used to construct the weights were the average second round ratings among the experts for each evaluation criteria.

Main results of the two rounds of surveys are shown in Tables 1 and 2.⁶ Consistent with the logic of the Delphi method, there was considerable convergence in the experts' ratings in the second round. As for variation in final ratings across the evaluation criteria, these ranged in value from 2.79 ("Insufficient promotion of collective bargaining" in law; "Insufficient promotion of collective bargaining" in practice; and "Infringements of the determination of minimum services" in law) to 5 ("Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities" in law; "Killing or disappearance of trade unionists in relation to their trade union activities" in practice; "Killing or disappearance of trade unionists in relation to their trade union activities when committed against trade union officials" in practice). The average value among these final ratings is correspondingly high, at 4.03. From the point of view of the experts, that is, all of the evaluation criteria represent FACB rights violations of at least moderate severity. For the purposes of constructing indicators, it is worth noting that the less variation there is in ratings among the evaluation criteria, the closer weighted indicators are to equally-weighted indicators.

These ratings are not the weights themselves, however. The ratings can be converted into weights using different ranges of minimum and maximum weighting and rating values. For the purposes of the LR indicator, minimum and maximum weighting values range from 1 to 2, based on *possible* minimum and maximum rating values ranging from 1 to 5, shown in the last column of Table 1.

7. Applying the weights, normalization and default scores

The raw coding uses the letters "a" through "g" (again, with each letter corresponding to one of the seven textual sources) to represent coded violations of FACB rights for each evaluation criteria, yielding a column of 180 cells for any given country and year. In order to apply the weights, any cell containing one or more letters is assigned a value of 1 and any blank cell for which there are no coded violations is assigned a value of 0, creating a binary coding column. The number of letters in a cell does not affect the construction of the binary coding column, in order to avoid double-counting given that the textual sources commonly reference each other. The cells of the column of weights is then multiplied by corresponding cells of the binary coding column, and summing across the cells of the resultant column yields a weighted non-normalized score for any given country and year. A hypothetical example is provided in Table 4, showing only those evaluation criteria with coded violations. In this example, 24 evaluation criteria are coded. Applying the weights yields a non-normalized score of 42.3 and a normalized score of 4.5, based on the rules describe next.

⁶ The survey addressed only the evaluation criteria shown in Table 1 for workers and their organizations, but the same weights derived from the survey responses were applied to the analogous evaluation criteria for employers and their organizations shown in Table 2.

Table 4: Hypothetical Example of Coding and Indicator Construction (for a Single Country and Year)

Evaluation Criteria		Textual coding	Binary coding	Weights	Binary coding x Weights
Ia. Fundamental civil liberties in law					
2	Infringements of trade unionists' basic freedoms	i	1	1.93	1.93
Ib. Fundamental civil liberties in practice					
6	Killing or disappearance of trade unionists in relation to their trade union activities	fhi	1	2.00	2.00
9	Other violent actions against trade unionists in relation to their trade union activities	fhi	1	1.82	1.82
12	Arrest, detention, imprisonment, charging and fining of trade unionists in relation to their trade union activities	hi	1	1.95	1.95
IIa. Right of workers to establish and join organizations in law					
25	Exclusion of other workers from the right to establish and join organizations	ahi	1	1.86	1.86
31	Lack of adequate legal guarantees against anti-union discriminatory measures	a	1	1.75	1.75
34	Infringements of the right to establish and join federations/confederations/international organizations	abhi	1	1.73	1.73
IIb. Right of workers to establish and join organizations in practice					
39	Previous authorization requirements	fhi	1	1.70	1.70
44	Committed against trade union officials re violation no. 43	hi	1	1.89	1.89
45	Lack of guarantee of due process and/or justice re violation no. 43	hi	1	1.80	1.80
IIIa. Other union activities in law					
51	Infringements of the right to freely elect representatives	ah	1	1.80	1.80
52	Infringements of the right to freely organize and control financial administration	ahi	1	1.59	1.59
54	Prohibition of all political activities	ahi	1	1.73	1.73
IIIb. Other union activities in practice					
58	Infringements of the right to freely organize and control financial administration	fhi	1	1.71	1.71
61	Lack of guarantee of due process and/or justice re violations nos. 56-60	f	1	1.79	1.79
IVa. Right to collective bargaining in law					
69	Acts of interference in collective bargaining	a	1	1.66	1.66
76	Exclusion of other workers from the right to collective bargaining	abhi	1	1.84	1.84
80	Acts of interference in collective bargaining	hi	1	1.64	1.64
Va. Right to strike in law					
87	Exclusion/restriction based on the objective and/or type of the strike	af	1	1.46	1.46
88	Provisions in law allowing for the suspension and/or declaration of illegality of strikes by administrative authority	ahi	1	1.59	1.59
94	Imposing excessive sanctions in case of legitimate strikes	afhi	1	1.82	1.82
Vb. Right to strike in practice					
105	Acts of interference during the course of strike action	hi	1	1.64	1.64
107	Committed against trade union officials re violation no. 106	h	1	1.80	1.80
108	Lack of guarantee of due process and/or justice re violations nos. 96-107	h	1	1.77	1.77
Sum (non-normalized score)			24		42.29
Normalized score (0 = best, 10 = worst)¹					4.45

1. Note that the weighted non-normalized score is capped at 95, as described in the text.

To normalize the indicators over time, weighted non-normalized scores were calculated for the roughly one-third of countries having the most coded violations of FACB rights of workers and their organizations for the years 2000, 2005, 2009 and 2012. This is based on the number of violations of FACB rights of workers and their organizations because of their greater frequency of being reported in ILO textual sources. The highest weighted non-normalized score for several countries hovered around 80. As such, 95 is assigned as the maximum weighted non-normalized score for the overall LR indicator, roughly equal to one-half the hypothetically possible maximum weighted non-normalized score. On this basis, the non-normalized score for any given country and year is normalized to range in value from 0 to 10, the best and worst possible scores respectively. In the future, if any country should receive a non-normalized score of greater than 95, this will be capped at 95, yielding a normalized score of 10.⁷

In addition, the method applies the notion that general prohibitions in law imply general prohibitions in practice (though not vice versa). In terms of coding, this means that – both for workers and employers -the direct coding of “General prohibition of the right to establish and join organizations” in law automatically triggers the coding of “General prohibition of the development of independent organizations” in practice; the direct coding of “General prohibition of the right to collective bargaining” in law automatically triggers the coding of the “General prohibition of collective bargaining” in practice ; and, finally, for workers, the direct coding of “General prohibition of the right to strike” in law automatically triggers the coding of the “General prohibition of strikes” in practice . Given that the general prohibition of the development of independent organizations implies the general prohibition of collective bargaining (though not vice versa), similar coding rules apply.

In addition to the above normalization rules, the worst possible score of 10 is given for all-encompassing violations of FACB rights, that is, for “General prohibition of the right to establish and join organizations” in law, “General prohibition of the development of independent organizations” in practice, “General prohibition of the right to collective bargaining” in law, and “General prohibition of collective bargaining” in practice.

8. Amendments

Based on consultation with the tripartite constituents, the following amendments should be noted:

The following chapeau text will be prominently presented in the reporting of SDG indicator 8.8.2: *“SDG indicator 8.8.2 seeks to measure the level of national compliance with fundamental labour rights (freedom of association and collective bargaining). It is based on six International Labour Organization (ILO) supervisory body textual sources and also on national legislation. National law is not enacted for the purpose of generating a statistical indicator of compliance with fundamental rights, nor were any of the ILO textual sources created for this purpose. Indicator 8.8.2 is compiled from these sources and its use does not constitute a waiver of the respective ILO Constituents’ divergent points of view on the sources’ conclusions.”*

⁷ The formula is thus: $(x*10/95)$, where x = the weighted non-normalized score for a given country and year and is capped at 95.

The reporting of SDG indicator 8.8.2 will highlight differences between ratifying and non-ratifying countries by adding two columns alongside SDG indicator 8.8.2. The first column will indicate whether a country has ratified Convention No. 87 and the second column will indicate whether a country has ratified Convention No. 98. The columns will be explained with the following text: *“SDG indicator 8.8.2 is not intended as a tool to compare compliance among ILO member States. It should specifically be noted that reporting obligations of an ILO member State to the ILO’s supervisory system and thus ILO textual sources are different for ratifying and non-ratifying ILO member States.”*

Consistent with Tables 1 and 2 in this paper, issues of non-compliance with respect to evaluation criteria concerning the exclusion of workers and employers in EPZs from freedom of association and collective bargaining rights will not be coded separately but rather coded under evaluation criteria concerning the general exclusion of workers and employers.

An additional evaluation criterion has been added to code cases brought under Article 26 of the ILO’s Constitution before the ILO’s Commission of Inquiry and given the maximum weight of 2.0 (evaluation criteria 0 in Tables 1 and 2). This evaluation criterion will be coded first for the year when the decision is made for the establishment of the procedure and then for every subsequent year until the final report is adopted and published.

Based on the identification of violations in ILO supervisory body textual sources, violations related to the prohibition of employers’ access to their premises during industrial action will be coded under new separate evaluation criteria that specifically address such violations (evaluation criteria 48 and 55 in Table 2 for violations in law and in practice, respectively).

Regarding possible contradictions among textual sources, for the purposes of SDG indicator 8.8.2 the following coding rule will be applied: *“If contradictory evidence is found within the same source or if an explicitly stated contradictory assessment is found among different sources – based solely on the comments, conclusions and recommendations of the ILO supervisory system – the information will be excluded from coding.”*

The coding of national legislation will be done in close collaboration with the International Labour Office to assure that it is done in a manner consistent with the ILO’s supervisory system. In addition, countries may also make available information on national legislation when reporting on this indicator through Voluntary National Reports or national reporting platforms or any other national reports. Note that in order to avoid creating an additional supervisory mechanism, coding of national legislation for ratifying member States will not be undertaken for SDG indicator 8.8.2 as this is under the remit of the ILO’s supervisory system.

SDG indicator 8.8.2 will not be reported for countries for which ILO supervisory body textual sources do not provide sufficient amount of information in a specific year. The Office will consult with the social partners regarding which countries should be dropped from reporting for these reasons. At the April 2018 consultation, the social partners expressed different views on the merits of dropping countries from reporting based on a comparison with an externally-produced indicator. To reconcile these different views, the Office proposes continuing with this comparison to provide the starting point for the ILO Department of Statistics to consult internal and external sources and the tripartite constituents.

The Office will coordinate a tripartite committee to consider further improvements to the method. The mandate of the committee is not to vet the SDG 8.8.2 indicators prior to their release, but to consider improvements that could be implemented in 2020. It should be emphasized that the primary purpose of the SDG indicators is to establish benchmarks for the consistent monitoring of progress and that the SDG process does not allow for methodological revisions for the construction of SDG indicators prior to 2020 nor on an ad hoc basis, as this would undermine the primary purpose of these indicators.

9. Proposed Resolution of the 20th. ICLS

The 20th International Conference of Labour Statisticians,

Recognising the need to have an internationally agreed methodology to measure indicator SDG 8.8.2 on labour rights consistent with the Resolution adopted by the United Nations General Assembly on Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development (A/RES/71/313), Annex taken on 6 July 2017,

Taking note that the Inter-Agency Expert Group on Sustainable Development Goals (IAEG-SDG) in its session of March 2017 requested to have an agreed methodology endorsed by the ICLS in its present session,

Having reviewed the proposed methodology presented by the ILO, recognizing that its constituents have been consulted through preparatory meetings;

Noting that a dedicated Committee within the ICLS considered the proposed methodology based on a detailed technical document with amendments resulting from these consultations;

Recommends that the Office:

- (a) Adopts the reviewed methodology as amended for indicator 8.8.2 and communicates the endorsement of the ICLS to the IAEG-SDG for its consideration and action.
- (b) Communicates on behalf of the ICLS the confirmation that the ILO should be the custodian agency for this indicator, given that ILO textual sources are its statistical foundation;
- (c) Makes the necessary internal arrangements to undertake the annual production and reporting of the indicator to the U.N.

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