
METHODOLOGICAL FRAMEWORK

Qualitative information

The basis and source for the ITUC Global Rights Index is qualitative information compiled and published in the Survey (survey.ituc-csi.org).

The Survey provides information on violations of the rights to freedom of association, collective bargaining and strike as defined by ILO Conventions, in particular ILO Convention Nos. 87¹ and 98,² as well as jurisprudence developed by the ILO supervisory mechanisms.³ It assesses compliance of national legislation with international standards and exposes practices by giving specific case examples of trade union rights violations which have occurred in a particular country.

Legal researchers analyse the most recent legislation for each country in order to identify sections that are in violation of trade union rights. First, legislation regulating the rights to freedom of association, collective bargaining and the right to strike is identified, including sector specific laws where relevant. Sections which are in violation of trade union rights are extracted and documented with the references. While in some cases there might be brief clarifications as to why the relevant section is considered to constitute a violation, the analysis is purely factual and based on existing international labour standards.

Violations in practice are identified through questionnaires sent to the 325 ITUC affiliates in 161 countries and territories representing 176 million workers as well as the Global Union Federations. The questionnaire aims to cover as many aspects of the right to freedom of association, the right to collective bargaining and the right to strike as possible. At the same time, it was important that the questions were streamlined to ensure they are straightforward and accessible for workers. After three pilot stages, we decided on 34 questions which were translated into three languages (English, French and Spanish) and including brief guidelines where needed.

The ITUC sends the questionnaire in an electronic and word format to its affiliates asking them to share it broadly with their membership. Furthermore, five regional meetings are conducted with regional human and trade union rights coordinators where the questionnaire is disseminated, explained and then filled out. In addition, the ITUC contacts unions directly by phone and email when it becomes aware of violations to confirm relevant facts. Whenever a violation is reported, affiliates are requested to indicate the date, victim/union, description of the events and complaints lodged at national and international level. Violations are only recorded if unions can provide relevant facts. Anecdotal references and mere statement of opinions are avoided thereby increasing the reliability and comparability of the information. All information is consolidated, summarised and documented.

The legal analysis and the case reports on violations in practice are published on the website of the Survey. Moreover, the ITUC launches a print publication annually highlighting serious violations and trends based on the evidence in the Survey. This means that the sources of information on which the country ratings are based are clear and highly transparent.

Country scores

The first step in assigning a country rating is to translate the qualitative surveyed information on violations into country scores through a coding process.

Qualitative information is coded against 97 indicators which are derived from ILO Conventions and jurisprudence and are grouped into five categories⁴: Fundamental civil liberties; the right to establish or join unions; trade union activities; the right to collective bargaining; and the right to strike. The large number of indicators was chosen in order to accurately reflect complex and multifaceted types of violation that can occur at country level.

The indicators address violations in law and in practice. Legal guarantees are essential for the protection of workers' rights. The fact that there are no reports on violations in practice with respect to a particular country does not mean that rights are fully protected and guaranteed. Workers might have shied away from even attempting to exercise certain rights because the legislation does not protect them against victimisation or even imposes sanctions for exercising

their rights. At the same time, comprehensive legislative frameworks do not automatically result in effective real-world enforcement. Thus, compliance with core labour standards is crucial when it comes to law and practice- in fact the two are interdependent.

All 97 indicators take an equally weighed binary form (YES/NO). This means that the qualitative information for each country is read against the list of 97 indicators and whenever the information corresponds to an indicator it is coded as "YES" and assigned a score of 1. One of the main advantages of equally weighed indicators is that this method reduces the normative subjectivity of the analyst who carries out the coding.⁵ Gradations are difficult to apply since disentangling concepts proves to be imprecise and leaves wide discretion to the analysts which could lead to serious biases. Moreover, each indicator refers to universally binding obligations, meaning that companies and governments must comply with each indicator fully and equally. As a result, each indicator must be of equal conceptual significance with any other indicator.

The fact that international labour standards highlight the importance of protecting union leaders and representatives⁶ and point at the danger of widespread and systematic violations⁷ was incorporated in the definition of the list of indicators. As a result, certain indicators are of gradational nature even though they are binary-coded. For example, indicator (4) on the murder and/or disappearance is followed by indicator (5) which addresses whether the murder and/or disappearance concerned a trade union leader. Indicator (6) addresses whether murders and/or disappearances are widespread and/or systematic.

Moreover, ILO jurisprudence has repeatedly made clear that excessively restrictive legislation or legislation that does not sufficiently protect workers can render rights inoperative in practice.⁸ This is particularly the case if the legislation is prohibitive and even imposes heavy sanctions for exercising legitimate rights, or if the legislation is too prescriptive and thereby excessively restricts the space in which workers can exercise their rights. For the coding rules, it means that if a violation of a right in law is coded for the above mentioned reason this leads to automatic coding of the same right under a violation in practice. However, if the cause of the violation in law is the fact that the legislation gives too wide discretionary powers to the government and/or employers, the issue is only coded as violation in law. The violation of the respective right is

then only coded as a violation in practice if there is evidence that the government and/or companies have availed themselves of this legislation in practice.

The worst possible score is assigned to a country by default, if the vast majority of workers effectively do not have access to any rights.⁹

Conversion into country rating

After the coding of information that is available on a country is completed the number of indicators for which violations have been coded is added up in order to arrive at a final country score. The rating of a country then depends on which cluster the final score falls under. Upon completion of the pilot phase of the project which included five stages based on 20 countries from various parts of the world, we established 5 clusters in total with ratings from 1 to 5. A country is assigned the rating 5+ by default, if the rule of law has completely broken down.¹⁰ It is impossible for workers to enjoy collective labour rights when violations of human rights and humanitarian law are systematic and the government/authority lacks institutional capacities to protect their rights. The assignment of the rating 5+ is grounded in qualitative language adopted in resolutions of multilateral organisations pointing at the seriousness of these attacks and the lack of accountability posing a threat to peace and security.

The objective was to construct meaningful ratings each representing a distinct and relevant normative scale concerning compliance with collective labour rights. The highest possible score a country could potentially get is 97. As pointed above, the list of indicators was defined on the basis that every possible type of violations could be accounted for and not on the suitability as a scale for the final ratings. It is highly unlikely a country would commit all possible types of violations. Therefore, the cut-off points for the tabulation of the ratings are data-driven, i.e. the country score of the worst performing country is used as the highest data point and the best performing country is used as the lowest data point in order to determine the cut-off points for each rating cluster. In 2014, the highest score reached by any country was 43 and the lowest score reached was 0 so each rating has to represent a scale of 9 in order to rate all countries.

Endnotes

¹ ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO)

² ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312243:NO)

³ Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (2006); ILO General Survey on Freedom of Association and Collective Bargaining (1994)

⁴ The list of indicators and coding rules are adapted from: Dora Sari and David Kucera, ILO Working Paper. 99, Measuring progress towards the application of freedom of association and collective bargaining rights: A tabular presentation of the findings of the ILO supervisory system (2011)

⁵ See for other indexes which have used this strategy: J. Botero, S. Djankov, R. La Porta, F. Lopez-de Silanes and A. Shleifer (2004), the Regulation of Labour, Quarterly Journal of Economics, Vol. 199, pp. 1340-1382; S. Deakin and P. Sankar, Assessing the Long-Run Economic Impact of Labour Law Systems: A theoretical reappraisal and analysis of New Time Series Data, Industrial Relations Journal, Vol. 39, pp. 453-487

⁶ ILO Digest on Freedom of Association: paras. 46; 48; 58; 62; 67; 68; 73; 74; 79; 120; 123; 128; 157; 176; 342; 343; 507; 511; 524; 662; 749; 751; 790; 799-812; 826; 831; 865; 1107.

⁷ ILO Digest on Freedom of Association: paras. 68; 173; 459; 528; 825; 1044.

⁸ ILO Digest on Freedom of Association: paras. 149; 272; 370; 501; 549; 791; 861.

⁹ ILO Convention 87, Art. 2: Workers have the right to freedom of association “without distinction whatsoever.”

¹⁰ ILO Digest on Freedom of Association with respect to the breakdown of the rule of law: paras. 32-34