

Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Target 8.8: Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment

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

Institutional information

Organization:

International Labour Organization (ILO)

Concepts and definitions

Definition:

The indicator will cover all ILO member states seeking to measure the level of national compliance with fundamental rights (freedom of association and collective bargaining, FACB) based on six international ILO supervisory body textual sources and also on national legislation. It is based on a coding process starting from coding the sources relevant to the year evaluated, coding the non-compliance identified in the collected sources and by converting the coding into indicators.

Rationale:

The indicator has a range from 0 to 10. The lower the number, the better the country scores in compliance with labour rights (FACB), the higher the worse. After coding 1 an observed non-compliance and 0 as no observed non-compliance, the identification of a number of evaluation criteria for which non-compliance is observed (weighted and non-weighted), using a Delphi method, weights are defined and then a normalization process is in place to set the range between 0 and 10, 10 being assigned to countries with all-encompassing prohibition of Freedom of association and Collective Bargaining (FACB) rights.

Concepts:

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 normative foundations. These 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 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.

In an effort to address some of the shortcomings of previous methods, 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 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).

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.¹ 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. 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.

Methodology

Computation Method:

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

¹ 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).

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.²

Table 1: Evaluation Criteria, Delphi Method Results and Weights

Evaluation Criteria		Delphi method results				Weights (1 to 2)
		1st round		2nd round		
		Avg. (1 to 5)	Std. Dev.	Avg. (1 to 5)	Std. Dev.	
Workers and their organizations						
0	Establishment of a Commission of Inquiry under Article 26 of the ILO Constitution	NA	NA	NA	NA	2.00
la. 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
lb. 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

²In 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.

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.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 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
IIIa. 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, established and precise criteria for the determination/recognition of trade 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 strikes	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
la. 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
lb. 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
Ila. 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' stucture 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
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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
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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
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34 Exclusion of employers from the right to establish and join organizations	4.39	0.51	4.43	0.51	1.86
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35 Previous authorization requirements	3.77	0.70	3.79	0.43	1.70
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36 Restrictions on the freedom of choice of employers' organizations' stucture and composition	3.62	0.74	3.79	0.58	1.70
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37 Imposed unity of employers' organizations	3.91	0.80	3.79	0.70	1.70
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38 Dissolution/suspension of legally functioning organizations	4.58	0.52	4.79	0.43	1.95
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39 Acts of interference of workers' organizations and/or public authorities	3.85	0.83	4.00	0.68	1.75
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40 Lack of guarantee of due process and/or justice re violation no. 39	3.85	1.14	4.07	0.73	1.77
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41 Infringements of the right to establish and join federations/confederations/international organizations	3.83	0.80	4.14	0.53	1.79
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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
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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
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44 Infringements of the right to freely elect representatives	3.93	0.96	4.21	0.80	1.80
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45 Infringements of the right to freely organize and control financial administration	3.46	0.94	3.36	0.93	1.59
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46 Infringements of the right to freely organize activities/programmes	3.99	0.83	4.21	0.43	1.80
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47 Prohibition of all political activities	3.62	1.34	3.93	0.92	1.73
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48 Prohibition of employers' access to their premises during industrial action	3.31	1.07	3.43	0.65	1.61
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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
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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
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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
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55 Prohibition of employers' access to their premises during industrial action	3.54	0.94	3.57	0.76	1.64
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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
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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
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58 Insufficient promotion of collective bargaining	2.77	0.97	2.79	0.70	1.45
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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
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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
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IVb. Right to collective bargaining in practice

67 General prohibition of collective bargaining	4.54	0.65	4.57	0.51	1.89
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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.

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 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

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.

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.

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
Ila. 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
Ilb. 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
Illa. 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
Illb. 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 10.³

³ 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.

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.

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 county 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 above, 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.

Disaggregation:

The disaggregation by sex and migrant status is possible although it will take more time to have the information available and will require more resources to re-code all violations taking special care of these categories

Treatment of missing values and discrepancies:

- [At country level](#)

This indicator 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 ILO 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.

- [At regional and global levels](#)

As the coding will be available for all member states, except in the cases of not feasible coding described in the previous paragraph, it will be possible to calculate averages for regional and global levels

Time series:

The indicator will be available starting 2015 onwards. 2017 and 2018 will be first calculated and then special work should be undertaken to code backwards to 2015-2016 since the previous methodology was refined by the 20th ICLS resolution II.

Calendar

NA.

Data Availability

The available data from the pilot exercise is available for 178 countries for 2016. The data is available in the attached excel file and it covers all regions. It is based on the described process of coding and normalization but does not include the codification of violation to employers' rights, which will be done in the final version of the indicator. The sources to code and produce this indicator are available in the ILO from its textual sources, needing a special effort of re-coding and coding by 5 independent teams of coders.

Time series:

Time series are not yet available but the data sources are available and the ILO, subject to available resources, will undertake a process of codification and normalization as from 2015 onwards.

Data collection:

Compilation and coding for 2017 will be starting early 2019. 2018 data will be released in 2020. Subject to resources, codification for 2015-2016 will be starting soon.

Data release:

It is expected to be reported by the end of each year.

Data providers

The data will be provided by the ILO textual sources described in the methodological material. The textual sources are: *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.*

These reports are widely known and disseminated to all ILO member states and in most of the cases are carried out with active participation of national social partners (governments, employers and workers). In some cases, like the Committee of Experts, it is an independent body hosted by the ILO assuring impartiality and objectivity in its judgements.

The ILO will undertake the task of coding and validating it through its supervisory mechanisms. A chapeau will be included in the annual report of this indicator as agreed with the tripartite constituents of the ILO during the ICLS. It will read:

“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.”

Data compilers

ILO

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Related indicators

This indicator links with 8.8.1 & 8.b.1; 16.2.2; 16.10.1 ; 16.a.1; 16.b.1