

Pamphlet No. 10

MINORITIES AND THE INTERNATIONAL LABOUR ORGANIZATION

Summary: The complaint procedures developed by the ILO for the protection of human rights may be used directly only by a government, a trade union or employers' association, or by a delegate to the International Labour Conference. However, many of the ILO's non-discrimination norms and its promotional, oversight, and technical assistance activities may be of interest to minorities. This pamphlet outlines some the relevant standards and ILO initiatives.

What is the ILO (International Labour Organization)?

The ILO was established in 1919 by the Treaty of Versailles. It was the only element of the League of Nations to survive the Second World War, and it became the first specialized agency of the United Nations system in 1945. The tripartite structure of the ILO (governments, employers, and workers) is unique among intergovernmental organizations, and the ILO is the only organization in which governments do not have all the votes.

The ILO is composed of three organs: the **General Conference** of representatives of member states (the "International Labour Conference"); the **Governing Body**; and the **International Labour Office**. The Conference and the Governing Body are composed half of government representatives and half of representatives of employers and workers of member States. The presence and voting power of these non-governmental elements give the ILO a unique perspective on the problems before it and offer possibilities for dealing with practical problems facing ILO members.

One of the ILO's principal activities is adopting and implementing international labour standards. The ILO adopts conventions and recommendations at the annual International Labour Conference, requires governments to examine whether conventions should be ratified, and closely supervises and criticizes how countries apply the conventions they choose to ratify. There are now approximately 7,000 ratifications of the nearly 200 conventions adopted under the auspices of the ILO.

Supervision of ILO standards is carried out mainly by two bodies, the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations.

The **Committee of Experts on the Application of Conventions and Recommendations** is composed of 20 independent experts on labour law and social problems, from all the major social and economic systems and all parts of the world. It meets annually to examine reports received from governments, which are obligated to report periodically on how they are applying the conventions they have ratified. Workers' and employers' organizations in countries that have ratified conventions may also submit comments on how conventions are applied in practice, thus offering a valuable supplement to governments' reports. The Committee normally

reports publicly on its comments and observations concerning specific conventions and specific countries.

The **Conference Committee on the Application of Conventions and Recommendations** is the next level of supervision. Established each year by the International Labour Conference, it reflects the ILO's tripartite structure of governments and of workers' and employers' representatives. On the basis of the report of the Committee of Experts, the Conference Committee selects a number of especially important or persistent cases and asks the governments concerned to appear before it and explain the situations on which the Committee of Experts has commented. At the end of each session, the Conference Committee reports to the full Conference on the problems governments are encountering in fulfilling their obligations under the ILO Constitution or in complying with conventions they have ratified. The Conference Committee's report is published in the *Proceedings of the International Labour Conference* each year, along with the Conference's discussion of the Committee's report.

ILO Standards

The ILO has a number of tools for the protection of minorities, even though there is no single minorities convention or programme in the Organization. The main tool is the use of ILO standards relevant to the protection of minorities, implemented by technical assistance and cooperation and through work with other international organizations. In most cases, the ILO focuses on the world of work and working conditions, but it also examines issues concerning migrant workers and indigenous and tribal peoples.

Non-discrimination

ILO action for the elimination of discrimination in employment and occupation is based on the ILO Constitution, which commits the ILO to fight against discrimination based on race, creed, or sex. Its principal convention in this area is the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which is supplemented by a number of other ILO standards. Convention No. 111 prohibits discrimination in employment and occupation on the grounds of race, color, religion, and national origin, among other statuses.

Convention No. 111 is one of the eight fundamental conventions of the ILO. As such, it is among the targets of a ratification campaign instituted by the Director-General in 1995. As of April 2001, it had been ratified by 147 countries.

As with all other Conventions for which it is responsible, the ILO carries out intense supervisory activities related to this Convention, and the ILO Committee of Experts on the Application of Conventions and Recommendations draws attention to problems in the implementation of the Convention in its annual report. Many of these comments concern discrimination on the basis of race, religion, and national origin. They highlight gaps in protection by member States, urge them to close these gaps, and recognize progress when it is achieved. Concerned members of minority groups should investigate the possibility of submitting information to the Committee either directly or through a trade union or employers' organization.

Indigenous and Tribal Peoples

Although they are distinct from national, religious, ethnic, or linguistic minorities, indigenous and tribal peoples have been of particular concern to the ILO for decades. The ILO is responsible for the only two international conventions relating directly to these peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which essentially replaced the 1957 Convention No. 107. Going beyond the world of work as such, much of the ILO's supervisory work with respect to these two conventions relates to the effects of racial discrimination or exclusion from the same opportunities for development that are available to the rest of the national population. The ILO's goal is to ensure equality of opportunity and treatment in all spheres of life, while not sacrificing the ability of these peoples to retain their own ways of life, cultures, etc.

Migrant Workers

The ILO has a considerable programme of activities directed towards migrant workers and participates in UN deliberations on this subject. In this field as well, the ILO is responsible for the only two international treaties in force on the subject as of mid-2001: the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). These Conventions have been ratified by 41 and 18 countries, respectively. (The 1990 UN Convention on the Protection of All Migrant Workers and Their Families is not yet in force.)

In 1999, the International Labour Conference recommended that these Conventions be revised, given the low number of ratifications and the existence of a UN convention on the same subject. In the meantime, however, they offer the only international legal protection for these workers.

Supervisory activities are supplemented by research and information-gathering by the ILO. Thus, in addition to its regular supervisory work, the ILO has held a number of meetings related to the subject of racial discrimination. For instance, an inter-regional seminar on Achieving Equality for Migrant and Minority Workers, covering fourteen countries in Europe and North America, was convened in 2000.

Other Standards

A number of other ILO standards are relevant to the protection of minorities, largely because all ILO standards must be applied in a context of non-discrimination and equal protection for all. For example, the Committee of Experts considered that a convention on labour statistics could not be properly applied by apartheid South Africa as long as it did not provide for labour statistics on both white and other workers (a problem happily now behind us in that country).

Another convention that can have a direct impact on the situation of minorities is the Forced Labour Convention, 1930 (No. 29), which prohibits all forms of forced or compulsory labour. Minorities are more subject to the abuse of fundamental human rights than are others. The Abolition of Forced Labour Convention, 1957 (No. 105) is even more precise in providing that forced labour may not be used for the purposes of racial discrimination. In addition, minority children are specially protected under the Worst Forms of Child Labour Convention, 1999 (No. 182).

If minorities are particularly vulnerable to discrimination, the most vulnerable members of those populations may be subject to multiple discrimination. Women, children, disabled persons, and other groups within minorities are all covered by various ILO standards and activities, and both national and international action should take account of their heightened vulnerability.

Declaration of Fundamental Principles and Rights at Work

A new tool adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work declares that "all Members [of the ILO], even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principle concerning the fundamental rights which are the subject of those Conventions, [including] the elimination of discrimination in respect of employment and occupation." Countries that have not ratified the relevant conventions nevertheless have to report to the ILO annually on how they are attempting to realize the principles in the Declaration.

Each year, the ILO issues a "global report" on one of the four rights covered in the Declaration. The first global report on discrimination will be in 2003, and will cover protection of minorities as well as discrimination on other bases. A programme of action on discrimination is being drawn up to focus ILO and other technical assistance on this problem.

Technical Assistance

The International Labour Office (the ILO Secretariat) provides technical assistance and advisory services to member States that wish to ratify Conventions or to apply them more fully. The ILO frequently provides advice in the form of convening national, regional, and sub-regional tripartite seminars on the ratification and application of all of the conventions referred to earlier. Technical cooperation projects to establish affirmative action policies and implementing mechanisms concerning race, among other criteria, have been carried out in some countries. Assistance is regularly given to countries in all regions of the world that wish to benefit from the ILO's experience in this issue.

The ILO also has a wide range of activities to promote and protect the rights of indigenous and tribal peoples around the world. In addition to the ILO's regular work of assisting countries that wish to ratify and apply conventions, externally-financed projects promote Convention No. 169 and help build cooperative associations to assist indigenous income-generating activities. Other ILO technical cooperation activities support the commercialization of traditional occupations and other fields.

Work with Other International Organizations

The ILO works closely with the UN treaty bodies (see Pamphlet No. 4) in examining national situations that affect the rights of minorities, lending its specialized knowledge and the results of its own detailed supervision to the work of these bodies. The ILO also works with the Commission on Human Rights, its Sub-Commission, and their working groups on subjects including minorities, indigenous populations, and contemporary forms of slavery (see Pamphlets Nos. 2 and 3).

The ILO also cooperates with the United Nations Development Programme, The World Bank, the regional development banks and other international organizations.

Complaints Procedures

Among other aspects of labour rights, the ILO's complaints procedures concern problems of discrimination on the basis of ethnicity that affect working life. Of the various mechanisms established by the ILO, the most relevant to discrimination against minorities is the possibility of filing **representations** against a State under Article 24 of the ILO Constitution. A representation will be considered if: it originates from "an industrial association of employers or workers"; it concerns a member State of the ILO; it refers to a convention ratified by the State against which it is made; and it alleges that the State "has failed to secure in some respect the effective observance within its jurisdiction of the said Convention."

After a representation has been received, the substance of the allegations is examined by a special tripartite committee appointed by the Governing Body from among its members. The committee communicates with the filing organization, asking for any additional information it may wish to submit, and with the government concerned. When all the information from both parties has been received, or if no reply is received within the set time limit, the committee makes its recommendations to the Governing Body.

If the Governing Body accepts the arguments made by the government, the procedure is closed and the allegations and replies may be published. If the Governing Body decides that the government's explanations are not satisfactory, it may decide to publish the representation and the government's reply, along with its own discussion of the case, to give the case wider publicity than simply filing it in its records. This was the case, for example, with a 1977 representation by the International Confederation of Free Trade Unions that alleged Czechoslovakia did not observe the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The decision of the Governing Body that it is or is not satisfied with the government's explanations amounts to a finding of violation of or compliance with the Convention. Whether or not the Governing Body decides that it is satisfied with the government's explanations, the questions raised in the representation are normally followed up by the ILO's regular supervisory machinery, i.e., the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations.

A number of representations have been filed under Convention No. 111 in recent years related to the kind of ethnic discrimination that is often the basis of conflict, both within member States and among them. While peacekeeping, as such, is not part of the ILO's mandate, the ILO is founded on the recognition that "there can be no lasting peace without social justice", and the absence of discrimination is essential to social justice.

The Role of NGOs

Direct access to the ILO and its supervisory machinery occurs through trade unions, employers' organizations, or governments. Where minority workers are discriminated against or otherwise are subject to human rights violations in the context of employment, they should seek to interest either a national or international organization to take up their cause with the ILO.

Further Information and Contacts

All communications to the ILO should be addressed to:
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A detailed description of the ILO complaint procedures may be found in H. Hannum, *Guide to International Human Rights Practice* (1999), and on the ILO's web site (www.ilo.org), under "international labor standards". The ILOLEX database contains the complete texts of all of the ILO conventions, in English, French, and Spanish: <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>. The human rights home page of the ILO is www.ilo.org/public/english/50normes/index.htm.