



Education International
Internationale de l'Éducation
Internacional de la Educación

Education International Trade Union Rights Manual

A practical guide for unions
defending their rights

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Introduction

Trade union rights are human rights and are considered as such and protected by human rights treaties. The Universal Declaration of Human Rights (Appendix A), the International Covenant on Economic, Social, and Cultural Rights, the European Union Charter of Fundamental Rights and Freedoms, and other agreements cover freedom of assembly and of association, workers' rights to collective bargaining and action, and workers' rights to information and consultation. Through such international and regional instruments, states have committed themselves to ensuring that trade union rights can be exercised. In such initiatives, a free and vibrant trade union movement has come to be recognized as a pillar of democracy and an indicator of a nation's progressive development.

Purpose of this manual

The international legal framework provides that states must protect trade union rights by creating a system for complaints about violations, adjudication, remedies, and punishment. For example, a government must effectively protect and enforce mechanisms that deter employers (including the government itself for public servants) from acting against those men and women who try to establish worker organizations. And yet, teacher organizations and trade unions in general are facing increasingly sophisticated attempts by governments to restrict their operations through a wide variety of legal, administrative, and informal measures.

Fortunately, trade union rights are well protected in international legislation. International supervisory mechanisms are available to be used when a country fails to live up to its commitments guaranteeing workers' rights. This manual describes how teacher organizations can appeal to these mechanisms when states seek to hamper or prevent teacher unions from working on behalf of their members. It is a practical resource book on the rights of teacher organizations to exist, operate, and represent their members. The focus is on organizational rights and actions, not on the options open to individual activists or on the filing of grievances on behalf of individual members. In certain cases human rights bodies allow only individuals and not organizations to lodge complaints, and this manual shows how teacher organizations can be requested to assist their members in such an undertaking.

The strength of unionism lies in the capacity of trade union organizations to translate the rights into a living reality for their members. Some Education International member organizations are fully aware of their trade union rights and regularly provide

information on related events and issues in their countries. However, in many places, teachers and their representatives suffer unnoticed. As EI cannot provide extensive face-to-face training to more than 400 member organizations worldwide, we have put together this manual to provide basic information to member organizations about their rights and on ways to convince states to implement trade union rights for teacher organizations and to spread best practices. At the same time, the manual helps the reader understand both the impressive number and competence of international organizations devoted to protecting their rights as workers and union members and the role of EI as the leading international advocate for teaching personnel.

The goals of Education International

Education International is the world's largest global union federation. It is the voice of 30 million teachers and education workers from pre-school to university. EI's 401 member organizations operate in 172 countries and territories. Its role can be expressed in terms of its principal aims:

Education and social goals

- ✎ to promote the right to education for all persons in the world, without discrimination through the establishment and protection of open, publicly funded and controlled educational systems, and academic and cultural institutions, aimed at the democratic, social, cultural and economic development of society and the preparation of every citizen for active and responsible participation in society;



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- ❖ to promote the political, social and economic conditions that are required for the realization of the right to education in all nations;
- ❖ to foster a concept of education directed towards international understanding and good will, the safeguarding of peace and freedom, and respect for human dignity;
- ❖ to promote peace, democracy, social justice and equality through the development of education and the collective strength of teachers and education employees;
- ❖ to combat all forms of racism and of bias or discrimination in education and society due to gender, marital status, sexual orientation, age, religion, political opinion, social or economic status or national or ethnic origin;
- ❖ to give particular attention to developing the leadership role and involvement of women in society.

Professional goals

- ❖ to enhance the conditions of work and terms of employment of teachers and education employees, and to promote their professional status in general, through support for member organizations;
- ❖ to support and promote the professional freedoms of teachers and education employees and the right of their organizations to participate in the formulation and implementation of educational policies;
- ❖ to further the cause of organizations of teachers and education employees;
- ❖ to build solidarity and mutual cooperation among member organizations;
- ❖ to encourage through their organizations closer relationships among teachers and education employees in all countries and at all levels of education;
- ❖ to promote and to assist in the development of independent and democratic organizations of teachers and education employees, particularly in those countries where political, social, economic, or other conditions impede the application of their human and trade union rights, the advancement of their terms and working conditions, and the improvement of educational services.

Union movement goals

- ❖ to promote unity among all independent and democratic trade unions both within the educational sector and with other sectors; and thereby contribute to the further development of the international trade union movement;
- ❖ to seek and maintain recognition of the trade union rights of workers in general and of teachers and education employees in particular.

Under the heading of human rights, EI promotes education rights, children's rights (including the fight against child labour), academic freedom, equality and non-discrimination on the basis of gender, national or ethnic origins, sexual orientation or identity, disability, age, religious beliefs, and political beliefs. Under the heading of trade union rights, EI encourages the ratification and implementation of international conventions on the protection of core labour standards: the freedom to form and join unions, the freedom to strike, and right of collective bargaining.

Defending the trade union rights of teacher organizations

In the area of focus of this manual – the defence of the trade union rights of teacher organizations – EI assists its member organizations to become aware of their rights, to adopt strategies to extend the scope of trade union rights in their country (through lobbying for the ratification by their country of internationally binding instruments such as human rights treaties and ILO conventions), and to make their country accountable in respecting core labour rights.

When member organizations are confronted with violations of their trade union rights, EI's first objective is to restore a dialogue at the national level. By extending international support to its member organizations and by putting a spotlight on a country, EI sometimes succeeds in restoring a dialogue between authorities and teacher organizations. EI has also helped member organizations to structure themselves in networks to allow a rapid exchange of information and efficient trade union response and support.

When all avenues for dialogue with the authorities have failed, EI supports its members through protest letters, Urgent



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In 1998, the International Labour Organization adopted a Declaration on Fundamental Principles and Rights at Work which declares as follows: all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote, and to realize ... the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

Action Appeals, investigation or support missions, audiences with embassies, networking, and eventually complaints with intergovernmental bodies such as the ILO, the Committee of Experts, CEART, the Council of Europe, and other agencies described in this manual.

In addition to the permanent flow of emergency requests for support from member organizations, EI focuses on countries which present long-term and/or systematic challenges through defence actions and organizational support.

EI also collaborates with ACTRAV (the Workers Bureau of the ILO), with the International Trade Union Confederation (ITUC), with other Global Union Federations, and with Human Rights groups such as Amnesty International, Human Rights Watch, the International Federation of Human Rights (FIDH), and others.

The effectiveness of international mechanisms

The international supervisory mechanisms are used when countries are not living up to the commitments they have made in ratifying international and regional treaties guaranteeing workers' rights. In some countries, international treaties take precedence over national law; in other countries a specific law may be required to give a ratified international treaty the force of a national law. In either case, states that have ratified or acceded to an international treaty

usually must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

What does this statement mean for teacher unions who find themselves in extreme situations? These include the following: harassment, detention, and sometimes murder of trade union members, refusal of union registration, favouritism of yellow unions, refusal to negotiate, interference in union activities, suspension or disruption of union statutory meetings, occupation of union offices, professional sanctions against teacher union leaders, refusal to enter into collective bargaining, compulsory arbitration, imposition of contract, violent suspension of strikes, and so on.

Unfortunately, international supervisory mechanisms do not supply a quick fix. International complaint procedures are time-consuming, because they involve consultation mechanisms of all parties (including governments, because these bodies are all intergovernmental). The existence of teacher organizations cannot always survive a confrontation with the authorities for the two or three years it usually takes for international procedures to be followed through.

However, a resort to international mechanisms can be used by teacher organizations to put pressure on governments to stop anti-union practices, enter into negotiations, and respect their international commitments. Governments hate to be put in the spotlight. Few governments accept with equanimity the prospect of being summoned by international institutions, such as the ILO, to respond to serious allegations by their own citizens.

International sanctions for trade union rights violations do not hurt countries economically nor pose serious political threats. But they do hurt the pride of countries and constitute a potential embarrassment. The name-and-shame tactic is sometimes very powerful. In recent years, only Zimbabwe, under the rule of President Robert Mugabe, and, in a contrasting category, Australia under the conservative government of John Howard, have been willing to contest the status and judgment of the international institutions. Most countries challenged by the ILO formally agree to respect trade union rights. It is then up to worker and teacher organizations to help persuade the governments to fulfil their guarantees or to seek redress in national law.



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Trade union rights

International and regional instruments protect a number of key trade union rights.

Right to freedom of association

Individuals have the right to “associate” together to form and join workers organizations to promote their common economic and social interests. Some states have attempted to curtail the activity of teacher organizations by imposing reprisals on individuals for joining an organization of their choice or by forcing them to join a state-approved association.

In a number of countries, categories of workers are excluded from enjoying freedom of association by national legislation. Teachers as civil servants may be forbidden to form trade unions and allowed only to form professional associations. This is contrary to the provisions of ILO Convention 87. The ILO Committee of Experts has repeatedly stressed that the only exceptions authorized by Convention 87 are members of the police and armed forces. Reacting to country reports submitted by Education International, the ILO Committee of Experts stressed that “teachers in public schools should be provided with a legal framework to exercise their right to form trade unions.”

However, governments in Lesotho, Eritrea, and Ethiopia forbid teachers employed in the public sector to form or join trade unions. China, India, and Iran have not ratified Conventions 87 and 98 and strictly curtail the rights of millions of teachers. Though Pakistan ratified Convention 87, teacher organizations can only register as professional associations. In Thailand, civil servants can join associations but without the right to bargain collectively. In Bangladesh, under the Industrial Relations Ordinance, workers in the public sector (including teachers) are forbidden to form trade unions.

When teachers employed by the state are deprived of trade union rights and are, at best, only guaranteed the right to form professional associations but prohibited from collective bargaining, their governments are guilty of restricting the rights of those they directly employ.

Some countries also have sought to hamper the ability of individuals to form associations by imposing cumbersome and

partial registration processes, by imposing high minimum levels of membership, by classing worker organizations as political associations, and by denying legal personhood, which is a prerequisite for day-to-day operations and for the ability to enter contractual relationships. The latter, which gives an association the right to open a bank account, to hire employees, and to rent or own premises, is essential to effective operations. Refusal to grant it can therefore effectively undermine the right of association. Yet the relationship between forming an association and obtaining legal person status is not a straightforward one. Wide disparities exist in national law. The ILO provides strong support for the view that the right to legal personhood is inherent in the right to freedom of association and has stated that it is one of the conditions which enable a union to function legally.

The right of association also covers the right of national worker organizations to interact broadly, such as to be members of national and international federations. In some countries the authorities have sought to hinder external contacts. Participation by trade unionists in international trade union meetings is a fundamental trade union right, which governments at times violate by such measures as withholding travel documents.

The right to freedom of association also covers the right of worker organizations to draw up their own rules and constitutions, elect their representatives, decide on programmes and plans, and undertake legitimate and peaceful activities. Teacher organizations in a number of countries have suffered hostile and intrusive interference by government in their internal governance. In various cases, the ILO has considered that the removal by the government of trade union leaders from office is a serious infringement of the free exercise of trade union rights. Suspension of legal personhood and dissolution of a union should be subject to appeal to an independent and impartial judicial tribunal. Eviction from premises and loss of government-paid jobs have also been considered as hostile intervention by the government in union internal affairs.

Right to peaceful assembly

The right to peaceful assembly should not be denied except in situations of national security or public safety. The right to violent assembly is not upheld. However, international standards limit the use of force by authorities in controlling peaceful or non-peaceful assemblies. International standards require that law enforcement



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officials should use force only as a last resort, in proportion to the threat posed, and in a way to minimize damage or injury.

Right to strike

This is not an absolute right, because other social interests may be affected. This is especially so where public employees are providing essential services, the disruption of which may threaten the life, health, and safety of the population. Firefighters, for example, are prohibited from striking in some countries. Governments have attempted to hinder the right to strike through a variety of strategies. For example, some countries adopt a “permanent replacement” doctrine whereby striking employees are replaced by new employees loyal to the employer who then vote the union out of existence. Such practices contravene international law.

The right to strike is often banned in the public service or obstructed in general by cumbersome procedures. Governments may include schools and universities within the scope of “essential services”. Germany, for instance, persists in its longstanding denial of the right to strike of all civil servants, including teachers, despite repeated ILO criticism. In Japan and Korea, public employees are banned from striking.

EI member organizations are invited to first seek advice from EI on whether there is possible cause for complaint. EI will check whether similar violations have already been filed by other professional organizations or by the trade union centre within the country. EI will also check the jurisprudence (interpretation) of the ILO regarding the matter raised.

Practices and strategies

Support from the International Labour Organization

In principle, a teacher organization identifying a trade union violation begins its opposition by using all procedures available at the local level. If these are ineffective and the organization wishes to denounce the violation, it lodges a complaint with the International Labour

Organization, whose standards uphold the rights of workers and employers to form organizations and to bargain collectively.

Over the years, the ILO has developed extensive and detailed decisions about what the freedom of association means, what the limits are, and what elements of the right are so critical that, if denied, they effectively deny the right itself. For example, the International Labour Conference has pointed out that “the right of assembly, freedom of opinion and expression and, in particular, freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers constitute civil liberties which are essential for the normal exercise of trade union rights”. The ILO also considers that “a trade union’s activities cannot be restricted solely to occupational questions”. Thus, for example, when a teacher organization arranges a march to request a national government to invest more money in public education, this activity is within the framework of legitimate trade union activities.

In cases where trade union leaders or workers had been arrested for trade union activities, and the governments’ replies amounted to general denials of the allegation or were simply to the effect that the arrests were made for subversive activities, for reasons of internal security, or for common law crimes, the ILO has always followed the rule that governments should submit the most precise information possible concerning the arrests, and especially detailing the legal or judicial proceedings that are in place to make a proper examination of the allegations. The ILO Committee on Freedom of Association has pointed out that, where persons have been sentenced on grounds that have no relation to trade union rights, the matter falls outside its competence. But it has emphasized that the decision whether a matter relates to criminal law or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned. This is a question also to be determined by the ILO Committee itself after examining all the available information and, in particular, the text of the judgment.

Regarding registration and dissolution of worker organizations, the ILO has concluded that if a minimum number of members is required to achieve union registration, this number should be low, and that consideration of applications should not be unduly delayed. The ILO has stated that to make the right of association subject to authorization granted at the discretion of a government department is incompatible with the principle of freedom of association, as is state legislation imposing unity within the trade union movement.



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In principle a worker organization can only be dissolved by a sovereign decision of its members. The ILO also recognizes that a union can be dissolved by judicial decision. However, if a Ministry of Education, of Labour, or of the Interior decides to suppress the registration of a teacher organization, the ILO Committee on Freedom of Association considers that ILO Convention 87 on freedom of association has been violated. The Committee has also noted that negotiations are not to be conducted on behalf of worker organizations by representatives appointed by or under the domination of employers or their agencies.

Some governments have also sought to restrict the flow of funds to associations, particularly funds from abroad. In cases involving trade unions, the ILO has held that laws requiring official approval of funds from abroad may be incompatible with Convention 87.

The ILO stresses that the right to strike and to organize union meetings are essential aspects of trade union rights.

The ILO also considers that successive governments in a state cannot escape the responsibility to address allegations of events or situations that occurred under a former government. The new government should take steps to remedy any continuing effect of the facts contained in the complaint.

Support from CEART and regional institutions

The Joint ILO/UNESCO Committee CEART can be used when the teacher organization feels that the status and working conditions of teachers are not respected and fall short of what is provided by the 1966 ILO/UNESCO Recommendation on the Status of Teachers and the 1997 UNESCO Recommendation on the Status of Higher Education Teaching Personnel. For example, if in one country, the teachers do not receive a wage but are paid with food (a sheep, say), CEART may be consulted. The list of issues which can be addressed is very broad, ranging from training (or lack thereof), to career (transfers, promotion, tenure), conditions of service (status, salaries, academic freedom), rights and responsibilities of teachers, teacher shortage, and so on.

A regional body can generally be approached by organizations from the region (for example, the Council of Europe by organizations in any of its 47 member states).

How to use this manual

The information provided in this manual will guide national teacher organizations in bringing forward to international institutions evidence of violations of trade union and human rights in their country. There is nothing to prevent the teacher organization from directly approaching any or all of these institutions on its own initiative. However, for the greatest effectiveness in gaining a hearing, it is recommended that the teacher organization begin by contacting Education International.

First, EI can help by assessing the complaint, pointing out any additional information desirable, and generally fostering the most persuasive submission.

Second, EI can help by recommending which institution(s) to approach, and in what order, and with what emphases.

Third, an endorsement by a trusted international trade union federation such as EI can be very powerful in ensuring a prompt hearing and favourable consideration. Furthermore, EI can seek endorsement by the International Trade Union Confederation.

These considerations are especially important for submissions to the ILO and CEART.

At the same time, the national teacher organization can also forward a complaint submission to a regional intergovernmental body when one is available. And it can simultaneously submit its complaint to UN Special Rapporteurs, such as those on Right to Education, Torture, Extrajudicial, Summary or Arbitrary executions, Racism, Racial Discrimination, Xenophobia and Related Intolerance, Minority Issues, Indigenous People, Internally Displaced Persons, Migrants, Violence against Women, and Trafficking in Persons.

It is always beneficial for EI to be kept informed and involved. Not only can EI provide direct assistance with these submissions as well but also EI will then be better prepared to respond if one of these adjudicative institutions approaches it for consultative reference and background information.

Texts of pertinent international conventions

The texts of international declarations and conventions relating to trade union rights and human rights are presented at the end of this manual in a set of appendices. Text discussions are accompanied by appropriate appendix references.



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1. International Labour Organization (ILO)

The ILO is an agency of the United Nations, and is in fact its only “tripartite” body, that is, jointly representing workers, employers, and governments. Created in 1919 by the Versailles Peace Treaty, the ILO was originally part of the League of Nations in Geneva. After the United Nations was established in 1945 to be located in New York, the Geneva-based ILO came to be incorporated within it to focus on fostering humane working conditions and combating injustice, discrimination, slavery, forced labour, and so on. Those aims remain valid today, though the field of activities has expanded to include such issues as equality, child labour, and HIV/AIDS. The ILO is significant to this manual because it is the UN body competent to set and deal with international labour standards.

ILO structure

Within the UN system, the ILO is unique in being a tripartite body. This means that its constituencies include representatives of governments and of worker and employer organizations. The annual International Labour Conference consists of two government delegates, a worker delegate, and an employer delegate from each member country. It elects the Governing Body, an executive council, which meets three times a year to make decisions on budgets and programmes to set before the annual Conference for approval. The Governing Body selects the Director-General for a five-year term to head the permanent secretariat which applies the policies and programmes decided on.

Currently, 182 countries are members of the ILO. By freely joining the ILO, all member countries endorse the principles and rights set out in its Constitution. All members, even if they have not ratified specific conventions, have an obligation as members to respect, promote, and implement the ILO’s Declaration of Fundamental Principles and Rights at Work, which outlines principles related to:

- ✦ freedom of association and the effective recognition of the right to collective bargaining,
- ✦ the elimination of all forms of forced or compulsory labour,
- ✦ the effective abolition of child labour,
- ✦ the elimination of discrimination in respect of employment, occupation, and remuneration.

The ILO has a Standing Committee on the Application of Labour Standards, which analyzes and evaluates cases brought before it at the request of the worker and employer groups on the basis of reports from the ILO Committee of Experts.

In relation to trade union and human rights, the various deliberative bodies and mechanisms of the ILO generate a series of responses aimed at persuading member states to respond to identified issues and improve implementation of the standards.

The role of employer and worker organizations

Organizations representing employers and workers play an essential role in the system of international labour standards. These organizations participate in selecting subjects for new ILO standards and in drafting texts, and their votes can determine whether or not the International Labour Conference adopts a newly drafted standard. If a convention is adopted, employers and workers can encourage a government to ratify it. As discussed later in this booklet, if the convention is ratified in a country, the government is required to report periodically to the ILO on how it is being applied in law and practice. The government reports must also be submitted for review and comment to employer and worker organizations in the country. Employer and worker organizations can also supply relevant information direct to the ILO. They can initiate representations for violations of ILO conventions in accordance with procedures under Article 24 of the ILO Constitution. Employer and worker delegates to the International



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Labour Conference can also file complaints against member states under Article 26 of the Constitution.

International labour standards

The ILO's standards are called international labour "Conventions" and "Recommendations." The ILO Conventions are international treaties, subject to voluntary ratification by ILO member States. The Recommendations are non-binding instruments setting out guidelines on subjects covered by the Conventions. Both are intended to have a concrete impact on working conditions and practices in every country of the world.

The ILO has adopted more than 180 conventions and 185 recommendations covering a broad range of subjects. A two-thirds majority of the votes cast by the delegates present at the International Labour Conference is necessary for the adoption of a convention or recommendation. Each adopted convention is then communicated to all ILO member states for "ratification," that is, to obtain the consent of the legislative authority within whose competence the matter lies. Member states undertake to bring the convention into their legislation within 18 months from the closing of the session of the Conference.

If ratification and implementation are not obtained, no further obligation rests upon the member except to report as follows: the member will report to the ILO Director-General, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the convention, showing the extent to which effect has been given to any of the provisions of the convention by legislation, administrative action, collective agreement, or otherwise and stating the difficulties which prevent or delay the ratification of the convention.

ILO Declaration on Fundamental Principles and Rights at Work

In 1998, the Governing Body of the ILO decided that eight conventions should be considered fundamental to rights at work, irrespective of the level of development of individual member States. These "Fundamental Conventions" became part of the ILO Declaration on Fundamental Principles and Rights at

Work, a promotional instrument (see Appendix E). Another four conventions concerning matters of essential importance to labour institutions and policy were classed as "Priority Conventions."

ILO member states are required by Article 22 of the ILO Constitution to report regularly on the measures they have taken to give effect to conventions to which they are party. However, the ILO considers that, regardless of ratification, a member state does have an obligation, deriving from its membership in the ILO and its acceptance of the ILO Constitution, to abide by the principles expressed in the ILO Declaration on Fundamental Principles and Rights at Work as well as to the four priority conventions. The result is that reports are requested every two years on a group of 12 leading conventions, and every five years on other ILO Conventions.

Fundamental Conventions

Eight conventions are collectively referred to as the ILO Declaration of Fundamental Principles and Rights at Work.

C87 Freedom of Association and Protection of the Right to Organize Convention, 1948

Workers and employers may establish and join organizations of their own choosing without prior authorization (Appendix F). Such an organization has the right to draw up its own constitution and rules, to elect its representatives, to organize its administration and activities, and to formulate its programs. Public authorities are not allowed to intervene in the conduct of its internal affairs. Worker and employer organizations have "the right to establish and join federations and confederations." All ILO members must take appropriate measures "to ensure that workers and employers may exercise freely the right to organize."

C98 Right to Organize and Collective Bargaining Convention, 1949

All workers are to "enjoy adequate protection against acts of anti-union discrimination in respect of their employment" (Appendix G). The protection applies to "acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership" and to "acts calculated to cause the dismissal of/or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the



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consent of the employer, within working hours."The protection also applies against "any acts of interference by anyone in their establishment, functioning, or administration."

The right to bargain freely over conditions of work constitutes an essential element in freedom of association. Trade unions must have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom they represent. All public service workers should enjoy collective bargaining rights, and priority should be given to collective bargaining to settle disputes arising in connection with the terms and conditions of employment. Both employers and trade unions are to bargain in good faith and make every effort to reach an agreement.

C29 Forced Labour Convention, 1930

Forced or compulsory labour is prohibited (Appendix H). Forced or compulsory labour is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."The convention does NOT apply to the following:

- ◆ "compulsory military service laws for work of a purely military character,"
- ◆ "any work or service which forms part of the normal civic obligations of the citizens,"
- ◆ "any work or service exacted from any person as a consequence of a conviction in a court of law,"
- ◆ "any work or service exacted in cases of emergency" (e.g. earthquakes, disease epidemics, floods).

C105 Abolition of Forced Labour Convention, 1957

Every country ratifying this convention (Appendix I) commits itself to "suppress and not to make use of any form of forced or compulsory labour:

- ◆ as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system;
- ◆ as a method of mobilising and using labour for purposes of economic development;
- ◆ as a means of labour discipline;

- ◆ as a punishment for having participated in strikes;
- ◆ as a means of racial, social, national or religious discrimination."

C138 Minimum Age Convention, 1973

Every signatory "undertakes to pursue a national policy designed to ensure the effective abolition of child labour and raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons" (Appendix J).

C182 Worst Forms of Child Labour Convention, 1999

Measures to prohibit and eliminate the worst forms of child labour, such as slavery, the sale and trafficking of children, prostitution, debt bondage and serfdom, forced recruitment of children in armed conflict, and work "which is likely to harm the health, safety or morals of children."The convention (Appendix K) applies to "all persons under the age of 18."

C100 Equal Remuneration Convention, 1951

Demands "the application to all workers of the principle of equal remuneration for men and women workers for work of equal value" (Appendix L). This means equal salary for work of equal value and any additional benefits to every worker without discrimination based on gender or any other reason.

C111 Discrimination (Employment and Occupation) Convention, 1958

Each ratifying country "undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination" (Appendix M).

Priority Conventions

In 1994, the ILO Governing Body designated another four conventions as "priority" instruments because of their importance for the functioning of the international labour standards system, thus encouraging member states to ratify them.

C81 Labour Inspection Convention, 1947

Ratifying countries must "maintain a system of labour inspection in industrial and commercial workplaces."



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C122 Employment Policy Convention, 1964

Ratifying countries must pursue “an active policy designed to promote full, productive and freely chosen employment, to ensure that there is work for all who are available for and seeking work, such work is as productive as possible, and that there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction, or social origin.”

C129 Labour Inspection (Agriculture) Conventions, 1969

Each signatory agrees to maintain “a system of labour inspection in agriculture.”

C144 Tripartite Consultation (International Labour Standards) Convention, 1976

Each signatory undertakes “to operate procedures which ensure, for ILO matters, effective consultations between representatives of the government, of employers and of workers. The representatives of employers and workers will be freely chosen by their representative organizations and they will be represented on an equal footing on any bodies through which consultations are undertaken.”

Trade unions worldwide continue their efforts to promote the ratification of the ILO Conventions. EI regularly encourages its member organizations to lobby their governments to ratify the Fundamental Conventions, as well as other conventions which have an impact on the daily lives of education personnel, such as Convention 183 on maternity protection and Conventions 107 and 169 on indigenous peoples.

ILO supervisory mechanisms

The ILO Conventions represent intentions and commitments. The implementation and enforcement of the convention commitments are up to the signatory member countries.

To strengthen the implementation and enforcement of the conventions, whether or not member states have ratified them, the

ILO has developed a broad set of mechanisms for investigation and reporting of working conditions in member countries. These fall in several groups:

- ✦ regular reports conducted by member countries,
- ✦ forms of technical assistance provided by specialists in labour standards located in ILO offices around the world,
- ✦ supervisory committees to analyze information generated and to receive and assess complaints,
- ✦ commissions of inquiry under Article 26,
- ✦ direct interventions.

Users of this manual will want to be familiar with all these mechanisms to be able to take advantage of them when situations arise.

Regular reports

The country reports

Each member state reports at scheduled intervals on the measures which it has taken to give effect to the provisions of ILO conventions which it has ratified. Under article 19 of the ILO Constitution, member states also report, at intervals as requested by the Governing Body, on the position of its law and practice in regard to the matters dealt with in conventions they have not yet ratified.

Every two years, governments have to submit a report explaining the measures they have taken to effectively apply the Fundamental and Priority Conventions.

Over five years, governments have to submit reports on implementation of all conventions. Governments are expected to consult worker and employer organizations when they draw up their report. If they do not, trade union centres can send their own contributions to the ILO. EI liaises with the International Trade Union Confederation (ITUC) to make sure that the relevant comments are received from the teacher organizations.

In 2008, the Committee of Experts requested a total of 2,477 reports from governments on the application of conventions ratified by member states (article 22 of the Constitution). The Committee received 1,611 reports, over 65% of the number requested. This percentage remains stable over the years.



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The reports due on ratified conventions should be sent to the ILO secretariat between 1 June and 1 September of each year. This is the opportunity for worker organizations to play an important role in the tripartite system, by calling the attention to, for example, new legislation that is contrary to the principles of a convention or to the lack of government action for effectively enforcing ILO core conventions.

The schedule for regular reports is available at <http://webfusion.ilo.org/public/db/standards/normes/schedule/index.cfm.cfm?lang=EN>

The global report

Each year, the ILO releases a thematic report on one of the four principles contained in the Declaration (and therefore on two of the basic conventions):

- ◆ 2010: Child Labour (C138 and C182)
- ◆ 2009: Forced Labour (C29 and C105)
- ◆ 2008: Freedom of Association (C87 and C98): "Lessons Learned"
- ◆ 2007: Non discrimination (C100 and C111): "Equality at work: Tackling the challenges"
- ◆ 2006: Child Labour (C138 and C182): "The End of Child Labour is Within Reach"
- ◆ 2005: Forced Labour (C29 and C105): "A global alliance against forced labour"
- ◆ 2004: Freedom of Association (C87 and C98): "Organizing for social justice"
- ◆ 2003: Non discrimination: "Time for Equality at Work"
- ◆ 2002: Child Labour: "A Future without Child Labour"
- ◆ 2001: Forced Labour (C29 and C105): "Stopping Forced Labour"
- ◆ 2000: Freedom of Association (C87 and C98): "Your Voice at Work."

International trade unions participate in the preparation of this report. (EI member organizations can submit reports until the month of June of the previous year as contributions to the global report of the following year.) The ILO global report, always the result of lengthy fact-finding work, is submitted to the annual Conference, where in a special session it is discussed in a tripartite manner. The discussion enables the preparation of a plan of action for the next four years. In 2006, a representative of EI took the floor during the special session on child labour.

ILO technical cooperation

The ILO does not only supervise the application of ratified conventions. It also provides different forms of technical assistance in which ILO officials or other experts help countries address problems in legislation and practice in order to bring them into line with the obligations under ratified instruments. One form of technical assistance consists of advisory and direct contact missions, during which ILO officials meet government officials to discuss problems in the application of standards with the aim of finding solutions. Another form of assistance consists of promotional activities, including seminars and national workshops, with the purpose of raising awareness of standards, developing national actors' capacity to use them, and providing technical advice on how to apply them to the benefit of all. The ILO also provides assistance in drafting national legislation in line with its standards.

Many of these technical assistance activities are carried out by the ILO's international labour standards specialists who are assigned to ILO offices located around the world. Standards specialists meet government officials and employer and worker organizations to provide assistance with new ratifications of conventions and reporting obligations, to discuss solutions to problems raised by the supervisory bodies, and to review draft legislation to ensure that it conforms with international labour standards. In 2008, at the initiative of EI and other international and national trade union organizations, direct contact missions were sent to Djibouti, Cambodia, and Ethiopia.

International labour standards specialists are stationed in the following regions:

- ◆ Africa: Addis Ababa, Cairo, Dakar, Harare, Yaoundé
- ◆ Americas: Lima, San José, Santiago
- ◆ Caribbean: Port of Spain
- ◆ Arab States: Beirut
- ◆ East Asia: Bangkok, Manila
- ◆ South Asia: New Delhi
- ◆ Eastern Europe and Central Asia: Moscow

These ILO international labour standards specialists are also available to assist trade unions and teacher associations and may be called on for clarification, information, and support.



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In addition, the International Training Centre in Turin, Italy, offers training on international labour standards for government officials, employers, workers, lawyers, judges, and legal educators, as well as specialized courses on labour standards, productivity improvement and enterprise development, international labour standards and globalization, and the rights of women workers.

Supervisory committees

Committee on Freedom of Association (CFA)

As described earlier, basic union rights are guaranteed in two ILO Fundamental Conventions, C87 (ratified by 149 countries) and C98 (ratified by 159 countries). The ILO created the Committee on the Freedom of Association to examine complaints lodged by worker and employer organizations against states which violate one or both conventions. As a tripartite body, the CFA is composed of an independent chairperson and three government, three employer, and three worker representatives.

Since its creation, the CFA has met three times a year and examined more than 2500 cases and has developed jurisprudence or legal precedents. More than 60 countries on all continents have taken measures following recommendations formulated by the Committee.

National, regional, or international trade unions (whether they are trade union centres, sectoral unions, or associations) can file complaints with the Committee on the Freedom of Association on non-compliance with ILO Conventions 87 and 98. Complaints can be lodged even if the country concerned has not ratified the said Conventions. A complaint cannot be filed against a worker or employer organization. Even when the alleged violation has been done by an employer, any complaint is filed against the government, on the ground that it is the government's responsibility to make sure all ratified conventions are implemented.

(See below: [Making Submissions to the ILO.](#))

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The ILO Committee of Experts is a global committee of labour lawyers and legal academics whose task it is to advise the ILO

constituents (governments, employers, and unions) on the interaction between legislation in a country and ILO conventions and recommendations.

The ILO Committee of Experts was created in 1926 to examine the growing number of government reports on the ratified conventions. (The CEACR is not to be confused with the Joint ILO/UNESCO Committee of Experts on teachers' issues, CEART, described below.) Today, the CEACR is composed of 20 independent legal experts appointed by the Governing Body for a renewable three-year term of office. The experts come from different geographic regions, legal systems, and cultures. The CEACR is a technical committee that provides an unbiased and technical assessment of the application of international labour standards through an analysis of the various country reports described earlier. The CEACR report examines the impacts of conventions and recommendations, analyzes the barriers to their implementation as indicated by governments, and suggests means of overcoming these barriers.

The comments of the experts are the starting point for compiling the list of cases that trade unions wish to bring to the attention of Conference Committee on the Application of the Standards in June.

Conference Committee on the Application of the Standards (CAS)

A standing committee of the annual ILO International Labour Conference, the CAS addresses worldwide progress in the application of labour standards. A tripartite body, it is composed of government, employer, and worker delegates.

The CAS deals with three main areas: evaluation of standard setting policies, a global survey of developments in all countries, and special inquiries into priority issues identified by the Workers' Group.

The annual report of the Committee of Experts is examined by the CAS on the basis of a list of countries and cases drawn up by the Workers' and Employers' Groups.

The governments implicated in the comments are invited to reply before the CAS and to provide information on the matter. In many cases, the CAS formulates conclusions, inviting the governments either to take specific measures in order to solve the problem or to accept missions or technical assistance from the ILO.



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The debates and conclusions on the cases examined by the CAS are published in its report. Particularly worrying cases are highlighted in special paragraphs. The report is on the site of ILO in the space reserved for the International Labour Conference. It is activated a few hours or days (dependent on the language) after the closure of the discussions, in the section on "provisional reports": <http://www.ilo.org/public/english/standards/relm/ilc>

Fact-Finding and Conciliation Committee on Freedom of Association

The Fact-Finding and Conciliation Commission on Freedom of Association is a permanent body and is the highest instance of the special machinery for the protection of freedom of association. It was established in 1950 and is composed of independent persons. Its mandate is to examine any complaint concerning alleged infringements of trade union rights which may be referred to it by the ILO Governing Body. Although it is essentially a fact-finding body, it is authorized to discuss with the government concerned the possibilities of securing the adjustment of difficulties by agreement.

Commissions of inquiry under Article 26

Under Article 26 of the ILO Constitution, a Commission of Inquiry can be requested when a member state is accused of serious and repeated violations and has refused repeatedly to do anything about them.

A complaint by virtue of Article 26 can be filed by:

- ✦ another member state which also ratified the same Convention,
- ✦ a delegate to the International Labour Conference in June,
- ✦ the Governing Body in its own capacity.

Upon receipt of a complaint, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken by the country in question to address the problems raised by the complaint.

A Commission of Inquiry is the ILO's highest-level investigative procedure. To date, 11 Commissions of Inquiry have been established. In 2004, an ILO Commission of Inquiry stated that trade

union independence had been undermined in Belarus. In 1998, such a Commission revealed widespread and systematic use of forced labour in Burma (Myanmar). Earlier, delegates at the 1982 International Labour Conference filed a complaint under Article 26 against the Polish government, which, under declaration of martial law, had suspended the activities of the Solidarnosc trade union and detained or dismissed many of its leaders and members. On the basis of the Commission's conclusions, the ILO and numerous countries and organizations put pressure on Poland to redress the situation. Lech Walesa, Solidarnosc leader and President of Poland, noted that "the Commission of Inquiry created by the ILO after the imposition of martial law in my country made significant contributions to the changes which brought democracy to Poland."

At the International Labour Conference in June 2008, the Workers' Group called for an official ILO Commission of Inquiry into Zimbabwe to look into the reports of torture and murder of trade unionists by security forces and thugs linked to the Mugabe regime.

The **CEACR annual report**, submitted to the ILO Governing Body at its March meeting, is divided into three parts:

Part I is the general report describing the extent to which member states have fulfilled their constitutional obligations in relation to international labour standards;

Part II contains observations about particular countries on the application of ratified

conventions presented by subject: freedom of association and collective bargaining; equality of opportunities; child labour; forced labour, occupational safety and health; wages; maternity protection; indigenous rights; migrant workers; and so on.

Part III contains an in-depth general survey of member states' performance on a particular subject area. In recent years, areas covered have been labour clauses in public contracts (2008); Forced Labour (2007); Labour Inspection (2006) and Hours of Work (2005).

(The CEACR annual reports from 1987 to the present are accessible at the following address:

<http://www.ilo.org/ilolex/english/ceacreprsq.htm>



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Direct Interventions

Action under Article 33

When a country refuses to fulfil the recommendations of a Commission of Inquiry, the Governing Body can take action under Article 33 of the ILO Constitution. This provision states that "in the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith."

In the year 2000, Article 33 was invoked for the first time in ILO history when the Governing Body asked the International Labour Conference to take measures to lead Burma to end the use of forced labour.

Request for a direct intervention by the ILO Director General

In case of a violation of C87 or C98, the ILO Director General can be requested to intervene without delay with the authorities of the country concerned. In order for this to happen, the facts must be particularly serious and require an urgent intervention (e.g. arbitrary detention of trade unionists, death threats).

Making submissions to the ILO

There are two main channels through which national worker organizations can inform and seek support at the ILO: the Committee of Experts and the Committee on Freedom of Association.

Comments to the Committee of Experts on the Application of Conventions and Recommendations

ILO member governments are required to submit reports to the CEACR on regular schedules and from time to time on special requests. In adherence to the tripartite principle, governments are expected to involve both workers and employers in drafting these submissions both by consultations and by encouraging commentaries on the submitted reports. In cases where governments ignore their social partners, international union

organizations such as Education International and the International Trade Union Confederation (ITUC) will help coordinate the transmission of comments to the Committee of Experts.

The deadline for sending comments to the ILO in the context of the annual report is the end of August of each year. This is the time for a national organization to play an important role in the tripartite system, by calling the attention to, for example, new legislation that is contrary to the principles of a convention or to the lack of government action for effectively enforcing the ILO core conventions. National governments are supposed to stick to the principles of the Fundamental Convention even when they have not ratified them. Therefore, the active contribution of teachers and their unions in the elaboration of the ILO report is a great opportunity for the unions to raise issues that are relevant to education workers.

Complaints to the Committee on Freedom of Association

As described earlier, this committee receives and assesses complaints against any member government (as the responsible guarantor) by worker or employer organizations.

A complaint to the ILO should be filed only after a national worker organization has used all the resources available at the local level.

To put together a strong case, EI strongly advises that teacher organizations consult or liaise with EI before sending the complaint. This is not only because the procedure is complex, but also because EI can endorse the complaint and make contact with ILO officers

While the case is pending before the CFA, the national union can put pressure on the government in a number of ways.

For example, it can use its media channels to publicize:

- ✦ the fact that a case has been submitted to the CFA,
- ✦ the fact (if it is so) that the government has not replied to requests for information from the CFA,
- ✦ in due course, the recommendations of the CFA, requesting the government to act on them.



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for follow-up. EI can also coordinate with the ITUC for additional support. Ideally, a complaint submitted by a national teacher organization should be endorsed by the national trade union centre, by EI, and ultimately by the ITUC.

If the CFA deems the complaint admissible, that is, determines that the facts described by the complainant organization clearly allege a violation of C87 or C98 or both, it contacts the government of the country concerned to confirm the facts. The CFA will inform your national government that your organization has filed a complaint, and the government will be given some time to make comments in connection to the issues raised by your union. Meanwhile, your organization will have a chance to provide additional information that is relevant to the case. If the CFA concludes that standards or principles have indeed been violated, it draws up a report for the ILO Governing Body and formulates recommendations on how to remedy the situation. The government is then invited to give an account of the implementation of these recommendations.

The union can also report back to the CFA on any actions, or lack of action, by the government on the recommendations.

Submission and follow-up

The complaint must be filed by post. If it is transmitted by fax, the original should be sent by post immediately. Complaints by e-mail are not admissible.

Once the complaint has been received by the CFA, your organization will receive communication from the ILO acknowledging receipt of the documents. At the same time, a case number will be assigned to the complaint. It is of great importance that your organization keeps track of the case number, for further reference and follow-up. If you have not received such a number promptly, please read the reply of ILO attentively or contact EI to assist.

It is essential to follow up on a complaint once it is filed. The ILO Freedom of Association Department may ask you for additional information. Please be attentive, as the absence of a reply on the part of the complainant is usually taken as a negative sign. At any time additional information can be submitted, citing the number of the complaint.

You will have access to the conclusions and recommendations of the Committee on the Freedom of Association in its reports. These reports are published three times a year, after each meeting (in March, June, and November).

Complaints should be sent to the following:

International Labour Organization (ILO)
Mr Juan Somavia
Director General
International Labour Organization
4 route des Morillons
1211- Geneva
SWITZERLAND
FAX: +41.22.799.85.53

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2. CEART (Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel)

CEART was created to monitor the implementation of the ILO/UNESCO Recommendation on the Status of Teachers adopted in 1966. In 1999, its mission was extended to monitoring the UNESCO Recommendation on the Status of Higher Education Teaching Personnel adopted in 1997.

Neither of the 1966 and 1997 Recommendations is legally binding, and the role of the Joint Committee is not judicial. Nevertheless, an important function of CEART is the consideration of problems associated with the application of the Recommendations, and the encouragement of governments and employer and teacher organizations to adopt measures to enhance the status of the teaching profession.

CEART is composed of 12 independent experts appointed by UNESCO and the ILO for renewable mandates of six years. The members act in their personal capacity. The criteria for selection include: independence from government, employer, or trade union organizations and competence in the recommendations' core fields. Furthermore, there is an attempt to achieve a balance of geographic regions, education systems, spheres of expertise, and gender.

The CEART examines the reports and studies presented by governments, by national organizations representing teachers and their employers, by ILO and UNESCO, and by intergovernmental or non-governmental organizations such as EI, which drafts a report on the themes of the agenda for each meeting.

The committee sessions are held every three years, alternating between UNESCO headquarters in Paris and the ILO in Geneva. Sessions vary in length from three and a half to five working days. These sessions are closed to the public but since 2000 involve interested stakeholders, including EI representatives, by invitation of the Joint Committee.

Reports published since the 1997 session may be consulted on the CEART website: <http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart/docs.htm>

Reports in print may also be requested from the joint secretariat. Information on non-compliance can be submitted to the CEART by teacher organizations in case of non-respect of the provisions outlined in either of the two Recommendations.

1966 Recommendation on the Status of Teachers

This Recommendation, adopted on 5 October 1966 by member states of UNESCO and ILO, sets common standards for the status of teachers, irrespective of the diversity of national legislation, regulations, and traditions.

Since the education sector in general is subjected increasingly to market pressure and the threats of commercialization, this recommendation remains pertinent. EI believes that the implementation of the 1966 Recommendation's provisions should be compulsory in all countries.

Highlights of the 1966 Recommendation

The 1966 Recommendation sets the standards for the status of teachers on some key aspects of the profession:

Preparation for the profession

Policy governing entry into preparation for teaching should rest on the need to provide society with an adequate supply of teachers who possess the necessary moral, intellectual, and physical qualities and who have the required professional knowledge and skills. (Art. 11)



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The 1966 ILO/UNESCO Recommendation on the Status of Teachers

- ✦ is the only international standard applicable to all teachers in both public and private schools up to the completion of the secondary stage of education whether nursery, kindergarten, primary, intermediate, or secondary, including those providing technical, vocational or art education. (Article 2)
- ✦ was adopted by consensus on 5 October 1966 in Paris by an intergovernmental conference convened jointly by the ILO and UNESCO.
- ✦ includes 146 articles, grouped in 13 chapters, that set standards, particularly in the following fields:
 - ✦ Preparation for the profession
 - ✦ Further education for teachers
 - ✦ Employment and career
 - ✦ Entry into the teaching profession
 - ✦ Advancement and promotion
 - ✦ Security of tenure
 - ✦ Disciplinary procedures related to breaches of professional conduct
 - ✦ Part-time service
 - ✦ Rights and responsibilities of teachers
 - ✦ Conditions for effective teaching and learning
 - ✦ Teacher salaries
 - ✦ Teacher shortages.

For the full text of the Recommendation, see Appendix N.

EI believes that a quality education can only be achieved with quality teachers who receive initial education adapted to current needs followed by life-long learning, in-service training, professional development, integrating new technologies, and team working. The requirement for quality teachers is repeated several times in the Recommendation.

The teacher shortage

It should be a guiding principle that any severe supply problem should be dealt with by measures which are recognized as exceptional, which do not detract from or endanger in any way professional standards already established or to be established and which minimize educational loss to pupils ...

Recognizing that certain expedients designed to deal with the shortage of teachers, such as over-large classes and the unreasonable extension of hours of teaching duty, are incompatible with the aims and objectives of education and are detrimental to the pupils, the competent authorities as a matter of urgency should take steps to render these expedients unnecessary and to discontinue them. (Art. 141)

EI recognizes that teacher shortages can have long-term negative effects on the quality of education given to pupils. To combat this situation, EI recommends making a teaching career more attractive by improving the status of teachers by improving salaries and conditions of work and providing quality initial training for all teachers. No teacher should be in front of pupils without having initial training in higher education and on-the-job support.

Employment and career

Stability of employment and security of tenure in the profession are essential to the interests of education as well as to those of the teacher; they should be safeguarded even when changes in the organization of or within a school system are made. (Art.45)

EI favours job security and professional stability as the surest ways of helping teachers to work calmly, with a sense of security, providing continuity and high quality education, free from unnecessary pressure of any kind.

Collective and social dialogue

Teacher organizations should be recognized as a force which can contribute greatly to educational advance and which therefore should be associated with the determination of educational policy. (Art. 9)

Machinery should be established whereby the right of teachers to negotiate through their organizations with their employers, either public or private, is assured. (Art. 83)

EI considers failure to consult teacher organizations in general to be a clear infringement of Article 9 of the Recommendation. It is critical for teachers to be able to negotiate their working



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conditions and strive for the highest education standards through their representative organizations. For this reason, EI calls on all governments to recognize teacher unions established in compliance with international and national standards. The views of such unions are, as a general rule, the outcome of a democratic process that determines a policy which is then presented by the elected representatives.

The rights and responsibilities of teachers

Every possible effort should be made to promote close cooperation between teachers and parents in the interests of pupils, but teachers should be protected against unfair or unwarranted interference by parents in matters which are essentially the teacher's professional responsibility. (Art. 67)

Every teacher should exhibit irreproachable personal behaviour and the highest standards of professional ethics with regard to pupils, other members of the staff, parents, and the community. EI sets out these essential principles in a Declaration of Professional Ethics adopted in 2001. This declaration constitutes an individual and collective commitment of teachers to all those involved in education and to society as a whole. These duties, however, must be balanced by the assurance that teachers can exercise their profession without interference in the areas that fall within their professional domain and educational responsibility, while recognizing parents' legitimate right to information and the legitimate exercise of their parental responsibilities.

Finally, EI is in favour of the adoption of clear standards in all countries, allowing a balanced partnership between teachers and parents while respecting teachers' need to fulfil their professional responsibilities.

1997 Recommendation on the Status of Higher Education Teaching Personnel

The 1997 Recommendation represents the formal acknowledgement by UNESCO's member states of the need to address common issues in the status of higher education teaching personnel in all countries, through the application of common regulations without exceptions, despite the diversity of laws, regulations, and traditions.

The fact that the higher education sector is at present susceptible to market pressures and threats of commercialization calls for the urgent widespread distribution, publicity, and application of the Recommendation.

EI urges that the 1997 Recommendation be implemented in all countries.

Highlights of the 1997 Recommendation

The UNESCO 1997 Recommendation highlights particularly:

Academic freedom

Higher education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship, and freedom to participate in professional or representative academic bodies. (Art. 27)

Academic freedom is an essential criterion for the development and circulation of knowledge. Both the State and the society must ensure that academic personnel enjoy the conditions which allow them to exercise their mission without fear of repression and risk of losing their independence, their careers, and their lives. Such conditions require the existence of a democratic environment.

Collegiality

Higher education teaching personnel should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own, while respecting the right of other sections of the academic community to participate, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution. (Art. 31)

EI believes that the system of collegiality should be maintained even if opening up to free-market forces is essential. EI opposes the general belief that universities can no longer be run by a collegial system of governance and regrets the direct appointment of rectors, deans, and heads of department.



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The UNESCO 1997 Recommendation concerning the Status of Higher Education Teaching Personnel

- ✦ is the only international norm that applies to higher education teaching personnel, defined as *all those persons in institutions or programmes of higher education who are engaged to teach and/or to undertake scholarship and/or to undertake research and/or to provide educational services to students or to the community at large.* (Article 1f)
- ✦ was adopted by consensus by the UNESCO General Conference on 11 November 1997, following years of joint preparation by UNESCO and the ILO.
- ✦ includes 77 articles, in 10 chapters, that cover the following areas:
 - ✦ Rights and freedoms:
 - ✦ Academic freedom
 - ✦ Self-governance and collegiality
 - ✦ Duties and responsibilities of personnel
 - ✦ Conditions of employment:
 - ✦ Entry into the profession
 - ✦ Security of employment
 - ✦ Evaluation and discipline
 - ✦ Negotiation of conditions of employment
 - ✦ Salaries, workload, social security benefits, health, and safety.

For the complete text of the Recommendation, see Appendix O.

Security of employment

Security of employment in the profession, including tenure or its functional equivalent, where applicable, should be safeguarded as it is essential to the interests of higher education as well as those of higher education teaching personnel ... Tenure or its functional equivalent, where applicable, should be safeguarded as far as possible even when changes in the organization of or within a higher education institution or system are made, and should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research to the satisfaction of an academic body, and/or extension work to the satisfaction of the institution of higher education. (Art. 46)

EI is concerned about the proliferation of short-term contracts and supports the decision of the Supreme Court of Canada, which ruled that “academic staff should have a strong security of employment in order to enjoy the freedom required to maintain academic excellence, which is or should be distinctive of the university.”

Collective bargaining and social dialogue

Organizations which represent higher education teaching personnel should be considered and recognized as a force which can contribute greatly to educational advancement and which should, therefore, be involved, together with other stakeholders and interested parties, in the determination of higher education policy. (Art. 8)

Higher education teaching personnel should enjoy the right to freedom of association, and this right should be effectively promoted. Collective bargaining or an equivalent procedure should be promoted in accordance with the standards of the International Labour Organization. (Art. 52)

EI considers the lack of consultation with teacher organizations to be a clear violation of Article 8 of the Recommendation. It is essential that academic staff be able to bargain their conditions of employment based on existing provisions.

Procedure concerning allegations and reports

In order to monitor the implementation of these two Recommendations, CEART has established a procedure that permits national and international teacher organizations to submit communications concerning the non-application of the provisions of those Recommendations in a given country.

On receipt of any communication that it considers to contain an allegation and is considered within its competence, the secretariat of CEART may request additional information from the submitting organization. It will then send the allegation to its permanent working party on allegations.

The original communication and any supplementary information will be referred to the government of the country in question for its comments within a specified period of time. Comments received



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will in turn be sent to the submitting organization for additional observations, and these in turn shall be returned to the government for its final remarks, if any. In the event that a government which has been requested to make observations on an allegation submitted by a teacher organization fails to respond within a reasonable time following the original communication and a reminder, the allegation may be submitted to CEART with a note that the government in question has failed to respond.

The original communication and all observations of the parties are then submitted to CEART for examination at its next session. Where appropriate, information related to its consideration of allegations is sought from sources that are available in accordance with its mandate. CEART's summary views will in turn be published as part of its report.

Submission of the report

CEART's reports are submitted to the Governing Body of the ILO, with a request that the reports be transmitted to the Committee on the Application of Conventions and Recommendation of the International Labour Conference, and to the Committee on Conventions and Recommendations of the Executive Board of UNESCO, for transmission to the General Conference.

Sometimes the final draft of a report on an allegation received after the last CEART session may be ready more than a year before the next scheduled meeting. With CEART's approval, the working party which has prepared the report is authorized to transmit it, as a full CEART report, for consideration by the Governing Body of the ILO and the Executive Board of UNESCO. Such a procedure has been followed twice to date: in 1999 in the case of the Czech Republic; and in 2005 in the case of Japan.

El strongly advises that a teacher organization consult or liaise with the EI's Education and Human Rights and Equality Units before sending any such complaints in the form of allegations on non-compliance with either of the two Recommendations in your country. This is not only because the procedure is complex, but also because EI can endorse the complaint and help to follow it up with the CEART.

Contacts are as follows:

CEART

International Labour Organization
Education sector specialist
Sectoral Activities Department
International Labour Office
CH-1211 Geneva 22
Switzerland
Tel: +41.22 799-7143
Fax: +41.22 799-7046

or

CEART

UNESCO
Chief of Section
Section for Teacher Education
Division for Higher Education UNESCO,
7, place de Fontenoy
75352 Paris 07 SP
France

To be admissible for examination by CEART, an allegation must be related to the provisions of either Recommendation, must emanate from a national or international teacher organization, and must not fall within the competence of other bodies of the ILO or UNESCO established to monitor conventions or other international instruments.



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3. UN High Commissioner for Human Rights

The United Nations system for the promotion and protection of human rights is based in the Office of the UN High Commissioner for Human Rights (OHCHR). This agency's work is to lead the UN role on human rights issues, emphasizing the importance of human rights at international and national levels, stimulating and coordinating action for human rights throughout the United Nations system, and supporting human rights organizations and treaty monitoring bodies. The OHCHR's priorities follow the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights, as well as the Charter of the United Nations.

Structure of the OHCHR

The OHCHR is headed by a High Commissioner with the rank of Under-Secretary General and has its headquarters in the historic Palais Wilson building in Geneva, Switzerland. The High Commissioner – currently Ms. Navanethem Pillay, who was appointed on 28 July 2008 – is responsible for all the activities of the OHCHR, advises the UN Secretary General on the policies of the United Nations in the area of human rights, represents the Secretary General at human rights events, and ensures that substantive and administrative support is given to the projects, activities, organizations, and bodies of the human rights programme.

The OHCHR, in addition to the Executive Office of the High Commissioner, is composed of four branches and a number of units and a service agency that report to the Deputy High Commissioner:

- ✦ Treaties and Commission Branch,
- ✦ Special Procedures Branch,
- ✦ Research and Right to Development Branch,
- ✦ Capacity Building and Field Operations Branch.

Human Rights bodies

The United Nations system for the promotion and protection of human rights consists of two main types of body: bodies created under the UN Charter, including the former Commission on Human Rights, and bodies created under the international human rights

OHCHR has regional representatives in Thailand, Chile, Ethiopia, Kazakhstan, Lebanon, South Africa and Cameroon. Offices with monitoring mandates can be found in Afghanistan, Colombia, Cambodia, Burundi and the Democratic Republic of the Congo, amongst others.

treaties. Most of these bodies receive secretariat support from the Treaties and Commission Branch of the OHCHR.

Charter bodies

- ✦ Human Rights Council (HCR), formerly Commission on Human Rights (CHR)
- ✦ Special Procedures established by the Commission on Human Rights
- ✦ Universal Periodic Review

Treaty bodies

There are eight human rights treaty bodies that monitor implementation of the core international human rights treaties:

- ✦ Human Rights Committee (HRC)
- ✦ Committee on Economic, Social and Cultural Rights (CESCR)
- ✦ Committee on the Elimination of Racial Discrimination (CERD)
- ✦ Committee on the Elimination of Discrimination Against Women (CEDAW)
- ✦ Committee Against Torture (CAT)



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- ◆ Committee on the Rights of the Child (CRC)
- ◆ Committee on Migrant Workers (CMW)
- ◆ Committee on the Rights of Persons with Disabilities (CRPD)

The three bodies **highlighted** are of potential interest to manual readers, and they will now be described.

Human Rights Council

On 15 March 2006, Resolution 60/251 of the UN General Assembly replaced the Commission on Human Rights with the Human Rights Council (HRC). The new HRC is a subsidiary organ of the General Assembly and has to promote universal respect for the protection of all human rights and fundamental freedoms while also addressing any situation of violations of human rights and making recommendations thereon. The new HRC reaffirms the indivisibility, universality, and interdependence of all human rights.

Upon the creation of the HRC, former UN Secretary General Kofi Annan stated: *The Council's work should mark a clean break from the past, and that should be apparent in the way it developed and applied the universal periodic review mechanism; and in its willingness to confront hard issues and engage in difficult discussions, where these were necessary to remedy or to prevent human rights violations. The Council should never be allowed to become caught up in political point-scoring or petty manoeuvres; it should always think of those whose rights were denied.*

The Council is composed of 47 member states who are elected for a term of three years by the General Assembly. African States have 13 seats; Asian States, 13, Eastern Europe, 6; Latin America and Caribbean, 8; and Western Europe and other States, 7 seats. The HCR's current President is Mr. Doru Costea, Permanent Representative of Romania to the UN. <http://www.ohchr.org/english/bodies/hrcouncil/>

Special Procedures

Special procedures are the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 29 thematic and 9 country mandates. The OHCHR provides these mechanisms with personnel, logistical, and research assistance to support them in the discharge of their mandates.

The UN special procedures system has been able to bring the intergovernmental debate on human rights closer to the reality on the ground. During recent years, the United Nations human rights experts have brought to the attention of the international community many issues of concern, such as police brutality, summary executions, the killing of women in the name of honour, the suffering of street children, the persecution of ethnic minorities in many societies, the role of non-State actors in human rights violations, the link between extreme poverty and respect for human rights, and the impact of human rights violations on civil society.

Special procedures are either an individual – called Special Rapporteur, Special Representative of the Secretary-General, Representative of the Commission on Human Rights, or Independent Expert – or a working group, typically composed of five members. The mandates of the special procedures are established and defined by the resolution creating each of them. Mandate-holders of the special procedures serve in their personal capacity and do not receive salaries or any other financial retribution for their work. An independent status for the mandate-holders can help guarantee of their impartiality.

Among their activities, most mandate-holders receive information locally on specific allegations of human rights violations and send urgent appeals or letters of allegation to governments asking for clarification. In 2005, more than a thousand communications were sent to governments.

Mandate-holders also carry out country visits at the request of the relevant special procedure, at the invitation of the country concerned, or on the basis of a standing invitation. As of August 2008, 62 countries had extended standing invitations to the special procedures. After such visits, special procedures' mandate-holders issue a mission report including their findings and recommendations.

Thematic and Country Mandates

Currently, there are 38 Special Rapporteurs, Special Representatives, Independent Experts, and working groups who serve under the following country and thematic mandates:

Countries

- ◆ Burundi - Akich Okola, Independent Expert on Human Rights (2005-)



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- ◆ Cambodia - Yash Ghai, Special Representative of the Secretary-General for Human Rights (2005-)
- ◆ Haiti – Michel FORST, Independent Expert on human rights (2008-)
- ◆ Liberia - Charlotte Abaka, Independent Expert on human rights (2003-)
- ◆ Myanmar - Tomas Ojea Quintana, Special Rapporteur on human rights (2008-)
- ◆ North Korea - Vitit Muntarbhorn, Special Rapporteur on human rights (2005-)
- ◆ Palestinian Territories - Richard Falk, Special Rapporteur on human rights (2008-)
- ◆ Somalia - Shamsul Bari, Independent Expert on human rights (2008-)
- ◆ Sudan - Sima Samar, Special Rapporteur on human rights (2005-)

Themes

- ◆ Adequate Housing - Raquel Rolnik (2008-)
- ◆ People of African Descent - Peter Lesa Kasanda (2002-)
- ◆ Arbitrary Detention - Manuela Carmena Castrillo (2003-)
- ◆ Sale of Children, Child Prostitution and Child Pornography - Najat M'jid Maala (2008-)
- ◆ Right to Education - Vernor Muñoz Villalobos (2004-)
- ◆ Enforced or Involuntary Disappearances - Santiago Corcuera (2004-)
- ◆ Extrajudicial, Summary or Arbitrary executions - Philip Alston (2004-)
- ◆ Human Rights and Extreme Poverty - Magdalena Sepúlveda Carmona (2008-)
- ◆ Right to Food - Olivier De Schutter (2008-)
- ◆ Effects of Foreign Debt and Other Related International Financial Obligations of States on Human Rights - Cephas Lumina (2008-)
- ◆ Freedom of Opinion and Expression – Frank La Rue Lewy (2008-)
- ◆ Freedom of Religion or Belief - Asma Jahangir (2004-)
- ◆ Physical and Mental Health – Anand Grover (2008-)
- ◆ Human Rights Defenders - Margaret Sekaggya (2008-)

- ◆ Independence of Judges and Lawyers - Leandro Despouy (2003-)
- ◆ Human Rights of Indigenous People - James Anaya (2008-)
- ◆ Human Rights of Internally Displaced Persons - Walter Kälin (2004-)
- ◆ Use of Mercenaries to Impede the Right of Peoples to Self-Determination - José Luis Gómez del Prado (2004-)
- ◆ Human Rights of Migrants - Jorge Bustamante (2005-)
- ◆ Minority Issues - Gay McDougall (2005-)
- ◆ Racism, Racial Discrimination, Xenophobia and Related Intolerance – Githu Muigai (2008-)
- ◆ Contemporary Forms of Slavery - Gulnara Shahinian - (2007-)
- ◆ Human Rights and International Solidarity - Rudi Muhammad Rizki (2005-)
- ◆ Promotion and Protection of Human Rights while Countering Terrorism - Martin Scheinin (2005-)
- ◆ Torture - Manfred Nowak (2004-)
- ◆ Human Rights and the Illicit Movement of Toxic Waste - Okechukwu Ibeanu (2004-)
- ◆ Trafficking in Persons – Joy Ngozi Ezeilo (2008-)
- ◆ Human Rights and Transnational Corporations and other Business Enterprises - John Ruggie (2005-)
- ◆ Violence against Women - Yakin Ertürk (2003-)

Submitting complaints under special procedures

Mandate-holders are entrusted by their mandate to receive information from different sources: governments, intergovernmental organizations, NGOs, alleged victims of human rights abuses, and witnesses. When they receive credible information about a human rights violation that comes within the scope of their mandate, they intervene directly with the government. The intervention can relate to a human rights violation that has already occurred, one that is ongoing, or one that will very likely take place if no action is taken. The decision to intervene is at the discretion of the mandate-holder.

The admissibility criteria will generally relate to the reliability of the source, the internal consistency of the information received, the precision of the factual details included in the information, and the scope of the mandate itself. However, it must be emphasized that the criteria and the procedures involved in



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responding to an individual complaint vary, so it is necessary to submit a complaint in accordance with the specific requirements established by each mandate-holder.

A complaint need not take any particular form. Teacher organizations should assist their individual members to file such complaints. The claim should be in writing and signed. It should provide basic personal information – name, nationality and date of birth – and specify the State party against which the complaint is directed. A claim brought on behalf of a person should provide proof of their consent or state clearly why such consent cannot be provided. All the facts on which the claim is based should be set out in chronological order. It is crucial that the account be as complete as possible and that the complaint contain all information relevant to the case.

The steps the organization has taken to exhaust the remedies available in the country should be detailed. It should also be stated whether the case has been submitted to another means of international investigation or settlement. This information should be provided in one of the secretariat's working languages, that is, English, French, Spanish, or Russian. In addition, all documents relevant the claims and arguments, especially administrative or judicial decisions on the claim by national authorities, should be submitted. It is also helpful to provide copies of relevant national laws.

If the complaint lacks essential information, the secretariat will request additional details. The process is confidential except for a complaint that is eventually referred to the Economic and Social Council. Thus, if a pattern of abuses in a particular country remains unresolved in the early stages of the process, it can be brought to the attention of the world community through the Economic and Social Council.

A complaint can be submitted to:

OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland
fax to +41 22 917 90 06
urgent-action@ohchr.org

The reader is strongly advised to consult or liaise with EI before sending any such complaints. This is not only because the procedure is complex, but also because EI can endorse the complaint and help to follow it up within the mandate of the Special Procedures.

Human Rights Committee

The Committee is one of several UN-linked human rights treaty bodies. The Human Rights Committee is a group composed of 18 experts that meets three times a year in Geneva or New York to consider the five-yearly reports submitted by United Nations member states on their compliance with the International Covenant on Civil and Political Rights (Appendix C) and with the Second Optional Protocol to the Covenant, on the Abolition of the Death Penalty. Furthermore, the Committee has the competence to examine inter-state and individual complaints related to alleged violations of the Covenant by state parties to the Protocol.

The Human Rights Committee also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues or methods of work.

The HRC may consider individual communications relating to State parties to the Optional Protocol to the International Covenant on Civil and Political Rights. The Protocol was opened for signature at New York on 19 December 1966. 109 UN Member States are party to the Optional Protocol, while 35 of them are signatories. List of ratifications: <http://www2.ohchr.org/english/bodies/ratification/5.htm>

Other treaty bodies

The other Treaty Body Committees are:

Committee on Economic, Social and Cultural Rights

This committee monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. State parties have to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years.

Committee on the Elimination of Racial Discrimination

CERD is a body of independent experts that monitors implementation of the Convention on the Elimination of All



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Forms of Racial Discrimination by its state parties. States must report initially one year after acceding to the convention, and then every two years. Besides the reporting procedure, the convention establishes three other mechanisms through which the Committee performs its monitoring functions: the early-warning procedure, the examination of inter-state complaints, and the examination of individual complaints.

Convention on the Elimination of All Forms of Discrimination against Women

CEDAW (Appendix D) defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. By ratifying this convention, states are obliged to undertake a series of measures to end discrimination against women in all forms. Countries that have ratified or acceded to the convention are committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Committee against Torture

CAT monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its state parties. All state parties must report initially one year after acceding to the convention and then every four years. Additionally, CAT may also, under certain circumstances, consider individual complaints or communications from individuals claiming that their rights under the convention have been violated, undertake inquiries, and consider inter-state complaints.

Committee on the Rights of the Child

CRC monitors implementation of the Convention on the Rights of the Child (Appendix B) and two other optional protocols to the Convention, on involvement of children in armed conflict, sale of children, child prostitution, and child pornography, by its state parties. All state parties must report initially two years after acceding to the convention and then every five years.

Committee on Migrant Workers

CMW is a body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its state parties. All state parties must report initially one year after acceding to the convention and then every five years.



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4. African Union

The African Union (AU) is a continental governmental organization which enables 53 African States to defend the interests of Africa and adopt coordinated positions on matters of common concern in international forums. Established in 2001, the AU was formed as a successor to the amalgamated African Economic Community (AEC) and the Organization of African Unity (OAU). Eventually, the AU aims to have a single currency and a single integrated defence force, as well as other institutions of state, including a cabinet for the AU Head of State. The purpose of the union is to help secure Africa's democracy, human rights, and a sustainable economy, especially by bringing an end to intra-African conflict and creating an effective common market.

The AU Commission is currently chaired by Jean Ping and has headquarters in Addis Ababa, Ethiopia. The African Union has eight Commissioners who mostly deal with trade, resources, and security issues. There is no Commissioner who monitors human rights issues.

The AU is governed by the Assembly of Heads of State and the Pan-African Parliament. Gertrude Mongella is the current President of the Pan-African Parliament.

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics, and rights and the freedoms of others. (Art. 11)

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. (Art. 15)

African Charter on Human and Peoples' Rights (Banjul Charter)

The Banjul Charter (Appendix P) is an international human rights instrument that seeks to promote and protect human rights and basic freedoms in the African continent. Key sections include the following:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status. (Art. 2)

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom, except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. (Art. 6)

Every individual shall have the right to free association provided that he abides by law. (Art. 10.1)

African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial that interprets the Banjul Charter, considers individual complaints of violations of the Charter, and undertakes other activities to promote human and collective rights across the African continent.

The Commission meets twice a year - usually in March/April and in October/November. One of these meetings is usually in Banjul (Gambia), where the Commission's secretariat is located; the other may be in any African state.

The ACHPR is made up of 11 members, elected by secret ballot at the AU Assembly. These members, who serve six-year renewable terms, are chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights (Art. 31). In selecting these members, particular consideration is given "to persons having legal experience". The Commission is currently headed by Mrs Salamata Sawadogo.



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The ACHPR has a Special Rapporteur on the Human Rights Defenders in Africa. The rapporteur can be contacted at the Secretariat of the African Commission on Human and Peoples' Rights. In her last report, Commissioner Reine Alapini-Gansou stressed that "I have identified as a matter of grave concern, the harassment and unjustified arrests suffered by some Human Rights Defenders. I would like to draw the attention of our Commission to the urgency of specific cases like Guinea, Zimbabwe, the Democratic Republic of Congo and the Central African Republic." She adds: "In conclusion, I would like to draw the attention of all the actors, namely the States and the NGOs, to the opportunity that the mandate has just given them by placing a questionnaire at their disposal for the evaluation of the situation of the rights of Human Rights Defenders on the Continent. This is an opportunity which has been provided for all the actors to enhance the relations between them and the mandate."

The members are to enjoy full independence in discharging their duties and serve on a personal basis (i.e., not representing their home states); however, no member state may have more than one of its nationals on the Commission at any given time. The members choose, from among their own number, a Chair and a Vice-Chair, who each serve two-year renewable terms.

The Commission has three broad areas of responsibility:

- ❖ Promoting human rights,
- ❖ Protecting peoples' rights,
- ❖ Interpreting the African Charter on Human and Peoples' Rights.

In pursuit of these goals, the Commission is mandated to *collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to governments (Art. 45).*

African Court on Human and Peoples' Rights

This regional court rules on African Union States' compliance with the Banjul Charter on Human and Peoples' Rights. It is being merged with the African Court of Justice following a decision by AU member states at a June 2004 African Union Summit.

The Court is located in Arusha, Tanzania. Arusha was also the location selected in 1996 for the International Criminal Tribunal for Rwanda, which is still functioning.

On January 22, 2006, the Executive Council of the AU elected the first 11 Judges of the African Court on Human and Peoples' Rights. The Court had its first meeting on July 2-5 2006.

The procedure to complain

When a complaint emanates from a person (physical or moral person, private or public, African or international) and not from a State party to the Charter, the matter is considered by the Commission at the request of the majority of its members. The Commission will only embark on a substantive consideration of the matter after ensuring that the conditions of admissibility of the complaint have been met. The Commission only considers a case after ensuring that any and all local remedies have been exhausted, unless it is obvious to the Commission that this procedure is unduly prolonged.

After studying the complaint and exhausting all means to reach an amicable solution to the matter, the Commission submits a report together with such recommendations as it deems useful to the Assembly of Heads of State and Government, which makes the final decision.

African Commission on Human and Peoples' Rights
P O Box 673, Banjul
Gambia
Tel: 220 39 29 62
Fax: 220 39 07 64
achpr@achpr.org



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5. Council of Europe

The Council of Europe, founded in 1949, is currently composed of 47 countries. Membership is open to all European countries that accept the principle of the rule of law and guarantee fundamental human rights and freedoms to their citizens. In 1950, the Council ratified the first international legal instrument safeguarding human rights, the Convention for the Protection of Human Rights and Fundamental Freedoms.

Structure of the Council of Europe

The Council of Europe comprises four pillars:

Committee of Ministers

The Council of Europe's decision-making body, this committee comprises the Foreign Affairs Ministers of all member states, or their permanent diplomatic representatives in Strasbourg.

http://www.coe.int/T/CM/aboutCM_en.asp

Parliamentary Assembly

The Assembly is made up of 626 representatives who are elected by the national governments of the member states. National delegations must reflect the representation of their parliaments. The size of the country determines its number of representatives and its number of votes. The representatives have the ability to investigate, recommend, and advise.

<http://assembly.coe.int/>

Congress of Local and Regional Authorities

The Chamber of Local Authorities and the Chamber of Regions are both consultative bodies appointed by the representatives chosen by the member states. The Congress currently counts 630 members who are grouped by alliances or ideological viewpoints. The main task of the Congress is to send rapporteurs every year to report on the situation of local and regional democracy in member states and also to observe elections around Europe. It also provides advice to the Committee of Ministers and to the Parliamentary Assembly on local and regional issues.

http://www.coe.int/T/Congress/Default_en.asp

Conference of Independent NGOs

In 1952, the Council of Europe recognized the importance of the non-governmental organizations (NGOs) and provided independent national and international NGOs with the opportunity to acquire participatory status. In turn, the NGOs promote the Council's activities through their associations. NGOs can advise or even provide legal representation for individuals or groups who want to complain to the European Court of Human Rights. They can also lodge collective complaints with the European Committee of Social Rights alleging violations of the European Social Charter.

<http://www.coe.int/T/E/NGO/public/>

The latter is of special interest to manual readers:

Conference of Independent NGOs

EI enjoys participatory status in the Council of Europe and takes part in the annual plenary Conference of the INGOs (International Non-Governmental Organizations). The Conference approves the annual activities report of the Liaison Committee and is informed about annual reports of the thematic and transversal commissions. Each year the Conference decides on the general courses of action to be taken to improve the functioning of the participatory system within the framework of the Council of Europe. It determines the objectives of the Liaison Committee for the coming year.

To be more responsive to changes in the Council of Europe, the INGO Conference has just approved a review of its operational structures. It will now establish five thematic and two transversal committees. The five thematic committees are Human Rights;



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Civil Society and Democracy; Social Cohesion and Eradication of Poverty; Culture, Science, and Education; and Sustainable Territorial Development. The two transversal committees are Gender Equality, and Europe and the Global Challenges.

EI is active in both transversal committees and in three thematic committees: Culture, Science, and Education; Human Rights (covering human rights, economic rights, and the European Social Charter); and Civil Society and Democracy. In these committee activities, EI focuses not only on specific education-related items but also on education and the intercultural dialogue, education for citizenship, and democratic governance in schools.

EI is an observer in the Higher Education Steering Committee.

Social and economic rights and the European Social Charter

The European Social Charter guarantees social and economic rights (Appendix Q). It was adopted in 1961 and revised in 1996. The European Committee for Social Rights is the body responsible for monitoring compliance in the states party to the Charter.

Follow up of the European Social Charter via the national reports

Before 10 October of each year, the party states are expected to submit a national report on the application of the Charter in their country. Since 2007, they focus on one theme a year. There are four themes: (1) employment, training, and equal opportunities; (2) health, social security, and social protection; (3) labour rights; (4) children, families, and migrants. Each theme is therefore addressed every four years.

Civil society organizations and trade unions have the opportunity to question their government about the draft report before it is sent in and, once sent in, to contest the report.

Collective complaints

NGOs enjoying participatory status with the Council of Europe are entitled to lodge complaints with the European Committee of Social Rights. The Committee examines the complaint and, if the formal requirements have been met, declares it admissible.

Once the complaint has been declared admissible, a written procedure is set in motion, with an exchange of memorials between the parties. The Committee may decide to hold a public hearing. The Committee then makes a decision on the merits of the complaint, which it forwards to the parties concerned and to the Committee of Ministers in a report that is made public within four months.

Finally, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the state concerned take specific measures to bring the situation into line with the European Social Charter.

Convention for the Protection of Human Rights and Fundamental Freedoms

This convention (Appendix R), also known as the European Convention on Human Rights (ECHR), was inspired by the 1948 Universal Declaration of Human Rights and entered into force in 1953. All member states of the Council of Europe are party to the ECHR, and new members are expected to ratify the convention at the earliest opportunity.

The convention has been amended various times through the adoption of protocols. For example, Protocol 6 prohibited the death penalty except in time of war. Protocol 14 amended the control system of the convention. In 1994, Protocol 11 provided that individuals have direct access to the European Court of Human Rights. Protocol 11 also enlarged the Court, assigning to it functions and powers which were previously held by the (now former) Commission on Human Rights. By ratifying Protocol 11, all contracting states accepted the jurisdiction of the Court to rule over cases brought against them by individuals.

European Court of Human Rights

The European Court of Human Rights, as currently constituted, was brought into being by Protocol 11 on 1 November 1998. The 47 judges (one from each contracting state) of the European Court are elected for a six-year renewable term by the Parliamentary Assembly



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from shortlists of three candidates submitted by each member country. The judges do not represent their respective countries; they must be independent and impartial. The Court's mission is to protect and ensure the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms. It rules over complaints against any member state lodged either by another member or by citizens of a member country.

Any person who feels that his/her rights have been violated under the European Convention on Human Rights by a contracting state can take a case to the Court. The decisions of the Court are legally binding, and the Court has the power to award damages. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states were considered actors in international law).

<http://www.echr.coe.int/ECHR/EN/Header/The+Court/Introduction/Information+documents/>

Allegation Procedure

Any member state or individual that claims to be the victim of violation of the Convention may complain directly to the Court by filling out an application form:

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Information+for+applicants/Application+form/>

The official languages of the Court are English and French, but the form can be submitted in an official language of the originating country. The motives for lodging a complaint are violations of:

- ✦ right to life;
- ✦ right to a fair hearing in civil and criminal matters;
- ✦ right to respect for private and family life;
- ✦ freedom of expression;
- ✦ freedom of thought, conscience, and religion;
- ✦ right to the peaceful enjoyment of possessions;
- ✦ your right to vote and to stand for election.

The following acts, in particular, are prohibited:

- ✦ torture and inhuman or degrading treatment or punishment;

- ✦ arbitrary and unlawful detention;
- ✦ discrimination in the enjoyment of the rights and freedoms set out in the Convention;
- ✦ the expulsion by a state of its own nationals or its refusing them entry;
- ✦ the death penalty;
- ✦ the collective expulsion of aliens.

Several criteria must be fulfilled to lodge a complaint. The nationality of the plaintiff is not important, but the complaint can only be lodged against a country which has ratified the Convention. Complaints cannot be lodged against individuals or private institutions. Only the direct victim of an alleged violation can lodge a complaint, and only within six months after all national jurisdictions have been pursued.

All complaints must be sent by letter, or through a form, and mailed to:

The Registrar

European Court of Human Rights

Council of Europe

F-67075 Strasbourg Cedex

France

Commissioner for Human Rights

The Commissioner for Human Rights is an independent institution within the Council of Europe. Its task is to promote and to raise awareness of human rights in the 47 countries of the Council. The institution was adopted by the Council of Ministers in 1997. Thomas Hammarberg was elected Commissioner for Human Rights and took up his position on 1 April 2006. The Commissioner is supported by an office and assisted by a dozen advisors.

The Commissioner is mandated to foster the effective observance of human rights, assist member states in the implementation of Council of Europe human rights standards, promote education and awareness-raising in human rights standards, identify possible shortcomings in the law and practice, and facilitate the activities of national ombudspersons and other human rights structures. His work is to encourage reforms to improve the promotion and the protection of the human rights as well as to take initiatives against human rights violations.



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The Commissioner engages in continuing dialogue with member states and conducts official country missions for a comprehensive evaluation of the human rights situation. His reports are presented to the Council of Europe's Committee of Ministers and the Parliamentary Assembly. They are subsequently published and widely circulated.

Being a non-judicial institution, the Commissioner's Office cannot act upon individual complaints, but the Commissioner can draw conclusions and take wider initiatives on the basis of reliable information regarding human rights violations suffered by individuals.

http://www.coe.int/t/commissioner/default_EN.asp

Office of the Commissioner for Human Rights

Council of Europe

F-67075 Strasbourg Cedex,

FRANCE

Tel + 33 (0)3 88 41 34 21

Fax + 33 (0)3 90 21 50 53

commissioner.humanrights@coe.int



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6. Organization of American States (OAS)

The OAS is made up of 35 member states: the independent nations of North, Central, and South America and the Caribbean. The government of Cuba, a member state, has been suspended from participation since 1962; thus only 34 countries participate actively. Nations from other parts of the world participate as permanent observers.

The OAS is the region's principal multilateral forum for strengthening democracy, promoting human rights, and confronting shared problems such as poverty, terrorism, illegal drugs, and corruption. It plays a leading role in carrying out mandates established by the hemisphere's leaders through the Summits of the Americas. The OAS has four official languages: English, Spanish, Portuguese, and French.

OAS structure

The member countries set major policies and goals through the General Assembly, which gathers the hemisphere's ministers of foreign affairs once a year in regular session. Ongoing actions are guided by the Permanent Council, made up of ambassadors appointed by the member states.

The OAS General Secretariat carries out the programmes and policies set by the political bodies. Secretary General José Miguel Insulza, who took office in May 2005, restructured the General Secretariat so the priorities of the member states could be addressed more effectively. Four specialized secretariats coordinate OAS efforts in several broad areas. The Secretariat for Political Affairs directs efforts to promote democracy, strengthen democratic governance, and prevent democratic crises. The Executive Secretariat for Integral Development promotes social and sustainable development, education, culture, science and technology, trade, and tourism.

Other offices and agencies – such as the inter-American human rights bodies and the Summits of the Americas Department – report directly to the OAS Secretary General. The Assistant

Secretary General oversees the secretariats of the Inter-American Commission of Women and the Inter-American Children's Institute, among others.

American Declaration of the Rights and Duties of Man

The American Declaration of the Rights and Duties of Man was the world's first international human rights instrument of a general nature, predating the Universal Declaration of Human Rights. The Declaration was adopted in April 1948 by the 9th International Conference of American States which also adopted the Charter of the Organization of American States and thereby created the OAS.

The first chapter of the Declaration sets forth a catalogue of civil and political rights to be enjoyed by the citizens of the signatory nations, together with additional economic, social, and cultural rights due to them.

While now largely superseded by the provisions of the American Convention on Human Rights (in force since 18 July 1978), the terms of the Declaration are still enforced with respect to those states that have not ratified the Convention. Although strictly speaking a declaration and not a legally binding treaty, the jurisprudence of both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights holds it to be a source of binding international obligations for the OAS's member states.



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American Convention on Human Rights

The American Convention on Human Rights (Appendix S), along with its two additional protocols, came into force on 18 July, 1978, and to date has been ratified by 24 of the OAS's 35 member countries. It is a more detailed human rights instrument than the Declaration. Some of its important provisions are as follows:

No one shall be subject to arbitrary arrest or imprisonment. (Art.7, Para. 3)

Everyone has the right to freedom of thought and expression. (Art. 13, Para. 1)

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others. (Art.15)

Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes. (Art. 16, Para. 1)

Inter-American Court of Human Rights

The Inter-American Court of Human Rights is an autonomous judicial institution based in San José, Costa Rica. Together with the Inter-American Commission on Human Rights, it makes up the human rights protection system of the OAS, which serves to uphold and promote basic rights and freedoms in the Americas.

The Court was established in 1979 with the purpose of enforcing and interpreting the provisions of the American Convention on Human Rights. Its two main functions are thus adjudicatory and advisory. Under the former, it hears and rules on the specific cases of human rights violations referred to it. Under the latter, it issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or member states.

Inter-American Commission on Human Rights (IACHR)

IACHR is one of two bodies in the inter-American system for the promotion and protection of human rights. The Commission has its headquarters in Washington, D.C. The IACHR is an autonomous organ of the OAS. It is composed of seven members who act independently, without representing any particular country. The members of the IACHR are elected by the General Assembly of the OAS. It is a permanent body which meets in ordinary and special sessions several times a year.

IACHR Complaints procedure

The IACHR Executive Secretariat prepared a form intended to make it easier for victims of violations, their family members, organizations of civil society, or other persons to file complaints alleging human rights violations by OAS member States.
https://www.cidh.oas.org/cidh_apps/manual_pdf/MANUAL2002_E.pdf

Petitions addressed to the Commission shall contain the following information: the name, nationality and signature of the person or persons making the denunciation; or in cases where the petitioner is a non-governmental entity, the name and signature of its legal representative(s); whether the petitioner wishes that his or her identity be withheld from the State; an account of the act or situation that is denounced, specifying the place and date of the alleged violations; if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged; the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated; any steps taken to exhaust domestic remedies; and an indication of whether the complaint has been submitted to another international settlement proceeding.

The form should be sent to:

Inter-American Commission on Human Rights
1889 F Street, N. W.
Washington, D.C. 20006 -USA
Fax: 1-202-458-3992
cidhoea@oas.org



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7. Asian Human Rights Bodies

The human rights debate in Asian countries often revolves around concepts like “the Asian perspective” and “non-interference policy.” Glaring human rights abuses are hardly mentioned in intergovernmental summits. Asian governments have ratified some international human rights instruments, but such policy is not reflected in national constitutions or laws. However recent developments are positive in the ASEAN context.

Association of South East Asian Nations (ASEAN)

ASEAN is a geo-political and economic organization of 10 countries located in Southeast Asia. It was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Since then the five founding states have been joined by five more members: Brunei Darussalam, Cambodia, Laos, Myanmar (Burma), and Vietnam. In addition are a candidate member (Timor Leste) and an observer (Papua New Guinea).

Since 2007, ASEAN has a Charter (Appendix T) which declares that it will establish a dedicated ASEAN human rights body along with a strong commitment to international human rights and humanitarian principles. To date, only four ASEAN countries have established national human rights institutions: Indonesia, Malaysia, Thailand, and the Philippines.

The ASEAN human rights body will hopefully assist ASEAN member states in dealing with common and transnational human rights and protection challenges, such as migration, forcible displacement, and trafficking, as well as provide individuals and worker organizations in ASEAN countries with channels for redress.

The terms of reference for the new human rights body are still to be determined.

South Asian Association for Regional Cooperation (SAARC)

The South Asian Association for Regional Cooperation (SAARC) comprises eight countries: Afghanistan, Bangladesh, Bhutan, India,

Maldives, Nepal, Pakistan and Sri Lanka. The SAARC Secretariat is established in Kathmandu, Nepal.

In 1985, the SAARC charter was signed by the governments of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. The stated goals of the SAARC Charter are that the countries will work together, in a spirit of friendship, trust, and understanding, to improve the people’s quality of life; to accelerate economic growth, social programs, and cultural development; to strengthen self-reliance among South Asian states; and to promote collaboration in economic, social, technical, and scientific fields. The notion of a “human right” is not even mentioned in the SAARC Charter, let alone the promotion of human rights as a goal.

Few attempts have been made by SAARC to discuss human rights issues. The SAARC member governments are wary of the term human rights, even though their representatives in international forums vouch for their commitment to promote and protect human rights. The SAARC countries have, for instance, signed the Convention on the Rights of the Child, and all except Maldives have signed the Convention on the Elimination of All Forms of Discrimination Against Women. Every SAARC member state’s constitution guarantees fundamental rights for its respective citizens, but such constitutional rights are laden with contradictions and exceptions.

Indeed almost all South Asian countries have laws that do not respect essential notions of due process, often resulting in arbitrary arrests, assault, and the killing of innocent people. In light of these human rights problems, South Asia can ill afford to remain the only region in the world where there is no regional instrument to govern human rights.



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8. General guidelines for lodging complaints

Particular organizations will have their own rules. However, the following list represents the most common expectations:

Approach

- ◆ A teacher organization should begin by contacting EI, for advice and endorsement.
- ◆ Only a few institutions allow individuals to lodge complaints.
- ◆ Request an application form, if any. When one is received, it should be filled out carefully and legibly and returned promptly.

Drafting

- ◆ Preferably, complaints should be written in an official international language (English and French for Europe).
- ◆ Provide a brief summary of the facts and your complaints.
- ◆ Highlight the right/convention/article that you think has been violated.
- ◆ Highlight the national remedies you have already used with copies of the decisions given in your case by all the public authorities concerned.
- ◆ Attach as many documents as possible relating to your complaints (these documents will not be returned to you, so only copies should be sent).
- ◆ When drafting the complaint, bear in mind that the complaint will usually be submitted to the country government for comment.

Submission

- ◆ Never go in person to make the complaint. The case will not be examined more quickly, and no legal advice will be available.
- ◆ The complaint may be sent by fax, provided the original is sent by surface mail.
- ◆ Originals must bear a signature.



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Education International

5 bd du Roi Albert II
B1210 Brussels
Belgium
Tel : + 32 2 224 0611
Fax: +32 2 224 0606

Dominique Marlet

Human & Trade Union Rights Senior Coordinator
Tel : +32-2 224 06 80

dominique.marlet@ei-ie.org

International Labour Organization

4 Route des Morillons
1211- Geneva
Switzerland
Fax : +41.22.799.85.33

CEART

International Labour Organization

Education sector specialist
Sectoral Activities Department
International Labour Office
CH-1211 Geneva 22
Switzerland
Tel: +41.22 799-7143 / Fax: +41.22 799-7046

CEART

UNESCO
Chief of Section
Section for Teacher Education
Division for Higher Education UNESCO,
7, place de Fontenoy
75352 Paris 07 SP
France

Office of the United Nations High Commissioner for Human Rights

Palais Wilson
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Tel: (41 22) 917 90 00 fax: (41 22) 917 90 11
urgent-action@ohchr.org

African Commission on Human and Peoples' Rights

P O Box 673
Banjul
Gambia
Tel: 220 39 29 62
Fax: 220 39 07 64
achpr@achpr.org

European Court of Human Rights

The Registrar
Council of Europe
F-67075 Strasbourg Cedex
France

Inter-American Commission on Human Rights

1889 F Street, N. W.
Washington, D.C. 20006
USA
Fax: 1-202-458-3992
cidhoea@oas.org



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- A. Universal Declaration of Human Rights
<http://www.unhchr.ch/udhr/lang/eng.htm>
- B. UN Convention on the Rights of the Child
<http://www2.ohchr.org/english/law/crc.htm>
- C. UN International Covenant on Civil and Political Rights
<http://www2.ohchr.org/english/law/ccpr.htm>
- D. UN Convention on the Elimination of All Forms of Discrimination against Women
<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
- E. ILO Declaration on Fundamental Principles and Rights at Work
<http://www.ilo.org/public/english/employment/skills/hrdr/instr/decla.htm>
- F. ILO Convention 87: Freedom of Association and Protection of the Right to Organize
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>
- G. ILO Convention 98: Right to Organize and Collective Bargaining
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>
- H. ILO Convention 29: Forced Labour
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>
- I. ILO Convention 105: Abolition of Forced Labour
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>
- J. ILO Convention 138: Minimum Age
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>
- K. ILO Convention 182: Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>
- L. ILO Convention 100: Equal Remuneration
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>
- M. ILO Convention 111: Discrimination (Employment and Occupation)
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>
- N. 1966 ILO/UNESCO Recommendation concerning the Status of Teachers
http://portal.unesco.org/en/ev.php-URL_ID=13084&URL_DO=DO_TOPIC&URL_SECTION=201.html
- O. 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel
http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html
- P. African Charter on Human and Peoples' Rights (Banjul Charter)
http://www.achpr.org/english/info/charter_en.html
- Q. European Social Charter
<http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>
- R. European Convention for the Protection of Human Rights and Fundamental Freedoms
<http://conventions.coe.int/Treaty/EN/Treaties/Html/005.htm>
- S. American Convention on Human Rights
<http://www.oas.org/juridico/English/treaties/b-32.html>
- T. Charter of the Association of Southeast Asian Nations
<http://www.aseansec.org/21069.pdf>

Education International Trade Union Rights Manual

A practical guide for unions defending their rights

The EI Trade Union Rights Manual shows how teacher organisations can draw the world's attention in cases of local threats to freedom of association, collective bargaining, and workers' rights. It describes international mechanisms that unions can call on to urge their country to live up to its commitments in support of human rights and trade union rights. Focusing on issues encountered by teacher organisations, the EI manual will be of practical value across the trade union movement.



Education International
Internationale de l'Éducation
Internacional de la Educación

El Head Office

5 bd du Roi Albert II
1210 Brussels, Belgium
Tel +32-2 224 06 11
Fax +32-2 224 06 06
headoffice@ei-ie.org
www.ei-ie.org

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