

## The ILO and public services

### A UNISON factsheet

#### Introduction

The International Labour Organisation (ILO) is the United Nations (UN) body that sets internationally recognised labour standards to protect the rights of workers globally.

It is a 'tripartite' organisation, consisting of three parties: workers, employers and governments. The organisation was set up after the First World War as part of the League Nations (the precursor to the UN). The ILO is unique within the UN in that it is the only body where workers (and employers) have a formal voice (all other UN bodies are run solely by government representatives).

The ILO undertakes a very wide range of activities. It carries out research and publishes information on the world of work. As well as its headquarters in Geneva, it has regional programmes and offices in many capital cities around the world. The ILO supports a large number of technical assistance and co-operation projects, including many that help build the capacity of employers' and employees' organisations in developing countries. But perhaps the most important aspect of the work of the ILO is its role in formulating and monitoring international labour standards in the form of **conventions**, **recommendations** and **Codes of Practice** which set minimum standards of basic labour rights.

There are over 180 conventions and a similar number of recommendations – (some earlier conventions have been shelved or withdrawn). Of the 188 conventions eight are considered 'core' and make up the ILO's **Core Labour Standards** (CLS). The eight core conventions cover four key areas:

- *freedom of association* and the effective recognition of the right to *collective bargaining* (Conventions 87 & 98);
- the elimination of all forms of *forced and compulsory labour* (Conventions 29 & 105);
- the effective abolition of *child labour* (Conventions 138 & 182);
- the elimination of *discrimination in respect of employment and occupation* (Conventions 100 & 111).

The conventions are international treaties, subject to ratification by ILO member countries. Once they are ratified, conventions are legally binding on ratifying countries. Recommendations are non-binding; they supplement the conventions by providing additional clarification and guidance for national policy and action.

When a country ratifies an ILO convention, it agrees to give it effect in law (ie incorporate it into domestic legislation) and to apply its provisions in practice<sup>1</sup>.

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<sup>1</sup> This is not simple though as a current example in the UK shows. A debate is taking place in the House of Lords in relation to forced labour as campaigners argue that UK legislation does not adequately cover

The country further agrees to the ILO's supervision of the measures. A formal ILO supervisory mechanism – consisting principally of a committee of independent experts<sup>2</sup> which examines annual reports on the application of ratified conventions and formulates observations to the governments concerned – ensures regular reporting by governments, and includes procedures for handling requests or complaints from representatives of workers' and employers' organisations.

However, even if the ILO rules that a country has not met the standard required by a convention, the ILO has no mechanisms to force a government to change its law or practice. The ILO has no police force or army. It must rely largely on its power to embarrass a government in the eyes of the international community. Many governments do not like the public exposure involved when complaints are made against them. Unfortunately, however, there are still governments who do not respond to this kind of pressure (Burma and Iran are prime examples. The USA, which has only ratified 14 conventions - its argument is that national legislation adequately covers all the issues - left the ILO on one occasion for a two-year period).

In 1998, the ILO produced the Declaration on Fundamental Principles and Rights at Work. In the declaration, ILO member states agreed that they should all respect, promote, and realise the ILO CLS (regardless of whether the member states had ratified the 8 core conventions).

The International Labour Conference (ILC) meets annually to discuss the application of conventions (and to draw up new ones) but between conferences the work of the ILO is guided by a governing body of 28 government members and 14 worker and 14 employer members. The UK workers' representative on the governing body is currently an officer of the TUC.

### Taking a complaint to the ILO

If the law and/or practice on workers' rights in a country do not conform to an ILO convention, a union can consider making a complaint to the ILO.

Complaints can only be made to the ILO:

- About a government, not an employer.
- If the government has ratified the convention in question (unless it is one of the 8 core conventions)
- By a trade union if it is:
  1. a national organisation directly interested in the matter (e.g. UNISON); or
  2. a national trade union centre (e.g. the TUC); or

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the offence. The government disagrees and say the current law gives victims sufficient protection  
[http://news.bbc.co.uk/1/hi/uk\\_politics/8325158.stm](http://news.bbc.co.uk/1/hi/uk_politics/8325158.stm)

<sup>2</sup> Since 1950, a special procedure has existed whereby complaints relating to freedom of association are referred to the Committee on Freedom of Association of the Governing Body

3. an international workers' organisation (e.g. Public Services International - PSI<sup>3</sup>).

While complaints cannot be made to the ILO directly against employers which means individuals cannot take complaints about an abuse of their individual rights, trade unions or trade union centres can complain that a government has not taken adequate steps to regulate the activities of employers in its country (in other words a government can be reported if it does not take action against an employer who has violated the rights of its workers).

Complaints are heard in the ILO by a Committee of Experts or by a Commission of Inquiry especially appointed by the ILO Governing Body, and, as mentioned above, complaints relating to freedom of association are referred to the Committee on Freedom of Association of the Governing Body (regardless of whether a member state has ratified the convention on freedom of association). The findings of the committee are made public and the government which is the subject of the complaint is asked to comply with any recommendations made and to provide written evidence of its response to complaints.

#### **Case study - Colombia**

As a result of the action over a number of years by the Colombian trade union centres, supported by the international trade union movement, the Tripartite Agreement on Freedom of Association and Democracy was signed on 1 June 2006. The main item in that agreement was the establishment in Colombia of an ILO Permanent Representation, whose main task would be to promote and protect the fundamental rights of workers, and in particular their rights to life, freedom of association, freedom of expression and free collective bargaining, whilst ensuring respect of the policies of the ILO. Following intensive pressure, on 18 October 2006 the tripartite agreement that defines the mandate of the ILO Permanent Representation in Colombia was signed, and the government finally agreed to open the ILO Office on 23 November 2006.

This 'success' is tempered by continuing violations of workers' rights. In 2008 the Confederation of Workers of Colombia (CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC) in several 'communications' to the ILO referred to acts of violence against trade union leaders and members, including murders, kidnappings, attempted murder and disappearances; the grave impunity surrounding such acts; the use of associated labour cooperatives and other forms of contracts which make it impossible for workers to establish or join unions; the arbitrary refusal by the authorities to register new trade unions, new statutes or the executive committees of unions; and the prohibition of the exercise of the right to strike in certain services which go beyond essential services [as defined by the ILO].

<sup>3</sup> Public Services International (PSI) is the global union federation to which UNISON is affiliated

### **Case study - Burma**

There have been many complaints made to the ILO about Burma: most of which have been about forced labour.

One of the conclusions of previous complaints recommended opening an ILO office in Burma to which the Burmese government finally acquiesced. The office in theory allows victims of forced labour to make complaints but in practice it has been quite difficult for complainants to do so without fear of retaliation by the state (several complainants have been imprisoned on trumped up charges unrelated to their taking the complaint to the ILO).

Also the method of complaining has become complicated as complaints are sometimes lodged in Thailand and then taken into Burma in diplomatic bags so that the ILO office can deal with them.

Forced labour has far from been eradicated but the government is conscious that the world community is aware of events that take place in the country.

### **Case study - South Korea**

Complainants in South Korea have allegations pending about the non-conformity of several provisions of the labour legislation, including the Establishment and Operation of the Public Officials' Trade Unions Act and the Trade Union and Labour Relations Amendment Act, with freedom of association principles; severe measures of repression against the leaders and members of the Korean Government Employees Union (KGEU)

The ILO Committee of Experts has examined the 'substance of the case' on ten previous occasions dating back to 1996.

The committee's recommendations 'requests the Government to give consideration to further measures aimed at ensuring that the rights of public employees are fully guaranteed by:

- (i) ensuring that public servants at all grades without exception and regardless of their tasks or functions, have the right to form their own associations to defend their interests;
- (ii) guaranteeing the right of ..... local public service employees ..... to establish and join organizations of their own choosing;
- (iii) limiting any restrictions of the right to strike to public servants exercising authority in the name of the State and essential services in the strict sense of the term;

The committee called on the government of Korea to stop interfering in the affairs of KGEU but these requests have consistently been ignored.

## Retreating from ILO conventions

Of the more than 180 ILO conventions there are many that are of particular relevance to public service workers including those that cover health & safety, compensation for accidents/occupational diseases, hours of work, holiday pay, minimum pay, paid maternity leave, sickness benefits, social insurance, workers' reps, part-time working, etc. Many of the conventions have been ratified and incorporated into national legislation (or the rights are already enshrined in law<sup>4</sup>); therefore individual workers can seek legal redress (take a case to court) within their own country if there has been a violation of their working rights.

Over the years these rights (to holiday pay, maternity leave, sickness benefits, etc) have become acceptable norms in workplaces in many countries but attacks on a number of fundamental rights have been escalating over the years, not least on the rights of public service workers to freedom of association (the right to join a trade union), organising and collective bargaining (including the right to take industrial action).

CLS were introduced to protect *all* workers, but the conventions contain provisions which give discretion to government to place limitations on these rights. For example, the army and police have traditionally been excluded from the protection of conventions covering the right to join a trade union (Art 9, C87) and the right to organise and collective bargaining (Art 5, C98). It is left to the state to decide to what extent they should be covered by national legislation. Also, Art 6 of C98 states that 'This convention does not deal with the position of public servants engaged in the administration of the state'. This provision had been intended to exclude 'mandarins' such as Whitehall officials and senior civil servants but over the years has been interpreted by governments around the world as meaning any worker delivering public services (and is also cited as the reason why public service workers should be exempted from the protection offered by C87).

For example, in Korea the government has banned most public service workers from joining a trade union while others have had their rights to organise strictly curtailed as they are involved in the widest interpretation possible of 'public servants involved in the administration of the state'.

Another worrying development has seen public service workers have their right to organise and bargain collectively seriously curtailed or denied altogether as they are deemed to be working in a service that is 'essential', and the ILO has accepted that workers providing 'essential services' may have limitations placed upon their rights.

### *Essential services*

Essential services are defined by the ILO as services where *'the interruption of which would endanger the life, personal safety or health of the whole or part*

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<sup>4</sup> Indeed several countries say there is no need to ratify conventions as domestic law provides sufficient protection to workers

*of the population*'.<sup>5</sup> With this in mind many countries have drawn up labour legislation which states that workers involved in 'essential services' (as defined by the state rather than using the narrower definition of the ILO) have restrictions or prohibitions placed on the right to strike and in many cases to bargain collectively. The ILO admits that many countries are abusing the definition of what is strictly an essential service.

In Colombia the constitution recognises the right to strike for all workers, except for members of the armed forces, the police and workers providing essential public services *as defined by law*. Similarly, the constitution charges the legislative authorities with making provisions governing the right to strike. However, this task has not yet been fulfilled, and in practice, laws dating back to between 1956 and 1990, which ban strikes, remain applicable to a wide range of public services. According to the ITUC these do not necessarily qualify as 'essential' services, in contravention of the ILO definition. In its 2007 report to the ILO on the implementation of C87, the government acknowledged that the definition of essential services contained in section 430(b) of the Labour Code is in contravention of C87. Whether it repeals the Labour Code of Colombia is another question.

In the Canadian province of Saskatchewan, the Public Service Essential Services Act gives employers the power to deem which public sector employees are essential and unable to strike. Unions and individuals who refuse to comply with the essential services' designations face fines.

In another Canadian province, British Columbia, during very limited industrial action by nurses in 2001, the government introduced a law imposing 'collective agreements' on 'negotiating parties' (employers and nursing staff) which favoured the employer and, in effect, 'terminated the already limited right to strike for this group of workers, as strikes are illegal during the term of a collective "agreement"'. UNISON's sister union CUPE and the British Columbia Nurses' Union responded by lodging a complaint with the ILO.

In the same complaint to the ILO against British Columbia, CUPE and the Teachers' Federation said that the government had introduced a law extending the definition of essential services to education thereby severely restricting the right to strike. CUPE said that this violated the recognised principles of freedom of association and free collective bargaining. The complaint was updated and resubmitted by the unions on three additional occasions with the ILO ruling that the legislation violated international agreements.

These types of complaints are increasing as governments introduce draconian legislation around essential services aimed at severely restricting or banning outright the right to strike and bargain collectively.

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<sup>5</sup> ILO General Survey, para. 159

### *Minimum service provision*

The ILO states that those providing 'essential services' (as defined above) must abide by a 'minimum service provision' at all times, especially during strike action. Unfortunately, because essential services are interpreted beyond the ILO definition abuses are widespread. In addition to the extension of the definition of essential services minimum service legislation in public services is being introduced in several countries without even linking the provision to essential services.

The ILO insisted that any restriction on rights must be balanced by a system of reciprocal guarantees, which ensure that workers will be offered compensatory measures including binding independent arbitration.

In France in 2007 the newly elected administration of President Sarkozy introduced minimum service legislation in public transport and now seeks to make complete stoppages on rail transport illegal. Prime Minister François Fillon stated that if the law 'works' in transport it should be altered to include: "other public services, notably education". The ILO does not define education as a service which if halted would *endanger the life, personal safety or health of the population* but minimum service provision is being extended to include public services other than those defined by the ILO.

Also, French employers can unilaterally determine the minimum services in the event of a strike in legislation passed in 2008. According to the ITUC in its Annual Survey of Violations of Trade Union Rights 2009 'the law is part of the pro-business strategy of President Sarkozy, who vowed to "review the strike regulations" during his election campaign. The ILO Committee of Experts has already criticised the law and asked the government to bring it into line with Convention 87.

According to some analysts the main attack on public service workers in France is the requirement for each individual to declare themselves as a striker 48 hours in advance of any strike or be subject to disciplinary action. In addition unions must notify the company in advance of any plan to issue a notification of strike action. Another attack on the right to strike is the stipulation that in no case must workers be paid for strike days. The law also makes provisions for employers to bring in outside labour during a strike thereby diluting the effectiveness of the strike, and after a week of strike action can demand that the union conduct another vote.

Minimum service provision attacks the concept of organising and the internal workings of trade unions by negating the right to strike, by favouring the employer's demands over that of the workers and by systematically stripping workers of rights enshrined in ILO conventions.

## Why is it an issue for UNISON?

In 2009 UNISON passed a motion<sup>6</sup> at National Delegate Conference on the erosion of public service workers' rights across the globe and how UNISON will respond to violations of rights of sister unions in other countries. Being minded that what happens overseas may well happen here (and is already happening, for example with the UK government's ruling that it has 'reserve powers' to enforce a legal ban on prison officers taking industrial action and Royal Mail using temporary labour ostensibly as part of its annual recruitment during the heavy Christmas period), UNISON wishes to learn from sister unions who have been subject to attacks on their rights.

PSI developed a programme of action on 'winning workers' rights'. Included in the programme is a pledge 'to use and defend existing rights, and extend those rights to other countries and other groups of unprotected workers providing services for the public sector.' This is in keeping with Motion 71 on the erosion of the rights of public service workers which includes an instruction to UNISON's National Executive Council (NEC) to work with PSI and others to 'campaign against any restriction on public services workers' rights to organise and bargain collectively'.

Motion 71 also commits UNISON to support challenges at the ILO to anti-trade union measures taken by governments and public service employers. This would mean UNISON supporting sister unions in taking complaints to the ILO for rights' violations and in some cases providing technical assistance to those who do not have the resources or training in meeting ILO procedures for submitting complaints.

UNISON has also got a long-standing record of providing solidarity and support to public service workers overseas who have been victimised by their employers and governments, and face threats and intimidations on a daily basis for their trade union activities.

## Summary of the core conventions

There are 8 core conventions which make up the Core Labour Standards; all of which have been ratified by the UK

### **Convention 29 forced labour (1930)**

Requires the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, properly supervised convict labour, and emergencies such as wars, fires, earthquakes.

### **Convention 87 freedom of association and protection of the right to organise (1948)**

Establishes the right of all workers and employers to form and join organisations of their own choosing without prior authorisation (Art 2), and lays down a series of guarantees for the free functioning of organisations without interference by public authorities (Art 11).

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<sup>6</sup> UNISON Motion 71 2009, Rights of public service workers to organise and collective bargaining <http://cms.unison.co.uk/MotionText.asp?DocumentID=999933>

**Convention 98 *organise and collective bargaining* (1949)**

Art 1 states that ‘workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.’ The convention provides protection against acts calculated to:

(a) make the employment of a worker subject to the condition that he [or she] shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.

Art 4 ‘encourage[s] and promote[s] the full development and utilisation of machinery for voluntary negotiation between employers ..... and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.’

Article 6 says: This Convention does not deal with the position of *public servants engaged in the administration of the State*, nor shall it be construed as prejudicing their rights or status in any way.

**Convention 100 *equal remuneration* (1951)**

Calls for equal pay and benefits for men and women for work of equal value.

**Convention 105 *abolition of forced labour* (1957)**

The convention states that governments should not make use of forced or compulsory labour in certain situations such as a means of discrimination (social, national or religious), a means of labour discipline, economic development or punishment for having participated in strikes.

**Convention 111 *discrimination (employment and occupation)* (1958)**

Calls for a national policy to eliminate discrimination in access to employment, training, and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin, and to promote equality of opportunity and treatment

**Convention 138 *minimum age* (1973)**

Aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling

**Convention 182 *worst forms of child labour* (1999)**

Calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour which include slavery and similar practices, forced recruitment for use in armed conflict, use in prostitution and pornography, any illicit activity, as well as work which is likely to harm the health, safety, and morals of children.

Other conventions of particular relevance to public service workers

**Convention 94 *labour clauses (public contracts) (1949)***

Covers public contracts awarded to other agents whereby wages and conditions offered by the external company to their workers shall be no less favourable than those already established for the work

**The UK denounced this convention in 1982**

**Convention 95 *protection of wages (1949)***

Includes provision that in cases of bankruptcy or liquidation workers should be treated as privileged creditors (Art 11)

**The UK denounced this convention in 1983**

**Convention 143 *migrant workers (supplementary provision) (1975)***

Includes a provision to respect the rights of migrant workers

**The UK has not ratified this convention**

**Convention 149 *nursing personnel (1977)***

Covers the provision of training and education as well as employment and conditions which encourage joining the profession and retention

**The UK has not ratified this convention**

**Convention 151 *labour relations (public service) (1978)***

Thirty years after C87 and C98 were formulated (and the clause pertaining to those engaged in the administration of the state) the ambiguity around protection for public service workers was set right in this convention which stated that all public servants should be afforded the protections offered by ILO Conventions 87 and 98

**The UK has ratified this convention**

**Convention 154 *collective bargaining (1981)***

Covers collective bargaining in regulating relations between employers and workers, and determining working conditions and terms of employment. Art 1, para 2 states that 'as regards the public service, special *modalities* of application may be fixed by national law or regulations'.

**The UK has not ratified this convention**

**Convention 183 *maternity protection (2000)***

Covers the health of a pregnant woman, maternity leave, benefits and employment protection

**The UK has not ratified this convention**