

INTERNATIONAL LABOUR LAW: RELEVANT INTERNATIONAL LEGAL INSTRUMENTS AND ENFORCEMENT MECHANISMS

There are a number of international legal instruments which prescribe various rights to workers in the Garment and Textile industry. Furthermore, these instruments prescribe obligations for states to take measures to protect such rights. This document details such legislation, with relevance to the garment industry. On an international level, states have incurred rights and obligations from the various human rights treaties, and International Labour Organisation (hereinafter 'ILO') conventions which it has ratified.

1. Human Rights Treaties

The main treaties that are of importance in connection to the rights of workers are:

- 1) *The International Covenant on Civil and Political Rights (ICCPR)***
- 2) *The international Covenant on Economic, Social and Cultural Rights (ICESCR)***
- 3) *The Convention on Elimination all forms of Discrimination of Women (CEDAW)***
- 4) *The Convention on the Rights of the Child (CRC).***

These treaties are binding upon all states which have signed and ratified them. If, however, a country has entered a reservation on a certain article in a treaty which it has ratified, it may be that this article is not binding upon that country, or that the country has specified how it will interpret this article (perhaps to its own benefit).¹ There are mechanisms to check if the parties to the treaties comply with their obligations. One important mechanism for that is the individual complaint mechanism. Under this procedure, individuals can bring a claim against the state to seek for enforcement of a right granted under a treaty.

1.9 Human Rights Treaties: Enforcement Mechanisms

International Human Rights Treaties

According to the article 26 of the Vienna Convention on the Law of Treaties (VCLT), states that have ratified a treaty must carry out their obligations in 'good faith.'² Additionally, there are

¹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT) articles 19-23

² *Ibid.*, art. 26

various mechanisms to check if the parties to the treaties comply with their obligations. One important mechanism for that is the individual complaint mechanism. Under this procedure, individuals can bring a claim against the state to seek for enforcement of a right granted under a treaty. The enforcement mechanisms for each of the relevant treaties are detailed below.

Universal Periodic Review: In addition to the enforcement mechanisms listed below, in 2006, the UN added a Universal Periodic Review (UPR) to its means of Human Rights enforcement. The system periodically reviews the human rights compliance of all UN member states (193 in total). States must submit a report detailing their implementation of all Human Rights agreements to which they are a party, detailing, 'what actions they have taken to improve the human rights situation in their countries and to overcome challenges to the enjoyment of human rights.' The UPR is currently working through its second cycle (which began in May 2012). **Notably, NGOs may submit information** and comment as well as attend the UPR working group.³

ICCPR – The Human Rights Committee (HRC) is the ICCPR's monitoring and enforcement body. States who have ratified the ICCPR must submit periodic reports to the HRC when requested to do so (around once every five years). Additionally, the HRC may hear interstate complaints. Finally, an individual complaint mechanism exists, but **only** if the state has also signed the first optional protocol (OP) to the convention.

ICESCR – The Committee on Economic, Social and Cultural Rights (CESCR) is the ICESCR's monitoring and enforcement body. As with the HRC, CESCR receives periodic reports from contracting states. Furthermore, CESCR holds 'General Discussion Days' and at times will visit states to gather information on compliance. Under the ICESCR, individual complaints are **only** permitted if the contracting state has signed the OP to the ICESCR.

CEDAW – The Committee on the Elimination of Discrimination against women is CEDAW's monitoring and enforcement body. As with the abovementioned treaties, state reporting is once again one of the main ways in which compliance with this treaty is monitored. The committee may make general recommendations after receiving state reports. Individual complaints are permitted **only** if the contracting state has signed the optional protocol.

³UPR' <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> accessed 19 January 2015

CRC – The Committee on the Rights of the Child is the CRC's monitoring and enforcement body. State reporting comprises the main way in which this treaty is enforced. ⁴

ILO Conventions

Further sources of international law which grant rights to workers are the Conventions of the International Labour Organisation (ILO). The ILO, by adopting such conventions, aims to introduce minimum labour standards which can be internationally agreed upon. Ratification is voluntary, but once ratified, the Conventions become binding upon the signatory states

There are 8 Core ILO Conventions, which deal with the 'fundamental rights' of workers. These are as follows:

- ***C029 – Forced Labour Convention (1930)***
- ***C100 – Equal Remuneration Convention (1951)***
- ***C105 – Abolition of Forced Labour (1957)***
- ***C111- Discrimination (Employment and Occupation) (1958)***
- ***C087 – Freedom of Association and Protection of the Right to Organise Convention (1948)***
- ***C098 – Right to Organise and Collective Bargaining Convention (1948)***
- ***C138 – Minimum Age Convention (1973)***
- ***C182 – Worst Forms of Child Labour Convention (1999)***

Supervisory System

In terms of supervision of compliance, the ILO has two systems; namely, the regular supervisory system, and a system of special procedures. Both systems will be detailed below.

Regular Supervisory system

Under this system, ILO member states are required to submit regular reports to the 'Committee of Experts on the Application of Conventions and Recommendations.' These reports must be submitted every 2 (for fundamental conventions) or 5 (for additional conventions) years. Additionally, employers or workers organisations may add comment to these reports. The

⁴ Rhona K.M. Smith *Textbook on International Human Rights*, (6th Ed, Oxford University Press, 2014) , p 153 ff

Committee may ask further questions or make recommendations to the member state based on the report.⁵ Furthermore, the annual report of the Committee is submitted to the International Labour Conference where a further 'Conference Committee on the Application of Standards' examines the report.⁶

Special Procedures

Committee on Freedom of Association

It is also worth noting that the ILO operates a special Freedom of Association Committee which monitors the right to freedom of association in countries, **regardless of whether they have ratified the relevant ILO conventions or not.**⁷ Complaints regarding freedom of association may be brought by employers and workers associations before this special committee. This is particularly relevant since India has not ratified the relevant freedom of association conventions. (non-binding nature).⁸

Representations

Under this mechanism, **employers or workers organisations may submit complaints** against a member state with regard to non-compliance with any of the conventions which it has ratified. A committee will examine the information and will, if necessary, make recommendations to the government concerned. If the representation concerns Conventions 87 or 98 (on Freedom of Association and Collective Bargaining), they are normally passed to the Committee on Freedom of Association (see above).⁹

Complaints

This system is essentially an inter-states complaint mechanism whereby a state may file a complaint against another state if it feels that there is a compliance issue. When this happens,

⁵ 'Committee of Experts on the Application of Conventions and Recommendations' (*International Labour Organisation*) <http://ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> accessed 2 February 2015

⁶ 'Conference Committee on the Application of Standards' (*International Labour Organisation*) <http://ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/lang--en/index.htm>

⁷ 'Special Procedures for the examination in the International Labour Organisation of complaints alleging violations of freedom of association - Annex 1, article 31' http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2565060:NO accessed 2 February 2015

⁸ 'Committee on Freedom of Association' (*International Labour Organisation*) <http://ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang--en/index.htm> accessed 2 February 2015

⁹ 'Representations' (*International Labour Organisation*) <http://ilo.org/global/standards/applying-and-promoting-international-labour-standards/representations/lang--en/index.htm> accessed 2 February 2015

the ILO's governing body may decide to set up a 'Commission of Inquiry' who will conduct a thorough investigation and make recommendations. This procedure is normally applied to states who are 'accused of committing persistent and serious violations.'¹⁰

¹⁰ 'Complaints' (*International Labour Organisation*) <http://ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang--en/index.htm> accessed 19 January 2015