

# The impact of the ILO Supervisory System on the achievement of labour rights and the promotion of social dialogue in the Latin American region

Over the last 20 years, there has been exponential increase in the use of ILO mechanisms, resulting in more effective recognition of rights

The pronouncements of the supervisory bodies of the International Labour Organisation have had a high degree of influence on the conquest of rights and the promotion of social dialogue in the Latin American region. The ILO's corpus of standards, characterised by a set of legally binding conventions, recommendations and declarations on various subjects related to the world of work, has its own supervisory system that is unique in the multilateral system. The supervisory system is composed of independent legal experts and tripartite bodies.

Monitoring of the body of law is carried out through a regular system and special procedures. The regular monitoring system is based on the examination of reports on implementation by law and in practice sent by Member States, as well as on comments received from workers' and employers' organisations. This report is produced by the ILO Committee of Experts on the Application of Conventions and Recommendations<sup>1</sup>. Its observations constitute assessments of the conformity of a Member State's national legislation with the conventions it has ratified. Its comments have acquired a high moral standing over the years and their legal value in national realities has become indisputable<sup>2</sup>.

The regular monitoring system is complemented by the work of the Committee on the Application of Standards of the International Labour Conference. This is a standing tripartite committee. Its main objective is, through its analysis of the report submitted by the Committee of Experts, to adopt conclusions, recommending that governments take specific measures to address the challenges at a national level, including ILO missions or technical assistance.

The special supervisory procedures<sup>3</sup> include, on the one hand, a generally applicable complaints and grievance procedure and, on the other hand, a special procedure on freedom of association. The latter is carried out by a special body called the Freedom of Association Committee of the Governing Body set up in 1951 to examine complaints about violations of freedom of association.

The pronouncements of the supervisory bodies and their possible qualification as a source of law or as "soft law jurisprudence" have given rise to much debate and discussion among academics and jurists outside and inside the ILO<sup>4</sup>. However, its value has always been highlighted by the trade union movement, especially in the Americas region, where, thanks to the pronouncements of the ILO supervisory bodies, it has been possible to celebrate

important achievements of rights in the different national realities. In other words, beyond any debate on the legal nature of the supervisory bodies' pronouncements, the trade union movement has undoubtedly been able to use them to promote the effective recognition of fundamental rights.

- Recently in Ecuador, the Provincial Court of Pichincha<sup>5</sup>, following up on the recommendations adopted by the Committee on Freedom of Association and approved by the Governing Body in its report no. 391 of October 2019<sup>6</sup>, ordered that the Association of Banana and Peasant Workers (ASTAC) be registered as a trade union organisation and, in turn, ordered the regulation of the exercise of the right to freedom of association by branch of activity in the country.
- In Colombia, the Supreme Court of Justice, Labour Cassation Chamber<sup>7</sup>, in its judgement of June 2020, recognising the pronouncements of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations as authentic interpreters of the conventions on freedom of association, declared the legality of the strike promoted by the National Health and Social Security Trade Union (SINDESS) and considered the right to strike as a possible instrument for the realisation of the general interest of a society.

Both court rulings demonstrate that, on the one hand, from a purely legal analysis, national courts have the capacity to recognise and give binding force to the recommendations of the ILO supervisory bodies<sup>8</sup>. On the other hand, it clearly demonstrates the effectiveness of the ILO supervisory mechanism in empowering trade union organisations in their countries to achieve effective recognition of their rights.

Over the last 20 years, the ILO has witnessed an exponential increase in the use of its supervisory mechanism, in particular the Committee on Freedom of Association, by the trade union movement in the Latin American region. Among the 3406 complaints examined by the CFA in its 70 years of existence, almost 50 percent (1718 cases) have come from Latin America<sup>9</sup>. The ILO Office, through a series of visits to various countries in the region, was able to verify the deficits in institutionalised social dialogue in the region and the challenges that this created at national level for the implementation of fundamental ILO Conventions such as Convention No. 87 on

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Freedom of Association and Protection of the Right to Organise, and Convention No. 98 on the Right to Organise and Collective Bargaining<sup>10</sup>.

For several years now, the ILO supervisory bodies have stressed the importance of addressing through national social dialogue mechanisms the prevention and resolution of conflicts relating to international labour standards, especially with regard to freedom of association and collective bargaining<sup>11</sup>. An example of this can be found in the experience of Argentina. In the last three years, two instances of institutionalised social dialogue have been created, mainly in response to a demand from the Argentine trade union movement, but also to a series of observations made by the Committee of Experts on the Application of Conventions and Recommendations.

In 2019, Resolution No. 225/2019 created the Commission for Social Dialogue for the Future of Work<sup>12</sup> in response to a series of repeated pronouncements by the Committee of Experts<sup>13</sup> requesting the Argentine State to promote instances of tripartite social dialogue to resolve pending issues related to compliance with ILO conventions. Two special subcommittees were set up within the framework of this committee, one to deal with issues relating to the implementation of labour standards linked to the ILO's regular mechanism<sup>14</sup> and the possible ratification of new conventions. Among the first issues proposed by the trade union movement for discussion in the standards subcommittee was the request for ratification of ILO Convention 190 on violence and harassment, which was finally ratified in December 2020<sup>15</sup>. The second subcommittee was devoted to the discussion of complaints and grievances before the Committee on Freedom of Association<sup>16</sup>.

It would be important to promote the reactivation of this two commission in such a way that its functioning is regular and allows to deepen the culture of social dialogue in the country. Social dialogue is not an objective in itself, it is a tool to achieve specific objectives. Its institutionalisation must be guaranteed with periodicity, concrete agendas and assessments<sup>17</sup>.

The year 2021 also saw the creation of the Economic and Social Council (CES)<sup>18</sup>, an institutionalised social dialogue body that brings together the labour and business sectors and representatives of academia, science and civil society.

The social dialogue in Argentina is usually expressed in collective bargaining and plays a fundamental role in setting wages and working conditions. On the other hand, the Economic and Social Council (ESC) is seen by the trade union movement as a relevant institution at this juncture to build, improve and strengthen public policies that address key issues such as: the promotion of decent work, gender equality and non-discrimination, social protection and occupational health and safety, support for the development of professional skills, and the reduction of inequalities, among others.

## Conclusion

The leading role of the Latin American trade union movement in the use of the ILO supervisory system has resulted in the expansion and effective recognition of labour and trade union rights, reinforcing the vital value of democracy for sustainable development and greater social justice in one of the most unequal regions of the world. The trade union movement of the Americas has demonstrated with its vast experience walking the corridors of the ILO Supervisory Body can be a very effective and efficient way to change in the behaviour of countries<sup>19</sup>. The close link between the ILO's body of standards, its supervisory system and their effective exercise by the trade union movement enables us to realise the dream of living in a more egalitarian region with full respect for human rights.

Almost 50 percent of cases examined by the Committee on Freedom of Association have been from the Latin American region

- 1 In a resolution adopted by the International Labour Conference at its Eighth Session in 1926, the CEACR and the Conference Committee on the Application of Standards were entrusted with the regular supervision of the observance by member States of their obligations under the standards adopted. ILO, *Handbook on procedures concerning international labour Conventions and Recommendations*, First edition (ILO, 2019)
- 2 In this regard, it is worth noting that the unique composition of the Committee of Experts on the Application of Conventions and Recommendations, namely the fact that it is composed of independent persons with distinguished legal backgrounds, helps to ensure that its views on the meaning of Conventions are widely accepted within the ILO. See, *Monitoring Compliance with International Labour Standards: The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations* (ILO, 2019)
- 3 The grievance procedure is governed by Articles 24 and 25 of the ILO Constitution. The complaints procedure is governed by Articles 26 to 34 of the ILO Constitution. The procedure of the Committee on Freedom of Association is governed by the ILO Constitution. See, [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:4046805:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:4046805:NO)
- 4 Claire La Hovary, "The ILO's Supervisory Bodies' 'Soft Law Jurisprudence'" (July 14, 2014). Adelle Blackett and Anne Trebilcock, eds, *Research Handbook on Transnational Labour Law* (Edward Elgar, 2015), first presented at the Labour Law Research Network Conference in June 2013, at: <https://ssrn.com/abstract=2465933>
- 5 Provincial Court of Pichincha. Judgment No: 17981202002407. 26.05.2021
- 6 Committee on Freedom of Association, Interim Report - Report No. 391, October 2019
- 7 Supreme Court of Justice, Labour Chamber of Colombia. SL1680-2020 Radicación n.º 81296 Acta 22 Bogotá, D.C., 24 June 2020, at: <https://cortesuprema.gov.co/corte/wp-content/uploads/2020/07/SL1680-2020-81296.pdf>
- 8 Carols Felipe Ledesma Céspedes, "Domestic Courts and Recommendations of the Committee on Freedom of Association of the ILO", *International Labor Rights Case Law* 8 (2022), pp130-134
- 9 Ana Virginia Moreira Gomes and Anil Verma, "Freedom of Association, the ILO and Latin America: A retrospective and the path ahead" (at p151) *70 Years of the ILO Committee on Freedom of Association: A Reliable Compass in Any Weather* (ILO, 2022), p154, at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/--normes/documents/publication/wcms\\_860150.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/--normes/documents/publication/wcms_860150.pdf)

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- 10 Horacio Guido, *Rational Tripartite Dispute Settlement Mechanisms for International Labour Standards (Nit) Promoted By The ILO* (2017)
- 11 Horacio Guido, *Las Normas Internacionales del Trabajo y el sistema de control de la OIT: elementos para un diálogo superador de las crisis en América Latina* (CIELO Laboral), at: [https://cielolaboral.com/wp-content/uploads/2019/12/3\\_guido\\_noticias\\_cielo\\_n11\\_2019.pdf](https://cielolaboral.com/wp-content/uploads/2019/12/3_guido_noticias_cielo_n11_2019.pdf)
- 12 *Se creó la Comisión de Diálogo Social para el Futuro del Trabajo*, Ministerio de Economía, at: <https://www.argentina.gob.ar/noticias/se-creo-la-comision-de-dialogo-social-para-el-futuro-del-trabajo>
- 13 Comment (CEACR) - Adoption: 2018, Publication: 108th ILC meeting (2019)
- 14 The Commission of Social Dialogue for the Future of Work created by Resolution 225/2019 will be made up of representatives of the Ministry of Production and Labour; of the following organisations of the trade union sector: General Confederation of Labour (CGT), Argentine Union of Rural Workers and Stevedores (UATRE), Autonomous Argentine Workers' Central (CTA Autónoma), Argentine Workers' Central (CTA de los Trabajadores); and of the following organisations of the business sector: Unión Industrial Argentina (UIA), Cámara Argentina de Comercio y Servicios (CAC), Confederación Argentina de la Mediana Empresa (GAME),

Asociación Empresaria Argentina (AEA), Sociedad Rural Argentina (SRA), Confederaciones Rurales Argentinas (CRA), Federación Agraria Argentina (FAA), Confederación Intercooperativa Agropecuaria Limitada (CONINAGRO), Cámara Argentina de la Construcción (CAMARCO), Asociación de Bancos Argentinos (ADEBA), Asociación de Bancos de la Argentina (ABA), Bolsa de Comercio de Buenos Aires (BCBA) and Instituto para el Desarrollo Empresarial de la Argentina (IDEA). Its functions are detailed in article 3, at: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/321868/norma.htm>

- 15 Argentina ratified it through Law 27580, passed by the National Congress on 15 December 2020, and deposited the instrument of ratification with the ILO on 23 February 2021
- 16 Observation (CEACR) - Adoption: 2019, Publication: 109th ILC meeting (2021)
- 17 ILO. A self-assessment method for social dialogue institutions. SAM-SDI International Labour Office - Geneva: ILO, 2021. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_827066.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_827066.pdf)
- 18 <https://www.argentina.gob.ar/consejo/que-es.2.11.2022>
- 19 Gomes and Verma, "Freedom of Association", p166

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agreements that were finally signed. The effect of the pandemic on collective bargaining can be observed.

Despite the very difficult panorama that we have described regarding trade union rights in Peru, in the last two years changes have been promoted in some regulations that favour trade union activity. We refer to the following:

- The new law for workers in the agricultural sector (Law No. 31110 of 2020), which after a large unplanned mobilisation by the unions which involved the vast majority of workers in the agro-export sector managed to improve labour rights in the sector;
- The new regulations for domestic workers (Law No. 31047 of 2020) that standardises their labour rights to those of other workers in the private sector, and which was achieved after years of struggle unions in the sector;
- Supreme Decree No. 001-2022-TR, which limits labour outsourcing to activities that are not part

of the core business, which would mean the incorporation of thousands of subcontracted workers to the payroll of the main companies;

- Supreme Decree 014-2022-TR, that makes important changes in the regulation of unionisation, collective bargaining and strike action (for example, this incorporates the recognition of new forms of union organisation, the recognition of the permanence of the clauses of collective agreements, and the elimination of various obstacles to the organisation of strike action, among other novelties).

Despite these provisions, the trade union model has not changed, the rules that encourage temporary hiring, and the special regimes are still in force. In Peru, the approval of a labour code that grants labour benefits to all workers, without distinction of category or sector, continues to be a pending task.

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creation of the social service for peace, approval of the peace law, a draft law against hunger to guarantee the right to food, as a state policy, and to resume again the peace talks that the previous government wanted to tear to shreds.

Progress is being made towards a just energy transition, the Escazú agreement in defence of the environment is ratified, the use of glyphosate is prohibited, and a social tax reform is approved that seeks to partially solve the misery that exists in the country. Under this reform, more money is allocated for the part of social welfare and to combat hunger. It is the first time in the country's history that a government plan is created starting from and building on the regions with a binding nature, in

which work is being done through social dialogue, on a labour reform that develops article 53 of the political constitution of our country, and other things that this government has done in less than a hundred days that the governments of the "Neoliberal Court" have not done over the many years that they have been governing. Today, the extreme right, a part of the business lobby, the bourgeoisie, the financial banks and tabloid media, the radio, and Uribista congressmen of the Centro Democrático (English: Democratic Centre) and other 'traditional' parties have tried - with fallacies and lies - to provoke a social revolt, in doing so they are staining and stigmatising the hopes and change of policies held by a "Social Court" government that wants total peace.