



# **Targeted Surveys on application of core labour standards**

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# 1. Targeted Surveys on application of core labour standards, Armenia

This report has been developed to provide a picture of the application of core labour standards in Armenia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

## Progress

- Improved legal framework on non-discrimination, right to strike, and forced labour (anticipated – pending adoption)
- Improved scope and competences of labour inspection service (anticipated – pending Charter of new body)

## Challenges

- Lack of enforcement relating to CLS, principally due to ineffective labour inspection system
- Discrimination against women workers
- Increasing informality and precarity across the labour market
- Reduced government efforts to address forced labour and trafficking
- Lack of data on child labour

## Key context

Armenia has seen substantial political upheaval in 2018. Following a series of popular protests, Nikol Pashinyan was appointed Prime Minister on 8 May. The programme of the new government may have significant implications for the labour rights enforcement environment – seeking to reinforce the rule of law, eliminate corruption, and achieve strong and inclusive economic growth.

A labour law reform process was initiated in early 2017, aiming to implement the goal of ‘simplifying regulations for small businesses’ that was set out in the government’s overarching policy programme adopted in October 2016. The ILO has also participated in the process, providing recommendations and clarifications on aligning reforms with international standards and best practice. The most recent draft amendments, reflecting a number of the ILO’s observations, were presented in February 2018. Although recent political upheaval has created some uncertainty, government representatives have indicated that labour law reform remains a priority, with core labour standards a focal concern.

Labour market conditions may also impede the application of core labour standards and wider access to decent jobs. Although the labour law reform seeks to promote negotiated outcomes, high levels of unemployment – estimated at 18.2% in 2017 – serve to diminish workers’ bargaining power. Workers in the large informal economy, estimated to account for 52% of all employment, face practical barriers to organising and collective bargaining. Enforcement of labour laws is also more difficult in the informal economy.

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However, the lack of a fully-functioning labour inspectorate is the biggest overall constraint for the realisation of core labour standards in Armenia. It is generally acknowledged that, since 2013, there has been no functioning labour inspection body to supervise and enforce the application of core labour standards. In 2017, the ILO expressed concern that the ongoing reorganisation of the labour inspectorate was not fully aligned with C81, as ratified by Armenia, with particular regard to Art. 4 and Art. 9.

There have been important developments in this area through 2018. A Health and Labour Inspectorate (HLI) was established under the 2018 Law on State Administration Bodies and came into effect on 9 April. However, a Charter setting out the specific roles and responsibilities of the HLI has not yet been adopted, and it is not yet clear whether it will address significant concerns about the scope, competences, and functioning of the previous inspection body (the Health Inspection Body – HIB). During the 9th round of the EU-Armenia Human Rights Dialogue in May 2018, Armenia indicated that it planned to reform the system of labour inspection to comply with international standards, including oversight of hours, wages and workers’ rights.

### **Freedom of association and collective bargaining**

Although basic foundations for social dialogue are in place, including a legal framework regulating collective bargaining and a tripartite commission for consultation between the government and social partners, there are several shortcomings regarding the legal framework on freedom of association and collective bargaining. Several specific concerns have been identified, largely reflected in the findings of the ILO CEACR (*see table, below*). Among the issues identified are: limitations on the right to strike; bans on organising for certain categories of workers; high minimum membership requirements for trade unions and employers’ associations; and restrictions on organising outside current sectoral and national structures. Many of these issues should be addressed by planned reforms of the Labour Code.

Pending the adoption of the charter of the new Health and Labour Inspection (HLI), concerns persist that there is no central oversight body to ensure enforcement of national legislation transposing the terms of ILO C87 and C98. In addition, there are several reported concerns about the enjoyment of freedom of association and collective bargaining in practice. For example, reports suggest that the informal consent of the employer is required to establish a formal trade union. In addition, there is currently no official procedure for registering collective bargaining agreements.

### **Forced labour**

The legal framework on forced labour is broadly adequate and in line with international standards. However, there remain some noteworthy gaps, especially the lack of a precise legal definition of forced labour. However, the latest draft of amendments to the Labour Code contains a definition of forced labour that is in line with international standards.

There are significant concerns about how relevant legislation is enforced. In the absence of a functioning labour inspectorate, there is no effective system to monitor and inspect workplaces to prevent and detect forced labour and trafficking. In addition, there are concerns that other supportive institutional mechanisms for tackling forced labour, such as formal provisions for victim support and mechanisms for overseeing and regulating labour recruitment agencies, are lacking or ineffective.

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Overall, social partners do not consider forced labour within Armenia a pressing issue in practice. However, there are reports that forced labour and trafficking for the purposes of labour exploitation occur, both within the country and involving Armenian nationals abroad, primarily in Russia and Turkey. There are few indications of specific efforts to address forced labour and the US Department of State's Trafficking in Persons Report for 2018 downgraded Armenia to 'Tier 2', indicating comparably less serious and sustained efforts than during the previous reporting period.

## **Child labour**

The legal framework concerning child labour, including its worst forms, is broadly adequate and in line with international standards. However, key legislation does not apply outside the formal sector, while definitions of 'light' and 'hazardous' work are either absent or insufficiently developed. In practice, there are significant enforcement limitations concerning child labour laws, primarily due to the absence of an effective labour inspection system.

According to the most recent National Survey on Child Labour, conducted in 2015 with the support of the ILO, 8.7% of children aged 5-17 are involved in child labour in Armenia, the majority of which (79.4%) are engaged in hazardous work. The survey found child labour to be most prevalent among older age groups and in rural areas, and that the majority of child labour (91%) occurs in agriculture. The ILO CEACR has raised further concerns relating to the increasing number of children involved in begging and heavy manual labour, as well as a growing risk of street children becoming involved in worst forms of child labour.

## **Discrimination**

There is no comprehensive anti-discrimination law, and existing legislation does not provide effective protection against discrimination. A draft Law on Ensuring Equality was published in March 2018, and in May 2018 Armenia reconfirmed its commitment to adopting a comprehensive anti-discrimination law in line with international standards. The draft law contains a comprehensive definition of discrimination and prohibited grounds for discrimination, as well as the responsibilities of employers in terms of preventing and prohibiting discrimination in the workplace.

In practice, most discrimination issues identified by stakeholders relate to gender. Women reportedly face discrimination at every stage of the employment relationship. At the recruitment stage, job advertisements frequently state preferences relating to gender or physical appearance, while employers often prefer to employ male candidates, even if they have lower levels of qualifications than women candidates. Upon commencing employment, there are reports that employers offer women (but not men in equivalent situations) short-term or 'service delivery' contracts rather than permanent employment contracts, primarily as a means to avoid their obligations relating to maternity pay and leave. During employment there are reports that sexual harassment is widespread and often goes unreported, while women are often the first to be dismissed during retrenchment processes. There are also some reports relating to discrimination on other grounds, including in relation to sexual orientation, age, disability, religion, and ethnicity.

## **Status of ratification and reporting**

Armenia has ratified all ILO fundamental (core) labour conventions without reservations and maintains their ratification. Armenia has also ratified three ILO governance (priority) conventions

(C81, C122 and C144). Armenia is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted that several categories of workers are excluded from establishing and joining organisations of their own choosing; that national law sets excessive minimum membership requirements and prescriptive organisational requirements for the establishment of employers' organisations and trade unions; that there are excessive thresholds for declaring a legal strike, and; that the process for determining minimum service during strikes does not include the participation of social partners.
	C98	(2017): Noted that the Labour Code provides for the possibility that in case no trade union exists at enterprise level, or if existing unions represent less than half of all employees, other representatives can be elected to negotiate collective agreements, and; that the Labour Code specifies that collective agreements will be considered unilaterally terminated if an enterprise is restructured or privatised.
Forced Labour	C29	(2016): Noted that members of the armed forces are only explicitly permitted to leave their service on expiration of their contract, for medical reasons, or on reaching an age limit. It is unclear if they also have the right to leave the service at their own request.
	C105	<i>No specific application issues raised.</i>
Child labour	C138	(2016): Noted that provisions in the Labour Code relating to child labour do not apply to work performed outside a formal labour relationship, such as self-employment or non-remunerated work.
	C182	(2016): Noted that the Criminal Code prohibits the involvement of a child in the commission of a crime but that it appears to only apply to children below the age of criminal responsibility (16 years).
Discrimination	C100	(2017): Noted that following the abolition of the State Labour Inspectorate in 2015, that there is no state body with responsibility for supervising the application of legislation relating to discrimination.  Noted that while the Labour Code provides for "equal pay for the same or equivalent work", that "same or equivalent work" is narrower than the principle of "work of equal value".
	C111	(2017): Noted that national legislation does not set out a comprehensive definition of discrimination, does not explicitly prohibit direct and indirect discrimination, and does not cover all the grounds for discrimination set out in C111. Further noted that there is no longer legal protection of workers against sexual harassment in employment and that the government maintains a list of jobs deemed to be dangerous or harmful in which women may not be employed.

## References

ILO CEACR, [Observations and Direct Requests for Armenia](#)

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## 2. Targeted Surveys on application of core labour standards, Bolivia

This report has been developed to provide a picture of the application of core labour standards in Bolivia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Broad constitutional rights provide strong basis for ongoing labour law reform
- Wide range of policies and initiatives to address discrimination, including in work
- Constitutional Tribunal has annulled provisions allowing children under 14 to work legally.

### Challenges

- Informality and casualisation of employment undermine worker and trade union rights
- Tripartite relations are poor
- Restrictions on freedom of association in the public sector
- Limited trade union autonomy
- Lengthy judicial delays
- Limited data on child / forced labour

### Key context

Despite an extended period of relative stability, Bolivia's political environment can still give rise to conflicts and a volatile context for labour relations. The government's aim to expand national energy production may lead to further conflict with unions, indigenous groups, and other social actors with stakes in the controversial sector, conflicts that risk wider labour and human rights' violations. More generally, the recent economic slowdown may negatively affect the application of core labour standards in various ways, increasing household poverty (a driver of child and forced labour), and further restricting resources for key state agencies (weakening enforcement and social protection programmes).

Informal and casual workers face particular challenges to the exercise of core labour rights. Concerns among stakeholders about a range of labour and human rights issues are typically more acute in relation to informal workers (e.g., child labour, forced labour, gender-based violence, and sexual harassment are all more prevalent in the informal economy, according to reports). The concentration of women in the informal sector means women are disproportionately exposed to these heightened risks.

In general, Bolivia's legal framework provides broad protections for core labour standards, but with some noteworthy exceptions, especially concerning freedom of association and collective bargaining in the public sector. Key rights established at the level of the Constitution – in relation to collective

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bargaining, right to strike, and discrimination (especially equal pay) – are not yet fully implemented in labour legislation.

In practice, there have been important areas of progress in recent years, including: the ongoing development of a new general labour law; expansion and capacity-building of the labour inspectorate; and specific programmes to address forced labour / trafficking, child labour, and discrimination. However, a lack of financial and human resources undermines enforcement efforts, especially in remote areas. Informality and employment casualisation remain overarching constraints on the application of core labour standards.

### **Freedom of association and collective bargaining**

Bolivia's legal framework provides inconsistent protections for freedom of association and collective bargaining. Despite broad guarantees at the level of the Constitution, labour legislation continues to bar public servants from forming trade unions or engaging in collective bargaining, permits private enterprises with fewer than 20 employees to prohibit unionisation, entitles labour inspectors to attend union meetings, and restricts the right to strike in defined circumstances. However, the government reports that new legislation is being prepared, including a new general labour law, to align labour legislation with the Constitution and international standards.

In practice, Bolivian civil society is highly engaged in politics, and labour relations can be fractious. Contentious labour relations and wider social/political volatility may constrain full exercise of workers' freedom of association – there are allegations of threats, physical attacks, dismissals, and other retaliatory measures taken against union activists. Additionally, trade unions allege that some employers circumvent worker demands by refusing to recognise new unions or promoting more employer-friendly, parallel unions. Fines for anti-union discrimination are unevenly enforced.

Informality and casual employment make it difficult in practice for workers to organise and for unions to engage in effective collective actions. Informality also constrains effective enforcement of labour legislation in many cases.

### **Forced labour**

The law prohibits all forms of forced and compulsory labour and provides for stringent penalties for offenders. However, forced labour remains a concern among stakeholders, especially in domestic service, illegal mining, ranching, and other agricultural sectors. There are also reports of human trafficking, including sex trafficking. Chronic poverty and systematic discrimination may leave indigenous communities particularly at risk. There are reports of debt bondage of indigenous workers involved in seasonal agriculture and cattle ranching, although recent information in this area is limited.

To address forced labour and trafficking, the government reports an increase in the number of labour inspectors to focus on high-risk sector; a National Action Plan to combat trafficking; and promotion of the 'Triple Seal' certification scheme, which certifies goods free from forced labour, child labour,



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and discrimination. However, a lack of financial and human resources constrains the implementation of key programmes and enforcement efforts, while penalties are often insufficient.

## **Child labour**

The minimum age of employment has been especially controversial in recent years. The 2014 Child and Adolescent Code (CNNA) permitted children as young as 10 to work in defined situations, in direct contravention of C138. The government argued that the law simply reflected the economic and cultural reality of Bolivia and provided protections for children who would otherwise work illegally. However, Bolivia's Constitutional Tribunal annulled the relevant provisions of the CNNA in July 2017, citing incompatibility with C138, thus restoring the minimum age of employment to 14 years.

In practice, child labour occurs across Bolivia. Children work in various agricultural sectors, often alongside their families, as well as in brick production, on construction sites, in commercial cleaning services, domestic work, street vending, and mining. Forced child labour may occur in some of these sectors, and there are also reports of child commercial sexual exploitation. Indigenous children are especially at risk of child labour, including work in agriculture and mines. Child labour laws are not consistently enforced, often because authorities lack sufficient resources and capacity. A lack of resources also constrains the effective operation of victim protection and rehabilitation services.

## **Discrimination**

Several laws and the Constitution prohibit discrimination generally and in employment specifically. However, there are important omissions in the extant legal framework, including the lack of specific prohibitions against gender discrimination in hiring, legislation to implement 'equal pay for work of equal value' (which is guaranteed by the Constitution), and mechanisms to address workplace sexual harassment.

In practice, discrimination continues to exist across the labour market, particularly affecting women, indigenous people, and people with disabilities. For example, there remain marked gender and ethnic pay gaps, with women and indigenous people significantly disadvantaged. In the former case, pay differentials partly reflect women's horizontal and vertical segregation in the workforce – in certain low-productivity sectors (retail, agriculture, domestic work) and more junior positions overall – although there are also reported cases of direct wage discrimination. Stakeholders attribute occupational segregation and pay differentials to both long-term gender norms and stereotypes, as well as direct discrimination against women and indigenous people.

## **Other working conditions**

A range of labour market factors affect the application of core labour standards and the realisation of Decent Work principles. Most concerns focus on informality (accounting for as much as 85% of employment) and the casualisation of labour. These trends leave increasing numbers of workers in

precarious forms of employment, characterised by low and fluctuating wages, irregular hours of work, absent or limited social security benefits, and few employment protections.

**Occupational safety and health.** Although OSH regulations are generally adequate, limited capacity in the labour inspectorate constrains effective enforcement. In practice, OSH standards are poor in the informal sector, especially in mining and agriculture.

**Working time.** Workers in the informal sector – especially in mining, agriculture, and small-scale retail – frequently work hours in excess of legal limits and without stipulated rest periods.

**Maternity protection.** Many workers are unaware of laws covering maternity leave and employment protection, according to stakeholders. As a result, women unlawfully dismissed due to pregnancies rarely report the offence or seek legal remedy.

**Wages.** Employers' groups claim that excessive annual increases to both the minimum wage and basic salary foment informality to the detriment of labour rights and working conditions overall, while they also allege marginalisation in tripartite wage-fixing processes. More generally, there are reports of sub-minimal wages and non-payment of overtime rates in the informal sector.

## Status of ratification and reporting

Bolivia has ratified all ILO fundamental (core) conventions and three governance (priority) conventions (excepting C129). Although the government generally meets regular reporting requirements, ILO's International Labour Conference has recently requested out-of-cycle reports for C138 (employment age) and C131 (minimum wage).

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Recalled previous unresolved concerns about Bolivian labour law, including: exclusion of agriculture workers from the scope of the general labour law; denial of the right to organise for public servants; excessive membership requirements for establishing a trade union; right of labour inspectors to attend union meetings; bans on foreign nationals and non-permanent employees serving as union officers; three-quarter majority requirement for strikes; the illegality of general strikes; and the possibility of imposing compulsory arbitration to end a strike. It noted ongoing work to draft a new labour code and law on public servants, and it trusts the government will adopt such legislation in very near future.
	C98	(2017): Recalled previous unresolved concerns about inadequate fines for anti-union discrimination and the lack of an express legal guarantee of collective bargaining for public servants and agricultural workers.
Forced Labour	C29	(2015): Recognised efforts to aid enforcement through training officials and increased labour inspections, focusing on high risk sectors/communities. It encouraged the government to strengthen state presence in high risk areas and report on steps taken to address root causes of forced labour. It also noted the limited number of prosecutions for forced labour offences overall. It requested the government to improve cooperation between relevant bodies to ensure forced labour cases are

		prosecuted effectively.
	C105	(2015): Sought clarification on whether compulsory prison labour is imposed on prisoners convicted for offences linked to illegal (but peaceful) strike participation or the expression of political views, scenarios that would contravene C105.
Child labour	C138	(2018): Expressed deep concern at provisions permitting a reduction in the minimum age of employment from 14 to 12 or 10 years in defined circumstances, and similar provisions that permit children to engage in light work from age 10. <i>Bolivia's Constitutional Tribunal annulled these provisions in July 2017.</i>  Urged the government to establish in law a minimum age of 14 years for admission into apprenticeships, noting the lack of an express minimum age in the labour code.
	C182	(2018): Noted various initiatives to address child labour in sugarcane and brazil nut sectors specifically. However, it urged the govt to take steps to prevent, identify, and rehabilitate victims of forced child labour in these sectors. It also requested the govt to adopt its national policy on eliminating child labour, which remains unimplemented.  Requested intensification of efforts to increase school attendance and to protect indigenous children from child labour.
Discrimination	C100	(2017): Requested that the govt ensure that the new labour law is adopted shortly and fully establishes the principle of 'equal pay for work of equal value', which are not in current law.  Requested a report on measures taken to adopt a method for the objective evaluation of jobs, noting such a method is a <b>pre-requisite for assessing compliance with the principle of 'equal pay for work of equal value'</b> . It also requested govt establish <b>suitable mechanisms for reporting cases of wage discrimination</b> .
	C111	(2017): Noted previous policy initiatives that address discrimination in employment, but noted the lack of information concerning impact. It also noted <b>the lack of visible measures – beyond a general national anti-racism policy – to address discrimination in employment against indigenous people; the lack of information about specific measures taken to address workplace sexual harassment; and concerns about access to remedy.</b>

## References

ILO CEACR, [Observations and Direct Requests for Bolivia](#)

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### 3. Targeted Surveys on application of core labour standards, Brazil

This report has been developed to provide a picture of the application of core labour standards in Brazil. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

#### Progress

- Non-discrimination legislation, including protections for migrant workers
- Efforts to combat discrimination in employment for certain groups
- Transparency on forced labour
- Anti-trafficking legislation

#### Challenges

- Political will to address CLS issues
- Inspectorate capacity to enforce forced labour and child labour law
- Rates of worst forms of child labour, particularly among youngest children
- Rates of collective bargaining
- Impunity, particularly for forced labour

#### Key context

Brazil has experienced a situation of economic and political crisis in recent years. Following recession in 2015-2016, brought about by a fall in international commodity prices and political instability, government implemented several fiscal reforms, many of which have proven unpopular. The crisis appears to have already had tangible impacts on the labour market, with rises in unemployment, underemployment, informal employment and poverty, which have yet to show signs of abating.

Governance remains a central concern and public mistrust of all levels of government is high, particularly owing to the numerous corruption scandals that have come to light in recent years. Since the impeachment of former Workers' Party President Dilma Rousseff, and the installation of centre-right President Michel Temer in 2016, there has been considerable public discontent and many internal tensions within government itself. This situation appears to stem from some opposition to impeachment, as well as the controversial reforms made under the current administration, including the 2017 reform of the labour code, known as the Consolidation of Labour Laws (CLT).

The CLT reform, which promised to modernise the labour market, has been criticised by some national stakeholders, as well as the ILO, which claims that the reform breaches the objective of C98. Combined with an attempt to narrow the legislative definition of forced labour, these recent developments can be considered to have somewhat politicised issues related to core labour standards, in a political context that is becoming increasingly polarised. A general election will take place in October 2018.

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There has been an emerging concern about the application of core labour (CLS) standards in Brazil in recent years. As detailed below, this is primarily owing to developments under the current administration, including reforms and attempted reforms, which are considered by some to weaken legislative protections, notably on trade union rights and forced labour (“trabalho escravo”). Legislative changes have reportedly been coupled with substantial public funding cuts, which, according to trade unions, have already limited enforcement of CLS issues by negatively impacting on the capacity of the inspectorate. Lastly, workers’ representatives also raise concerns about increasingly forms of flexible work, and the consequences this may have on CLS issues, in a labour market already shaped by high informality.

### **Freedom of association and collective bargaining**

Brazilian legislation broadly provides the right to freedom of association, collective bargaining and right to strike, with some notable restrictions, particularly on public sector workers. Brazil has not ratified C87, as it is deemed incompatible with the system of “unicidade” or singularity, outlined in the Constitution, and through which only one trade union per occupational category can operate in each city. Some workers’ representatives acknowledge issues with this system, claiming it limits right to freedom of association and serves as a constraint to strengthening the trade union movement. The CLT reform has recently stipulated that collective agreements prevail over legislation, even if the agreed conditions are lesser than those set by law. ILO CEACR claims these amendments breach the objective of C98.

In practice, freedom of association and the right to bargain collectively is generally respected in Brazil. Statistics indicate, however, declines in unionisation and, since the CLT reform, rates of collective agreements have fallen. Significant strike action took place during 2017, including a general strike in November, opposing the CLT reform. The ITUC claimed that the reform undermines labour rights and constituted a “serious attack” on collective bargaining. Allegations of police violence during strike action and related protests are fairly common. Intimidation and violence is also a concern and three trade unionists were killed during 2017 in varying circumstances (ITUC, 2018).

### **Forced labour**

Brazil has been regarded by some as an international example for its unique legislative protections and exemplary prevention and enforcement efforts against forced labour. Brazil’s punishable definition of forced labour, “trabalho escravo”, is broader than that contained in ILO Conventions, with the Penal Code defining it as “conditions analogous to slavery”. Brazil has also long been acknowledged for its public blacklist of employers found to use “trabalho escravo”. However, government attempted to modify legislation pertaining to these two areas during 2017. The proposal provoked strong reactions from some national stakeholders, such as the public prosecutor on labour (Ministério Público do Trabalho - MPT), as well as the ILO, and was eventually suspended by the Supreme Court. Contrastingly, advancements have been made on trafficking legislation, with a fairly comprehensive anti-trafficking passed in late 2016.

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While not all victims of “trabalho escravo” in Brazil are victims of forced labour, many of them are thought to be and forced labour remains a serious concern in Brazil. The majority of victims have traditionally been agricultural workers, who are often internal migrants that find themselves in situations of high vulnerability in isolated rural settings, often recruited deceptively by illegal labour intermediaries. Mines, logging sites and cattle ranches are also considered high-risk. More recently, an increasing number of workers, many foreign migrants, are being identified in urban forms of “trabalho escravo” in sectors such as garment manufacturing and construction. Major constraints include recent funding cuts, inability of labour inspectors to impose criminal penalties, widespread and persistent impunity, and growing labour informality. Nevertheless, transparency surrounding efforts to address forced labour has increased, with various several online platforms recently launched, including one by the Ministry of Labour providing up-to-date findings by the labour inspectorate.

## **Child labour**

Many regard the legislative framework surrounding child labour as broadly in line with ILO conventions, with an extensive list of hazardous activities that defines and prohibits worst forms of child labour is in place. The 2016 anti-trafficking law, however, requires elements of force, fraud, or coercion in cases of child sex trafficking for it to be recognised as such, which is not in accordance with the UN TIP Protocol.

While Brazil has greatly reduced rates of child labour over the decades, whether improvements continue to be made in recent years remains unclear, particularly owing to a dispute over government statistics. Child labour, including in its worst forms, occurs across a wide range of activities. Agricultural work, particularly in the family home, represents around half of all child labour; whereas child domestic work in third-party homes is also a concerning issue due to a lack of transparency and intervention. Civil society reports that 2017 funding cuts have led to a decline in child labour-targeted inspections, particularly in more rural areas. A more structural constraint at play is that the inspectorate remains unable to enter private homes, where most child labour takes place. Overall, trade unions and civil society claim that the situation has worsened due to the economic crisis and funding cuts, with child labour among children under nine years of age rising.

## **Discrimination**

Brazilian anti-discrimination legislation is broadly comprehensive. In recent years, legislative developments have provided non-discrimination protection for persons with disabilities and granted full labour rights to migrants. The CLT reform also removed mandatory breaks for women prior to working overtime. However, there are some outstanding gaps highlighted by the ILO relating to **the principle of equal remuneration for men and women for work of equal value, and insufficient protections against sexual harassment. For example, at current, there is no clear prohibition of sexual harassment by co-workers.**

Despite legal protections and effective enforcement, employment discrimination persists in practice. This situation is associated with deep-rooted societal discrimination and historic inequalities. Discrimination in employment is believed to most commonly affect Afro-Brazilians, women, persons with disabilities, indigenous persons, and transgender individuals, and the gaps between the employment situations of these groups are described as stark. For example, a fifth of all working black women are employed in domestic work, an occupation that is known for its precarious conditions. Even in cases of obvious discrimination, victims rarely come forward. Although there have been some advances in legislation, and some notable initiatives on-going with the ILO, the obstacles to tackling employment discrimination remain huge in comparison. Some highlight a need for greater affirmative action.

### Status of ratification and reporting

Brazil has ratified seven of the eight ILO fundamental (core) labour conventions and three of the four ILO governance (priority) conventions. Notably, Brazil has not ratified C87 (Freedom of Association) as it is inconsistent with provisions in the Brazilian Constitution. No reports indicate that Brazil has the intention to remedy this. Brazil fulfilled all its reporting requirements to the ILO supervisory machinery during 2017.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified</i>
	C98	<p>(2018): Noted and requested information regarding various issues relating to the CLT reform including: extension of the definition of “autonomous” workers; provision of collective agreements with lesser protections than legislation; and the possibility for certain qualified workers to have individual contracts that derogate from legislation, potentially with lesser protections. Also noted relevance of 2017 comments (see below).</p> <p>(2017): Noted legislative issues including: gaps relating to collective bargaining rights for public employees not engaged in state administration; no definition of anti-union discrimination or relevant sanctions; and govt power to nullify collective agreements based on non-compliance with fiscal policy. Requested govt information on progress in anti-unionist discrimination prosecutions.</p>
Forced labour	C29	<p>(2016): Repeated request for information on penalties imposed on perpetrators of forced labour and victim support. Urged govt to continue to regularly publish the blacklist of employers found to use forced labour and warned against potential legislative amendments aimed at narrowing definition of “trabalho escravo”. Noted weakening capacity of mobile labour inspectorate.</p> <p>(2016): Requested information on the More Doctors programme following claims that Brazilian labour legislation does not apply to Cuban doctors and their right to resign appears unclear. Also requested information on awareness raising initiatives, particularly among vulnerable migrant workers.</p>

	C105	<i>No recent comments</i>
Child Labour	C138	(2016): Requested govt take measures to increase inspectorate's ability to enforce law in informal sector and private homes; also requested statistics on child labour owing to increases.
	C182	(2016): Urged govt to tackle child labour in private third-party households; and requested information on prevention efforts and rehabilitation, particularly for most vulnerable children  (2016): Requested govt provide details of penalties for violations relating to worst forms of child labour – legislation does not provide this. Also requested govt ensure access to education and provide statistics on such.
Discrimination	C100	(2018): Noted that the CLT does not fully reflect principle of equal remuneration for work of equal value and requested this be amended. Requested information on enforcement efforts and measures to address structural causes of gender pay gaps.
	C111	(2018): Requested govt increased efforts to combat discrimination based on race, colour or ethnicity, and to actively promote equality in employment and occupation, and provide information on such.  (2018): Noted inadequate sexual harassment legislation. Requested information on efforts to address employment discrimination including that based on disability, HIV status, race, and gender and sexuality (LGBT).

## References

ILO CEACR, [Observations and Direct Requests for Brazil](#)

International Trade Union Confederation (ITUC), 2018, [Global Rights Index 2018](#)



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## 4. Targeted Surveys on application of core labour standards, Canada

This report has been developed to provide a picture of the application of core labour standards in Canada. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Judicial protection over freedom of association and collective bargaining
- Reference to international labour standards in court judgments
- Pay equity (equal pay for work of equal value) legislation

### Challenges

- Declining unionisation rates, particularly within the private sector
- Vulnerability of some groups to forced labour incl. trafficking (TFWs, indigenous women)
- Discrimination (race, disability)
- Lack of data on child labour
- Legislated restrictions on freedom of association and collective bargaining

### Key context

Canada is a high-income country with a long-standing record of economic openness, stability, and inclusiveness. Its labour market has remained strong despite the 2008-2009 financial crisis, and also scores well on job quality metrics including labour market security, working environment, and earnings. Canada's laws are generally aligned with ILO conventions on core labour standards.

Canada is governed according to a federalist constitutional structure, which divides legislative powers between different levels of government. Both the federal government and provincial governments have jurisdiction over labour and human rights. Federal jurisdiction extends to federally regulated businesses including banks, air transportation, and communications, while provincial jurisdiction covers remaining entities that account for a vast majority of Canada's workforce. Despite these disparate legal regimes, labour laws generally retain the same essential features across all jurisdictions. The country's labour law landscape is changing in light of legislative reforms as well as judicial decisions, particularly constitutional cases interpreting the *Canadian Charter of Rights and Freedoms* (the Charter) which binds all levels of government.

Although some gaps have been identified with respect to the application of core labour standards in Canada, there generally are no egregious instances of non-compliance. Enforcement is largely viewed as adequate or good, with some exceptions.

Coordination is an overarching issue, largely owing to Canada's federalist constitutional structure which provides for both provincial and federal responsibility over several areas including labour,

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human rights and immigration. For instance, there is a lack of national coordination with respect to disability access laws, discrimination laws, and services provided to temporary foreign workers (TFWs). Stakeholders have submitted that this leads to uneven application, implementation, and enforcement.

### **Freedom of association and collective bargaining**

While laws across Canada are generally aligned with ILO conventions, many developments have been driven by recent judgments decided by the Supreme Court of Canada (SCC). Following a spate of labour-related cases, Canada's Charter extends constitutional protection to collective bargaining, free association, and the right to strike. International standards, including core labour standards, have also received more attention in judicial decisions.

Trade unions have raised the issue of precarious work and the difficulties associated with organising precarious workers. Stakeholders, including labour experts, trade unions and the ILO CEACR, have also drawn attention to labour legislation in several provinces which often preclude certain workers (typically 'professionals' such as lawyers and engineers, but sometimes agricultural workers) from organising trade unions. Other concerns include 'back-to-work' laws in some jurisdictions, which are used to statutorily end strikes, 'essential services' laws that limit the right to strike for workers deemed essential, and laws that prohibit negotiations on certain topics or that 'freeze' wages (or other contractual terms) under collective agreements.

### **Forced labour**

There are no general concerns relating to Canadian law and its alignment with international standards on forced labour. Some concerns have been raised regarding the vulnerability of specific groups, particularly the vulnerability of migrants under visa schemes for low-skilled workers (particularly the TFW programme) as well as the vulnerability of indigenous women to trafficking and exploitation.

The TFW programme allows Canadian employers to hire foreign nationals to fill gaps in the workforce on a temporary basis. According to trade unions, TFW visas restrict employment options and ties workers to a single employer which makes it difficult for them to leave their job if their rights are abused. Language barriers may serve to compound these problems. Employer representatives emphasise that instances of abuse are the exception rather than the rule.

The situation of indigenous women and their vulnerability to trafficking has received increasing attention. The 'National Inquiry into Missing and Murdered Indigenous Women and Girls' has a broad mandate that includes exploring the underlying social, economic, cultural, institutional and historical factors that contribute to the vulnerabilities of indigenous women and girls. Academics have linked trafficking vulnerability to a number of factors including Canada's colonial legacy – notably forceful assimilation – as well as systemic discrimination based on race, gender and social status.

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## **Child labour**

In terms of both the legal framework and the situation in practice, child labour is not identified as a salient issue in Canada. However, the ILO supervisory bodies have identified certain jurisdictions where children under 18 can perform certain hazardous tasks or where general prohibitions against under-18s in hazardous work are not expressed (Canada, Newfoundland, Prince Edward Island and Nunavut). While child labour is not a widely reported issue, this might be viewed as a government failure to systemically collect data on working children.

## **Discrimination**

Although Canada's anti-discrimination framework, as part of its human rights legislation, is generally viewed as comprehensive across the country, questions have been raised relating to its scope of application. Prohibited grounds of discrimination, such as social origin and political opinion are not consistently covered across the multiple jurisdictions. With respect to pay equity – which is the Canadian technical phrase for equal pay for different work of equal value – the ILO has noted that a number of provinces do not have pay equity legislation, including Alberta, British Columbia, Newfoundland, Saskatchewan, the North-West Territories and the Yukon. In other jurisdictions, pay equity laws are only applicable to the public sector (Manitoba, New Brunswick, Nova Scotia and Prince Edward Island). Reforms and reviews to pay equity laws have been undertaken, most notably in the federal jurisdiction.

Information deficits are an overarching obstacle to addressing discrimination in employment. Lack of government data collection and statistical information on discrimination in employment may mask the pervasiveness of certain issues.

According to worker representatives, discrimination in employment persists in practice, particularly on the basis of gender, race (especially indigenous persons), disability and religion. There are reported undue delays in processing discrimination complaints in many jurisdictions. Enforcement gaps have also been noted by trade unions in connection with pay equity laws, particularly in jurisdictions which rely on complaints as opposed to more 'proactive' approaches, as well as in occupations where 'male comparators' are difficult to identify.

## **Status of ratification and reporting**

Canada has ratified all eight ILO fundamental (core) labour conventions, following the ratification of C98 in 2017 and C138 in 2016. It has ratified two of the four ILO governance (priority) conventions (C122 and C144). It is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<p>(2016): Several jurisdictions do not extend the right to organise and bargain collectively to all workers, for instance land surveyors, agricultural workers, lawyers and domestic workers.</p> <p>(2016): Laws governing public sector labour relations in certain jurisdictions provide for broad essential services provisions or prohibit strikes; broad back-to-work legislation has been used in some jurisdictions and in some sectors to end strikes.</p>
	C98	<i>No recent comments</i>
Forced Labour	C29	<p>(2017): <i>No specific application issues raised</i></p> <p>(2017): <i>No specific application issues raised</i></p>
	C105	<p>(2017): <i>No specific application issues raised</i></p> <p>(2017): <i>No specific application issues raised</i></p>
Child labour	C138	<i>No recent comments</i>
	C182	<p>(2017): <i>No specific application issues raised</i></p> <p>(2017): Noted that a number of jurisdictions permit children under 18 to perform hazardous work; notes that indigenous children have lower educational and academic outcomes.</p>
Discrimination	C100	<p>(2017): Noted that in several jurisdictions, laws providing for equal remuneration for work of equal value do not apply to the private sector or do not fully achieve the end of pay equity.</p> <p>(2017): <i>No specific application issues raised</i></p>
	C111	<p>(2017): Noted that most jurisdictions do not cover “social origin” and “political opinion” as prohibited grounds of discrimination under human rights laws; at national level there lacks a coherent policy for coordinating equality in employment and occupation.</p> <p>(2017): Exclusion of “mail contractors” from labour laws allegedly amounts to indirect discrimination to the extent that most contractors are women.</p>

## References

ILO CEACR, [Observations and Direct Requests for Canada](#)

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## 5. Targeted Surveys on application of core labour standards, Cape Verde

This report has been developed to provide a picture of the application of core labour standards in Cape Verde. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Legislation and enforcement against human trafficking
- Legislation and protection against worst forms of child labour
- Labour inspectorate capacity on islands of Sal and Boa Vista

### Challenges

- Tripartite dialogue relating to right to strike (establishing minimum services and grounds for civil requisitioning)
- Uncertainty surrounding right to strike in practice
- Non-discrimination legislation
- Limited information and data on CLS issues

### Key context

A sound multi-party democracy since 1991, Cape Verde is a young and rapidly developing republic. Among its West African neighbours, the archipelago distinguishes itself through its political and economic stability. Cape Verde has enjoyed middle-income status since 2008, largely based on income generated by tourism, which continues to be the backbone of the economy. This has brought about notable social development gains, with significant declines in poverty.

Nevertheless, the labour market does face challenges, with a significant proportion of informality and self-employment. Employment is also declining in a key export sector - aquaculture. Furthermore, with most of the population under the age of 25, creating decent work opportunities for youth is an increasingly pressing challenge. Following a 'modernization' of the Labour Code in late 2016, workers' representatives have also voiced concerns about an increase in 'flexible' forms of employment.

Its history of migration is central to understanding Cape Verde, which has a recognised diaspora, primarily in the US, Portugal and other Western European countries. With a relatively small domestic labour force, in more recent years the archipelago has itself become a destination country for economic migrants. Migrant workers are primarily from member countries from the Economic Community of West African States (ECOWAS), through which full labour mobility is permitted. Between 17,000 and 20,000 migrants are thought to be currently working in Cape Verde, principally in construction and services, in both formal and informal employment.

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Cape Verde has made some considerable advancements on core labour standards (CLS) issues in recent years, as detailed below. There are, however, some cross-cutting issues that are constraints to progress. These include the limited capacity of the labour inspectorate (Inspeção Geral do Trabalho - IGT), inadequate technical knowledge of CLS issues among some relevant authorities and national stakeholders, and a paucity of data and information on CLS issues in practice. Nevertheless, some efforts to remedy these issues have been observed, with government increasing the number of labour inspectors on the islands of Sal and Boa Vista during 2018.

### **Freedom of association and collective bargaining**

Freedom of association and the right to collective bargaining are broadly respected in Cape Verde, in both law and practice. Trade unions carry out their activities without interference and there are no recent reports of violence, threats, or other abuses against trade union members or leaders. Collective bargaining is reportedly limited, however. In 2017, it was agreed that the National Committee for the Promotion of Collective Bargaining would be re-launched. Also, the ILO is providing technical assistance to establish collective agreements in the hotel and banking sector. However, little has yet to change in practice.

Legislative issues persist in relation to the list of minimum essential services to be maintained during strike action and the imposition of civil requisitioning, or “back to work orders”, during strikes. Through the reform of the Labour Code in 2016, it was provided that an independent tripartite commission was to be established and that this commission would decide on amendments in these two areas. Nevertheless, the commission has yet to be established, with various reasons cited for the delay. This situation has thus left law reform in this area in a state of uncertainty. In this context, government classified a police strike in late 2017 as illegal for reasons including failure to comply with civil requisition and failure to maintain minimum essential services. Trade unions have since lodged a complaint with the ILO in relation to this.

### **Forced labour**

National legislation is broadly in line with international standards. Previous gaps were rectified by the 2015 amendment of the Penal Code, which criminalised trafficking. Indeed, Cape Verde is considered to have made positive advancements against trafficking, approving its first anti-trafficking national action plan in May 2018 and prosecuting perpetrators under the new Penal Code provisions. In practice, recent cases identified by authorities have been related to sex trafficking.

Contrastingly, non-sexual forms of forced labour are not widely reported in Cape Verde. However, some stakeholders acknowledge that indicators of forced labour may well be present yet may go unrecognised as such. Migrant workers are thought to be at an increased risk. Relevant authorities in Cape Verde may also conflate the concepts of forced labour and trafficking, and they note that there is limited data and reporting on this issue in practice.

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## **Child labour**

The legislative framework on child labour is partially in line with international standards. Some notable legislative gaps persist in relation to minimum age for unpaid work, regulations on light work, and protections for working children outside formal employment relationships. The latter is particularly important considering that child labour, including in its worst forms, is overwhelmingly found in informal contexts in agriculture, domestic work and to a lesser extent street work. Sexual exploitation of minors is also an identified risk issue.

Of the four core labour standards areas, the strongest commitment and enforcement efforts appear to have been made in relation to child labour. Legislative amendments were passed, such as the adoption of a list of defined hazardous work in 2016, and a variety of well-regarded protection efforts by the Cape Verdean Institute for Children and Adolescents (ICCA) are ongoing. These actions include an awareness campaign, a child labour reporting hotline and emergency centres for at-risk children. Contrastingly, international observers and national stakeholders largely report that enforcement remains inadequate, particularly in high-risk contexts. Again, there is limited data and reporting on inspections or prosecutions related to child labour, and this impedes effective monitoring of the situation.

## **Discrimination**

In practice, women and migrant workers are most likely to experience employment discrimination in direct and indirect forms. The legislative framework is broadly adequate, despite some notable gaps, which were not amended in the Labour Code reform in 2016 – this was considered a missed opportunity by many. Legislative gaps persist in relation to equal remuneration for work of equal value, protections against sexual harassment by fellow employees, and non-discrimination on grounds of national extraction. Employers' representatives stress that legislation must be amended as a priority, before any tangible improvements in practice can be expected.

Although cultural barriers remain, some efforts to tackle gender discrimination and poor conditions of migrant workers have been observed under relevant national plans and strategies adopted in recent years. Furthermore, the Institute for Gender Inequality (ICIEG) reportedly established a working group in August 2017 to identify gaps in legislation concerning gender equality in employment. The online Gender Observatory of Cape Verde was also launched in 2016 to provide better statistics and visibility on gender equality issues. However, international observers continue to highlight a lack of data and reporting on these issues, which means progress is difficult to monitor.

## **Status of ratification and reporting**

Cape Verde has ratified all eight ILO fundamental (core) conventions and one of the four governance (priority) conventions – C81 (Labour Inspection). During 2016 and 2017, Cape Verde did not fulfil all its reporting requirements to the ILO supervisory machinery. This has triggered some out-of-cycle

requests from ILO supervisory bodies. The ILO is currently implementing an EU-funded project, which seeks to improve Cape Verde's reporting capacity, among other aims.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Requested efforts to determine the minimum services in the event of a strike, and thus exceptional cases where civil requisition would be applicable. These must be agreed through tripartite dialogue, as dictated under the Labour Code reform.
	C98	(2018): Requested reports on progress made to promote collective bargaining and re-establish of the National Committee for the Promotion of Collective Bargaining. Welcomed case specific advancements.
Forced labour	C29	(2016): Requested govt revise the Penal Code to criminalize trafficking in persons for sexual and labour exploitation. This issue was reportedly resolved through an amendment to the Penal Code.
	C105	<i>No recent comments</i>
Child Labour	C138	(2018): Repeated 2015 comments. Requested that measures be taken to ensure that legislation protects children in informal working relationships; sets a minimum age for unpaid work; provides regulation of light-work activities; and regulates artistic work of children.
	C182	(2016): Requested that measures be taken to define 'minor' in the Penal Code; ensure that hazardous work legislation protects children in informal working relationships; and that the Penal Code improves protections against prostitution of under 18s.
Discrimination	C100	(2017): Noted that current legislation provides no system for objective job evaluation.  (2017): Noted that provisions in the Constitution and the Labour Code on equal pay are more restrictive than the principle of equal remuneration for work of equal value provided for in the Convention.
	C111	(2017): Noted that the Labour Code does not protect against discrimination on the grounds of national extraction or sexual harassment by other workers and requested amendments. Requested govt take measures to train labour inspectors on provisions.

## References

ILO CEACR, [Observations and Direct Requests for Cape Verde](#)



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## 6. Targeted Surveys on application of core labour standards, Colombia

This report has been developed to provide a picture of the application of core labour standards in Colombia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Conflict-related forms of labour exploitation
- Overall child labour rates
- Efforts to address worst forms of child labour and human trafficking
- Legalisation to regulate subcontracting
- Labour inspection and enforcement capacity

### Challenges

- Violence (lethal and non-lethal) against trade unionists
- Judicial backlog and sense of impunity
- Restrictions on right to strike
- Anti-union discrimination
- Use of subcontracting to thwart unionisation and collective bargaining

### Key context

Colombia's economy has performed well over the last decade, initially driven by an oil and mining boom. Following a slowdown in these sectors, as a result of falling international commodity prices, other sectors such as services, agriculture and manufacturing have become engines of growth in more recent years. Despite growth, deep socio-economic challenges remain – including societal discrimination, inequality, corruption, violence and what is perceived as a climate of impunity. Nevertheless, owing to its economic progress, Colombia was invited to become a member of the OECD in May 2018. Trade unions have been critical of the accession, citing inadequate progress on labour issues.

Colombia's political, civic and socio-economic life is deeply affected by the internal armed conflict, which has been ongoing for more than five decades. A peace agreement reached between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) in 2016 brought a demobilisation of the FARC and hope of end to the conflict. Initial optimism was swiftly followed by weak popular support for the agreement, which was nonetheless approved by Congress in late 2016. This was somewhat reflected in the June 2018 presidential election victory of Ivan Duque, the conservative candidate, who has been openly critical of the peace deal. The long-running armed conflict has had serious implications for the application of core labour standards, including effective absence of the State and non-enforcement of labour laws in parts of the country, particularly some rural areas. The conflict has also left millions of Colombians internally displaced, which is believed to have fuelled cases of forced labour, human trafficking and child labour. Subsequently, there is a

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widely-shared hope that the apparent end of the conflict will significantly improve the enjoyment of core labour standards in Colombia.

Colombia has and is continuing to make considerable progress on core labour standards issues. While weak enforcement remains a central constraint, government has reportedly allocated significantly greater funding and resources to the inspectorate and other enforcement bodies in recent years.

While the peace process will lead to a natural reduction in certain labour rights breaches, there is a possibility that structural constraints, such as the absence of enforcement in rural areas, will require significant state intervention. Lastly, some have voiced concerns about a potential decline in international scrutiny of Colombia and the potential consequences this may have on the application of core labour standards going forward.

### **Freedom of association and collective bargaining**

Although Colombia's legislative framework is considered broadly adequate in relation to freedom of association and collective bargaining, there are some identified gaps. These include: some restrictions on the right to strike and bargain collectively, and the inability of the legal framework to adequately prevent employers from circumventing the law to thwart worker attempts to organise or bargain collectively. The latter is allegedly brought about by the misuse of certain subcontracting arrangements.

In practice, Colombia is one of the most dangerous countries in the world for workers – with more trade unionist murders in 2017 than any other country. Anti-union discrimination and employer attempts to block or restrict worker organisation are reported to be commonplace. Central to this is poor law enforcement on the part of the inspectorate and judiciary, which leads to perceptions of widespread impunity. While Colombia remains under great international scrutiny owing to this grave situation, some meaningful progress has been broadly recognised. This includes steps to amend legislation and attempts to regulate subcontracting practices, as well as substantially increasing funding to the inspectorate, the Special Investigations Unit, and the National Protection Unit for unionists.

### **Forced labour**

With respect to forced labour, Colombian legislation is considered to be broadly consistent with international standards, with gaps persisting in relation to compulsory military service. Nevertheless, there are some outstanding issues, particularly: sex trafficking; forced labour in mining, agriculture; and forced recruitment by armed groups. The armed conflict is considered a key driver of this situation, and victims have traditionally been those most affected the violence. Subsequently, it may be that peace brings a decrease in these cases. Generally, there is a positive evaluation of efforts made by Colombia regarding trafficking. Recent advancements include a legislative reform removing requirements on victims to lodge complaints before receiving assistance, new public awareness campaigns and notable collaboration with international agencies and foreign governments to tackle human trafficking. Nevertheless, workers' organizations note a need for more targeted interventions

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by government in rural areas, and a continued lack of finances preventing adequate enforcement and victim support.

## **Child labour**

Colombian legal framework is generally considered to be in line with relevant ILO Conventions on the minimum age and the prohibition of worst forms of child labour. Despite continued declines in prevalence, child labour is still an issue in Colombia – including in its worst forms. Work in agriculture, mining, commercial sexual exploitation, and the continued use of minors who were forcibly recruited by armed groups, are the most commonly-identified forms. Overall, there is a general view that Colombia has made significant efforts to eliminate the worst forms of child labour in recent years, including through mobile inspection, targeted programmes, awareness campaigns, improve coordination and recent procedures to rehabilitate child soldiers. There is optimism that further declines will be witnessed as peace progresses. Nevertheless, access to education, poverty and socio-cultural norms remain notable challenges.

## **Discrimination**

While there are some inconsistencies with relevant ILO conventions, Colombian non-discrimination legislation is viewed to be reasonably comprehensive. Persistent gaps relate to the principle of equal remuneration for work of equal value, as well as sexual harassment protections. Discrimination in employment, particularly based on sex, race and disability, is identified as a continuing issue in Colombia. Deep-rooted societal discrimination and patriarchal norms are identified as the major constraints to remedying this. While there are some notable efforts to tackle gender and disability related discrimination at work, some report a continued absence of efforts to tackle racial discrimination.

## **Other working conditions**

Colombia's labour market is shaped by very high informality (67%), especially in rural areas, and this is a significant barrier to providing decent work. Transitions to formal employment are minimal and that formal opportunities created in recent years tend to be temporary or self-employed roles, which reportedly serves as an additional barrier to raising social security affiliation. In a regional comparison, Colombia also has fairly high-unemployment (10%), most affecting young people and women.

**Occupational safety and health.** OSH legislation is considered to be adequate, up-to-date and relevant to key industries. Inspectors reportedly lack OSH training and rarely reach rural and isolated areas, whereas penalties for violating OSH regulations are comparatively low and not always collected. A major constraint is that the large informal sector falls outside protections – and this is particularly a concern in mining and agriculture, which are the highest-risk for OSH issues. Furthermore, informal workers in certain sectors claim they may not report OSH issues through fear of dismissal.

**Working time.** Legal exceptions apply for agricultural and domestic workers, who are a sizeable amount of the workforce in Colombia. Other exceptions to maximum working hours can be granted by authorities, and are often granted in the mining sector, resulting in long work days, reportedly fuelling OSH incidents. Hours can

reportedly be very long in the export-oriented floriculture sector (16-20 hour days) with few to no breaks, particularly during periods of high consumer demand, when overtime can reportedly be mandatory. Whereas unions express particular concern over regularly excessive hours worked by domestic workers.

**Employment protection legislation.** The reinstatement of illegally-dismissed workers is often slow and ineffective, owing to overburdened and corrupt courts (USDOS, 2018). While verbal contracts are permitted under Colombia law, note that agricultural and domestic workers generally only have verbal agreements, leaving them at higher risk of exploitation, and providing them little job security. In many key sectors (agriculture, floriculture, mining), temporary and fixed term contracts, often through subcontractors, are reportedly common and growing. Reports suggest that this creates an ease of hiring and firing that provide workers with little security.

**Social security coverage.** Social security coverage is low, particularly in rural areas and among agricultural workers. Trade unions report that 67% of workers are not covered by health, pensions, and accident protection. Low social security coverage rooted in high unemployment (in a regional comparison), increasing self-employment and temporary roles, continued high informality and non-compliance among employers. Nevertheless, national stakeholders and internal observers recognise recent government efforts to increase formality, bolster social security and crackdown on employers who do not pay workers' contributions.

## Status of ratification and reporting

Colombia has ratified all eight ILO fundamental (core) labour conventions and three of the four ILO governance (priority) conventions. It has not ratified C122 on Employment Policy. Colombia fulfilled its reporting obligations to the ILO supervisory machinery in 2017.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted restrictions on FoA for certain workers (retired, unemployed etc). Also noted that convictions for anti-union violence had fallen, and judiciary's capacity had declined. Requested information on collective bargaining by sector and govt response to allegations of continued use of trade union contracts.
	C98	(2017): Repeated request for legislative amendment to ensure that collective pacts only in absence of trade unions.  (2017): Requested govt amend legislation to allow apprentices' remuneration to be agreed through collective agreements. Requested information on the impact of legislative amendments intended to improve procedures for labour arbitration tribunals.
Forced labour	C29	(2015): Repeated request to amend legislation on compulsory military service. Requested information on efforts to tackle trafficking, including prosecutions and collaboration with foreign governments.
	C105	<i>No recent comments.</i>
Child Labour	C138	(2018): Requested govt indicate whether policy for prevention and eradication of child labour (2016–26) has been finalised.
	C182	(2018): Requested information on govt efforts against trafficking of children for commercial sexual exploitation, and dissuasive penalties for forced recruitment of children by armed forces. Also requested govt continue measures to remove and rehabilitate child soldiers and provide information on such.
		(2018): Requested information on measures ongoing to tackle child labour in small

		scale mining, and statistics on vulnerable children removed from worst forms of child labour by mobile inspection units.
Discrimination	C100	<p>(2017): Repeated that legislative protection for equal remuneration for work of equal value is too narrow. Noted that monitoring of equal pay is limited by legislation to larger companies.</p> <p>(2017): Requested enforcement information on equal remuneration for work of equal value. Requested that current bill to amend legislation be amended to eliminate confusion between performance appraisals and objective job evaluation.</p>
	C111	<p>(2017): Requested govt amend legislation to repeal “mitigating circumstances” provided for harassment at work and extend protections to all workers. Requested impact reports on programmes and policies tackling racial discrimination.</p> <p>(2017): Noted authorities register sexual harassment cases at work together with broader harassment, impeding analysis. Requested information of enforcement against workplace harassment.</p>

## References

ILO CEACR, [Observations and Direct Requests for Colombia](#).

US Department of State, 2018, [Colombia Human Rights Report 2017](#).

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## 7. Targeted Surveys on application of core labour standards, Costa Rica

This report has been developed to provide a picture of the application of core labour standards in Costa Rica. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Protections against anti-union discrimination, including effective access to remedy
- Updated legal definition of trafficking
- Enforcement / victim support for forced labour
- Strengthening the labour inspectorate
- Long-term lower incidence of child labour
- Multifaceted policies / strategies for addressing gender discrimination

### Challenges

- Low unionisation rates and trade union presence in key industries, especially in the private sector
- Limited collective bargaining and bi-/tripartite dialogue, especially in public sector
- Parallel, non-union worker representative bodies and direct employer-worker agreements undermine trade unions
- Anti-union discrimination persists
- Government use of judicial challenges to limit strikes and collective bargaining in public sector

### Key context

The combination of long-term political stability, a strong social compact, and steady economic growth over recent decades has helped Costa Rica achieve one of the lowest poverty rates in Latin America and the Caribbean, as well as strong human development indicators. Overall, these political, social, and economic factors provide a context that is broadly conducive to the application of core labour standards.

However, despite long-term growth, Costa Rica's deteriorating fiscal situation and persistent levels of inequality have been noted as broad development concerns with implications for core labour standards. For example, Costa Rica's budget deficit has led the current government to propose a range of austerity measures, including cuts to wages and benefits in the public sector. In this context, stakeholders have expressed concern about draft budget laws that may restrict the scope of collective bargaining agreements (CBAs) in the public sector. More generally, there are concerns that the government's austerity measures may have medium and long-term negative effects on household incomes, the effectiveness of government social programmes, and the resources and capacity of state agencies responsible for labour law enforcement.

A series of labour market challenges have emerged in recent years with implications for the application of core labour standards. Rising unemployment (currently at 10%), combined with

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persistent poverty among disadvantaged groups, increases families' economic vulnerability and heightens the risk of possible labour exploitation, including the use of forced and child labour. Workers in the growing informal economy face barriers in practice to the exercise of core labour rights, while wider enforcement of labour laws is also especially problematic in the informal sector. Finally, the continued underrepresentation of certain social groups across the labour market indicate the presence of structural and/or direct discrimination affecting employment opportunities for women, young people, and migrants in particular.

Costa Rica's legal framework generally provides broad protections for core labour standards. Recent legislation has strengthened protections against forced labour, anti-union practices, and employment discrimination in particular. Most stakeholders also recognise the government's ongoing efforts to improve the application of core labour standards in practice, noting the development and implementation of National Action Plans in key areas, the creation of specialist agencies, as well as more practical initiatives to improve on-the-ground services – for example, training for officials, data collection, funding for victim shelters, and other social programmes.

Nevertheless, there remain concerns about current law and practice in specific areas, such as collective bargaining, as well as enforcement limitations more generally (including weaknesses in the labour inspectorate). Limited policy coherence and the lack of an integrated approach to implementation, together with poor inter-agency coordination, are additional factors to constrain the application of core labour standards.

### **Freedom of association and collective bargaining**

Costa Rica's legal framework provides adequate protection for freedom of association and collective bargaining, although there remain concerns about their application in practice. Trade unions report that low unionisation rates, especially in the private sector (2-3%), constrain the capacity for workers to organise and restrict the effectiveness of strikes and collective bargaining initiatives. According to some stakeholders, a broad anti-union sentiment across sectors of Costa Rican society, politics, and business both contributes to and is exacerbated by declining unionisation rates, as well as the depreciation of the trade union movement's credibility more generally. More specifically, a range of other factors impede unionisation, including employers' increasing use of 'flexible' and fixed-term contracts, the presence of parallel worker representative bodies in many enterprises (e.g., 'solidarity associations'), and various forms of anti-union discrimination (e.g., intimidation, dismissal, and blacklisting of union officials). There are particular concerns about trade union rights in export agriculture, although employers in the sector maintain that core labour standards are broadly respected.

In the public sector, trade unions claim that the government has increasingly sought legislative and judicial means to restrict the right to strike and limit collective bargaining. Unions note the government's use of unconstitutionality claims to challenge judicially provisions of active CBAs; recourse to judicial injunctions to prevent or end strikes; and provisions in draft legislation that would restrict the scope of collective bargaining with respect to wages and benefits. However, the

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government maintains that legal strikes meeting legal requirements are duly respected, while some limits to the scope of collective bargaining are necessary given Costa Rica's current fiscal crisis.

## **Child labour**

Costa Rica's laws prohibit work by children under the age of 15 years without exceptions, while they also establish specific conditions for the employment of persons under 18 years. Overall, the government has made significant progress both in terms of prevention and enforcement efforts concerning child labour. However, there remain some concerns about a lack of resources for key state agencies (e.g., the labour inspectorate), which constrains effective enforcement and victim protection activities, especially in rural areas.

In practice, child labour occurs primarily in the informal economy, especially in the agricultural sector and, to a lesser extent, the commercial, industrial, and service sectors (including domestic work). More specifically, the government recognises the existence of child labour among the seasonal workforce on coffee farms, and on citrus, pineapple, banana, and sugarcane plantations. There are particular concerns about children from migrant families in seasonal work on plantations, and both migrant and indigenous families in coffee production. Children often work alongside their families in these sectors. Forced child labour is also reported in some sectors, including construction, fishing, street vending, and domestic service. There are concerns about the forced commercial sexual exploitation of children, especially in relation to tourism.

## **Forced labour**

The law prohibits forced or compulsory labour and establishes criminal penalties for offences. Recent reforms to the Penal Code bring provisions on human trafficking into line with international standards. However, there have been few prosecutions under forced labour and trafficking laws to date, while funding for enforcement and victim support services is inadequate in some areas. The government has taken steps to improve enforcement and victim support activities, including training law enforcement officials, funding victim shelters, and social programmes for vulnerable communities.

In practice, forced labour continues to occur in Costa Rica, primarily in the informal economy. Reports indicate that men, women, and children – including a disproportionate number of migrants from other Central American countries – may be subject to forced labour in Costa Rica in sectors such as agriculture, construction, fishing, and small-scale retail activities. Debt bondage is reported in the agricultural sector, with migrant and indigenous workers especially at risk. Referral mechanisms for trafficking victims are not always implemented in a timely and effective manner, while official discretion in such referrals lead to uneven levels of protection.

## **Discrimination**

The legal framework concerning discrimination in employment is adequate. The recent adoption of the RPL significantly strengthened legal protections, including the expansion of expressly prohibited



grounds of discrimination; stipulating equal treatment (including pay) for workers engaged in similar work; improving access to remedy (e.g., through prompt reinstatement); and other protections for victims of discrimination. Additionally, the government is implementing a wide range of policies and programmes to address discrimination in employment, including a National Policy on Gender Equality and gender equality unit within MTSS; awareness-raising campaigns aimed at challenging gender stereotypes; initiatives to address discrimination against indigenous and Afro-Costa Ricans; and employment promotion plans for persons with disabilities.

However, discrimination in employment continues to exist in practice across the labour market, affecting in particular women, indigenous communities, people with disabilities, LGBTI persons, and migrant workers. Stakeholders draw attention to women's low labour force participation rate and a persistent gender wage gap (approx. 20 per cent), which they attribute in part to women's horizontal and vertical segregation in the workforce. Labour market segregation is, in turn, derived from both long-term gender norms and stereotypes, and direct discrimination in employers' hiring and promotion decisions.

There are also reports of discrimination against indigenous and migrant workers in terms of pay and working conditions, often due to workers' lack of official documentation that leaves them vulnerable to exploitation. Additionally, stakeholders report broad discrimination against people with disabilities, as well as affecting LGBTI persons.

## Status of ratification and reporting

Costa Rica has ratified all ILO fundamental (core) and governance (priority) conventions. The ILO's Committee of Experts (ILO-CEACR) has not raised any concerns about Costa Rica's reporting obligations, with no out-of-cycle requests in recent years.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Welcomed a reduction in the minimum representativeness threshold required by trade unions to decide on strikes, as well as proposed amendments to remove prohibitions on foreign nationals holding union leadership positions (previous ILO-CEACR concerns). However, it requests the government establish in law a fixed period for authorities to register trade unions and remove prohibitions on strikes by transport and dock workers.
	C98	(2017): Welcomed adoption of the Procedural Labour Reform (RPL) law that strengthens protections against anti-union discrimination. However, it also encourages the government to adopt measures to strengthen collective bargaining in the public and private sectors, citing authorities' use of legal proceedings to repeal provisions in public sector CBAs; and the prevalence of direct worker-employer agreements in the private sector (which may undermine union-backed collective bargaining).
Forced Labour	C29	<i>No recent comments</i>
	C105	<i>No recent comments</i>

Child labour	C138	(2018): Recognised significant government efforts to address child labour, while noting the continued existence of child labour in practice, especially in the informal economy. It requests the government intensify efforts to eliminate hazardous child labour.
	C182	(2018): Noted progress towards eliminating the worst forms of child labour, but it requests the government intensify efforts to ensure robust investigations and prosecutions in trafficking cases and improve programmes to address school drop-outs.  Recognised government programmes to prevent child labour and support victims, while noting how limited resources and inter-agency coordination constrain implementation in some cases. It requests the government ensures legislation on hazardous work is enforced, especially for domestic workers, citing reports of the comparatively high incidence of child domestic labour.
Discrimination	C100	(2017): Repeated requests that the government amend legislation to give full expression to the principle of 'equal pay for work of equal value', noting that current laws establish only the more limited principle of 'equal wages for equal/similar work'.  Requested the government adopt urgent measures to address gender-based vertical and horizontal segregation in the labour market, including by addressing the constraining impact of gender stereotypes on women's employment opportunities.
	C111	(2017): Recognised progress in addressing discrimination against women overall, including implementation of a National Plan on Gender Equality (2016-2020). However, it requests the government amend legislation to include express prohibitions of discrimination based on colour (currently omitted from pertinent legal provisions), as well as adopt measures to ensure foreign migrant workers are protected in practice from discrimination in employment.

## References

ILO CEACR, [Observations and Direct Requests for Costa Rica](#)

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## 8. Targeted Surveys on application of core labour standards, Ecuador

This report has been developed to provide a picture of the application of core labour standards in Ecuador. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Union registration rates and dialogue with government
- Legislation regarding public sector's right to freedom of association and collective bargaining
- Protection of migrants against forced labour
- Child labour rates in the formal sector
- Legislative efforts regarding discrimination

### Challenges

- Potential use of specific legislative schemes to circumvent constitutional protections
- Social security coverage
- Resources and inspection's reach against forced labour
- Lack of comprehensive legislation and a National Plan against trafficking
- Persistence of stereotypes against women, indigenous persons and migrants

### Key context

Ecuador underwent a stable period of growth from 2006 to 2014, mainly due to high oil prices. With decreasing oil prices, a stronger dollar, and the earthquake in 2016, which devastated the country, Ecuador is currently facing an economic crisis. The current administration has been forced to reduce public spending, impose temporary measures to increase revenue sources other than oil, and restrict imports.

Since 2017, the current administration has been implementing measures to improve rule of law in Ecuador. These measures include reinstating presidential term limits that had been eliminated in 2015, denying access to public office by persons convicted of corruption, and strengthening restrictions on mining and oil operations to be developed in protected areas and indigenous territories. Ecuador has also taken steps to strengthen human rights protections, implement a consultation mechanism with indigenous peoples, and introduce measures to tackle discrimination based on sexual orientation and gender identity.

### Freedom of association and collective bargaining

Union formation is accelerating under the new administration, with 52 new unions registered since 2017 and notable government efforts to streamline the registration process, including through online registrations. Trade unions had noted the denial of registration as a concern in the past, including through a case before the ILO Committee on Freedom of Association. The case involved

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governmental denial of a sector union based on minimum membership requirements that in practice constrain workers from small establishments' right to organise, a situation prevalent in the agriculture sector.

There has also been some legislative progress to allow public sector workers extend their right to organise and bargain collectively.

Despite these improvements, trade unions report that anti-union discrimination, including threats and dismissals persists, particularly in the banana and transportation sectors.

### **Forced labour**

Ecuador has made improvements in combatting trafficking in persons, including creating of an inter-agency committee to prevent human trafficking, entering into cooperative agreements with neighbouring countries, adopting new legislation to penalise perpetrators and protect victims, particularly migrants, and carrying out awareness-raising campaigns.

Despite these improvements, the international observers note that Ecuador still lacks comprehensive legislation regulating human trafficking, the country's current action plan is out of date, and legal definitions of crimes in current law related to human trafficking and forced labour are complex, making prosecution cumbersome. Indigenous persons, Afro-Ecuadorians, migrants, and refugees are particularly vulnerable to forced labour.

### **Child labour**

The National Council for Intergenerational Equality reports that child labour in the formal sector is declining and school attendance is rising, owing to a greater number of labour inspections and growing private sector efforts. However, child labour persists in the informal sector, where governmental and private sector initiatives do not extend. Children often work in agriculture - for example in the banana, sugarcane, rice and flower plantations – and engage in hazardous activities. Indigenous, Afro-Ecuadorian, and migrant and refugee children are particularly vulnerable to child labour because of poverty, discrimination, and lack of access to education.

### **Discrimination**

Despite the adoption of wide-ranging legislation against discrimination and policies promoting inclusion in Ecuador, discrimination in employment against women, indigenous peoples, migrants and the LGBTI community is widespread. Afro-Ecuadorians report that societal stereotypes remain a barrier to employment opportunities. International organisations report that legal and policy efforts focus on eliminating gender violence, but do not address women's equality and empowerment. International observers also note that discrimination against foreign migrant workers is prevalent, and that male chauvinism, adult centrism, and racial discrimination impede access to employment.

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## Other working conditions

There are a number of challenges to the achievement of decent work and access to social security benefits in Ecuador. Primary among these challenges is the prevalence of underemployment and informality – with 47.5% of the population working in Ecuador’s informal sector (GoE INEC, 2018). Another challenge is the high rate of poverty among young people. Although 94% of young people are employed, they work in low quality jobs that do not require qualifications. In 2017, the government took steps to address these challenges by adopting legislation to make labour contracts more flexible, allow for flexible schemes in certain sectors, and promote youth employment by reducing labour and social security protections and providing incentives to employers to hire young people. Trade unions have opposed such laws and policies because of the impact they have on labour standards in Ecuador.

**Occupational safety and health.** Regulations on occupational safety and health do not apply to the informal sector, which employs a large percentage of the population. There are reports that employers sometimes dismiss workers who have suffered a workplace injury rather than provide them alternative employment, that occupational injuries have increased, and that establishments often do not comply with OSH regulations. The government reports advancement in the creation of a culture of occupational safety and health.

**Working time.** Trade unions have expressed concern about new forms of more flexible labour contracts introduced by the government in some economic sectors. While the stated purpose of the flexible labour contracts is to reduce employment in the informal sector, trade unions are concerned that they will erode labour standards in the country, including opposing legal provisions regarding working hours and rest periods.

**Wages.** Local media reports that the minimum wage is not adequate to cover basic living expenses. Trade unions report that workers in the banana, flower and shrimp sectors are paid less than the minimum wage.

**Social security coverage.** According to a government survey 58.2% of employees are not affiliated to a social security scheme (GoE INEC, 2018). The ILO has observed issues in the management of the social security system, such as non-payment of premiums and issues with the enrolment process, premium collection, and payment control. The ILO, unions, and employer organisations have all expressed concerns over the social security institute’s deficit due to a reduction in contributions, with the ILO warning Ecuador in 2017 that a social security crisis is looming. The government is seeking to introduce a complete reform of the system, for which it has sought the technical assistance of the ILO.

## Status of ratification and reporting

Ecuador has ratified all eight ILO fundamental (core) labour conventions without reservations. Ecuador has ratified three of the four ILO governance (priority) conventions, with the exception of C129 on Labour Inspection (Agriculture). Ecuador is currently up-to-date with its reporting

obligations in relation to most of the fundamental and governance conventions. The only exception is the report in response to the C98 Direct Request for 2017. The ILO CEACR has repeated its request.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<p>(2018): Requested govt to ensure full respect for the rights of public servants to freedom of association and collective bargaining; engage in tripartite discussion to bring legislation into compliance with C87; reform labour legislation to allow for trade union pluralism in the public and private sectors and eliminate penalties that could potentially allow for the imprisonment of protesters; and remove administrative barriers to the registration of trade unions, noting some progress on the matter in practice.</p> <p>(2018): Noted issues raised include the exclusion of some categories of public employees from the right to organise, limitations on public servants' right to strike, compulsory referral of collective labour disputes to arbitration, and noted progress regarding legal provisions extending the right to strike to trade union federations and confederations.</p>
	C98	(2018): Noted issues raised include allegations of anti-union discrimination and dismissals in both the public and private sector (particularly in the banana industry), inadequate penalties for acts of anti-union discrimination and interference, the fact that anti-union discrimination is not prohibited in the recruitment and hiring phases and noted progress regarding the right to organise in the public sector.
Forced Labour	C29	(2015): Noted the adoption in 2014 of criminal penalties for labour exploitation, efforts to ensure that protection and assistance is provided to victims of forced labour, steps taken by Ecuador and neighbouring countries to ensure that migrant workers are protected from abusive working conditions and forced labour and noted a lack of clarity about prison labour and whether or not it is compulsory.
	C105	(2015): The sole issued raised relates to prison labour – how it is organised, whether or not it is voluntary, and what regulations govern the work of prisoners.
Child labour	C138	(2015): Noted the substantial number of children engaged in child labour and hazardous work despite national programmes to combat child labour, confirmation that the minimum age for employment had been raised from 14 to 15, low secondary school enrolment rates, and the need to ensure that children attend school at least until the age of 14.
	C182	<p>(2015): Noted the implementation of new criminal penalties for sexual exploitation and trafficking of children, the adoption of a special system to protect victims of crimes (including children), efforts to prevent children from becoming engaged in trafficking and sexual exploitation, progress in rehabilitation and social integration of victims, and potential results of international cooperative efforts.</p> <p>(2015): Noted programmes to enhance protection for street children, elimination of trafficking and sale of children for begging, the need to ensure that indigenous children have access to bilingual education to prevent them from engaging in the worst forms of child labour, and the potential impact that Ecuador's ratification of the Domestic</p>

		Workers' Convention (C189) may have on efforts to protect child domestic workers.
Discrimination	C100	<p>(2016): Issues raised include the narrow definition of equal pay for equal work in Ecuador's Labour Code and occupational sex segregation in the labour market.</p> <p>(2016): Requested detailed statistical information about the gender pay gap, including remuneration levels for men and women in various occupational categories, disaggregated by colour and race. Other issues raised include promotion of equal pay for work of equal value performed by women and men in the public and private sectors, ongoing efforts to adopt objective job evaluation and wage schemes, and tripartite dialogue to give effect to the principle of equal pay for work of equal value.</p>
	C111	<p>(2016): Noted with interest the repeal of legal provisions that required women to obtain permission from their husbands too be members of family vegetable garden cooperatives. The Committee requested that the Labour Code be amended to address two issues: (1) direct and indirect discrimination in hiring, vocational training, and working conditions on all bases listed in C111; and (2) sexual harassment, including a requirement for employers to adopt prevention measures.</p> <p>(2016): Requested information about the employment and occupational impacts of the national equality policy and statistical data about labour market access of indigenous, Afro-Ecuadorian and Montubio women, women with disabilities, migrant women, and women refugees. It also noted actions taken to address discrimination based on HIV status and affirmative action to promote labour market access of Afro-Ecuadorian, indigenous and Montubio peoples.</p>

## References

GoE INEC, 2018, [Encuesta Nacional De Empleo, Desempleo y Subempleo \(ENEMDU\), Indicadores Laborales.](#)

ILO CEACR, [Observations and Direct Requests for Ecuador.](#)

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## 9. Targeted Surveys on application of core labour standards, El Salvador

This report has been developed to provide a picture of the application of core labour standards in El Salvador. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Prosecution of forced labour
- Reduction of cases of discrimination against women
- Reduction of instances of worst forms of child labour

### Challenges

- Failure to reinstate the CST
- Anti-union discrimination and use of gang violence to deter unionisation
- Political interference with worker and employer organisations
- Low unionisation rates
- Discrimination against persons with disabilities and LGBTI persons, and lack of data on the matter
- Low number of prosecutions for official complicity in forced labour
- Lack of judicial efficiency and independence
- Low number of CBA

### Key context

El Salvador has shown consistently low levels of growth in the last decade. The slow economic growth of past years has translated into high rates of poverty, albeit with a modest reduction in recent years. However, within this trend incomes for the poorest 20% of the population has increased.

International observers, including the US State Department, list corruption, weak rule of law, impunity, and a lack of complete control of the armed and security forces - with accounts of forced disappearances, torture and cruel, inhuman, or degrading treatment, and lethal police abuse, as sources of concern for the country (USDOS, 2017). Violence and crime are significant and well-documented issues in El Salvador, with the prevalence of gangs depleting governmental resources. The widespread violence has serious implications for the country's governance and social and economic development, including the application of core labour standards.

### Freedom of association and collective bargaining

El Salvador's legislation is generally aligned with international standards, except for some gaps in legislation identified by the ILO CEACR and echoed by stakeholders. The failure to reactivate a legally mandated tripartite Superior Labour Council (CST) has been highly controversial.



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While the government reports a general increase in unionisation rates and the protection of workers' rights, some sectors have low unionisation rates, particularly in the maquila and agricultural sectors. In addition, the ILO CEACR has noted with concern the low number of CBAs registered, especially in the public sector. There have been complaints to the ILO that there is government interference regarding the registration of union and employer organisations, as well as reprisals against organisations and workers not aligned with the administration's political views. There are reports of anti-union discrimination, including through threats, dismissals, blacklisting, and obstacles to career development. Gangs have been reportedly used to threaten workers attempting to form unions. Corruption, bribes, and pay-offs between employers and union leaders are also alleged to occur.

### **Forced labour**

The legislative framework related to forced labour is largely in line with international standards, however international observers report cases of exploitation and forced labour in the maquila, fishing, domestic, and agricultural sectors. Inadequate enforcement efforts and prosecution of forced labour, insufficiently dissuasive fines, corruption and official complicity, the treatment of victims as criminals, and a lack of understanding of the concept of trafficking by officials are also concerns for stakeholders.

High levels of societal violence and a deteriorating economic climate in El Salvador are believed to increase vulnerability of the poorest communities to practices that may amount to forced labour in the form of servitude to gangs.

### **Child labour**

Despite broad legislation against child labour, it is reportedly a widespread problem. The latest government survey estimates that in 2017, 130,157 minors between the ages of 5 and 17 were engaged in child labour, with 88,422 children performing dangerous work. Local stakeholders and international observers note that most child labour is present in rural areas in agriculture, and the worst forms of child labour take place in sugarcane and coffee cultivation, fisheries, mollusc shucking, in the production of fireworks, and through gang recruitment to conduct criminal activities. Nonetheless, government, civil society and private sector efforts have reportedly decreased rates of the worst forms of child labour by 90%.

Inspections are criticised as being inadequate, particularly in the informal and agricultural sector, and penalties insufficient to deter violations. There is also a reported lack of resources for specialised agencies and lack of interagency cooperation. Economic necessity, tied to poor access to education, limited job opportunities, violence and crime, and a cultural understanding that work is necessary for the formation of children are said to fuel child labour in the country.

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## Discrimination

Despite a general prohibition on discrimination, international observers report that discrimination is present in the country, particularly against women, persons with disabilities, LGBTI persons, and HIV affected persons.

Women in rural areas and the maquila sector are reported to be particularly affected by discrimination in employment, with exploitative conditions of work, sexual harassment, and dismissals because of pregnancy. Gang violence has reportedly deepened gender inequality in the country. However, stakeholders report some progress in eradicating discrimination against women.

## Other working conditions

There are high levels of informality and poor conditions of employment, especially in the agriculture, maquila and construction sectors. Youths experience the greatest difficulty accessing decent work.

**Maternity protection.** According to the Ministry of Labour over 100 women complaint that they had been dismissed because of pregnancy in 2017. There are also reports that women in the maquila sector are deprived of maternity benefits. A 2018 change in the law introduced a 6-month period during which women may not be dismissed after maternity leave.

**Wages.** In 2017, the minimum wage was increased, amidst clashes between the employer, worker and government sectors and allegations of corruption. Workers in the maquila and agricultural sectors receive the lowest wages, with claims that these are inadequate to provide for their needs. Social partners also note problems with non-payment of wages in the construction sector.

**Employment protection legislation.** There are reports of maquilas suddenly closing without respecting their obligations towards workers.

**Social security coverage.** A reform of the social security system was passed in 2017, reportedly incorporating unions' requests. Government statistics indicate only 34 out of 100 persons are covered by the social security system, with agricultural workers excluded from receiving benefits. There are reports that that some employers in the maquila sector fail to pay social security contributions.

## Status of ratification and reporting

El Salvador has ratified all eight ILO fundamental (core) labour conventions. El Salvador has also ratified all four ILO governance (priority) conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association &	C87	(2017): Noted the need for amendments to the following legislative provisions: the limitation of workers' ability to be members of more than one union; the requirement

collective bargaining		<p>of 35 workers or 7 employers to form an organisation; the requirement that the names of founding union members must be registered; the 6-month waiting period to introduce new requests after registration denial; and the prohibition against foreign nationals serving as union leaders.</p> <p>(2017): Requested that the govt amend its laws, including removing provisions related to excessive limits on public sector workers' right to strike; ensuring that only cast votes are counted to call a strike; modifying excessively restrictive majority support requirements for strikes; and ensuring the right of non-strikers to work and of employers to access premises. The ILO CEACR noted govt proposals to make such changes.</p>
	C98	<p>(2018): Noted the need for changes to legislation to explicitly prohibit interference with union activity; modify the 50% worker representation requirement for unions to enter into CB; ensure that renegotiation of in-force CBA occurs only if requested by both parties; provide for judicial remedies for denials of CBA registration; eliminate the requirement for ministerial approval for public sector CBA; and allow certain public employees to fully enjoy the right to freedom of association. Also noted claims of anti-union discrimination against public sector workers and that fines are not sufficiently dissuasive.</p>
Forced Labour	C29	<p>(2015): Encouraged the govt to take measures to protect workers in rural and indigenous communities from practices amounting to forced labour. Also noted the government had established shelters for children and female victims of trafficking, but not for male victims.</p>
	C105	<p>(2012): Requested the amendment of the Penitentiary Law, which imposes a duty on prisoners to work, so that it reflects government indications that the work is voluntary in practice.</p>
Child labour	C138	<p>(2018): Repeating previous comments it noted government efforts to combat child labour, but requested the government nonetheless strengthen its efforts, particularly in rural areas and for children engaged in hazardous work, since child labour rates in these conditions were particularly high.</p>
	C182	<p>(2018): In its previous comments, it had requested that the government investigate and prosecute persons engaged in child trafficking, noting a low number of sentences.</p> <p>(2018): Expressed concern over cases of boys and girls being "handed over" to families for domestic work in poor conditions.</p>
Discrimination	C100	<p>(2017): Requested that the govt establish mechanisms to ensure equal pay for work of equal value, and that it provide training to inspectors on the issue.</p> <p>(2017): Requested that the govt amend its narrow legislative definition of equal pay for equal work which is not in line with C100.</p>
	C111	<p>(2017): Noted institutional efforts to provide for equal opportunities in the workforce for women and indigenous peoples.</p> <p>(2017): Noted reports of pregnant women being dismissed or discriminated against, and of sexual harassment. It also noted that the law does not fully define sexual harassment. It also noted that the law prevents persons affected by an infectious/contagious disease from entering public service. On the other hand, it noted</p>

	that the law was reformed to prohibit discrimination based on HIV status and to prohibit HIV testing by employers.
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## References

ILO CEACR, [Observations and Direct Requests for El Salvador](#)

US Department of State (USDOS), 2017, [Country Reports on Human Rights Practices for 2017 – El Salvador](#).

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## 10. Targeted Surveys on application of core labour standards, Georgia

This report has been developed to provide a picture of the application of core labour standards in Georgia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Labour law reform process (through development of a draft action plan in coordination with ILO).
- Labour inspection relating to “hard, harmful and hazardous” conditions.
- Application of CLS in court judgements.

### Challenges

- Overall lack of enforcement relating to CLS.
- Company participation in the pilot labour monitoring programme.
- Lack of information on child labour and forced labour
- Reported anti-union discrimination

### Key context

Following the ‘Rose Revolution’ in 2003 Georgia introduced wide-ranging reforms to its business environment, including significant de-regulation of the labour market. The Labour Code that was in place during the period 2006-2013 provided for maximum flexibility in employment relations and was described by international observers as “the most liberal in the world”. While the Labour Code was significantly amended in 2013, representing considerable progress towards international standards, stakeholders report that the legacy of this period, particularly the abolition of the labour inspectorate and subsequent failure to re-instate an effective labour standards’ oversight agency with adequate mandate and competences, continues to affect the application of core labour standards in 2018.

The Georgian labour market is characterised by high levels of unemployment and informality. This overall lack of dynamism in the labour market significantly affects the application of core labour standards because it leads to reluctance on the part of the government to introduce reforms which it perceives may increase the burden on employers. For example, stakeholder discussions on the introduction of a fully-fledged labour inspectorate are dominated by concerns that it would ‘kill jobs’ and lead to higher levels of informality.

The lack of a fully-functioning labour inspectorate constitutes a major challenge for the realisation of core labour standards in Georgia. The labour inspectorate was abolished in 2006 and there is currently no competent state body with responsibility for supervising and monitoring the application

of labour rights and standards in the workplace, and no clear timeline for when one might be established.

There are, however, some indications of recent progress. In January 2018, the scope of the Labour Conditions Inspection Department's pilot labour monitoring programme through which it carries out voluntary inspections of workplaces was expanded to cover the full range of labour rights and labour conditions (previously it had been limited to observing health and safety conditions). In March 2018, a new Law on Labour Safety was passed which will allow labour inspectors to enter workplaces which are defined as involving "hard, harmful and hazardous" (HHH) conditions and carry out inspections relating to OSH issues.

### **Freedom of association and collective bargaining**

Following significant reforms in 2013, Georgia has a relatively comprehensive legal framework in relation to freedom of association that provides for the right of most workers to form and join independent unions and to strike and bargain collectively, although there are some outstanding gaps. In general, key issues raised by trade unions and the ILO CEACR relate to the lack of enforcement and the absence of a fully-functioning labour inspectorate, with the result that there is currently no legal mechanism to supervise and monitor the application of C87 and C98.

Overall, trade unions report that there has been a significant improvement in freedom of association since 2013 and that trade unions no longer face direct repression or harassment by the government. However, employer and worker representatives also report that the government does little to actively enforce or promote freedom of association and collective bargaining and that this undermines their enjoyment in practice. There is no up-to-date information on collective bargaining coverage rates, but it is reported that existing agreements tend to replicate the law without providing significant additional provisions. It is also reported that employers generally comply with the terms of CBAs, but that violations are not uncommon, particularly given the lack of supervision or enforcement from the government.

### **Forced labour**

The legal framework on forced labour is broadly adequate but there are some outstanding gaps with relevant ILO conventions, notably relating to circumstances in which authorities can impose punishments involving compulsory labour.

Although Georgia reintroduced state supervision for the prevention of forced labour in 2016, there are significant concerns around its effectiveness. In particular, while inspectors are authorised to enter any place of employment to ascertain whether forced labour and/or trafficking is present, they are not empowered to issue sanctions for violations and their enforcement power is limited to informing relevant authorities. According to the US Department of State (USDOS), the labour inspectorate operates with an unclear mandate that inhibits inspectors' ability to effectively investigate workplaces for forced labour violations, while actions to enforce trafficking legislation have so far focused primarily on sexual rather than labour exploitation.

While Georgia is generally considered a source rather than a destination country for victims of forced labour and trafficking, there is evidence that forced labour does occur and that migrant workers are

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particularly vulnerable. Cases of forced labour have been identified in recent years involving foreign nationals exploited in agriculture, construction and domestic service.

## **Child labour**

The legal framework on child labour is broadly compatible with ILO standards, although the ILO and local stakeholders have raised concerns that ‘light work’ and ‘hazardous work’ are not properly defined in legislation and that the labour code does not offer adequate protection for children working in the informal economy. While regulations relating to ‘light work’ and ‘hazardous work’ for children and young workers have reportedly been drafted, there is little indication of when they might be adopted.

In general, the most significant concerns relate to the almost total lack of enforcement, given the absence of a functioning labour inspectorate to observe the implementation of child labour provisions. The USDOS has noted that the government did not identify any cases of child labour violations during 2017, raising significant questions over whether and how legislation is enforced.

A national child labour survey was conducted in 2015 and found that 4.2% of all children aged 5-17 are engaged in child labour, of whom just over half (52%) are below the age of 13 (the permissible age for light work) and 64% are engaged in hazardous work. The survey also found that the majority of child labour occurs in rural areas (84%) and usually involves children helping out on family-owned farms and enterprises (63%) (ILO, 2016). Similarly, the main concerns raised by stakeholders relate to the prevalence of child labour in primary agriculture, particularly in small, family-owned farms.

## **Discrimination**

Georgia’s legal framework offers relatively comprehensive protection against discrimination, although there are still some outstanding legal gaps with ILO conventions, particularly around the definition of sexual harassment and equal pay for work of equal value. The government reported to the ILC in May 2018 that work is ongoing to strengthen the legal framework on non-discrimination and to transpose EU Directive 2006/54/EC of 5 July 2006 “On the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation” into national legislation.

In general, the most significant concerns raised by local stakeholders and international observers, including the ILO CEACR, relate to the lack of an effective enforcement mechanism, and that the ‘burden of proof’ for establishing a discrimination case generally rests with the worker (except in relation to dismissal). In addition, trade union representatives report that provisions in the Labour Code which state that an employer is not obliged to justify its decision to refuse to hire a candidate effectively prevent candidates from bringing forward a case relating to discrimination in recruitment.

Most reports of discrimination in respect to employment relate to gender, present at every stage of the employment relationship. At the pre-employment stage there are reports, including by the Georgia Public Defender, that job vacancy announcements frequently contain non-gender-neutral language and specify or imply that only candidates of a specific gender are eligible to apply and that during interviews women are often asked question about their marital status and their plans for having children, or even to provide medical proof that they are not pregnant. Stakeholders have also reported discrimination issues relating to age, national and ethnic minorities, disability and sexual orientation.

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## Status of ratification and reporting

Georgia has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. Georgia has also ratified two of four ILO governance (priority) conventions (C122 and C144). Georgia is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): There is a minimum membership requirement for establishing a trade union set at 50 persons which may inhibit the establishment of organisations in small and medium enterprises.  (2018): There are some restrictions on the right to strike including a restrictive definition of collective labour disputes; a prohibition on strikes in some non-essential services; and the ability of courts to postpone or suspend strikes which affect third-party companies.
	C98	(2018): There are no provisions to protect workers from the non-renewal of short-term contracts on the basis of anti-union discrimination; the government can terminate conciliatory procedures at any time during collective disputes.
Forced Labour	C29	(2017): <i>No specific application issues raised</i>
	C105	(2017): The Criminal Code allows for penal sanctions involving compulsory labour for participating in strikes.
Child labour	C138	(2016): 'Light work' activities which are permissible for children aged 14-16 are not defined in legislation; the Labour Code only applies to hired labourers and therefore does not sufficiently protect children working on family farms in the agricultural sector.
	C182	(2016): <i>No specific application issues raised.</i>
Discrimination	C100	(2018): There is no legislation giving full expression to the principle of equal remuneration for men and women for work of equal value; absence of enforcement mechanism relating to non-discrimination.
	C111	(2018): Employers are not required to provide reasons for not hiring candidates, which may effectively bar candidates from successfully bringing discrimination cases; except in cases of dismissal, the burden of proof for establishing a case of discrimination rests with the worker; there is no explicit definition of sexual harassment in national legislation.

## References

ILO CEACR, [Observations and Direct Requests for Georgia.](#)

ILO, 2016, [Georgia National Child Labour Survey 2015 - Analytical Report.](#)



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## 11. Targeted Surveys on application of core labour standards, Guatemala

This report has been developed to provide a picture of the application of core labour standards in Guatemala. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Tripartite dialogue and willingness of national stakeholders to engage in such
- Efforts to amend legislative gaps
- Better tailored enforcement initiatives against child labour and trafficking

### Challenges

- Corruption within authorities responsible for labour justice and impunity
- Functioning and impartiality of judiciary
- Persistent anti-union hostility, including threats and violence
- Weak enforcement across CLS issues

### Key context

Guatemala is the largest economy in Central America. It experiences high social inequality, with severe poverty disproportionately affecting its significant indigenous and rural populations. This inequality, as well as deep social divides and mistrust of authorities, are somewhat a legacy of the country's 36-year civil war, which continues to shape Guatemala today. This legacy, and more recently corruption, have contributed to Guatemala's weak institutional capacity – which presents one of the greatest challenges to the application of core labour standards and ensuring decent working conditions more broadly.

Over the last decade, Guatemala has found itself under significant international scrutiny on labour rights issues, particularly for anti-union violence and infringements on freedom of association and collective bargaining rights. Between 2008 and 2017, this scrutiny involved arbitration under the United States, Dominican Republic and Central America free trade agreement (DR-CAFTA). The arbitrator decided in favour of Guatemala last year.

In a separate process, Guatemalan unions lodged a complaint with the ILO Governing Body, claiming non-observance of ILO Convention 87 (Freedom of Association). Subsequently, an action plan has been in place since 2013 to address some of these issues. Owing to the tangible efforts made in Guatemala in this regard, particularly in very recent years, both the ILO and government have expressed the hope the non-observance complaint procedure would be closed by end of 2018, subject to progress allowing to address the pending issues. Contrastingly, trade unions and NGOs

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have stressed the importance of international pressure on Guatemala and are concerned about the potential impact of a decline in external pressure on the implementation of core labour rights.

In Guatemala, national stakeholders have diverse and often conflicting points of view, resulting in limited consensus, particularly when discussing progress and constraints. Broadly speaking, there is agreement that some progress has been made recently, with an unprecedented level of tripartite discussion and demonstrable efforts to agree on legislative amendments on freedom of association.

Nevertheless, little has changed regarding the application of core labour standards in practice. Workers' representatives report that this is primarily owing to consistently poor enforcement, including continued weak capacity of the inspectorate, and corruption within responsible authorities. This creates widespread impunity for those responsible for labour violations. There is a credible risk, if governance remains weak, that legislative amendments will fail to bring about substantive change in practice.

### **Freedom of association and collective bargaining**

While legislative gaps persist, there is general agreement that some progress is being made to resolve these. There has been a broad welcome for the launch of the National Tripartite Commission for Labour Relations and Freedom of Association in February 2018 and note a genuine willingness on the part of all participants. The Commission is actively engaged in tripartite discussion and working to reach consensus on relevant legislative amendments, particularly under Bill 5199. Employers do report some sticking points, notably relating to the possibility of lowering membership requirements for trade union formation. Nevertheless, the government reports that if consensus is not reached on issues, then proposals will be put to congress for it to make a decision.

Despite government claims of improved enforcement capacity, in practice, reports suggest there are few tangible signs of progress. Indeed, the ILO notes that enforcement-related activities are a priority that require further urgent action, including investigation and prosecution for trade unionist murders, effective implementation of reinstatement orders and the promotion of freedom of association. Trade unions echo this and stress that worker organisation remains very challenging in the private sector in Guatemala, and that the number of threats and violence against trade unionists have increased. These stakeholders suggest that weak and corrupt enforcement bodies, and continued widespread impunity are the major obstacles to improving the situation in practice.

### **Forced labour**

There is a general view that legislative protections regarding forced labour are comprehensive. The ILO has repeatedly highlighted a gap relating to the Penal Code, which describes prison labour as a duty, including for those imprisoned on political beliefs and participation in strikes. Overall, there is sense among international observers that while Guatemala has made some advances in its efforts to tackle human trafficking, efforts in identifying, preventing and remedying other, non-sexual, forms of forced labour remains insufficient (USDOS, 2018). Underpinning this situation, some are of the view that there is a lack of understanding about the concept of forced labour among authorities and the

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general population. Consequently, the indicators of forced labour reported among the country's large, agricultural workforce of internal migrants, go unrecognised. Poor enforcement capacity and victim support services are also notable constraints.

## **Child labour**

Some gaps between legislation and the requirements of ILO Conventions exist in relation to child labour. These relate to an absence of explicit or adequate minimum age restrictions in law on hazardous work, light work, and apprenticeships, as well as inconsistencies between legislation on the compulsory schooling age and minimum age for work. The prevalence of child labour in Guatemala, including in its worst forms, is recognised as a serious problem. Guatemala reportedly has the highest rate of child labour in Central America, with the issue concentrated in agriculture, but admittedly present across many other, primarily informal sectors. Authorities have been targeting child labour inspections in high-risk sectors, and several initiatives to tackle child labour have been in place over the last few years; however, there is limited reporting on impacts. Enforcement efforts remain insufficient considering the scope and gravity of child labour in the country. Some workers' organisations question the political will among authorities to combat the issue.

## **Discrimination**

Non-discrimination legislation is broadly considered to be adequate. However, the ILO CEACR has noted gaps relating to legislation on equal pay for work of equal value, as well as highlighting the need to revise the law to explicitly prohibit pregnancy testing by employers. Discrimination in employment, and society more broadly, is widespread and deeply entrenched, particularly against indigenous workers and women. Indigenous peoples remain largely excluded from the main economy and are concentrated in informal employment, and women tend to remain in low-wage, often informal, roles (IAHCR, 2016). Rather than gaps in law, most international observers and national stakeholders highlight the limited and weak enforcement efforts and what they describe as the seeming disinterest, or fatalistic attitude, among authorities toward discrimination issues, particularly in the case of country's large and disadvantaged indigenous population.

## **Other working conditions**

Guatemala's labour market is characterised by low unemployment, yet high informality (70%), particularly in rural areas and among its large agricultural workforce. This is a central constraint to creating decent work opportunities and protecting the rights of a large part of the working population.

**Occupational safety and health.** OSH standards are considered to be poor, outdated and rarely enforced. Despite an increase in government funding to OSH issues, some argue that the budget remains too low. Export-oriented sectors such as have well-reported OSH issues. In agriculture, rates of toxic pesticide exposure, heat stress and related health issues, and tool-related injuries are

common. In garment manufacturing, there have been reports of unhygienic conditions, repetitive strain injury, and health issues brought on by limited breaks.

**Working time.** Excessive working hours are common, particularly among informal workers, and are also regularly identified in labour inspections in the formal sector. Nevertheless, enforcement is ineffective owing to inadequate fines. Again, this is a concern in industries such as manufacturing and agriculture, where excessive piece rates are often in place, leading to unpaid overtime and limited breaks. Unions also stress that domestic workers regularly work up to 19 hours a day.

**Wages.** Most Guatemalan workers do not receive the minimum wage, partially due to the fact that many are employed in the large informal economy, as well as non-compliance with minimum wage legislation in more formal employment. Trade unions claim that minimum wages consistently fall below the cost of living. Some also criticise the lower minimum wage set for workers in export-oriented sectors.

**Social security coverage.** Social security coverage is low, with less than a third of the workforce affiliated to the social security institute. Those that are affiliated are primarily urban workers, in formal employment, and there is a clear absence of social security among rural populations, including agricultural workers. Cases of employers' diverting workers' social security contributions have been reported (ILRF, 2017).

## Status of ratification and reporting

Guatemala has ratified all ILO fundamental (core) labour conventions and ILO governance (priority) conventions. In 2017, Guatemala met all its reporting obligations to the ILO supervisory machinery, including a requirement for an additional out-of-cycle report on C87.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Noted several persistent legislative issues inconsistent with C87, continued impunity for anti-union violence an insufficient protection for unionists, and judicial delays on reinstatement orders. Requested govt better promote freedom of association.
	C98	(2018): Noted absence of a normative framework on collective bargaining and persistent non-compliance within municipal governments. Requested authorities take a more proactive approach in ensuring collective bargaining rights are respected by municipal governments.
Forced labour	C29	(2016): Requested govt information on how prisoners give free and informed consent to work, and on efforts to prevent forced overtime in agriculture.
	C105	(2016): Noted legislative issue within the Penal Code, which defines prisoners' work as "a duty" and extends to those serving a sentence for expressing certain political views, or as discipline for public employees' participation in strikes.
Child Labour	C138	(2016): Noted legislative gaps relating to minimum age for apprenticeships and failure to define "minors" prohibited from carrying out hazardous work.

		(2016): Noted poor inspection capacity, especially considering the high incidence of child labour in practice compared to the very low number of child labour cases identified.
	C182	(2016): Requested govt increase protections for most vulnerable children. Noted poor access and enforcement of basic education particularly rurally, and noted that the education budget is insufficient  (2016): Noted need to increase investigations and prosecutions related to child sex trafficking and requested govt engage in greater international cooperation. Also requested further measures to prevent child labour in manufacturing of fireworks.
	C100	(2017): Noted equal pay provision legislation for the civil service may not include objective job evaluation.  (2017): Noted persistent legislative issue regarding a too restrictive provision for equal pay for equal work.
Discrimination	C111	(2017): Requested information on efforts to improve the situation of: indigenous workers; and employment-related racial discrimination.  (2017): Noted insufficient legislative protections against pregnancy testing by employers.

## References

ILO CEACR, [Observations and Direct Requests for Guatemala](#)

Inter-American Commission on Human Rights (IACHR), 2016, [Situation of Human Rights in Guatemala](#).

International Labour Rights Forum (ILRF), 2017, [87th Labor Leader Murdered in Guatemala Since 2004](#)

US Department of State (USDOS), 2018, [Guatemala - Trafficking in Persons Report](#).

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## 12. Targeted Surveys on application of core labour standards, Honduras

This report has been developed to provide a picture of the application of core labour standards in Honduras. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Powers of the labour inspectorate, including higher fines for violations
- Efforts to combat child labour
- Measures on employment discrimination, particularly gender discrimination

### Challenges

- Precarious conditions of work across all sectors
- Legal restrictions on union formation and the right to strike
- Anti-union discrimination, blacklisting, reprisals & protection unions
- High rates of child labour

### Key context

Honduras has been in a state of political, humanitarian and economic crisis since the 2009 change in government, which many observers, including the EU, characterised as a coup d'état. According to the US Department of State (USDoS) corruption and institutional weakness are widespread (USDoS, 2016). Poverty affects 66% of the population, with extreme poverty being a particular concern in rural areas (World Bank, 2017). International observers also report extensive violence, insecurity and influence of organised crime. Concerns have also been raised over the reported lack of government control over the armed forces and private security. A contested presidential election in 2017, followed by violent clashes between security forces and protesters, has been noted by local media and trade unions to cause business closures, higher rates of unemployment, and more precarious conditions of work more broadly.

Honduras' principal source of revenue are exports, of which almost 50% are derived from agribusiness. The country's dependence on agricultural exports makes it highly vulnerable to external impacts, such as natural disasters, fluctuation in prices or changes in trade relations.

A new Labour Inspection Law was passed in Honduras in 2017. It introduces higher fines for violations of labour laws. It also includes specific provisions related to denying a labour inspector access to establishments, a practice noted by stakeholders in the country. The ILO CEACR had expressed concern in the past regarding what it considered to be merely symbolic fines, particularly for anti-union discrimination. The new law also introduces technological improvements to the

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process of union registration, guaranteeing workers and inspectors' safety when registering organisations. National government, worker, and employer sectors agree on the importance of the law and international observers have welcomed its passing.

### **Freedom of association and collective bargaining**

The legal framework is considered broadly consistent with international standards on freedom of association and collective bargaining. Trade unions and international observers report low levels of unionisation due to discrimination and retaliation against unionised workers, including killings and other forms of violence. The USDoS and trade unions also report the existence of employer-controlled unions in the agricultural and export-processing sectors. They also report that certain employers also refuse to engage in collective bargaining and attempt to block trade union registration. Similar issues have also been reported in the public sector.

Trade unions have welcomed advances in the new Labour Inspection Law which imposes more stringent fines for interfering in union matters, ignoring collective bargaining agreements and denying labour inspectors' access to establishments.

### **Forced labour**

The risk of forced labour is generally considered low in Honduras, and the legal framework is considered broadly in line with international standards. The main concern, rather, is the large number of Honduran migrant workers who may fall victim to forced labour in other countries. However, international observers, including the UN Human Rights Committee, have expressed some concerns regarding practices that could amount to forced labour in Honduran maquiladoras, domestic work and the fishing industry.

The ILO CEACR has noted efforts to combat the practice, such as the adoption of a Trafficking in Persons Law; the creation of a committee against trafficking; and mechanisms to collect data and assist victims.

### **Child labour**

A joint study by the ILO, UNICEF and the World Bank revealed high rates of child labour in Honduras, with 70% of working children believed to carry out hazardous work (UCW, 2015). International observers report that criminal organisations recruit children into the worst forms of child labour, including recruiting children to commit violent crimes.

Despite legislative protections being in place, the ILO, UNICEF and the World Bank point out inconsistencies in the legislative framework on child labour: while the minimum age for work is set at 14, minors under 14 are allowed to work with government authorisation, and without distinctions for the worst forms of child labour. Minors under 18 may not carry out hazardous work, however, those over 16 may do so with authorisation. Stakeholders from the national government, trade union and employer sectors report that a majority of minors who work do not have such authorisation. Finally,

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the Labour Code does not cover agricultural undertakings with less than 10 workers, where most child labour is reported to occur, and inspections are limited.

Nevertheless, the national and municipal governments and other actors have recently made efforts to address child labour. The ILO CEACR noted the establishment of committees and directorates focusing on protecting children and eradicating child labour, educational efforts and a National Plan and Roadmap to eliminate the practice.

## **Discrimination**

Despite broad reaching legislation that generally aligns with international standards on discrimination, international observers, including the ILO CEACR and UN agencies, report difficulties for minorities and women to obtain and keep jobs, a disparity in wages with the rest of the workforce, and pregnancy related discrimination. Women in rural areas, indigenous women and women of African descent are particularly affected. The Labour Code also limits the work women can perform. Indigenous peoples, persons with disabilities and HIV-Aids, and LGBTI persons also suffer from discrimination in employment.

There have been some improvements in combating discrimination, including plans on gender equality, against racial discrimination and for the inclusion of people living with HIV/Aids. Honduras has also increased fines for sexual harassment and wage discrimination.

## **Other working conditions**

Apart from issues regarding core labour standards, there are significant challenges regarding other working conditions. The labour market is characterised by high levels of informality and poor conditions of employment, especially in the agricultural and maquila sectors. Underemployment is high, and youth, women and indigenous people face the greatest challenges in accessing decent work. Local media reports also highlight that the Hourly Employment Law is being used by employers to avoid complying with regulations regarding other working conditions.

**Occupational safety and health.** Local trade unions and international observers, report concerns regarding safety and health in the construction, maquila, agriculture (where the use of chemicals without protective measures is extensive), and dive fishing sectors (where there have been reports of employers selling drugs to indigenous workers). The new Labour Inspection Law is set to increase enforcement in this area.

**Working time.** Worker organisations in the field, international observers and local media report violations of maximum working hours in the maquila and agriculture sectors, particularly on sugarcane and palm oil plantations. Workers in these sectors are paid at a piece rate, which in turn encourages them to work overtime without receiving compensation. Workers hired under the Hourly Employment Law may also work longer hours than legally permitted.



**Wages.** Local media reports that 71% of workers in Honduras do not receive a minimum wage (Mejía, 2017) and that the minimum wage does not allow a decent standard of living. Maquila and agriculture workers – particularly in melon, sugarcane, coffee and palm oil – are most affected. The minimum wage in specially regulated Employment and Economic Development Zones, where most garment factories are located, is lower than the national minimum wage (Oxfam, 2015).

**Social security coverage.** A large portion of the population lacks access to social security. Despite government efforts to improve the system, trade unions and local media have noted that resources will be insufficient to fund universal access and denounced a persisting lack of transparency in the social security system.

## Status of ratification and reporting

Honduras has ratified all eight ILO fundamental (core) labour conventions. Honduras has also ratified three of the four ILO governance (priority) conventions, the exception being C129 on Labour Inspection (Agriculture). Honduras is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Noted that the Labour Code does not apply to agricultural enterprises with less than 10 permanent employees; government officials can end disputes in the oil industry; there are excessive requirements for union leaders and union formation; and a 2/3 majority requirement and other procedural requirements deemed excessive to call a strike.
	C98	(2018): Noted that legislation does not expressly prohibit employer intervention in union matters. There are also significant limitations on the collective bargaining rights of public employees.
Forced Labour	C29	(2016): Noted an unclear protection of prisoners' free and informed consent and labour rights when working for the private sector. Also noted the lack of a national plan against trafficking and that no resources were allocated to a program for victim assistance.
	C105	(2016): Noted an unclear provision mandating compulsory prison labour that could be used to punish freedom of expression-related offences.
Child labour	C138	(2016): Noted that the labour Code does not apply to minors working in agricultural establishments with less than 10 employees. Child labour norms only appear to apply to contractual labour relations.
	C182	(2016): Noted a low number of convictions for sexual exploitation in relation to the number of cases reported. Also, insufficient services and assistance for child victims of trafficking and sexual exploitation.
Discrimination	C100	(2017): Noted that the principle of equal pay for work of equal value is not in line with

		C100. Noted a tendency to “undervalue” work in sectors dominated by women.
	C111	(2017): Noted that Honduras’ laws do not contain the legal concept of a hostile working environment. Also, access to recourse for victims of sexual harassment is not ensured.

## References

ILO CEACR, [Observations and Direct Requests for Honduras](#).

Mejía, 2017, ‘[El 71% de los asalariados hondureños, sin salario mínimo](#)’, La Prensa.

Oxfam, 2015, ‘[Derechos que Penden de un Hilo](#)’.

U.S. State Department (USDoS), 2016, [Human rights report – Honduras](#).

Understanding Children’s Work (UCW) - ILO, UNICEF, World Bank, 2015, [Entendiendo el trabajo infantil y el empleo juvenil – Honduras](#).

World Bank, 2017, [Overview – Honduras](#).

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## 13. Targeted Surveys on application of core labour standards, Indonesia

This report has been developed to provide a picture of the application of core labour standards in Indonesia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Active promotion of social dialogue and collective bargaining
- Bolstering labour inspection
- Adoption of new law on Indonesian migrant workers, and capacity development of BNP2TKI
- Tackling discrimination at the workplace (relating to workers with disabilities)

### Challenges

- Increasing use of non-standard and precarious form of employment
- Rising concerns about sexual harassment in the workplace
- Antagonistic industrial relations climate
- Entrenched gender norms /stereotypes
- No recent data on child labour

### Key context

Indonesia has overseen a wide range of reforms in recent years, including far-reaching decentralisation. Reforms have affected various labour governance functions, including labour inspection, which was effectively decentralised (although it has since been brought back under closer control of provincial and central authorities). The transition to a more democratic political system has also accompanied fundamental labour market reforms, including an overhaul of the labour law and industrial relations environment. The industrial relations climate remains fractious, partly in anticipation of a general election scheduled for 2019. Notable efforts have been made in recent years to boost the effectiveness of labour standards enforcement. However, there remain specific concerns about workers' access remedy through formal labour dispute settlement mechanisms.

Indonesia has made significant gains in relation to reducing poverty, nearly halving the poverty rate since 2000. Although rapid urbanisation has spurred jobs growth, Indonesia faces a major demographic challenge, with 1.7 million young people joining the labour market each year. Progress in creating decent work opportunities has been mixed and – although legal protections have recently been enhanced for migrant and domestic workers – many workers remain vulnerable. Women workers remain significantly over-represented in low-paying, less protected parts of the economy. Non-standard forms of employment are common, and it is estimated that informal employment accounts for more than three quarters of all employment in Indonesia. Overall, employment quality remains a major issue in Indonesia. Youth unemployment – at 15.6% - as well as skills shortages and skills mismatches are also persistent challenges.

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## **Freedom of association and collective bargaining**

The legal framework on freedom of association and collective bargaining is broadly adequate, although there are specific concerns relating to legal provisions on: the right of civil servants to organise; employer non-interference in trade union activities; and the implications for the right to strike of the classification of enterprises and economic zone as ‘vital objects’ whereby industrial disputes may be subject to security force intervention.

In practice, key issues raised by stakeholders relate to issues of enforcement, harassment of both trade union members and employers, and concerns regarding the capacities of social partners to negotiate effectively. In the absence of experience, there is generally a low level of capacity to entertain negotiation and social dialogue on the part of both workers and employers. Government has overseen recent and renewed efforts to build these skills, however, not least through a series of training and awareness-raising initiatives. Current government efforts to promote enterprise-level collective bargaining take place in the context of a marked decline in union membership in the past decade. Stakeholders note that broader economic patterns – notably the prevalence of MSMEs and increasing use of non-standard forms of employment – may militate against organisation necessary for effective representation.

## **Forced labour**

The legal framework surrounding forced labour is adequate. The law prohibits all forms of forced labour, although Indonesia has not yet ratified P29. Key issues reported by stakeholders relate to aspects of enforcement, including insufficient penalties for trafficking and forced labour.

In practice, there are reports of forced labour within Indonesian jurisdiction in domestic work as well as in the mining, fisheries and agricultural sectors – specifically, on palm oil plantations. While (registered) labour emigration has been in rapid decline over the past decade, Indonesia is a major source country for women, children and men subject to trafficking, including for the purposes of forced labour. Reports indicate that Indonesians are subject to forced labour and debt bondage in several sectors abroad, including domestic service, construction, factories and manufacturing, mainly in Asia and the Middle East.

Key reforms have been made to the governance of labour migration. In November 2017 the government introduced a new law on the Protection of Indonesian Migrant Workers. The Migrant Worker Protection and Placement Agency (BNP2TKI) has worked with a number of partners, including the ILO, to reduce risks of abuse and exploitation of Indonesian migrant workers. The government is committed to a number of activities to eliminate forced labour under the National Action Plan on Combating Trafficking in Human Beings (RAN PTPPO).

## **Child labour**

The legal framework surrounding child labour is strong. Stakeholder concerns mostly pertain to enforcement of child labour laws.

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In practice, child labour, including its worst forms, persists. The most recent Ministry of Manpower estimates suggest that in 2015 there were some 1.6 million children in situations characterised as child labour in Indonesia. Child labour reportedly occurs mostly in informal, unregulated activities, such as street vending and in the agricultural and domestic sector. The US Department of Labour lists seven goods from Indonesia as produced by child labour: fish, footwear, gold, palm oil, rubber, tin and tobacco.

The government is currently implementing the 2nd phase (2017–2019) of the Roadmap Towards A Child Labour-Free Indonesia in 2022, and the ILO has recently concluded a programme in cooperation with the government to address child domestic work. On the legislative front, the government has adopted Manpower Decree No. 2/2015 on the Protection of Domestic Workers, Art.4 of which sets the minimum age of employment for domestic workers at 18 years. However, a number of factors impede further progress: allocation of resources for effective enforcement of child labour laws; supply-side ‘push factors’ potentially requiring broader social protection measures; lack of comprehensive and recent data on child labour; and limits on access to schooling.

## **Discrimination**

Indonesia does not have an overarching anti-discrimination law, but anti-discrimination provisions are embedded in different laws and regulations. Social partners consider the legal framework relating to anti-discrimination adequate, although other stakeholders note a number of legal gaps around the grounds for discrimination covered in law: discrimination based on sexual orientation, national origin, citizenship, language, age, and HIV status and other diseases is not explicitly prohibited in secondary legislation.

The government is committed to creating decent work for women and is pursuing several national approaches towards promotion of equality of opportunity and non-discrimination. In 2016, the government adopted a new ‘Law on the Rights of People with Disabilities’, though the impact of the legislation to date is reportedly modest.

In practice, most reports of discrimination in employment relate to gender. There is a high degree of both vertical and horizontal occupational segregation, and women’s labour force participation lags significantly behind men’s – both likely explained to some degree by allocation of unpaid care responsibilities and stereotypes relating to women’s economic activity. Stakeholders report discrimination of women in all areas of employment, including pay and benefits, career development, job security and hiring, with rising concerns about sexual harassment in the workplace.

## **Status of ratification and reporting**

Indonesia has ratified all ILO fundamental (core) labour conventions without reservations and maintains their ratification. Indonesia has ratified two out of four ILO governance (priority) conventions (C81 and C144). Indonesia is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to all these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Noted ongoing discussion within govt on implementing regulation on the right of civil servants to organise. Requested the government to ensure that sections the Penal Code – on “instigation” and “unpleasant acts” against employers - are not applied to abstract trade union activities. Noted trade union claims that legal provisions on protection of ‘national vital objects’ may be used in practice to suppress freedom of association.
	C98	(2018): Noted indications by govt that it will amend Manpower Act, which requires employer presence during enterprise vote to determine trade union representation for collective bargaining. Requested govt to review Industrial Relations Dispute Settlement - allowing for only one party to file a petition to the Industrial Relations Court – as this does not promote voluntary collective bargaining.
Forced Labour	C29	(2017): Urged the government to strengthen efforts to protect migrant workers from abusive practices and conditions amounting to forced labour. Requested the government to take measures to improve functioning of Task Force.
	C105	(2017): Urged the government to amend sections of Criminal Code which provide for: compulsory labour for certain acts of public expression, and requested amendment to Manpower Act, which provides for compulsory labour for illegal participation in strikes.
Child labour	C138	(2016): Requested the government to amend law to prescribe obligations of employers to keep registers of children in all economic activities.  Noted with concern that majority of children under minimum age engaged in self-employment or working without clear wage relationship are not covered by Manpower Act.
	C182	(2016): Noted reports that there is no legal protection for child domestic workers under the age of 18.  Requested the government to ensure application of effective and dissuasive penalties for employing children in hazardous work.
Discrimination	C100	(2017): Requested the government to consider amending legislation to reflect the broad definition of ‘remuneration’ under the Convention.  Urged the government to ensure that women do not face direct or indirect discrimination with respect to family allowances and employment-related benefits. Encouraged the government to consider amending Manpower Act to reflect principle of equal remuneration for work of equal value.
	C111	(2017): Requested the government to carry out review of discrimination in employment and occupation based on all grounds. Requested the government to consider revising Manpower Act to expand benefits related to night work to male workers. Requested the government to ensure that civil servants are not discriminated against based on political opinion.

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## References

ILO CEACR, [Observations and Direct Requests for Indonesia](#).

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## 14. Targeted Surveys on application of core labour standards, Kyrgyzstan

This report has been developed to provide a picture of the application of core labour standards in Kyrgyzstan. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Improved judicial capacity and procedures
- Ongoing efforts to tackle gender-based discrimination in employment
- Ongoing efforts to combat child labour in its worst forms
- Efforts to raise awareness of trafficking risk among Kyrgyz migrants

### Challenges

- Weak labour standards enforcement capacity, particularly the inspectorate (SETSI)
- Trade unions are weak and may be subject to undue influence from government
- Official approval required for legal strike action
- Weak tripartite and bipartite dialogue
- Official complicity in human trafficking
- Inconsistent enforcement of forced / child labour laws
- Weak government capacity for reporting

### Key context

Kyrgyzstan has made a rapid transition to a market economy since the 1990s and, despite some instability, it has enjoyed comfortable economic growth in recent years. Nevertheless, incomes remain low, particularly in the large agricultural sector, and almost a quarter of the population is in poverty. A significant barrier to the effective application of labour standards in Kyrgyzstan is the scale of informal employment, affecting some 70% of the employed population: informal workers are outside the oversight of labour inspection services and terms and conditions of employment are generally poor.

Kyrgyzstan is a country heavily-shaped by its high rate of outward migration and is reportedly the most remittance-dependent country in the world. This emigration has some significant implications for the labour market and the application of core labour standards. The labour market remains underdeveloped, and families of migrants face specific socio-economic challenges, including increased vulnerability to child labour. Kyrgyz migrants are exposed to risks of trafficking and forced labour in their destination countries.

Corruption remains a major constraint on law enforcement, including in the police and judiciary. Nevertheless, stakeholders are optimistic about reforms pushed through in recent years with the aim to improve the court system.



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Despite some legal gaps, there are few significant concerns about extant legislation. Rather, stakeholders' concern centre on enforcement, particularly the weak capacity of the labour inspection services and the Ministry of Labour and Social Development. There are particular concerns about the effectiveness of labour inspection. Restructuring in 2012 saw the labour compliance function assigned to the State Inspectorate for Ecological and Technical Safety (SETSI), and there are questions raised about capacity, resources, and a lack of unannounced access to enterprises. Moreover, the legal basis for the interaction between the restructured SETSI and the continued parallel trade union inspection system remains unclear.

There are positive assessments of government efforts to address certain issues, particularly gender-related employment discrimination and child labour in its worst forms. Efforts to raise awareness of trafficking risks among Kyrgyz migrants are also acknowledged. By contrast, enforcement of forced labour and anti-trafficking provisions are considered ineffective and there are some concerns about failures to tackle official complicity in these issues. Furthermore, tripartite dialogue is reported to be increasingly limited. There are few discernible improvements in trade union rights.

### **Freedom of association and collective bargaining**

The legal framework is considered mostly adequate in its provisions on freedom of association and collective bargaining. Remaining legislative concerns relate primarily to obstacles to the right to strike and ensuring established unions with fewer than 50% membership in an enterprise are not side-lined in collective bargaining.

Observers report that, for the most part, the government respects and enforces freedom of association and collective bargaining. Nevertheless, in practice, stakeholders acknowledge that trade unions remain weak, particularly in the private sector, where collective bargaining is uncommon. Unions may be influenced by employers and have limited experience of functioning independently and wholly representing the interests of workers. Stakeholders recognise that tripartite dialogue is limited, with some indicating that the quality of social dialogue is deteriorating, owing to the limited convening and promotional capacity of the Ministry of Labour (which has itself been subject to manifold re-structuring in the wake of political shifts). Widespread informality also remains a marked constraint to effective worker organisation and representation.

### **Forced labour**

National legislation provides protections against slavery, trafficking in persons, and forced labour. There are some gaps with ILO conventions, including in relation to compulsory military service, and the potential for prison sentences involving compulsory labour as a penalty for insulting a public official. Legislation is weak in its definition of forced labour and in its provision of victim identification criteria.

Kyrgyzstan is predominately a source rather than a destination country for victims of trafficking and forced labour, and Kyrgyz migrants are at significant risk abroad. However, forced labour is reported to occur within Kyrgyzstan, particularly in the agriculture, construction, forestry, and textiles sectors, as well as in domestic work. The government has recently committed to review forced labour legislation, develop victim identification and referral mechanisms, and to implement initiatives to promote safe migration and raise awareness of trafficking. Nevertheless, there remain significant

concerns about weak enforcement of relevant laws, limited funding for ambitious government programmes, and official complicity in human trafficking.

## Child labour

There are few significant concerns about the scope of child labour legislation. However, there are some outstanding issues concerning the definition of light work and the need to revise the hazardous work list. In practice, child labour remains widespread in Kyrgyzstan, particularly in agriculture. Although figures show a marked decline in the overall incidence of child labour between surveys in 2007 and 2014, the worst forms of child labour grew to account for a larger share of child labour (ILO, 2016).

There have been several recent initiatives in Kyrgyzstan to eliminate the worst forms of child labour. A specific 'Worst Forms' Action Plan was adopted in 2016 and several social protection programmes to reach vulnerable children and their families are now in place. The government is also reviewing the hazardous work list. However, stakeholders remain critical of weak enforcement, highlighting that most working children are not in formal employment relationships and thus beyond the scope of current legislative protection and enforcement efforts. Insufficient data and monitoring are also significant barriers to more effective intervention.

## Discrimination

Kyrgyzstan's legal framework on non-discrimination is considered broadly compatible with international standards. However, there remain some gaps in national legislation, including restrictions on women's work and the principle of equal remuneration for work of equal value. Nevertheless, most stakeholder concerns relate to the inadequate enforcement and implementation of the law.

Discrimination in employment against women and ethnic Uzbeks is most commonly reported. Initiatives and commitments to address gender inequality and sexual harassment in employment have been welcomed and some positive advancements regarding women's participation in managerial and profession roles have been observed. Major socio-cultural barriers remain to Kyrgyz women's economic empowerment, however. Stakeholders have not identified any current initiatives to address discrimination in employment on grounds other than gender.

## Status of ratification and reporting

Kyrgyzstan has ratified all fundamental (core) conventions and three out of four governance (priority) conventions, excepting C129. However, Kyrgyzstan has serious shortcomings in its reporting to the ILO supervisory machinery, including issues relating to regularity and quality. As a result, the majority of recent CEACR comments on fundamental conventions repeat previous observations / direct requests.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective	C87	(2018): Repeated request for government to reduce high proportion of workers required to agree a strike; requested government specify in which sectors minimum services should be maintained during strike; and suggested government establish

bargaining		minimum services rather than prohibit strikes in some services.
	C98	(2018): Repeated request for government to amend law to ensure representative unions with less than 50% of workforce are not undermined by elected representatives in collective bargaining.
Forced labour	C29	(2017): Repeated request for government to amend Constitution to ensure compulsory military service is purely of military character; and to indicate emergency cases in which forced labour may be used. Also requested information on conditions of prison labour.
	C105	(2018): Requested government amend Criminal Code provision that orders punishment, with obligation to work, for insulting a public official. Also requested information on application of punishment with obligation to work in cases of negligence by public officials.
Child Labour	C138	(2018): Repeated request for government to ensure self-employed children, children in informal economy and children working for family benefit from protection laid down in the convention; requested the government ensure light work legislation is enforced and a list of specific light work activities be drafted.  Repeated request for violations, particularly of hazardous work, legislation to be adequate punished; requested the government indicate measures envisaged to require employers to keep registers of employees and dates of birth.
	C182	(2017): Expressed concern at the lack of data on the prevalence of child trafficking and sexual exploitation in Kyrgyzstan. Requested the government to continue enforcement efforts against worst forms, including hazardous agricultural work, and provide reporting on such. Also requested that government provide information on rehabilitation.  Repeated request for the government to continue efforts to tackle worst forms of child labour; protect street children; improve access to education; identify vulnerable children; and report on progress under the Child Labour Monitoring System.
Discrimination	C100	(2018): Repeated request for the government to amend Law on Gender Equality to give full expression of C100 and indicate if it applies in both public and private sectors. Also requested statistics and enforcement information.
	C111	Repeated request for the government to ensure that any measures limiting women's access to work are strictly limited to maternity protection. Also made several repeat requests for information on various issues pertaining to non-discrimination protections, vulnerable groups and harassment.

## References

ILO CEACR, [Observations and Direct Requests for Kyrgyzstan](#)

International Labour Organization (ILO), 2016, [Working children in the Kyrgyz Republic: Child Labour Survey 2014–2015](#)

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## 15. Targeted Surveys on application of core labour standards, Mexico

This report has been developed to provide a picture of the application of core labour standards in Mexico. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Legislation regarding conflict resolution and the registration of unions and collective bargaining agreements
- Legislation on minimum working age
- Lower child labour rates
- Ratification of ILO C098

### Challenges

- Confidence in the labour inspectorate and the judiciary to effectively, independently and transparently exercise their duties
- Anti-union discrimination and use of employer-controlled unions
- Discrimination (gender, indigenous identity & others) especially gender wage gap
- Efficacy & efficiency of inspections

### Key context

Mexico's social, political and economic context is affected by lack of trust in democratic institutions, and a widely-held perception that corruption is widespread in the country. This, combined with a climate of political and economic uncertainty and high levels of societal violence, represent potential challenges to the application of core labour standards in the country.

Elections held on 1 July 2018 saw the election of Andrés Manuel López Obrador. During the campaign, López Obrador signalled towards a more protectionist economy, while also defending the North-American Free Trade Agreement (NAFTA). He has also promised to take power away from big business, protect union leaders and increase workers' wages. Alongside López Obrador's victory his party, Morena, and its supporting coalition gained control over both houses of Congress. This majority should allow them to pass legislative changes without difficulties. However, in practice, it is unclear whether the elected coalition will be voting in unison.

Uncertainty related to the July 2018 elections and the renegotiation of NAFTA have slowed down the growth of the Mexican economy in the first half of 2018. High levels of poverty and labour market informality are also a source of concern. In October, Canada, Mexico and the US appeared to reach a new trade agreement, which is likely to be signed by the end of November. The text of this agreement contains commitments from the parties on labour issues, including providing for legislation and practice that ensure acceptable conditions of work and the right to freedom of association.

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## **Freedom of association and collective bargaining**

In 2017 Mexico passed a constitutional labour reform which introduced substantial changes regarding freedom of association and collective bargaining. First, the reform dissolves the Conciliation and Arbitration Boards (CAB), whose functions will be transferred to local judicial entities. Second, the reform also requires verification of workers' support prior to the registration of collective bargaining agreements (CBA) and creates an independent entity for the registration of both unions and CBAs. These changes come as an attempt to further guarantee the independence and representativeness of the trade union formation process and collective bargaining negotiations, which are issues of major concern in the country.

Although these reforms have generally been positively received, the proposed implementing legislation has been criticised by trade unions, academics and civil society as limiting the reform's reach and being favourable to union representatives supporting the government. As of October 2018, the reform has yet to be implemented by regulating legislation, despite the fact that the legally-mandated period for bringing the legislation into effect has now passed. The decision to ratify Convention 98 by the Mexican Senate in September 2018 and provisions in the new trade agreement between Canada, Mexico and the US which contains provisions committing Mexico to passing legislation to ensure freedom of association, may accelerate the reform's implementation. It is not known whether Congressional consideration of implementing legislation will be delayed until 1 December 2018 when López Obrador takes office.

National stakeholders and international observers note several issues that are nonetheless not addressed with regard to freedom of association and collective bargaining in practice. A significant stakeholder concern relates to the alleged existence of employer-dominated unions (also known as 'ghost unions'), which have been created to thwart genuine trade union formation and bargaining. Trade unions and civil society organisations also identify the politicisation of the trade union registration process – through the creation of undue obstacles for registration of independent unions – as a major issue. Trade unions further report retaliation against workers who seek to form independent unions, including through dismissals and blacklisting. International observers have also expressed concern over the excessive legal requirements which need to be complied with in order to call a strike.

There are also conflicting reports of violence (including deadly violence) against striking union members, which have been allegedly perpetrated by state forces, private security forces, and other unions.

## **Forced labour**

While Mexico's legislation regarding forced labour is considered to be broadly aligned with international standards, civil society organisations and international observers report significant concerns over enforcement efforts and the allocation of resources to combat the practice, as well as over the high number of identified victims. Conditions that may amount to forced labour are

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reported as particularly present in the agricultural sector, where demand for foreign and indigenous day labour is high. There have also been anecdotal, yet consistent, reports of mass disappearances of migrant workers in the past, with concerns that they have been taken against their will for the purpose of forced labour.

Despite government efforts to fight trafficking in persons, the eradication of forced labour remains a challenge in Mexico. Key constraints reported by civil society organisations and international observers include a lack of harmonised understanding of the concept of forced labour amongst authorities, lack of effective inspection efforts and limited resources dedicated to combating the practice. Corruption and complicity of public officials in forced labour and trafficking offences are also a concern.

## **Child labour**

Mexico's legislation regarding child labour is considered to be broadly in line with international labour standards, particularly after the country raised the minimum working age to 15 in order to ratify C138. In practice, child labour remains highly prevalent. According to the latest child labour survey conducted by Mexico's statistics institute (INEGI), 3.2 million minors were engaged in child labour in Mexico in 2017 (11% of the population aged 5 to 17). According to INEGI's 2017 survey, almost 40% do not have the minimum age to work, and over 60% partake in dangerous activities (INEGI MTI, 2017). Child labour is most prevalent in the agricultural sector, but it is also reported in the services, commerce, construction and mining industries, as well as in brickyards.

The worst forms of child labour are also a concern in Mexico. International observers have noted that criminal organisations recruit children. Government estimates indicate that 21,000 minors are captured by trafficking networks in Mexico every year.

The government has reported a decrease in child labour rates in recent years, which it attributed to the raise in the minimum working age, and increased inspection efforts. Employer organisations have attributed this improvement to the influence of international companies' demands for child labour-free supply chains. Nonetheless, enduring constraints to the complete eradication of child labour in Mexico include ineffective inspections, societal attitudes towards child labour and the families of working children, and a lack of effective measures to combat the root causes of child labour.

## **Discrimination**

Mexico is generally regarded as having a comprehensive legal framework regarding employment discrimination. However, civil society organisations and international observers detect the presence of discrimination in the workforce, particularly against women, but also based on sexual orientation, disabilities, indigenous identity and socio-economic status.

While the number of women in the Mexican workforce is increasing, Mexico is still has the third largest gender wage gap and one of the lowest female labour force participation rates in the OECD. According to the World Economic Forum, Mexico's gender wage gap has been widening in recent

years. Other concerns include the fact that many women workers are employed in the informal economy and underrepresented in decision-making roles. Pregnancy-related discrimination and sexual harassment are also deemed significant issues by local civil society organisations and international observers.

Persons with disabilities and indigenous workers also face significant challenges in accessing decent employment without discrimination in Mexico, as evidenced by large wage gaps between them and the rest of the working population.

## Status of ratification and reporting

Mexico has ratified all eight ILO fundamental (core) conventions. In September 2018, Mexico ratified ILO Convention 98, following long-lasting pressure from trade unions, civil society organisations and international trade partners. Now Mexico needs to implement the changes in law and practice that will align the country's current labour situation with international standards. Mexico is not party to two of the governance (priority) conventions, C81 and C129 (Labour Inspection and Labour Inspection in Agriculture).

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Noted with concern continued allegations of the use of protection contracts in the country, and lack of information on proposed amendments to address it. Noted allegations of violence against unionised workers, including deadly violence. Noted that foreign workers are prohibited from being union leaders and that public servants have limited rights to freedom of association. Noted allegations of independent trade union registration being denied. Noted with satisfaction changes brought by the reform to labour justice, vesting competence to federal and local courts, making the conciliatory process more flexible and effective, and decentralising the conciliation body.  (2018): Noted the requirement for union leaders to be accredited by the government as proof of their fair election, and that branch unions are not permitted to represent workers from other branches in different industries. Also noted that certain public servants and essential personnel are restricted from striking or have additional requirements to do so.
	C98	<i>Decision to ratify passed by the Senate in September 2018.</i>
Forced Labour	C29	(2016): Noted the low number of convictions for human trafficking crimes, and allegations of corruption and complicity by public officials.
	C105	<i>No recent comments.</i>
Child labour	C138	Mexico ratified C138 in 2015 and was requested to make its first report in 2017. The ILO CEACR repeated this request in 2018, since the first report was not received.
	C182	(2016): Noted the low number of convictions for sexual exploitation of minors and for officials accused of complicity.
Discrimination	C100	(2017): The definition of "equal pay for equal work" contained in Mexican law falls short of C100's definition of "equal pay for work of equal value". Noted the

		absence of objective evaluation methods to determine equal value.
	C111	<p>(2017): Requested Mexico modify its conciliatory methods for complaints of discrimination, given their low success rate.</p> <p>(2017): Noted that the labour law does not expressly protect against discrimination based on race, colour, national extraction, social origin and political opinion. Redress mechanisms for sexual harassment end with the termination of the employment relationship (albeit with compensation), raising concerns that this remedy could be used as a penalty against the victim and dissuade complaints.</p>

## References

ILO CEACR, [Observations and Direct Requests for Mexico](#).

Instituto Nacional de Estadística y Geografía, Módulo de Trabajo Infantil (INEGI MTI), 2017, [Principales Resultados](#).



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## 16. Targeted Surveys on application of core labour standards, Moldova

This report has been developed to provide a picture of the application of core labour standards in Moldova. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Legal framework on the core labour standards, especially non-discrimination.
- Government attention on issues relating to the core labour standards.

### Challenges

- Social dialogue at the national level.
- Collective bargaining at the enterprise level.
- Functioning of the labour inspectorate.
- Broader decent work issues, including wage arrears.
- Anti-union discrimination

### Key context

Moldova is the poorest and most unequal country in Europe. The Moldovan economy is characterised by a small domestic market with limited competition, large economic distance to regional markets and low endowment in institutional, human and natural capital. These factors constitute a serious constraint to the application of core labour standards, largely because the labour market is unable to support sufficient productive, decent work opportunities and workers are vulnerable to various forms of labour exploitation.

In 2014, almost one billion dollars, equivalent to 12.5% of GDP, was embezzled from the national banking system. The resulting political and economic upheaval has reportedly resulted in very little limited substantive progress relating to labour standards in recent years, as attention has been focused elsewhere. While this situation is beginning to improve, speculation around the outcome of parliamentary elections due in November 2018 has created some uncertainty regarding the future direction of labour-related reform.

National stakeholders and international observers report that weaknesses in Moldova's labour inspection regime constitute the biggest constraint to the application of core labour standards. Recommendations by the ILO Committee of on the Application of Standards and the most recent observations from ILO CEACR (2018) have raised significant concerns that the labour inspection system does not conform with relevant ILO conventions. Of particular concern is Law No. 131 on "State control over Business Activity" (2012) which significantly restricts the functioning of the

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inspectorate, specifying that visits by the labour inspectorate should be announced five days in advance, that each workplace can be inspected no more than once per year and that during the first three years of the operation of a company, inspections will be of a consultative nature and that sanctions and other restrictive measures will not be applied, even in the case of severe violations. Since the law was passed, annual inspection reports have shown a dramatic decrease in the number of infringement reports submitted to judicial authorities, from 891 in 2012 to 165 in 2016, with reports of further declines since 2016.

### **Freedom of association and collective bargaining**

Moldova's legal framework on freedom of association and collective bargaining is mostly consistent with international standards, although there are some outstanding issues relating to the right to strike. Instead, ineffective enforcement and supervision of labour laws is the principal constraint in ensuring freedom of association and collective bargaining rights in Moldova. This is evidenced by the fact that authorities did not record or punish a single violation of the trade union law during 2017, despite trade unions registering reports of 129 infringements (USDOS, 2018).

According to trade unions, there has been a decline in collective bargaining and social dialogue in recent years, both at national and enterprise level. Specific concerns include allegations from that for the last two years, labour law reforms have been embarked on without any tripartite discussion. Meanwhile, at the enterprise level, trade unions indicate that a range of issues which were previously decided upon through collective negotiations, especially relating to wages and salary supplements, are now set unilaterally by firms. While the most recent ILO Decent Work Country Programme (2016-2020) sets out several actions towards strengthening social dialogue and collective bargaining in Moldova, trade unions report that actual progress towards these goals has been limited at the sectoral, regional and firm level.

### **Forced labour**

The legal framework on forced labour is broadly adequate and there are no significant concerns with its scope or content. However, international observers note that the law is not adequately enforced and penalties and sanctions for forced labour are seldom imposed.

In practice, international observers report that forced labour in Moldova is closely linked to international and internal trafficking. In particular, Moldova is identified as a significant source country for men, women and children subject to trafficking and forced labour abroad, primarily in Russia, Ukraine and elsewhere in Europe. Within the country, forced labour reportedly occurs in all regions, particularly on farms and in agricultural work.

### **Child labour**

The legal framework on child labour is broadly adequate but enforcement is often insufficient, including in relation to worst forms of child labour. While trade union and employer representatives

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report that child labour is not a significant issue and “does not really exist in Moldova”, international observers have reported that child labour remains an issue in practice, particularly in relation to primary agriculture. In August 2017, the Ombudsman reported that the number of children subject to labour exploitation in Moldova has increased, and that authorities, including the National Committee for the Elimination of Child Labour, lack effective mechanisms to tackle the problem, particularly since it largely occurs in the informal sector (Ombudsman, 2018).

## **Discrimination**

Moldova has made substantial progress to improve its legislative framework on non-discrimination in recent years, but that there are outstanding issues relating to the legal definition giving expression to “equal pay for work of equal value”. Few complaints relating to discrimination are brought forward in practice, indicating shortcomings in the implementation and enforcement of relevant laws. In particular, it is reported that decisions on discrimination cases issued by the courts commonly do not include proper assessments of evidence, do not follow national law and do not apply international legal principles relating to equality.

Overall, both by global and regional standards, Moldova performs relatively well on measures of gender equality in employment. However, the Moldovan Equality Council and international observers have raised concerns regarding the prevalence of gender discrimination, particularly in relation to pregnancy and maternity. The Equality Council and the ILO have also reported discrimination issues in relation to Roma persons, persons with disabilities, older workers and on the basis of health status and language.

## **Other working conditions**

Moldova faces a number of significant employment challenges. The labour market is characterised by high levels of informality, low levels of productivity and low levels of employment.

**Occupational safety and health.** OSH legislation is generally considered adequate and reforms are ongoing to align national legislation to relevant EU Directives. However, trade unions report ‘deep concern’ with the overall level of enforcement of OSH laws by the government and of non-compliance with relevant legislation by employers. In September 2017, responsibility for the enforcement of occupational safety and health (OSH) legislation was transferred to 10 separate supervision authorities. Trade unions report that not all of these authorities employed qualified personnel to conduct inspection activities and that workplace accidents which took place since September 2017 (around 60, including 11 fatalities and 4 serious injuries), have not been properly investigated or addressed (CNSM, 2018).

**Wages.** Delayed wage payments and wage arrears are a significant issue across all sectors and are growing over time, reaching MDL 178 million (EUR 9 million) in April 2017 (USDOS, 2018). “Envelope wages”, whereby workers receive cash-based unregistered payments for at least part of their salary, are also common practice in Moldova, reportedly accounting for 29.6% of total payroll (ILO, 2016).

**Social security coverage.** The widespread practice of undeclared wages has also been identified as a major obstacle to establishing a comprehensive social security system as it significantly impacts on access to social security for workers whose salaries are not fully declared. International observers also report concerns relating to the shrinking coverage of the pension scheme, and around social security coverage for disadvantaged and marginalised individuals and for Moldovans working abroad.

## Status of ratification and reporting

Moldova has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. Moldova has also ratified all four ILO governance (priority) conventions. Moldova is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Requested govt. to adopt legislative provisions expressly providing for the participation of trade unions and employers' organizations in determining the minimum services to be ensured in the event of a strike, and to amend the list of essential services where strikes are prohibited.
	C98	(2018): Requested govt. to amend Labour Code to ensure that referral of a collective bargaining dispute to the courts is possible only upon request by both parties to the dispute.
Forced Labour	C29	(2017): The Labour Code allows for forced labour in circumstances which contravene C29, including for violations of labour discipline and expressing political views.
	C105	(2017): <i>No specific application issues raised.</i>
Child labour	C138	(2016): The Labour Code allows children aged 15 to conclude work contracts with the written permission of their parents, provided that this does not impair with their health, education or development.
	C182	(2016): No specific concerns raised but requested additional information relating to trafficking and Roma children.
Discrimination	C100	(2017): <i>No specific application issues raised.</i>
	C111	(2017): Requested amendments to the Labour Code to ensure that restrictions on women's work are limited to maternity protection.

## References

ILO CEACR, [Observations and Direct Requests for Moldova](#).

ILO, 2016, [The Informal Economy in the Republic of Moldova – a comprehensive overview](#).

National Trade Union Confederation of Moldova (CNSM), 2018, [Report on the Social Aspects of the Implementation of the Association Agreement Between EU and Moldova](#).

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Ombudsman of the Republic of Moldova, 2018, [Rights, responsibility and human freedom in the Republic of Moldova in 2017](#).

US Department of State (USDOS), 2018, [Country Reports on Human Rights Practices for 2017](#).

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## 17. Targeted Surveys on application of core labour standards, Mongolia

This report has been developed to provide a picture of the application of core labour standards in Mongolia. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Adoption (pending) of revised Labour Code will bring national law much closer in line with all core conventions
- Government intent to ratify C81 and P29
- Ongoing efforts to eliminate worst forms of child labour
- Capacity building for inspectors, judiciary and social partners on range of CLS

### Challenges

- Widening gender pay gap and significant gaps in national non-discrimination laws
- Lack of clarity in child labour laws
- Inadequate services to reduce vulnerability to child labour and to protect trafficking victims
- Labour inspectorate is under-resourced, and legal restrictions on unannounced inspections
- No freedom of association for employers
- National social partners lack capacity, especially in relation to collective bargaining
- Limited prosecution for child labour offences
- No recent survey on child labour or gender discrimination in employment

### Key context

Mongolia's recent economic performance has improved dramatically with GDP growth increasing from 1.2% in 2016 to 6.1% in the first quarter of 2018. Although mining is an important source of income and exports, it is not a major employer. Agriculture and livestock remain an important source of employment in rural areas, where poverty rates are higher. The overall trend for poverty reduction in Mongolia is positive, although progress remains fragile; poverty increased sharply to 29.6% in 2016 as a result of the economic downturn. Labour market conditions have begun to improve since 2016, but unemployment remains at an estimated 8% in 2018. Precarious conditions characterise employment in the sizeable informal economy. The gender gap in labour force participation rates has more than doubled in the last twenty years.

Further structural challenges remain for the effective application of core labour standards in Mongolia. The impact of the 2016 economic and financial crisis took a toll on institutional capacities, especially in the areas of law enforcement and corruption. While labour inspection capacity remains

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a concern, and there remain restrictions on unannounced inspections, the government has indicated its intent to ratify C81 (though not C129). Efforts continue to build the capacity of institutions relevant to the application of – and reporting on – core labour standards, including a new phase of the EC-funded ILO GSP+ project. The EU-Mongolia Partnership and Cooperation Agreement (PCA) entered into force on 1 November 2017. Mongolia continues to benefit from the EU GSP+ arrangement.

The ILO has identified a range of shortcomings in current labour legislation. The most recent draft amendments to the Labour Law are currently before Parliament (July 2018) and, when approved, would bring the Labour Law into closer alignment with the ILO fundamental conventions. The draft revised Labour Law also reportedly provides a definition of the ‘employment relationship’ that covers all employees and employers in both the formal and informal economy.

### **Freedom of association and collective bargaining**

Key legislative reforms are either in draft or scheduled. The draft revision to the Labour Law introduces a distinction between rights and interest disputes, setting out separate procedures for their resolution, and addresses aspects of C98 relating to government and employer interference in collective bargaining. The Ministry of Labour and Social Protection (MLSP) has also recognised the need to amend the 2001 Law on Trade Unions and to develop an analogue for employers’ right of association.

In practice, laws providing for freedom of association and collective bargaining are generally enforced. However, some employers reportedly disrupt trade union activities and discriminate against members. In general, trade union representation of workers in the informal economy is limited, as well as among workers in smaller enterprises in the formal economy.

### **Forced labour**

The definition of forced labour in the current Labour Law is not aligned with C29 and C105 and is due to be amended in the draft revision to the Labour Law. The draft would also expressly prohibit employers from retaining workers’ passports. The 2017 revision of the Criminal Code establishes forced labour as a criminal offence, punishable with a fine or imprisonment for up to 8 years. The government has signalled its intention to ratify P29.

In practice, there are concerns about forced labour of military conscripts and prisoners, and the treatment of victims of trafficking. Migrant workers may also be vulnerable to forms of exploitation tantamount to forced labour. There are some reports of forced labour – principally relating to document retention – in the SME sector.

## Child labour

Amendments to Mongolia's Labour Law came into force in September 2016 establishing a minimum wage for access to employment of 15 years. The 2017 revision of the Criminal Code established penal sanctions for engaging children in the worst forms of child labour. The current (2018) draft revisions to the Labour Law would bring further alignment with C138 and C183 with regard to: linking minimum age to compulsory schooling, employer record-keeping of workers aged under 18, individual permitting of exemptions from minimum age, and defining 'light work'.

In practice, it is reported that 10% of children aged 5 to 17 are engaged child labour in Mongolia, particularly in the agriculture sector, but also in forms of horse racing, construction, and mining. Hazardous work is reportedly common in construction and mining. Data collection and monitoring of child labour pose significant problems, not least because employers are not (yet) required to keep a register of workers under 18 years. Penalties for engagement of child labour, though recently increased, reportedly remain an insufficient deterrent.

## Discrimination

The current draft amendments to the Labour Law will, if passed, close several gaps in national law compared to international standards: prohibiting discrimination on the basis of political opinion; aligning with the definition of sexual harassment in the Law on the Promotion of Gender Equality, incorporating prohibitions on both hostile environment and quid pro quo sexual harassment; requiring employers to introduce measures to prevent sexual harassment in the workplace; and including the principle of equal remuneration for men and women for work of equal value. All of these have been welcomed by the ILO CEACR.

In practice, discrimination in employment stems from inequalities that are entrenched in gendered relationships both inside and outside the workplace. Women's labour force participation lags well behind men, and there is marked gender-based occupational segregation both in terms of sectoral and seniority. The gender pay gap is a major concern and it is reportedly increasing, with women earning 14.3% less than men.

## Status of ratification and reporting

Mongolia has ratified all eight fundamental (core) conventions and two out of four governance (priority) conventions. It is up-to-date in all its reporting, marking positive progress on previous reporting cycles.

Application issues - latest ILO CEACR observations and direct requests on core conventions		
Freedom of association &	C87	(2018): Repeated request for government to expedite adoption of law setting out legal status of employers, including independence of employers' organisations. Noted



collective bargaining		Labour Law restricts strikes to collective labour disputes, excluding strikes against public policy or sympathy strikes.
	C98	(2018): Requested government revise Labour Law, to ensure autonomy of bargaining agents. Noted right to collective bargaining should include civil servants not engaged in State administration.
Forced labour	C29	(2017): Requested government clarify conditions under which career members of armed forces may leave service during peacetime and number of resignations accepted or refused. Requested government provide information on application of Resolution No. 107 establishing 'Mongolian conscripts for reconstruction' project. Requested further information on prisoners' work for private companies, conditions on imposing unpaid work in lieu of imprisonment and institutions entitled to use such labour.
	C105	(2017): Requested government to indicate form of sanctions that may be applied for participation in unlawful strikes.
Child Labour	C138	(2016): Requested government ensure draft Labour Law includes: legal protections include children working outside clearly defined employment relationship; provision linking minimum age for employment with age of compulsory schooling; provision regulating 'light work'. Requested government establish system of individual permits for under-15s working in activities such as artistic performances, and limit working hours.  Requested government ensure draft Criminal Code contains dissuasive penalties for breach of children's rights and draft Labour Law requires employers to keep register of workers under 18.
	C182	(2016): Requested clarification of terms 'under-age persons' and/or 'minors' in legislation. Requested government provide information on child trafficking cases. Reiterated previous request for information about government policies for removing children in mining sector  Urged government to eliminate employment of under-18s as horse jockeys, and to enforce safety regulations strictly.
Discrimination	C100	<i>No specific application issues raised</i>
	C111	(2018): Repeated request that government indicate measures to ensure public officials are protected against discrimination on grounds of political opinion. Requested government ensure retirement age reforms do not shorten working life of women in discriminatory manner. Requested government increase efforts to deal with sexual harassment at work and ensure new Labour Law covers both quid pro quo and hostile environment sexual harassment.  Requested government review overly broad provisions allowing sex-specific recruitment.

## References

ILO CEACR, [Observations and Direct Requests for Mongolia](#).

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## 18. Targeted Surveys on application of core labour standards, Myanmar

This report has been developed to provide a picture of the application of core labour standards in Myanmar. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Ongoing labour law reform includes recent / proposed improvements relevant to the application of core labour standards
- Ongoing efforts to build capacity of social partners with international support
- Declining incidence of forced and child labour, although both issues remain serious concerns

### Challenges

- Ongoing internal conflict is an overarching constraint on effective application of core labour standards, with particular concerns about forced / child labour
- Underdeveloped legal framework pertaining to core labour standards
- Nascent social partners lack capacity
- Enforcement shortcomings, including a weak labour inspection system
- Restrictions on scope of collective bargaining
- Alleged use of forced labour, including forced child labour, by military

### Key context

Myanmar is currently undergoing profound economic, social and political transformation with significant implications for the application of core labour standards (CLS). Since the return to civilian rule in 2011, the government has initiated wide-ranging reform process, including an overhaul of labour legislation. At the same time, Myanmar has become more open to international integration and cooperation and was readmitted to the ILO in 2013, embarking on a series of projects relevant to CLS, notably relating to forced labour, child labour and freedom of association.

Nevertheless, Myanmar remains one of the poorest countries in Southeast Asia and approximately 26% of the population live in poverty. Employment in Myanmar remains heavily concentrated in low-productivity, informal jobs, including a significant share in the agricultural sector. The quality of jobs is often poor, with approximately 63% of the labour force engaged in 'vulnerable employment' characterised by inadequate earnings and difficult work conditions.

Ongoing conflicts – particularly in the states of Rakhine, Kachin, and Shan – represent a significant overall constraint on the application of core labour standards. Myanmar's armed forces (the Tatmadaw), along with non-state armed groups, continue to be implicated in the use of forced

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labour and forced child labour in conflict-affected regions. More generally, the large-scale displacement of the civilian population has heightened vulnerabilities to labour exploitation and contributed to a general situation of lawlessness in affected areas.

Myanmar's labour legislation remains underdeveloped and ineffective for regulating current labour market conditions. The current legal framework does not comply with international standards in several key areas. Overall, national labour law is characterised by fragmented legislation that covers labour issues by sector (e.g. factories, shops, mines) or by theme (e.g. wages, leave and holidays). This leads to significant gaps in coverage, particularly for workers in sectors such as agriculture, construction, and fisheries that are not covered by sector-specific laws. However, these shortcomings are widely acknowledged, and there is an ambitious reform agenda to update labour legislation and to bring such legislation into line with international standards.

### **Freedom of association and collective bargaining**

From the establishment of military rule in 1962 until the enactment of the new Labour Organisation Law in 2011, trade unions were banned in Myanmar and workers were prohibited from forming organisations, having their representatives recognised, negotiating collectively with employers, or carrying out strikes and other collective activities. Consequently, although trade unions and employers' organisations have proliferated since 2011, they remain at a nascent stage of development.

Myanmar has not ratified ILO C98. National law establishes the right to organise and bargain collectively, and to take industrial action. However, there remain numerous areas in which national law deviates from internationally recognised norms and principles concerning freedom of association and collective bargaining, including: restrictions on workers joining unions outside their specific trade or activity; excessive membership requirements for union registration; the lack of express protections against anti-union discrimination; restrictive rules on trade union structure and governance; a limited scope for collective bargaining; and several restrictions on legal strike activity. In practice, there are specific concerns about the difficulties faced by trade unions in obtaining official registration, retaliation – including dismissal – from employers for legitimate union activity, and the limited occurrence and scope of collective bargaining.

### **Forced labour**

Myanmar has not ratified C105. Myanmar's Constitution prohibits forced labour, trafficking, or enslavement, but it permits forced labour in the case of punishment for a crime. In recent years, the government and the ILO have adopted a series of initiatives aimed at addressing forced labour in Myanmar – including a Joint Action Plan and a Supplementary Understanding that established a forced labour complaint mechanism. These initiatives have achieved some progress in reducing the incidence of forced labour.

In practice, the most significant concerns still relate to the use of forced labour by Myanmar's armed forces (the Tatmadaw). Other than child recruitment (see Section 6), there are significant concerns that the Tatmadaw's 'self-reliance' policy, whereby troops are required to procure their own food and supplies from local communities, is a significant underlying cause of forced labour, particularly within ethnic minority communities in conflict zones. A recent UN Fact-Finding Mission (FFM) on

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Myanmar identified a pattern of continuing systematic use by the Tatmadaw of forced labour, including for portering, digging trenches, guiding, and cooking (UN HRC, 2018).

Forced labour also occurs in the private sector, although awareness of the issue remains low. Fifteen products from Myanmar are included on USDOL's most recent List of Goods Produced by Forced Labour: Bamboo, Beans, Bricks, Garments, Jade, Palm Thatch, Physic Nuts / Castor Beans, Rice, Rubber, Rubies, Sesame, Shrimp, Sugarcane, Sunflower and Teak.

## **Child labour**

The legal framework on child labour does not yet meet international standards. Legislation relating to child labour is contained in several sectoral laws, but none include a specific definition or prohibition of child labour. In addition, there is no clear prohibition of worst forms of child labour.

In practice, child labour is extremely prevalent in Myanmar. Myanmar's first and most recent child labour survey was conducted in 2015 and found that 1.2 million children, or approximately 9.3% of the total child population, were engaged in child labour.

Notwithstanding significant progress since 2012, the use of child soldiers by government armed forces (Tatmadaw), remains a serious concern. Since 2012, the UN FFM to Myanmar has received 1,374 complaints regarding the recruitment of children by the Tatmadaw, of which 856 were verified (UN HRC, 2018). The recruitment and use of children by non-state armed groups is also a key issue, although severe access restrictions mean that there are relatively few verified cases. Child labour also occurs in the private sector, although it is a more recently recognised phenomenon that has not yet been comprehensively addressed (MCRB, 2017a). Ten products from Myanmar are included on USDOL's most recent List of Goods Produced by Child Labour: Bamboo, Beans, Bricks, Garments, Jade, Rice, Rubber, Rubies, Sugarcane and Teak.

## **Discrimination**

Myanmar has not ratified C100 or C111. The national legal framework on non-discrimination is generally considered inadequate. Although the Constitution contains some prohibitions on discrimination and a guarantee that citizens shall enjoy equal opportunity in employment, the application of these rights is limited to citizens of Myanmar, thereby excluding significant portions of the population. At the same time, these constitutional provisions are not sufficiently reflected in national law, and secondary legislation contains few explicit prohibitions on discrimination in employment.

Discrimination is not well acknowledged or widely recognised by national stakeholders. However, international observers report that discrimination against ethnic, religious and linguistic minorities is a significant issue, while gender-based discrimination is widely apparent across the labour market. All official identity documents are required to state the religion and ethnicity of the individual, and it is reported that employers use this information to discriminate against non-Bamars during recruitment processes. Women's overall labour force participation rate is low (52% compared to 82% for men), while women are also overrepresented in vulnerable employment and perform the majority of unpaid care and household work. Women are also typically concentrated in sectors and occupations that, according to prevalent sociocultural gender norms, are deemed appropriate for women. Finally, work-related discrimination based on sexual orientation and gender identity is reportedly common.

## Status of ratification and reporting

Myanmar has ratified just three ILO fundamental (core) labour conventions (C87, C29 and C182), and no ILO governance (priority) conventions. Myanmar is up-to-date with all its reporting obligations to the monitoring bodies of the ILO in relation to ratified conventions.

		Key application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2018): Requests the government review provisions in the Labour Organisation Law, including the minimum membership requirement for forming a labour union of 30 workers and eligibility restrictions for trade union officers. Also notes that the 2016 Peaceful Assembly and Peaceful Procession Law contains provisions that may give rise to restrictions on freedom of association and trade union activity. Finally, notes how provisions in the Special Export Zones (SEZs) Law appears to restrict the application of general labour laws, especially concerning dispute settlement.
	C98	<i>Convention not ratified</i>
Forced Labour	C29	(2016): Notes that no action has been taken to amend the Constitution, which exempts from a prohibition of forced labour 'duties assigned by the Union in accordance with the law in the interest of the public'.
	C105	<i>Convention not ratified</i>
Child labour	C138	<i>Convention not ratified</i>
	C182	(2016): Notes inconsistencies between national law and C182, including several pieces of national legislation which define a 'child' as being under 16 years of age (rather than 18 as required by C182), for example in relation to prohibitions of using children in illicit activities or in hazardous work. Similarly, notes the absence of a standardised list determining types of hazardous work for children under 18 years.  Expressed concern that a number of children who fled the army after being recruited into its ranks were charged with desertion and treated as criminals under Myanmar law, rather than victims.
Discrimination	C100	<i>Convention not ratified</i>
	C111	<i>Convention not ratified</i>

## References

ILO CEACR, [Observations and Direct Requests for Myanmar](#)

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## 19. Targeted Surveys on application of core labour standards, Nicaragua

This report has been developed to provide a picture of the application of core labour standards in Nicaragua. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Labour inspection and enforcement capacity
- Extension of full labour protections in EPZs
- Tripartite dialogue in EPZs
- Government efforts to combat human trafficking and child labour
- Legal framework on employment discrimination

### Challenges

- Erosion of right to freedom of association and collective bargaining in practice
- Prosecution & incarceration of some trade unionists and protesters
- Discrimination on political opinion in public sector
- Lack of support for trafficking victims
- Legal restrictions on the right to strike
- Overall child labour rates
- Lack of data on child labour and sexual harassment

### Key context

Nicaragua faces several significant socio-economic challenges that affect the application of core labour standards. These relate to education, generation of sustainable and formal employment, and discrimination against women and racial and ethnic minorities. A reported lack of financial and human resources hampers the government's ability to produce and analyse timely, accurate data on labour market issues such as the prevalence of child labour and employment discrimination. Lack of resources, an alleged lack of political will and a perception that government corruption is widespread are also concerns with respect to the enforcement of labour laws, protection of workers, and effectiveness of labour inspection (Transparency International, 2018).

Despite the many challenges faced by Nicaragua, international observers and national stakeholders report several legislative developments in the past decade that have improved the country's legal framework to address labour-related challenges. Most significant among these legal reforms were the creation of a cadre of labour law judges and creation of the Labour Appeals Tribunal under the Labour and Social Security Procedural Code of 2012, and the passage of the General Law on Workplace Inspections in 2008. In 2016, a new regulation on export processing zones explicitly extended all labour law protections to workers in EPZs. Nicaragua also implemented what is considered to be a progressive anti-trafficking law in 2015. Nicaragua has a functional tripartite legal structure for social dialogue, but reports have emerged in recent years that tripartism has only applied to supporters of the ruling party.

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Since April 2018, Nicaragua faced a significant political and social unrest. What initially started as a wave of protests against social security reforms has transformed into a broader movement against the government, led by President Daniel Ortega, which has been in power since 2007. As of August 2018, between 317 and 448 people were reported to have died, with the government acknowledging 198, and thousands to have been injured as a result of violent clashes between government forces and the protesters (AI, 2018; FT, 2018; AP, 2018; OAS, 2018; Herald, 2018). According to Nicaraguan think tank FUNIDES, the economy could lose between USD 638 million (approx. EUR 544 million) and USD 1.4 billion (approx. EUR 1.2 billion) in 2018 as a result of the conflict, with significant implications for employment and poverty levels. A national dialogue process (supported by international actors such as the EU) was ongoing at the time of writing this report.

### **Freedom of association and collective bargaining**

For the most part, observers and social partners report that the rights to freedom of association, collective industrial action, and collective bargaining are adequately protected by Nicaraguan law. The ILO, national human rights organisations, and union representatives report, however, that enjoyment of the right to freedom of association is generally deteriorating in Nicaragua, with accounts of obstacles to union registration and repercussions against protesting workers. They allege that this is especially the case for trade unions and workers who disagree with the current government (USDoS, 2017; ITUC, 2016; Freedom House, 2018; Mendoza, 2015). Legal restrictions on the right to strike, which have repeatedly been noted as an issue by the ILO CEACR over the years, remain in force. Worker groups and international labour rights organisations have raised concerns regarding violations of workers' right to freedom of association in Nicaragua's export processing zones (EPZs).

Nevertheless, the application of the right to collective bargaining has improved in at least two respects, with the adoption of regulations in 2016 that extend full protection of labour laws to EPZs and the tripartite efforts resulting in the inclusion of gender policies in 57 collective bargaining agreements.

### **Forced labour**

Nicaragua's legal framework on the prohibition and elimination of forced labour is considered largely in line with international standards, making great strides to combat human trafficking with the adoption of a comprehensive anti-human trafficking law in 2015. However, the ILO CEACR has noted that it had not received any information about specific measures taken by the government to implement the new law. This makes it difficult to determine whether the law has had any impact on reducing trafficking in Nicaragua. Funding and support for victim protection programs has also reportedly deteriorated, focusing mostly on female victims of sex trafficking. The ILO has noted possible indicators of forced labour in Nicaraguan agriculture, particularly the sugarcane industry, although it is generally unclear whether the poor conditions prevalent in the sector would constitute forced labour under the conventions.

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The application of C29 and C105 in Nicaragua appears to be focused on human trafficking – particularly sex trafficking – rather than forced labour or trafficking for the purposes of labour exploitation. With respect to forced labour, reports and attention tend to focus on the exploitation of Nicaraguan nationals in other Central American countries, Mexico, and the United States.

## **Child labour**

Nicaragua's legal framework on child labour is generally considered in line with ILO conventions, with one notable exception regarding the age of compulsory schooling. Notwithstanding the adoption of government programs and policies to eliminate child labour, trade unions, human rights organisations, and other observers generally note that there is no discernible change in the prevalence of child labour in Nicaragua, including the worst forms of child labour. Child labour is reported to be present in quarries, the banana and sugarcane sectors, domestic work and among homeless street children.

In addition to lack of resources for implementing programs and enforcing labour laws, there is a reported lack of resources for gathering and publishing timely data on the extent of child labour and information about the results of enforcement measures. Factors such as mistrust of authorities, cultural acceptance of child labour, deficiencies in the education system, and gaps in birth registration procedures, particularly in rural areas, are also considered factors in the persistence of the practice in Nicaragua.

## **Discrimination**

Nicaragua has been making progress in its efforts to improve the legal framework to eliminate discrimination based on sex, race, religion, and other grounds. The ILO observes, however, that shortcomings remain in the current legal framework, including inadequate legal provisions covering equal pay and sexual harassment.

Discrimination in employment on the basis of sex, sexual orientation, gender identity, race, ethnicity, skin colour, disability, age, or HIV status remain a concern. The ILO has noted, however, an increase in discrimination based on political opinion in the public sector.

## **Status of ratification and reporting**

Nicaragua has ratified all eight ILO fundamental (core) conventions. Of the four ILO governance (priority) conventions, Nicaragua has ratified C122 (Employment Policy) and 144 (Tripartite Consultation). Nicaragua has not ratified C81 (Labour Inspection) and C129 (Labour Inspection in Agriculture). Nicaragua's reporting to the ILO CEACR has been inconsistent. Nicaragua submitted reports on seven of the eight core conventions in 2017, but the country has not submitted a report on C105 (Abolition of Forced Labour) since before 2009. ILO CEACR has again requested an out-of-cycle report on C105 for 2018. While the government expressed its commitment towards complying with its reporting obligations during the 2018 International Labour Conference, it did not acknowledge any delays regarding C105.



		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted with regret that the right to strike is still limited by the compulsory arbitration provision in Articles 389 and 390 of Nicaragua's Labour Code. This is a longstanding issue. Welcomed government initiatives to promote the right to organise, including the promotion of gender equality policies by trade unions.
	C98	(2017): Noted with interest that the government promoted a gender dimension in collective bargaining, and that fifty-seven collective agreements with gender equality clauses were recently signed. Also noted that the Tripartite National Committee on Export Processing Zones (EPZs) negotiated changes to the minimum wage in EPZs.
Forced Labour	C29	(2017): Requested information on the implementation of measures to prevent, investigate, and punish trafficking in persons as well as to protect victims and witnesses. Noted that Nicaragua should continue to build the capacity of law enforcement agencies – including police, the labour inspectorate, public prosecutors, and magistrates.
	C105	<i>No recent comments.</i>
Child labour	C138	(2017): Noted that the age for the completion of compulsory schooling in Nicaragua is still 12 under the 2006 Education Act.  (2017): Noted that a special child labour inspection program in coffee harvesting and limestone quarries was established. The ILO CEACR requested information on the results of the program.
	C182	(2017): Noted with interest the adoption of the 2015 Act against Trafficking in Persons. More information on implementation requested.  (2017): Called on the govt to continue efforts to protect street children and integrate them into school and training courses.
Discrimination	C100	(2016): Noted that the narrow formulation of the principle of equal pay for women and men is still inconsistent with the Convention.
	C111	(2016): Noted a failure of labour law to address both <i>quid pro quo</i> and hostile working environment sexual harassment. Implementation of national equality policy remains a challenge. Labour inspection guidelines are needed in relation to hiring discrimination based on sexual orientation and other protected grounds.

## References

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## 20. Targeted Surveys on application of core labour standards, Pakistan

This report has been developed to provide a picture of the application of core labour standards in Pakistan. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders

### Progress

- Provincial governments' ownership of CLS issues
- Provincial legislative efforts on child and bonded labour
- Identification of cases of bonded labour and trafficking
- Levels of tripartite dialogue at federal and provincial level
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### Challenges

- Alternative forms of labour sub-contracting as an anti-union tactic
- Enforcement of non-discrimination
- Perceived corruption and impunity relating to labour issues
- Weak enforcement, inspection, prosecution and judicial capacity
- Lack of recent data on bonded and child labour

### Key context

The application of core labour standards in Pakistan has been heavily shaped by the devolution process, which began in 2010. Since devolution, responsibility for labour legislation and enforcement has resided with the four provinces - Sindh, Punjab, Khyber Pakhtunkhwa (KP) and Balochistan. While devolution has provided opportunities for innovative, grassroots solutions to issues relating to the core labour standards, it has also created significant challenges as provincial authorities have varying capacities to adopt and enforce labour laws.

Pakistan has experienced consistent economic growth in recent years, but the translation of economic gains into social development outcomes has been muted. A major brake on this process is Pakistan's sizeable informal economy, comprising almost three-quarters of the workforce, notably in agriculture and home-based work. The extent of the informal economy represents a significant challenge for the implementation of core labour standards, primarily because in most provinces, informal workers remain outside the scope of existing labour law.

The new government, elected in July 2018, has promised to launch a labour policy to safeguard Pakistani workers, as well as promising to prioritize generating employment and upskilling the labour force.

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Overall, enforcement of core labour standards continues to lag significantly behind legislative gains, resulting in limited progress in practice. While provinces have gradually improved legislation relating to the core labour standards in recent years, weak capacity of the inspectorate and other administrative bodies is widely cited as a key constraint in the application of all core labour standards. This issue is widely recognised and government, together with the ILO, continues to work to improve the capacity of the inspectorate.

National stakeholders and international observers have been pleased by the levels of ‘ownership’ of core labour standards now assumed by the provincial governments, particularly Sindh and Punjab. Of the four core labour standards fields, child labour is recognised as having gained the most momentum among provincial governments, with less progress reported in relation to issues such as non-discrimination and freedom of association

### **Freedom of association and collective bargaining**

Federal and provincial industrial relations acts (IRAs) broadly confer the right to workers to join and form trade unions and to bargain collectively. Balochistan and Sindh amended legislation to include informal workers in agriculture and fisheries in their IRAs, thus providing trade union rights to these workers. Nevertheless, several legislative gaps with the conventions remain, somewhat impeding rights to freedom of association, collective bargaining, and the right to strike.

Despite gradual progress with legislation, and notable enforcement efforts in Sindh, which has reportedly sought to raise awareness of trade union rights among the large informal workforce, little has yet to change in practice. Trade unions highlight continued negative perceptions of unions, anti-union discrimination and efforts by employers to thwart worker organisation, particularly in the private sector. This includes labour sub-contracting, forming ‘yellow unions’, and attempts to circumvent provincial law by establishing operations in other provinces. In addition, commentators report that enforcement is weak, with insufficient resources and a lack of political will from authorities noted as constraints.

### **Forced labour**

Legislation has been enacted in all provinces except Balochistan, where the federal legislation applies. While legislative gaps with ILO Conventions 29 and 105 remain, including references to compulsory labour as a penalty, some improved protections exist in provincial legislation, such as protections against worker debt cycles in Punjab and KP.

Bonded labour is a serious and entrenched issue in Pakistan, and it remains widespread. It is typically present in informal contexts, such as agricultural, domestic and brick kiln work. Although poor enforcement is again the major constraint, there have been some advancements, including efforts by some provinces to regulate brick kilns and increased identification of trafficking victims. However, District Vigilance Committees (DVCs), local citizen reporting bodies on bonded labour, are only

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functioning in Punjab, which was also the only province to launch a bonded-labour prosecution in 2017. Some trade unions claim that DVCs have become quickly politicised, hindering their functioning. Indeed, international observers note that corruption and official complicity in bonded labour is a constraint (USDOS, 2018).

## **Child labour**

While Sindh, Punjab and KP have enacted child labour legislation, they have not addressed all the historic gaps that exist between federal legislation and the Conventions. These include issues with minimum age thresholds for ‘light work’, disparities in compulsory schooling ages and unclear provisions regarding activities that constitute ‘hazardous work’ for under-18s in some provinces and territories. Nevertheless, child labour has been a priority issue in Pakistan in recent years, with a number of provincial projects in place, and reports of ongoing efforts to strengthen legislation. National stakeholders and international observers appear most concerned about the high and persistent rates of child labour in its worst forms, such as in brick kilns, as well as child domestic work, which has gained increasing visibility as an issue. Considering the scale of the problem, many agree that enforcement is inadequate, and some claim it is virtually absent. Across provinces, labour inspection capacity is weak, and inspections are limited to the formal sector, where child labour is less common. Even in cases where child labour is identified, legal action is not always taken, and penalties are inadequate. Inspectors reportedly lack resources and training on child labour issues, particularly in its worst forms. Nevertheless, international observers, including the ILO, again recognise progress by Punjab and Sindh on improving enforcement.

## **Discrimination**

Gaps exist between protections against employment discrimination and the Conventions, including relating to the concept of equal pay for work of equal value and sexual harassment protections. Progress by provinces to adopt anti-discrimination legislation developed by federal government in coordination with the ILO remains slow. Considering the prevalence of discrimination, particularly against women and religious minorities, greater enforcement efforts are needed. Understanding of the concepts of employment discrimination and harassment remain low among employers, and discrimination within authorities, such as the inspectorate, hinders right to redress, according to international observers. Furthermore, the administrative apparatus for discrimination issues is weak and some recently-launched initiatives have subsequently ceased due to a lack of funding.

## **Other working conditions**

Pakistan’s labour market continues to experience low levels of women’s participation, limited creation of decent jobs, and a growing reliance on sub-contracted labour in export industries. The high level of informality (73%) is a major obstacle to ensuring decent work and adequate worker protection.

**Occupational safety and health.** Sindh is the only province with its own OSH law. In other provinces, there is an absence of an effective framework for enforcing OSH and, where enforcement exists, it is ineffective, overburdened and at risk of corruption (CNV Internationaal, 2017). OSH is poor across sectors. However, export- sectors are developing better provisions. Mining is a concern, with high rates of fatalities. The large informal workforce is unprotected by OSH regulation.

**Wages.** Minimum wages do not apply to the large informal sector. Some also claim that increases have been insufficient, remaining far below the cost of living (FES, 2017). Compliance with minimum wage provisions is reportedly low, owing to weak enforcement and bureaucracy. It is reported that minimum wage regulations are generally only complied with at export-oriented factories, owing to pressure from audits by international buyers.

**Employment protection legislation.** Employment is reportedly insecure in most sectors, owing to informality, a lack of written contracts, and growing and repeated use of temporary contracts or subcontracted workers in export industries. The latter is generally preferred by employers to provide flexibility (CNV Internationaal, 2017).

**Social security coverage.** Employment is reportedly insecure in most sectors, owing to informality, a lack of written contracts, and growing and repeated use of temporary contracts or subcontracted workers in export industries. The latter is generally preferred by employers to provide flexibility (CNV Internationaal, 2017).

## Status of ratification and reporting

Pakistan has ratified all eight ILO fundamental (core) labour conventions and two of the four ILO governance (priority) conventions (C81 and C144). Reports indicate that Pakistan does not have the intention to ratify outstanding governance conventions at present. Pakistan failed to meet its reporting obligations to the ILO supervisory machinery in 2017. However, it was reported in 2018 that Pakistan had since sent replies to the majority of CEACR comments.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Requested govt. to remove legislative prohibitions on the right strike and remove penal sanctions for participation in peaceful strikes. Noted eligibility criteria for trade unionists to hold office is too broad.  (2017): Noted legislative restrictions on certain workers forming and joining trade unions and the possibility of union deregistration without judicial review.
	C98	(2018): Requested govt. clarifications and amendments on: trade union rights for all workers; excessively high thresholds for collective bargaining; prohibitions of workers to join multiple unions; and impartiality in compulsory arbitration.
Forced labour	C29	(2018): Requested govt. improve enforcement of bonded labour legislation in brick kilns; ensure functioning of district vigilance committees in all provinces; and tackle low rates of trafficking convictions.

	C105	(2018): Requested govt. continue efforts to amend legislation stipulating compulsory labour as a penalty for certain offences.
Child Labour	C138	<p>(2018): Requested govt. clarify / amend issues surrounding: minimum age for light work in all provinces; minimum age for work in family establishments has no exceptions; and any inconsistencies between minimum age for work and compulsory schooling.</p> <p>(2018): Requested govt. adopt child labour legislation, including hazardous work legislation, in provinces where these are outstanding.</p>
	C182	<p>(2018): Requested govt. adopt a National Strategy to Eliminate Child and Bonded Labour, pass law prohibiting domestic work for minors, and noted insufficient enforcement measures.</p> <p>(2018): Noted various issues including no compulsory education in Gilgit-Baltistan, weak law enforcement, insufficient penalties and limited efforts to tackle cross-border child trafficking.</p>
Discrimination	C100	<p>(2018): Requested information on enforcement of equal pay for equal work and a copy of relevant draft legislation.</p> <p>(2018): Requested govt. improve definitions in KP legislation regarding equal pay for equal work and provide information on application.</p>
	C111	<p>(2018): Requested govt. provides information on measures taken to ensure women's access to vocational training and placement services.</p> <p>(2018): Requested govt. ensure provincial legislation defines and prohibits direct and indirect discrimination, in all aspects of employment for all workers; and provide information on efforts to formalize women's work; and outstanding sexual harassment legislation in provinces.</p>

## References

CNV Internationaal, 2017, [Pakistan Country Study - Labour standards in the garment supply chain.](#)

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## 21. Targeted Surveys on application of core labour standards, Panama

This report has been developed to provide a picture of the application of core labour standards in Panama. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Prosecution & conviction rates of forced labour perpetrators
- Child labour rates
- Training for inspectors
- Number of registered unions
- Number of women accessing employment

### Challenges

- Limitations on union formation and strikes
- Minimum working age for light work and training
- Low capacity and independence of inspectorate
- Discrimination against indigenous persons

### Key context

Panama has been one of the fastest growing economies in Central America in the last decade. Despite this economic growth, there are persistent levels of inequality and disparities between urban and rural areas, and high levels of informality, particularly affecting indigenous people. Corruption is also reportedly a problem.

### Freedom of association and collective bargaining

There are some noted limitations in Panama's legislation regarding freedom of association. Examples include provisions that require unions have a 40-member minimum and that a majority of employees of the enterprise or establishment must support a strike for it to be deemed legal. Certain categories of public workers, including Panama Canal workers, are not allowed to strike, while other service providers must ensure that service is not interrupted.

There are some reports of employer use of security forces to prevent union activity and violent clashes between employers and workers, or between rival unions. Other constraints reported include the practice of 'disguised' dismissals of union leaders, refusal by companies to let union leaders be in contact with strikers or address workers during negotiations, arrests of striking workers, and failure by employers to engage in collective bargaining.

On the other hand, the government is recognised to be making progress in the implementation of legislation regarding freedom of association, with a proposal for new rules related to public sector



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unions and an executive decree prohibiting employer interference with trade unions and specifically banning employer-controlled unions which are a concern in the country. The ILO CEACR had also previously noted that the government was failing to grant legal personality to unions. The Committee have subsequently noted with interest that the government reported having addressed this situation, with a number of unions being registered.

## **Forced labour**

Despite a generally strong legislative framework, forced labour, including in the form of debt bondage, is a risk issue in Panama. Most victims of forced labour in Panama are men trafficked or deceptively recruited from Nicaragua, Colombia, and Venezuela. Victims are most commonly found to be working in construction, agriculture, mining and, to a lesser extent, small businesses. Reports indicate that organised crime groups are engaged in the trafficking of persons.

Social partners report that services for victims are limited, the National Commission Against Trafficking in Persons is underfunded and understaffed, and interagency coordination is weak. Nonetheless, Panama has shown some progress in its efforts to combat forced labour. Efforts noted by the ILO CEACR include cooperative plans, training and awareness-raising campaigns, strengthening of services for victims and mechanisms for victim identification, and increased law enforcement. Panama was also the first country in the Americas to ratify ILO's 2014 Protocol to the Forced Labour Convention (P29) in 2016.

## **Child labour**

Despite increased efforts to combat child labour and a relatively strong legislative framework, the government indicates that 23,855 children were engaged in child labour in 2016. A majority of children work in the agricultural sector, including in hazardous activities. International observers report that indigenous children are most affected, working in agriculture, forestry, fishing and hunting, construction, services, artisanal mining, and street vending. According to a government study, in some parts of the indigenous community, familial attitudes related to disability and gender identity compels families to send some children to work instead of school.

UN Committee on the Rights of the Child has expressed concern over provisions in the law that allow children over 12 to perform light work with authorisation, without defining light work or delineating limitations. Specialised agencies are noted as lacking sufficient human, technical, and financial resources to eradicate child labour and inspection efforts are thought to be inadequate in the informal and agricultural sectors.

Despite these constraints, the government has reported a decrease in child labour. As noted by the ILO CEACR, the government has partnered with international organisations and the private sector through its *Roadmap to ensure that Panama is a country free of child labour and its worst forms* to engage in efforts to reduce the practice.

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## Discrimination

The Panamanian legal framework on non-discrimination is generally considered to be in line with international standards, with notable exceptions being the absence of sexual orientation as a prohibited ground for discrimination and a narrow definition of the principle of equal pay for work of equal value.

However, despite comprehensive legislation and a number of efforts by the government, private sector and social partners, there are reports of discrimination in the workforce, particularly on the basis of race, gender, disability, sexual orientation, gender identity, HIV status, and migration status.

The persistence of traditional gender stereotypes is reported to be an obstacle to women's equality in the workforce. Women present higher levels of unemployment, lower levels of labour force participation, and are affected by lower wages, sexual harassment, and discrimination based on pregnancy. Discrimination against indigenous persons in employment is also deemed to be a significant issue by some stakeholders, with international observers attributing indigenous persons' lack of access to decent employment to extreme poverty and the prevalence of racial discrimination in the country. International observers have pointed to prejudice about the capabilities of persons with disabilities and lack of oversight, data, and resources as obstacles to equal employment opportunity and labour market access for persons with disabilities.

## Other working conditions

There are a number of reported challenges regarding other working conditions. In particular, the high rates of informality affect workers' access to social security and other benefits and the use of short-term contracts is alleged to be a widespread way to circumvent labour laws. High levels of informality are particularly reported in relation to work carried out in indigenous areas.

**Occupational safety and health.** Fines are reported to be insufficient to deter OSH violations, with an inadequate number of inspectors. However, the government reports a decrease in injuries, due in part to an increased budget for the Ministry of Labour, trainings, and other efforts. Legislative changes may lead to improvement of workplace safety in vulnerable sectors. The ILO CEACR has noted government efforts to reduce occupational accidents in the construction sector and a legislative proposal advanced by the government to increase employers' responsibility for OSH in the sugarcane sector.

**Working time.** There are numerous reports of violations of maximum working time in the maritime and agricultural sectors, particularly on coffee and sugarcane plantations.

**Wages.** Panama increased its minimum wage in 2017, making it the country with the highest minimum wage in Latin America. It has been reported that agricultural workers receive the lowest wages in the country, and migrant workers frequently do not receive the minimum wage.

**Social security coverage.** Over 40% of the population is engaged in informal employment and does not qualify for social security benefits. Another concern is that employers hire workers on short term contracts to avoid contributing to the system. Workers in the agricultural sector and indigenous persons are most affected by gaps in social security coverage.

## Status of ratification and reporting

Panama has ratified all eight ILO fundamental (core) labour conventions, including the 2014 Protocol to the Forced Labour Convention (P29). Panama has also ratified three of the four ILO governance (priority) conventions, except for C129 on Labour Inspection (Agriculture). Panama is up-to-date with all its reporting obligations to the ILO.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2016): Noted the creation of an Implementation Committee to address gaps in legislation, including: the 40-member requirement to form a union; prohibition against public sector workers forming unions; limitations on public sector organisations; requirement that union leaders be Panamanian; payment of union fees by non-members; the closure of establishments in case of strike and prohibition against the entry of non-strikers; automatic intervention of the police in strikes; prohibition of strikes called by union federations; prohibition of strikes against the government's economic and social policies and of those not related to an enterprise collective agreement; restraints on the right to strike particular to the transport sector; and the dismissal of public servants for failing to provide minimum services during a strike.
	C98	(2016): Noted that certain provisions regarding strikes are imposed by law rather than established through collective bargaining; that the law limits the number of representatives allowed in collective negotiations; and that public-sector workers do not have the right to collective bargaining.
Forced Labour	C29	(2018): Noted that most foreign victims rescued opt to return to their home countries rather than filing complaints in Panama, possibly due to fear of reprisals or lack of confidence in the judicial system. Asked that the govt provide information on victim services and compensation.
	C105	(2018): Noted that the law provides for mandatory labour for convicted prisoners, which could potentially be used to impose forced labour on strikers. The government responded that prison labour was voluntary in practice and that it was working to amend the law.
Child labour	C138	(2018): Noted that the law allows for minors under 14 to carry out hazardous work (if in training establishments with authorisation).
	C182	(2018): Noted that 7% of children between 5 and 17 work, rising to 35% for indigenous children; and that while the number of reported child labour violations is high, the number of penalties imposed remains low.
Discrimination	C100	(2016): Noted that the principle of equal pay for equal work in Panama is not in line with C100's equal pay for work of equal value.  (2016): Requested the govt raise awareness about equal remuneration between men

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		and women, including among inspectors.
	C111	(2016): Requested that the govt report on how it was ensuring public-sector workers were not discriminated against on the basis of their political opinions.

## References

ILO CEACR, [Observations and Direct Requests for Panama](#).

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## 22. Targeted Surveys on application of core labour standards, Paraguay

This report has been developed to provide a picture of the application of core labour standards in Paraguay. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Efforts to combat forced labour, human trafficking and child labour
- Efforts to address claims of debt bondage and labour exploitation in the Chaco region
- Efforts to make workplaces more inclusive
- Right to paid maternity and paternity leave

### Challenges

- Failure to protect trade unionists from reprisals and dismissals
- Labour inspection and enforcement capacity
- Child labour
- Widespread discrimination

### Key context

Paraguay has a small and open economy, which has grown steadily at annual rates of around 5% over the past decade yet is subject to volatility due to its dependence on natural resources. Generation of electricity, soy cultivation, and livestock farming and production are Paraguay's main economic activities – together representing more than 70% of the country's exports in 2016. Poverty, inequality, corruption, and a weak judiciary are contextual issues of concern, which impact on the enjoyment of core labour standards.

In April 2018, Paraguay elected Mario Abdo of the conservative right-wing Colorado Party as its new president. Abdo assumed office in August 2018. Some observers suggest that Abdo's conservative inclinations will lead to retrogressions in terms of human rights, including those of women and minorities. However, the new president has called for the reduction of poverty, inequality and corruption in the country, and his new Minister of Labour has called for greater dialogue with unions and the development of equal opportunities for women.

The ILO, trade unions, and government officials have noted that the Ministry of Labour (MTESS) lacks sufficient financial, human, and technical resources to effectively perform its duties regarding core labour standards, particularly in isolated regions of the country. While there has been some progress within the MTESS, it is considered a key issue to be tackled by the new administration.

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## **Freedom of association and collective bargaining**

Worker organisations have reported that unions are subject to significant constraints in Paraguay, while labour authorities emphasize their efforts to promote social dialogue between employer and worker organizations. Trade unions report that dismissals of union members are common in several sectors, including communications, metallurgic, aviation, transport, and banking, and that union members have been subject to criminal prosecution for their involvement in protests.

Trade unions also report that employers and professional associations have influence over trade unions in the private sector and that collective bargaining is minimal and not currently a free process. Despite some noted efforts to hasten the union registration process, procedural delays and interference by government officials and employers in the process are concerns shared by local trade unions and international observers, including the ILO.

The newly appointed Minister of Labour, Carla Bacigalupo, has promised greater dialogue with trade unions, which has been noted by stakeholders.

## **Forced labour**

Trade unions and international organisations report that forced labour is prevalent in the agricultural sector in indigenous areas. UN entities and other international observers have identified the risks of debt bondage and other forms of labour exploitation in the Chaco region. The government has made some progress and adopted policies and implemented strategies to combat forced labour, with some focus in the Chaco region. However, deficiencies in the labour inspectorate are a constraint to the eradication of the practice, with indigenous communities most affected and without having access to effective complaint mechanisms.

There are efforts to bring the legislative framework up to international standards regarding forced labour. There is a proposal that would provide for specific sanctions for forced labour. Under the current legislative framework, instances of forced labour are only punished if they amount to trafficking in persons. Under the proposed law, establishments would not be able to limit their liability by suggesting it lies only with traffickers, and prosecutors would not have to prove the elements of trafficking.

## **Child labour**

The government has adopted legislation, policies and programs to combat child labour, but international observers, including the UN Committee on Economic, Social and Cultural rights, report that child labour remains a pervasive problem in Paraguay. International observers indicate that children work in several sectors of the economy, including services retail; metallurgic, brick, and limestone manufacturing; clothing manufacturing; and ranching, sugar processing, and agricultural sectors. The practice of *criadazgo* is also reportedly widespread, with children from impoverished families being hired to perform domestic work in households in exchange for room and board and support for school attendance – but who are sometimes subjected to forced labour without any type

of compensation. Regarding the worst forms of child labour, children can be found begging, street vending, and working in factories and agriculture subject to abuse or hazardous conditions. There are also accounts of children being subjected to debt bondage alongside their parents in the Chaco region.

International observers, including UN agencies and the ILO, and local trade unions, report some advances in combating the practice, including cultural shifts that make the practice unacceptable to society, legislative efforts to address concerns and efforts from the government and social partners. However, lack of presence of the labour inspectorate in isolated regions and failure to address the root causes of child labour in these areas are constraints to the eradication of child labour.

## Discrimination

Paraguay has adopted government policies and programs to promote inclusion in the workforce and made advances in legislation providing paid maternity and paternity leave. Nevertheless, the country lacks a comprehensive anti-discrimination law and fails to prohibit discrimination on the basis of national origin, citizenship, sexual orientation, gender identity, language, or having a communicable disease other than HIV.

International organisations, including UN agencies and the ILO, and the Government of Paraguay report that women encounter more obstacles than men in accessing employment, receive lower wages, and encounter discrimination based on pregnancy. Discrimination based on race, disability, age, language, weight, sexual orientation and HIV status is common.

The new Minister of Labour, has announced that the presidency will focus on employment opportunities for all, including providing for equal rights for women.

## Status of ratification and reporting

Paraguay has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. Paraguay has ratified two of the four ILO Governance (priority) conventions. The two priority Governance conventions it has not ratified are C129 on Labour Inspection (Agriculture) and C144 on Tripartite Consultation. Paraguay had previously fallen behind but is currently up-to-date with its reporting obligations in relation to the fundamental labour and Governance conventions it has ratified, with the exception of C105 regarding which no recent records were found.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2016): Noted reports related to the arrest of trade unionists, compulsory arbitration of strikes, and pending inconsistencies of legislative provisions with C87. Chief among these inconsistent provisions are the requirement of an unduly large number of workers (300) to establish a branch trade union, prohibition against joining more than one union even if a worker has more than one job, restrictive requirements to be

		eligible to serve in trade union leadership, and excessive minimum service requirements during a public services strike.
	C98	<p>(2016): Noted two issues – inadequate protection against dismissal of public sector union officers and pending inconsistencies of legislative provisions with C98. These legislative inconsistencies include absence of anti-union discrimination protections for trade union members (as opposed to leaders) and inadequate penalties and justice delays for acts of anti-union discrimination.</p> <p>(2016): Requested that the government provide information on steps it has taken to promote social dialogue and collective bargaining.</p>
Forced Labour	C29	<p>(2017): While acknowledging the government's significant efforts to combat trafficking and forced labour, the Committee expressed deep concern about operational problems in administrative agencies established to enable indigenous workers who are victims of labour exploitation to exercise their rights. The Committee requested information about prosecutions of and criminal penalties enforced against perpetrators of forced labour through debt bondage and other means.</p> <p>(2017): Noted efforts and requested further information regarding measures taken to assist Paraguayan victims of trafficking and forced labour. It also raised the issue of prison labour, requesting information about the nature of work by prisoners – whether it is voluntary and whether it is for private profit or public benefit.</p>
	C105	(2006): Raised the issue of provisions on the Penal Code imposing prison sentences for slander and libel.
Child labour	C138	<p>(2017): Requested information and statistics about progress achieved under several recently adopted child labour eradication programs and the National Strategy for the Prevention and Elimination of Child Labour and the Protection of Young Workers. Other issues raised included insufficient penalties for child labour violations and Paraguay's ongoing efforts to improve its inspection system. The Committee noted with satisfaction that Paraguay recently raised the minimum age for any type of domestic work to 18.</p> <p>(2017): Noted falling school enrolment rates despite the adoption of policies like the National Education Plan 2014 and legislation expanding free compulsory education for children ages 6 to 14. Requested Paraguay to intensify its efforts in this area.</p>
	C182	<p>(2017): Issues raised include lack of information about penalties imposed against traffickers and the absence of a system to gather data to support follow-up action for trafficking victims. Noting progress made through adoption of policies and international cooperative efforts, the Committee asked the government to intensify its efforts to take immediate and effective action to eliminate the sale, trafficking, and sexual exploitation of children and young persons. Committee also noted allegations of lack of border control and inadequate training for border officials in identifying trafficking and sexual exploitation of children, who are treated like criminals and not victims of prostitution. It also noted efforts to ban the <i>criadazgo</i> practice.</p> <p>(2017): Noted the special risk faced by street children of engaging in work classified as hazardous child labour. Noting Paraguay's significant efforts in removing children from this risk, the Committee asked the government to intensify its efforts. The Committee also requested the government to intensify its efforts to protect indigenous children from the worst forms of child labour.</p>
Discrimination	C100	(2016): Requested specific information about Paraguay's efforts to reduce the wage gap and adopt objective job appraisal mechanisms to fully implement the concept of equal pay for work of equal value by women and men, noting inequalities regarding



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		women in the workforce.
	C111	(2016): The primary issues raised include the omission of national origin as a prohibited ground of discrimination in the Labour Code and the need to adopt comprehensive sexual harassment legislation that covers both <i>quid pro quo</i> and hostile work environment harassment and provide for adequate reparations. The Committee noted Paraguay's adoption of legislation prohibiting discrimination based on HIV/AIDS status and efforts to implement policies to improve gender equality.

## References

ILO CEACR, [Observations and Direct Requests for Paraguay](#).

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## 23. Targeted Surveys on application of core labour standards, Peru

This report has been developed to provide a picture of the application of core labour standards in Peru. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- New criminal provisions on forced labour and stronger penalties for related offences.
- Policies and initiatives to improve official capacity concerning forced / child labour.
- National Action Plans and specific legislation to address discrimination in employment.

### Challenges

- Use of fixed-term contracts as an anti-union tactic, especially via 'special labour regimes'.
- Under-funding and lack of resources for labour inspectorate and other key agencies.
- Continued restriction on strikes and public sector collective bargaining
- Limited data on child / forced labour incidence

### Key context

In general, Peru has experienced a sustained period of relative political and economic stability in recent years, despite occasional crises. However, the political system functions poorly and legislative initiatives are often difficult to progress. There are also allegations of widespread official corruption, including in the judicial system, which impede effective enforcement efforts and access to remedy in labour rights cases.

The trade union movement is weak and there is a lack of public faith in unions. These weaknesses are both a legacy of civil war associations between the political left and guerrilla groups, and a result of broad economic liberalisation and labour flexibilization policies adopted by the Fujimori (1990-2000) and subsequent governments.

There has been notable growth in the Peruvian economy, although uneven distribution of economic benefits has left high levels of poverty in certain regions. Poverty and lack of access to basic public services are frequently cited as underlying factors contributing to child and forced labour. An export-oriented economic model has included the adoption of 'promotional laws' covering specific sectors, including export agriculture, which exempt employers in the sector from certain labour protections in the general labour legislation. Many reports from stakeholders about the non-application of core labour standards relate to workers in these 'special labour regimes' and are central to a labour complaint currently pending under the EU-Peru trade agreement.

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The labour force is characterised by significant informality and casualisation, which leads to weak trade unions, enforcement challenges, and labour exploitation. There are significant ethnic and regional divisions, and wider societal discrimination against indigenous people and Afro-Peruvians extends to employment contexts. Gender and ethnic pay gaps, partly due to occupational segregation, persist across the Peruvian labour market.

In general, Peru's legal framework provides adequate protections for core labour standards. However, weak enforcement and inadequate victim support services are significant concerns among stakeholders. Under-funding of key agencies, including the labour inspectorate, a lack of interagency cooperation, and lengthy delays in judicial proceedings are among the principal enforcement constraints identified.

### **Freedom of association and collective bargaining**

The law provides broad protections for freedom of association and collective bargaining, although there remain several limitations. Trade unions argue that the need for 20 members at a workplace for official registration unduly restricts freedom of association. The ILO and national stakeholders have also raised concerns about the prohibition on unionisation among trainees and some public sector employees; the continued exclusion of wage issues from the scope of public sector collective bargaining (despite Peru's Constitutional Tribunal ruling that such exclusions are unconstitutional); and restrictions on certain types of 'atypical' industrial action, such as go-slows and work-to-rule.

In practice, some employers may use the discriminatory non-renewal of fixed-term contracts to dissuade and prevent unionisation. In some cases, these practices are facilitated by 'special labour regimes' that relax restrictions on such contracting practices in designated sectors, including some agricultural and 'non-traditional export' sectors. There are also reports of other forms of anti-union discrimination, including threats, physical violence, and arbitrary dismissal of workers for legitimate union activities. Excessive judicial delays in processing labour cases may effectively deny some workers access to remedy.

### **Forced labour**

The law prohibits all forms of forced or compulsory labour, and stakeholders' concerns focus primarily on enforcement limitations. In general, forced labour occurs primarily in the informal sector and particularly in more remote rural areas. There are reports of elements of forced labour – including debt bondage – affecting workers in the informal mining, forestry/logging, agricultural, and brick-making industries, and among domestic workers. There are also reports of trafficking for forced labour and sexual exploitation, particularly in poor and indigenous communities in remote areas.

Overall, weak enforcement is a key factor constraining efforts to address forced labour. Amongst other items, there are specific concerns about insufficient strategic planning and coordination among government agencies; a lack of funds, pertinent knowledge / training, and other resources across key enforcement and judicial authorities; and corruption and official complicity in trafficking and other illicit activities.

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## **Child labour**

Peru's legal framework concerning child labour is broadly in line with international standards, although there remain some contradictions and discrepancies. For example, although the minimum age of employment is 14 years, full-time education is compulsory until 15 years, while current legislation permits adolescents to work in mining or fishing despite both industries being designated as hazardous occupations. The absence of a legal definition of 'light work' means that national legislation provides no additional protections to children under 15 years who engage in some forms of work.

However, enforcement limitations are the principal concern in this area, especially in relation to the informal sector where most child labour occurs. In practice, the prevalence of child labour remains extensive, particularly in rural areas. Moreover, a high percentage of children working are reportedly involved in the worst forms of child labour, especially in artisanal mining operations, logging, brick-making, and small-scale agriculture. Indigenous children are especially prone to dropping out of school and being involved in hazardous work in agriculture. Additionally, there are reports of hazardous child labour in domestic work, as well as commercial sexual exploitation linked to both the tourism and illegal mining and logging industries. Enforcement efforts are constrained by underfunding of the labour inspectorate, the remote location of high risk industries (e.g., illegal mining in the Amazon region), inconsistent interagency cooperation and data collection, and the limited involvement of tripartite partners.

## **Discrimination**

The law prohibits discrimination in employment on various grounds, and recent reforms have strengthened legislation concerning equal pay and equal opportunities in employment more generally. However, both direct and indirect discrimination continue to affect employment opportunities and treatment for diverse groups, especially women, indigenous and Afro-Peruvians, and people with disabilities.

Stakeholders highlight both horizontal and vertical segregation in Peru's labour market, with women, indigenous people, Afro-Peruvians, and people with disability concentrated disproportionately in low-paid sectors, mostly in the informal sector, and more junior positions overall. Labour market segregation may partially explain significant gender and ethnic wage gaps. However, wage disparities between men and women engaged in similar work suggest the presence of more direct forms of discrimination, and routine gender-based and ethnic discrimination reportedly affects many employers' hiring and promotion decisions. Long-standing sociocultural stereotypes about the relative aspirations, aptitudes, and social roles of women, indigenous people, and Afro-Peruvians are broader constraints on employment opportunities. Finally, direct discrimination on the part of employers, and physical barriers to workplaces, constrain employment opportunities for people with disabilities.

## **Other working conditions**

There are several areas of concern with respect to broader working conditions in Peru. In particular, informality and labour casualisation have contributed to an increasing number of workers engaged in precarious forms of employment, particularly young people, who are affected by irregular and inadequate wages, uneven social security coverage, and limited employment protection. Workers

employed under ‘special labour regimes’ face similarly precarious conditions, particularly due to the widespread use of fixed-term and temporary contracts over extended periods.

**Occupation safety and health.** There are routine violations of OSH standards in both private and public sectors, primarily due to weak enforcement. There are particular concerns about inadequate OSH standards in small and medium enterprises and in the informal economy. According to trade unions, the law sets an unreasonably high threshold for establishing employers’ liability for workplace injuries and wider non-compliance with OSH regulations.

**Wages.** Wage laws are not consistently enforced, with reports that many workers in smaller enterprises or engaged in informal work receive subminimal wages. A 2018 increase in the minimum wage has been challenged as politically motivated and not based on the country’s financial capabilities.

**Employment protection legislation.** Stakeholders have consistently raised concerns about ‘special labour regimes’ that permit the unlimited use of fixed-term and temporary contracts. In other sectors, employers’ representatives claim certain employment protections (e.g., severance pay) promote informality by imposing unreasonable potential costs on employers associated with the recruitment of permanent employees. There are also concerns about legislative proposals that would make collective dismissals due to economic hardship more accessible to employers.

**Social security coverage.** Once again, high informality and the prevalence of fixed-term contract workers are principal concerns among stakeholders, with these categories of workers typically excluded from most contributory social security schemes. Legislation that allows for the withdrawal of social security contributions has also been criticised following massive withdrawals that could deplete the system’s funds.

## Status of ratification and reporting

Peru has ratified all ILO fundamental (core) conventions and three of four governance (priority) conventions (excepting C129). There are no reported concerns about Peru’s reporting obligations.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<p>(2016): Requested the government remove legal restrictions on the right to organise and bargain collectively for certain categories of workers (trainees, judges, prosecutors, and some civil servants). It also urges the government to ensure an independent body determines the legality of strikes, rather than labour authorities. It requests review of rules that restrict union access to schools.</p> <p>Requested review of legal prohibitions on certain ‘atypical’ forms of strikes in the public sector.</p>
	C98	<p>2016): Requested review or revision of various legislation covering export sectors and public servants that permit the extensive use of temporary contracts, noting how the discriminatory non-renewal of such contracts is used by employers to restrict workers’ capacity to organise. It also requests amendments to allow public sector collective bargaining to include wage issues.</p> <p>Noted how a protracted judicial process limits workers’ access to remedy in anti-union discrimination cases.</p>

Forced Labour	C29	(2018): Welcomed amendments that strengthen criminal provisions on forced labour, while noting wider enforcement limitations, primarily due to lack of funds/resources. It encourages the government to strengthen the states' presence in high risk areas.
	C105	(2018): Sought clarification on whether provisions in the Penal Code that prohibit the 'obstruction' of citizen movements or public services are applied to restrict peaceful strikes or protests.
Child labour	C138	(2017): Noted that labour or judicial authorities can approve children aged 12-14 years to work and 15-18 year-olds to work hazardous occupations. It hopes draft legislation will remove these provisions. It also requests the government strengthen the labour inspectorate to improve enforcement in the informal economy.
	C182	<p>(2017): Urged the government to ensure thorough investigations and robust prosecutions in child labour cases, citing the low numbers of cases identified and prosecuted. It urges the govt to build capacity in the labour inspectorate to improve enforcement in the mining sector and for domestic workers.</p> <p>Encouraged the government to continue efforts to protect street children and indigenous children from child labour, citing several existing initiatives, but to intensify efforts to address poverty as an underlying cause of child labour.</p>
Discrimination	C100	<p>(2015): Noted the lack of an objective job evaluation system for effective implementation of the principle of 'equal pay for work of equal value'. <i>However, new legislation introduced in 2018 has addressed this limitation.</i></p> <p>It also asks the government to identify and address underlying causes of the existing gender wage gap, such as discrimination and stereotyping.</p>
	C111	<p>(2015): Requested the government assess the impact of 'special labour regimes' (that reduce labour protections), noting that affected sectors employ disproportionately women and indigenous people. It also requests the government strengthen the labour inspectorate to address discrimination at work.</p> <p>Noted the apparent omission of 'colour' and 'nationality from prohibited grounds of discrimination in laws covering the public sector, and it requests clarification. It requests the government ensure sufficient funding for enforcement procedures concerning sexual harassment (<i>recent initiatives address this issue</i>).</p>

## References

ILO CEACR, [Observations and Direct Requests for Peru](#)

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## 24. Targeted Surveys on application of core labour standards, Philippines

This report has been developed to provide a picture of the application of core labour standards in the Philippines. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Investment in and re-design of labour inspection, and domestic 'Accreditation' initiative for garments sector
- More stringent preventive and deterrent OSH measures set to be adopted
- Some legislative and administrative action on 'contractualisation'
- Protection of Overseas Filipino Workers
- Progress and goals in tackling child labour
- New legislation on age discrimination, and draft law on multiple bases of discrimination
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### Challenges

- Extra-judicial violence and Violence against trade unionists
- Capacity of labour market to absorb new entrants
- Collective bargaining coverage and trade union membership
- Limited, slow access to legal remedy for labour disputes
- Low levels of women's participation

### Key context

The Philippines is one of the fastest growing economies in Southeast Asia; economic growth has not translated to sufficient creation of quality jobs, however. This is reflected not only in sustained levels of under-employment, but also the prevalence of forms of informal and precarious employment, including high rates of disguised employment and contracting practices serving to circumvent obligations of 'regular' employment (so-called 'contractualisation'). The President's July 2018 State of the Nation Address urged Congress to pass legislation ending unlawful contractualisation 'once and for all'. The industrial relations environment is characterised by low union density and disparate collective bargaining. There remain serious concerns around of anti-union harassment and violence, and in its most recent country rankings on workers' rights, ITUC assigned the Philippines the lowest score: '5 – No Guarantee of Rights'.

While labour inspection capacity is increasing, and some new impetus gained under the new administration, resources remain under-requirement. There is a new domestic initiative to mandate labour standards accreditation for garment sector enterprises seeking preferential tariffs under US and EU GSP (+). Further, following a series of fatal factory fires in Special Economic Zone (SEZ) facilities, the Department of Labor and Employment (DOLE) has revoked an agreement under which

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labour inspection responsibilities for SEZs were delegated to the Philippine Economic Zone Authority (PEZA).

Migration plays a structural role in the Philippines economy. Overseas Filipino Workers (OFWs) contribute 10% of GDP through remittances. While the Philippines has developed a robust model for deploying labour overseas, and mechanisms of support and protection have advanced, OFWs – and domestic workers in particular – remain vulnerable to exploitation.

### **Freedom of association and collective bargaining**

ILO CEACR and other international observers have flagged numerous shortcomings in the legal framework relating to freedom of association and collective bargaining. There are some indications of recent legislative progress. The Government has initiated a range of legislative reforms to align national legislation with C87 and C98. Most of these reforms are still pending before Senate, however. In 2017, the government ratified ILO C151 – Labour Relations (Public Service); transposing legislation is still awaited.

The government also cooperates closely with ILO. Supported by the EC (DG Trade), ILO is engaged in a number of focused activities reflecting the priority concerns of the Supervisory Machinery (CEACR and CAS), working with national and local government, workers and employers to build capacity and awareness of rights, improve measures on investigation of violations of trade union rights, develop approaches to monitor any violations, and promote effective social dialogue.

There remain serious concerns relating to the situation in practice. Two cases are currently active with the ILO Committee on Freedom of Association (CFA). Extra-judicial killings and other forms of violence and harassment against trade unionists are a significant concern. Trade unions also report restrictions on formation, harassment and intimidation. There have been significant declines in both union membership and collective bargaining coverage in recent years.

### **Forced labour**

The legal framework on forced labour is broadly adequate and consistent with C29 and C105. The Philippines has not ratified Protocol 29. Concerns relate to the enforcement of legal provision as well as corruption and official complicity in trafficking and forced labour cases. In practice, forced labour is reported to occur within the Philippines in industry, fisheries, agriculture, construction and domestic work and other areas of the informal sector. Particular concerns also relate to cases of labour trafficking and abusive practices of private agencies recruiting workers for placement overseas.

Authorities have pursued a range of measures to better protect Filipino migrant workers from forced labour risks, and draft law is currently before Senate to strengthen information provision and legal assistance for migrant workers. The government highlighted the protection of migrant workers during its presidency of ASEAN in 2017 and ratified the ASEAN Convention Against Trafficking in



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Persons (ACTIP) in 2017. The US Department of State ranks the Philippines in Tier 1, recognising the government's 'serious and sustained efforts' to eliminate trafficking.

## **Child labour**

The legal framework regarding child labour is considered broadly adequate, although there are some concerns regarding the protection of children in informal labour relationships.

Child labour persists in the Philippines. Labour Force Survey statistics from 2016 indicate that 1.5 million working children were in situations of child labour. Most working children were aged 15-17 years, of which 60% were not in full-time education. Child labour occurs mostly in rural areas and primarily involves agricultural work. Thirteen products from the Philippines are included on the US Department of Labor's list of goods produced with child labour, including bananas, coconuts, fashion, sugarcane and tobacco.

The Philippine Development Plan commits to reducing cases of child labour by 30% by 2022, reflected in an Administrative Order establishing a goal of withdrawing at least 630,000 children from child labour from 2017-2022. However, difficulties in enforcing child labour laws, persistent household poverty and insufficient access to education remain important constraints on further progress.

## **Discrimination**

Philippine law does not contain an overarching anti-discrimination instrument, but a number of regulations which prohibit discrimination on defined grounds – including age, race, gender and disability. This fragmentation has led to legislative gaps, including the absence of a legal prohibition of all forms of discrimination specific to employment and occupation. The government has indicated it is committed to promoting gender equality and eliminating all forms of discrimination: a more comprehensive legal framework for tackling discrimination is pending before Senate, not for the first time, but faces staunch opposition.

The Philippines is considered a front-runner in Asia in promoting gender equality; however, in practice, gender discrimination and inequality of opportunity for women persist. Women are over-represented in vulnerable employment and are less likely to participate in the labour force. Although the aggregate gender pay gap is negative, women tend to be paid less in occupations where they are over-represented. Discrimination in employment is also reported on the basis of age, against people with disabilities and people with HIV. Progress is constrained by ineffective enforcement of existing anti-discrimination legislation, as well as low levels of awareness about rights and persistent socio-cultural norms.

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## Other working conditions

There are a number of structural deficits in the labour market – primarily the prevalence of informal employment, including precarious and disguised employment, and inadequate enforcement – impede the effective application of labour standards. Key issues include:

**Occupational health and safety.** Enforcement of OSH legislation is a concern, particularly in the context of informal and non-standard forms of work. National OSH standards require safety and health committees and trained OSH officers in all companies; in 2013, only around 60% of companies had established committees and around 70% had assigned officers. Fines for the violation of OSH provisions are reportedly too low to act as an effective deterrent. New legislation (Senate Bill 1317) is awaiting Presidential signature: this would mandate higher penalties and require compliance with substantive and procedural OSH standards economy-wide, including SEZs.

**Working time.** ILO reports that the incidence of excessive working hours has decreased. However, national figures suggest parallel trends of both significant levels of under-employment, alongside excessive hours in some occupations. In January 2018, full-time workers (working at least 40 hours weekly) comprised only 63.6% of the total labour force; of these, 20.7% worked more than 48 hours weekly.

**Social security coverage.** While the government strives for universal coverage, and the social security enrolment rate is high (for the formal sector), de facto coverage rates are low, as only a fraction of registered members contribute on an active basis.

**Employment protection legislation.** Trade unions and civil society highlight the negative impacts of ‘contractualisation’ – entailing both precarious fixed-term employment, or disguised employment through use of contractors - while employer organisations maintain the importance of flexible work arrangements for a competitive economy. To date, reforms have centred on limiting the use of labour contracting, with less focus on precarious fixed-term employment.

## Status of ratification and reporting

The Philippines has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. It has also ratified two out of the four ILO governance (priority) conventions (C122 and C144). There is ongoing discussion around ratification of C81. The Philippines is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Legal provisions relating to public authorities’ right to act during labour disputes can lead to compulsory arbitration.  (2017): The Labour Code excludes certain public servants and managerial employees as well as migrant workers without a valid work permit from joining or establishing a

		union. Labour Code provides for excessively high requirements to the registration of federations or national unions; further minimum membership requirements to form a trade union may still be too high. Expressed concern that, despite numerous allegations of anti-union violence, there has been a lack of progress in investigating such cases, and that legislative reforms had not been adopted.
	C98	(2016): National Electrification Administration provides for collective agreements to be ratified by entities other than those specified in law.  (2016): Collective bargaining negotiations in the public sector are limited in scope and do not include wages, benefits, and working time.
Forced labour	C29	<i>No specific application issues raised</i>
	C105	(2017): The Human Security Act foresees for the crime of terrorism 40 years imprisonment involving compulsory labour.  (2017): The Penal Code provides for penalties involving compulsory labour for expressing dissident political views. The Labour Code provides for penalties involving compulsory labour for the participation in illegal strikes.
Child Labour	C138	(2017): Children working in the informal economy or on a self-employed basis do not receive adequate protection.
	C181	(2017): Given the prevalence of child trafficking and the low number of trafficking court cases, concerns regarding the enforcement of anti-trafficking legislation and corruption are raised.
Discrimination	C100	(2015): The definition of ‘work of equal value’ in the Labour Code is too restrictive, limiting comparability to identical or substantially identical tasks.
	C111	(2016): Prevalence of sexual harassment is difficult to assess objectively, due to the lack of a centralised reporting system.

## References

ILO CEACR, [Observations and Direct Requests for the Philippines](#)

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## 25. Targeted Surveys on application of core labour standards, Singapore

This report has been developed to provide a picture of the application of core labour standards in Singapore. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Improved employment outcomes and reductions in discrimination for older workers
- Promotion of gender equality in the workplace through flexible working arrangements

### Challenges

- Government employees barred from forming / joining trade unions
- Close alliance between ruling PAP and NTUC (trade union federation) may constrain effective social dialogue
- Poor reporting record to ILO monitoring bodies
- Limited legislation on non-discrimination in employment

### Key context

The EU and Singapore recently completed negotiations for a Free Trade Agreement, the final text of which needs to be formally agreed by the European Council and European Parliament. Pending their approval, it is anticipated that the agreement will enter into force before the end of the current mandate of the European Commission in November 2019. The negotiated agreement ‘reaffirms the commitments to effectively implementing the ILO Conventions that Singapore and the Member States of the Union have ratified respectively’ and states that ‘the Parties will make continued and sustained efforts towards ratifying and effectively implementing the fundamental ILO conventions and they will exchange information in this regard’ (EU-Singapore FTA, Trade and Sustainable Development chapter, Art 12.3).

Singapore has a highly-skilled and highly-educated labour force. According to the latest labour force survey, 55% of workers hold tertiary qualifications and 56% are employed as professionals, managers, executives and technicians, according to government figures (MoM, 2018). Singapore’s labour market also relies heavily on migrant workers, particularly in low-wage sectors of the economy. In December 2017, there were 1.37 million registered foreign workers in Singapore, representing 38% of the total workforce – one of the highest foreign-to-local labour ratios in the world (TWC2, 2017). Approximately 70% of foreign workers are employed in low or semi-skilled jobs, including as domestic workers (25.6%) and in the construction sector (29.5%) (MoM, 2018).

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Concerns relating to the application of core labour standards and broader decent work issues, both in law and in practice, generally relate to foreign workers in low-wage and low-skilled sectors. Foreign workers' vulnerability is closely linked to Singapore's use of a sponsorship system whereby migrant workers' employment and residency is contingent on continued sponsorship by their employer, severely limiting their bargaining power and increasing their vulnerability to exploitation.

### **Freedom of association and collective bargaining**

Singapore has not ratified C87. However, in general there is a robust legal framework that governs freedom of association and collective bargaining. Nevertheless, there are specific shortcomings with relevant ILO conventions, including that government employees are prohibited from joining trade unions and that foreign citizens are not permitted to become trade union officers.

The industrial relations landscape in Singapore is characterised by a collaborative approach to labour management relations, and broad agreement on the necessity of maintaining a business-friendly, low-regulation economy. In this context, there are some concerns that trade unions lack independence in practice. The National Trades Union Congress (NTUC) is openly allied with the ruling People's Action Party (PAP) and the former's official policy prohibits union members who support or supported opposition parties from holding office in its affiliated unions. Given that almost all unions are affiliated with the NTUC, there are some concerns regarding the effectiveness of social dialogue and independence of collective bargaining processes.

There are also concerns about the right to strike, both in law and in practice. There is a strict legal framework surrounding the right to strike, especially for broadly defined essential services. Public sector employees, along with workers in water, gas and electricity services, are prohibited from striking. Workers in other broadly-defined 'essential services', including bus drivers, must provide 14 days' notice before striking. There are also strict procedural requirements, including that 50% of trade union members in an enterprise must approve strike action. Violations of legal requirements on the right to strike are subject to severe penalties, including the possibility of short-term prison sentences and deportation of foreign workers.

### **Forced labour**

Singapore denounced C105 in 1979. The law prohibits and criminalises forced and compulsory labour, but there is no clear definition of forced labour in national legislation.

Although forced labour is not a prominent concern among stakeholders, other reports indicate that some migrant workers experience conditions indicative of labour trafficking in Singapore. Alleged practices include the illegal withholding of pay, threats of repatriation without pay, withholding of travel documents and passports, restrictions on movement, and physical abuse affecting migrant workers, most notably in domestic work and in the construction sector. There are also reports of forced labour onboard fishing vessels that transit through Singapore or its territorial waters.

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Elements of Singapore's sponsorship system for migrant workers create vulnerabilities to forced labour. Under the system, employers are required to post a SGD 5,000 (approx. EUR 3,150) security bond for all Work Permit holders (issued to low-skilled and semi-skilled workers, usually in the domestic work and construction sectors), which is forfeited if the migrant worker 'absconds' and remains illegally in Singapore. The possibility of losing the security bond sometimes leads employers to seek to control workers' movements, and it is reportedly common practice for employers to withhold passports. The sponsorship system also ties work permits to an individual employer, and (with limited exceptions) requires foreign workers to be repatriated if their employment is terminated. These provisions contribute to workers' unwillingness to speak out about abusive or exploitative practices.

### **Child labour**

The government's latest report to the UN Convention on the Rights of the Child stated that 'in general Singapore does not have a problem with the economic exploitation of children, including child labour'. The government has further reported that no infringements have ever been identified relating to the employment or working conditions of children below the age of 16 years, and that no violations of the provisions of the Employment Act relating to children's employment have ever been charged.

There are some reports relating to child domestic work, despite a minimum age requirement for all foreign domestic workers set at 23 years. The Ministry of Manpower reports that it has taken enforcement action against 98 employment agencies in the last three years for failing to ensure that foreign domestic workers meet the minimum age requirement, although it has not specified how many of these cases involved the recruitment of children. Local NGOs report that there has been a recent increase in underage domestic workers, particularly from Myanmar, although it is not known whether these cases primarily relate to children or young adults. In May 2018, two employment agencies were charged with recruiting Myanmar 13-year olds to work as domestic workers.

### **Discrimination**

National law contains few specific provisions relating to non-discrimination. Instead, Singapore relies primarily on a promotional approach to address discrimination in employment, principally through the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP). The TAFEP's Tripartite Guidelines on Fair Employment Practices set out recommendations on employment practices to prevent discrimination through progressive human resource practices. The TAFEP is also responsible for examining complaints of workplace discrimination and 'identifying and engaging with companies that have scope to improve their practices'. In cases where employers fail to improve practice, the TAFEP can report breaches of the guidelines to MOM, who, at their discretion, can impose administrative sanctions such as 'stern warnings' and 'curtailment of work pass privileges' (a requirement for hiring foreign workers).

There are some limitations to Singapore's promotional approach to non-discrimination issues. Specifically, in the absence of national law, there is no clear right to recourse for workers facing discrimination, and there are no express obligations on employers not to discriminate. Similarly, although there are guidelines in place, these are not legally binding and they are not attached to specific enforcement measures such as reinstatement or compensation.

In practice, there are particular concerns about discrimination affecting employment opportunities and workplace treatment of women, foreign nationals, and people with disabilities. For example, there is both vertical and horizontal occupation segregation by gender in the public and private sector, while women are severely underrepresented on corporate boards. Similarly, a 2016 survey found that 66% of women in Singapore report experiencing gender discrimination in terms of career progression opportunities, remuneration, performance appraisal, and recruitment.

There are also reports of discrimination against migrant workers, especially female foreign domestic workers, and against disable workers, who employers reportedly seek to recruit on a 'client-contractor' basis to avoid perceived insurance costs and employment benefit regulations. Discrimination on the basis of age is a prominent issue nationally and one of the few forms of discrimination that is explicitly recognised in national law (albeit only in relation to dismissal). Human resource policies and processes, including those relating to recruitment and compensation, often show a bias against older workers. Finally, there are specific concerns about discrimination on the basis of sexual orientation, which is not expressly referenced in the TAFEP guidelines.

## Status of ratification and reporting

Singapore maintains ratification of five ILO fundamental (core) conventions without reservations. It has not ratified C87 or C111, and it denounced C105 in 1979. Singapore has ratified one out of four ILO governance (priority) conventions (C81). However, Singapore is not up-to-date with its reporting obligations to the monitoring bodies of the ILO. At the most recent International Labour Conference (ILC) in June 2018, Singapore was identified as a 'case of serious failure by member states to fulfil reporting obligations' and it was noted that information was not received for most observations and direct requests of the Committee in recent years (ILC, 2018).

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified.</i>
	C98	<i>Reporting not up-to-date.</i>
Forced Labour	C29	<i>Reporting not up-to-date.</i>
	C105	<i>Convention denounced.</i>
Child Labour	C138	<i>Reporting not up-to-date.</i>

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	C182	<i>Reporting not up-to-date.</i>
Discrimination	C100	<i>Reporting not up-to-date.</i>
	C111	<i>Convention not ratified.</i>

## References

EU-Singapore FTA, [Trade and Sustainable Development chapter](#)

ILO CEACR, [Observations and Direct Requests for Singapore](#)

International Labour Conference (ILC), 2018, [Application of International Labour Standards 2018](#)

Ministry of Manpower (MoM), 2018, [Foreign Workforce Numbers](#)



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## 26. Targeted Surveys on application of core labour standards, Republic of Korea

This report has been developed to provide a picture of the application of core labour standards in Republic of Korea (hereafter Korea). The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Labour law reform, including a broad commitment to align national law with international standards.
- Recognition of trade unions representing workers engaged in 'special forms of work'
- Collective bargaining (diminishing government interference)

### Challenges

- Severe restrictions on freedom of association, especially concerning union registration
- Discrimination against 'non-regular' workers and employees in micro-enterprises
- Gender wage gap and occupational segregation
- Lack of trust among tripartite actors
- Anti-union practices by employers and alleged judicial bias against trade unions

### Key context

Korea has experienced remarkable economic growth over the past 40 years, driven primarily by sustained export-oriented industrialisation. Economic growth has facilitated a parallel social transformation, with significant gains in prosperity and educational attainment. However, industrial relations remain highly contentious. Low levels of trust among tripartite actors means that industrial disputes frequently develop into strikes or lead to judicial proceedings rather than productive tripartite dialogue. Fractious industrial relations create a challenging context for the application of core labour standards, especially freedom of association and collective bargaining.

In recent decades, a series of policies to restructure Korea's industrial conglomerates and enhance labour flexibility have, amongst other outcomes, contributed to the increased use of temporary workers and extensive outsourcing by major manufacturers. Such 'non-regular' forms of employment constrain in practice workers' capacity to organise and bargain effectively, while 'non-regular' workers reportedly face discrimination in terms of wages and working conditions. The disproportionate number of women in 'non-regular' employment, as well as direct discrimination by employers, perpetuates marked gender inequalities in the labour force.

The new government of President Moon Jae-in, in office since May 2017, has put human rights at the centre of its policy agenda. In a break with previous governments, the Moon Administration has committed to ratify all outstanding ILO Fundamental Conventions and pursue various labour law

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reforms to strengthen labour and social rights. Stakeholders generally view the new government's overall policy direction as more favourable to labour rights, although employers' associations (who oppose the direction of proposed reforms) warn that slated amendments risk aggravating strained industrial relations.

In general, stakeholders' concerns regarding the application of core labour standards centre on freedom of association and collective bargaining. Korea has not ratified ILO C87 or C98, and existing legislation fails to meet international standards in this domain. There are also concerns about discrimination in employment, especially affecting women and 'non-regular' workers (although, in the case of gender discrimination, concerns focus on the situation in practice rather than specific legal or enforcement shortcomings). Forced labour and child labour are not priority concerns, with the partial exception of migrant workers, who may be vulnerable to forced labour in defined situations.

### **Freedom of association and collective bargaining**

Korea has not ratified C87 or C98. The law provides broad protection for freedom of association and collective bargaining, although there are significant restrictions on public officials, teachers, and essential services. For example, the law bars some public officials from joining unions and denies both teachers and civil servants the right to strike. The law also prevents dismissed teachers and public servants from maintaining trade union membership, and these provisions have been used previously to deny legal personality to the national teachers' union and a public sector union (although the latter has recently regained legal registration following a change to its internal regulations).

A narrow judicial interpretation of permissible grounds for strikes may expose union officials to unwarranted civil and criminal lawsuits. There are also reports of anti-union discrimination on the part of employers (e.g., threats, dismissal, promotion of employer-friendly unions), and wider concerns about the high number of arrests, prosecutions, and harsh penalties imposed on union officials for union-related activities. More generally, extensive subcontracting may permit employers to restrict workers' rights in other ways; for example, negating a strike in one subcontractor by employing workers from another.

Trade unions have also criticised provisions that grant exclusive bargaining rights to the majority union in an enterprise or sector, denying other unions the right to negotiate with employers, sign collective agreements, and call strikes. Employers' associations contend that unions often obstruct collective bargaining through 'excessive' demands, politicising disputes, and resorting to legal challenges. The practice of seeking unilateral revisions to public sector collective agreements (via rulings from administrative authorities) has reportedly decreased with the new government. However, distrust among tripartite actors remains an overarching constraint on collective bargaining.

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## **Forced labour**

Korea has not ratified C29 or C105. The law prohibits and criminalises all forms of forced or compulsory labour, although anti-trafficking provisions may not fully align with international norms. Overall, forced labour and human trafficking are not prominent concerns raised by stakeholders.

There are some reports of forced labour affecting migrant workers, both within Korea and on fishing vessels registered to Korean companies. Some migrant workers, especially those from Vietnam, China, and Indonesia, reportedly incur large debts to migrate, which subsequently increase their vulnerability to debt bondage. Trade unions and international organisations have also criticised regulations that restrict migrants' ability to move workplace, which they claim increases workers' vulnerability to forced labour. They also report that authorities are not proactive in identifying victims (partly due to inconsistent interpretations of anti-trafficking laws), and there are few measures to support victims. There are also concerns about provisions that allow authorities to assign military personnel to civilian jobs if necessary, a practice that may contravene C29.

## **Child labour**

Korean legislation generally meets international standards with respect to child labour, and the government both enforces the law and operates a range of preventive and victim-support initiatives. Nevertheless, there are some recent concerns about the vulnerability of children to sex trafficking and commercial sexual exploitation, especially through online recruitment. The law also provides for the 'protective disposition' of child victims of sex trafficking in juvenile correctional facilities, which stakeholders fear may dissuade victims from reporting abuses.

## **Discrimination**

The Constitution and various other laws provide express protection against discrimination in employment on various grounds, although they omit reference to 'colour', 'political opinion', 'language', and 'HIV/AIDS status'. In general, the lack of an overarching anti-discrimination law – combined with the narrow interpretation of some provisions (e.g., 'sex discrimination' does not typically extend to discrimination against LGBTI people) – may at times constrain efforts to protect against work-related discrimination.

In practice, there is a pronounced – and increasing – gender wage gap, derived in part from women's horizontal and vertical segregation in the labour market. Labour market inequalities are partly attributable to sociocultural norms, which place a disproportionate share of household and childcare responsibilities on women, and direct discrimination by employers. For example, employers' hiring decisions are often influenced by women's marital and family status, and questions about women's personal/family plans are reportedly common during interviews. Critics claim that the government's work-life balance policies – for example, promoting part-time work for women returning to employment after childbirth – contributes to women's increasing 'non-regular' employment, thus

exacerbating a ‘vicious cycle’ of career discontinuity, wage inequality, and vertical labour-market segregation.

There are also long-standing concerns about discrimination based on employment status and the size of an enterprise. ‘Non-regular’ workers – including self-employed, part-time, temporary, and fixed-term workers – face discrimination in practice in terms of wages and working conditions compared to ‘regular’ workers, while many ‘non-regular’ workers enjoy only limited protections under general labour laws. Workers in micro-enterprises (<5 employees) – an estimated 40% of Korean workers – face similar discrimination due to the partial non-application of certain labour laws. Exclusions leave workers exposed to arbitrary dismissal, excessive working hours, and no overtime pay, as well as outside the scope of provisions stipulating equal pay and prohibiting gender discrimination.

Finally, there are reports that migrant workers are frequently discriminated against in wages and working conditions, while there are also allegations of sexual harassment and physical abuse on the part of employers. Authorities frequently fail to prosecute cases concerning mistreatment of migrant workers, according to some reports.

## Status of ratification and reporting

Korea has ratified four ILO fundamental (core) conventions, with C29, C87, C98, and C105 unratified. Korea has also ratified three governance (priority) conventions (excepting C129). However, the government reports its intention to ratify all core conventions. To this end, an expert working group has been established to assess where national legislation would need amendment to align with the conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified.</i>
	C98	<i>Convention not ratified.</i>
Forced Labour	C29	<i>Convention not ratified.</i>
	C105	<i>Convention not ratified.</i>
Child labour	C138	<i>No recent comments.</i>
	C182	<i>No recent comments.</i>
Discrimination	C100	<p>(2018): Noted a persistent gender wage gap that is especially pronounced between regular and non-regular workers. Noted how legislation <b>restricts the scope of comparison</b> for the purposes of <b>equal pay for men and women</b>; specifically, it provides for equal pay for work of equal value ‘in the same business’, while the scope of broader job/work comparison is limited to ‘work of a similar nature’. Urged the government to amend legislation to give full expression to the principle of ‘equal work for work of equal value’.</p> <p>(2018): Requested further information on measures taken to address the</p>

		underlying causes of the gender pay gap and to promote the concept of ‘work of equal value’ among employers. Also requested the government increase efforts to enforce equal pay laws, citing a lack of awareness of relevant legislation among officials and insufficient capacity within labour and judicial authorities to identify and address cases of pay discrimination.
	C111	<p>(2016): Cited cases of teachers disciplined at work for political activities outside the classroom (the law prohibits teachers from engaging in political activities in general), in view of discrimination on grounds of political opinion. Urged amendment of relevant legislation.</p> <p>Requested the government explain the omission of ‘race’, ‘colour’, and ‘political opinion’ from expressly prohibited grounds of discrimination in recent employment laws. Reiterated concerns about weak enforcement of migrant workers’ rights, especially restrictions on changing workplaces. Requested the government review measures to protect foreign workers and assess why many labour rights cases filed by workers are not pursued by authorities. Also requested the government intensify efforts to promote women’s access to a wider range of occupations and to more senior positions overall.</p>

## References

ILO-CEACR [Observations and Direct Requests for the Republic of Korea](#)

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## 27. Targeted Surveys on application of core labour standards, Sri Lanka

This report has been developed to provide a picture of the application of core labour standards in Sri Lanka. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Child labour – declining incidence and innovative, effective public policy initiatives
- Protections for migrant workers overseas (forced labour / trafficking)
- Government proposals to extend labour legislation to domestic workers
- Improved protections for Sri Lanka migrant workers overseas

### Challenges

- Low and declining unionisation rates
- Deteriorating tripartite dialogue, including within the NLAC
- No specific legislation on discrimination in employment
- No public sector dispute settlement machinery
- Anti-union practices, especially in EPZs
- Inconsistent enforcement of labour laws; particularly weak in the informal economy

### Key context

The legacy of civil war shapes key aspects of Sri Lanka's political and social context, with implications for the application of core labour standards. The conflict left many families in poverty or internally displaced, increasing their vulnerability to various forms of labour exploitation. Stakeholders report numerous abuses, including child and forced labour, experienced by conflict-affected communities. More recently, increasing political and ethnic tensions raise the prospect of further social violence, which would inevitably risk deteriorating the wider human and labour rights situation. Electoral setbacks and fractures in the ruling coalition have also delayed the government's legislative agenda, including constitutional and labour law reform, leaving some labour rights un- or under-protected. As a beneficiary country of the EU's GSP+ scheme, Sri Lanka is required to implement effectively all ILO fundamental conventions on the core labour standards.

In the economic domain, slower growth and government cutbacks may increase financial pressure on public and private sector employers. There are fears that such conditions may accelerate the trend of employers hiring short-term, contract workers instead of permanent employees. Temporary workers, often contracted via third-party 'manpower' agencies, face de facto and de jure barriers to unionisation, as well as inferior working conditions, compared to permanent employees. More generally, the location of key industries in export processing zones (EPZs) is a significant structural factor given that stakeholders report particular concerns about worker and trade union rights in EPZs.

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The high level of informality in Sri Lanka's labour market also poses challenges to the application of core labour standards. Enforcement of labour laws is difficult in the informal sector, while the limited presence of trade unions leaves workers vulnerable to exploitation by employers. Many short-term contract workers face a similar predicament. The concentration of women in informal employment, as well as their segregation in lower-paid occupations in the formal economy, are further labour market factors that affect (and reflect limits to) the application of core labour standards in Sri Lanka.

In general, Sri Lanka's legal framework provides adequate protections for core labour standards, albeit with some exceptions (e.g., public sector dispute settlement, non-discrimination). However, uneven enforcement is an overarching concern, especially in the informal economy, with a lack of resources and capacity in key institutions identified as a significant constraint.

### **Freedom of association and collective bargaining**

Sri Lanka's legal framework concerning freedom of association and collective bargaining is generally adequate, although there are some restrictions affecting the public sector (e.g., no mechanism for dispute settlement). However, there remain issues with the application of legislation in practice, including uneven enforcement of pertinent laws by labour authorities (e.g., official inaction in responding to complaints); delays in processing labour complaints, often rendering immaterial the eventual ruling; and insufficient penalties imposed for violations, undermining any deterrent effect.

In practice, trade unions allege employers adopt various union-busting measures that undermine workers' rights, including harassment, dismissals, and blacklisting of union officials; promoting employer-friendly Employees' Councils that undermine trade unions; and impeding trade unions' registration as legal bargaining agents. Judicial interference (e.g., pre-emptive injunctions) may also impair the impact of strikes, while discretion to designate 'essential services' offers authorities another means to limit industrial action.

Nevertheless, there are areas of progress, including proposals to extend labour legislation to domestic workers, development of public sector dispute settlement mechanisms, and recruitment of labour inspectors. Informality and extensive subcontracting (and related declining unionisation rates) remain overarching constraints on freedom of association and collective bargaining.

### **Forced labour**

In general, the law prohibits all forms of forced and compulsory labour, primarily through provisions in the Penal Code. However, laws allowing compulsory labour as part of prison sentences may violate C29 in some cases. In practice, there are reports of forced labour linked to human trafficking (of Sri Lankan workers internally and overseas), in domestic work, and commercial sexual exploitation. There are related concerns about high recruitment fees that increase migrants' risk of debt bondage.

Authorities generally apply the law in forced labour cases, although resource and capacity limitations constrain broader investigative, preventative, and remediation efforts. Limited capacity means victims of forced labour and trafficking are not consistently identified, with reports of victims being prosecuted under vagrancy and prostitution laws. Some penalties may be unduly lenient where

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prosecutors pursue lesser charges, allegedly due to inadequate police investigations. Some stakeholders claim that the government fails to protect adequately Sri Lankan migrant workers overseas, although there have been recent advances in this area. Other areas of progress include the adoption of an anti-trafficking National Strategic Plan, legislation to protect domestic workers, and capacity-building of officials involved in combating forced labour/trafficking.

## **Child labour**

The government has adopted numerous measures to address child labour both at the strategic/policy level (e.g., proposals to raise the minimum age of employment, a National Policy on the Elimination of Child Labour), as well as important on-the-ground initiatives (e.g., district-level Total Child Development Plans that coordinate a multi-stakeholder, integrated approach to addressing child labour). These and similar measures are viewed as key factors in reducing the incidence of child labour in recent years.

However, despite some progress, child labour continues to occur in Sri Lanka. High poverty rates in conflict-affected areas and the plantation sector make children from these households especially vulnerable, while there are also concerns about the sexual exploitation of children (especially in tourism) and child labour in domestic service (including bonded labour). Because child labour occurs mostly in the informal sector (domestic work, small family enterprises), there are specific detection challenges; labour inspections focus on the formal sector, while the out-of-view nature of domestic work impedes detection by child protection services. A perceived lack of resources and inter-agency coordination are broader constraints on enforcement.

## **Discrimination**

There is no specific legislation covering employment discrimination, which results in the inconsistent application of non-discrimination principles in national law (reliant on broad constitutional provisions and numerous laws on specific issues). Constitutional non-discrimination provisions are not only inadequate for capturing key aspects of employment-related discrimination, but they also omit colour, sexual orientation, gender identity, and disability from the expressly prohibited grounds of discrimination.

In practice, discrimination affects employment opportunities for women, ethnic minorities, people with disabilities, and LGBTI people. There is a marked gender pay gap, attributable to both women's concentration in lower-paid roles and direct wage discrimination (women paid less than men for identical work). Gender norms that place a disproportionate share of household and caring duties on women, as well as stereotyped ideas about the relative aspirations and aptitudes of men and women, are cited as underlying contributing factors. Tamil workers also face ethnic and language-related discrimination on the part of employers and authorities, including a lack of Tamil-speaking officials that impedes workers' access to remedy.

## **Other working conditions**

Informality and the casualisation of employment, including the use of 'manpower' agencies, are key factors depressing working conditions and prospects for Decent Work. These labour market trends leave many workers in precarious forms of employment with low and fluctuating wages, irregular work hours, limited social security benefits, and few employment protections. The ILO's Decent Work Country Programme (2018-2021) focuses, *inter alia*, on labour law reform, migrant worker



protections, labour inspections, and promoting tripartite dialogue. Other specific issues are outlined below.

**Occupational safety and health.** The lack of an overarching OSH law leaves around 70 per cent of the workforce unprotected, while injury compensation laws fall well below ILO standards. Enforcement is uneven across sectors, with no OSH inspections in the informal sector. Data on workplace accidents is limited.

**Working time.** Enforcement is weak in some sectors, including EPZs. Reports note routine violations of overtime laws, including protections for women and adolescents. Draft reforms will remove discriminatory limits on women's working hours.

**Wages.** The new National Minimum Wage Act (NWWA) does not establish periodic review mechanisms, while enforcement is weak in the informal sector. Trade unions consider current minimum wage levels as inadequate.

**Social security coverage.** Several key social security schemes are employer liability, leaving informal and 'manpower' workers lacking adequate protections. The social assistance programme, though extensive, fails to target effectively those most in need. However, proposed legislation will extend protections to domestic workers.

## Status of ratification and reporting

Sri Lanka has ratified all ILO fundamental (core) conventions and three governance (priority) conventions (except C129). Reporting is generally adequate, although delays in submitting some regular reports and exceptional requests from the ILO's Committee of Experts (CEACR) have led to several out-of-cycle reports in recent years.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<p>(2016): Welcomed the government's intention to align the minimum age of employment (14) with that of trade union membership (16). Also requested legislative action to permit public sector unions to form federations; prohibit dissolution of trade unions while judicial appeals are pending; and limit officials' discretion to compel arbitration in industrial disputes. Hoped the government will soon adopt public sector dispute settlement mechanisms.</p> <p>Requested the government take steps to prohibit excessive force by police in controlling workers' protests, citing reports of police violence and arbitrary arrests. Also requested legislative action to ensure penal sanctions are not applied to punish workers in essential services who violate procedural strike laws.</p>
	C98	<p>(2017): Urged amendments to permit workers and trade unions to file complaints directly to courts, noting that in practice only the Commissioner General of Labour (CGL) can submit cases of unfair labour practices to judicial authorities.</p> <p>Also requested measures to ensure collective bargaining can occur if a single trade union fails to meet legal representational thresholds (40%) and sought comment on collective bargaining for public sector workers, noting the IDA's lack of coverage.</p> <p>Reiterated concerns about collective bargaining in EPZs, citing limits on site visits by labour inspectors and the potential of non-union Employees Councils to undermine</p>

		trade unions' position.
Forced Labour	C29	<p>(2018): Requested the government improve protection of Sri Lankan migrant workers overseas, citing reports of abuses including forced labour. Noted penalties in trafficking cases may be insufficient to deter violations and requested the government ensure robust prosecutions and dissuasive penalties in such cases.</p> <p>Requested the government repeal the Compulsory Public Service Act, which provides for compulsory public service for up to five years for graduates. Also sought clarification on the application of legal provisions granting the President discretionary power to block individual resignations in the armed forces, and the operation of the government's 'work release scheme' for prisoners.</p>
	C105	(2018): Sought clarification on the use of compulsory labour for prisoners, citing concerns about its use for prisoners convicted of offences linked to political views or illicit (but peaceful) strike activity.
Child labour	C138	(2018): Welcomed the government's intention to raise the minimum age of employment from 14 to 16 years. Requested measures to improve the labour inspectorate's coverage of the informal sector, where most child labour occurs.
	C182	(2018): Noted decline in child labour in hazardous industries, but requested the improved enforcement in the informal sector. Noted concern at limited prosecutions for child prostitution offences.
Discrimination	C100	<p>(2015): Reiterated concerns that current laws do not fully establish the principle of 'equal pay for work of equal value' and urged appropriate legislative action. Requested measures to ensure non-discrimination concerning emoluments, citing the reported practice among rural workers of offering meals to men only.</p> <p>Noted gender wage discrimination in the plantation industry and the lack of a wages board for palm oil workers. Requested the government indicate steps taken to ensure equal pay for 'equal value' (not only 'similar') work in these sectors.</p>
	C111	<p>(2015): Requested the government address concerns about the high burden of proof in sexual harassment cases (given the reliance on criminal law) and clarify an apparent restriction of harassment to behaviour involving 'a person in authority'.</p> <p>Indicated the need for more specific legislation addressing discrimination in employment, noting reliance on broad non-discrimination provisions in the Constitution and other laws.</p>

## References

ILO CEACR [Observations and Direct Requests for Sri Lanka](#)

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## 28. Targeted Surveys on application of core labour standards, Ukraine

This report has been developed to provide a picture of the application of core labour standards in Ukraine. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Legal framework on the core labour standards, especially non-discrimination

### Challenges

- Worst forms of child labour, including in illegal coal mining and in conflict-affected areas
- Functioning of the labour inspectorate
- Broader decent work environment
- Freedom of association and collective bargaining

### Key context

Ukraine's economy and labour market are characterised by long-standing structural constraints which affect the application of core labour standards, including poor rates of employment creation, high levels of informality (including work in ostensibly formal enterprises) and weak labour market governance. These constraints have been exacerbated by more recent developments, including the ongoing conflict in Eastern Ukraine and high rates of outward migration.

Ukraine signed an Association Agreement with the European Union in 2014 that came into full effect in September 2017 and included a commitment to approximate national legislation to EU *acquis*, including in the field of labour, non-discrimination and occupational safety and health (OSH). In addition, the Canada-Ukraine Free Trade Agreement (CUFTA) which was signed in 2016 and entered into force in August 2017, contains several additional commitments with relevance for the core labour standards and broader working conditions, particularly relating to the labour inspectorate.

In general, Ukraine's labour law is considered outdated. Key legislation dates back to the Soviet era and Ukraine is one of only two countries in Eastern Europe and Central Asia that still has in place a pre-transition Labour Code. Local trade unions and employer organisations report that the current Labour Code contains several direct gaps with respect to the ILO core conventions and contributes to a generally weak environment for applying the core labour standards by limiting incentives for firms to grow and hire, and contributing to informal employment, underemployment, and wage arrears. A new Labour Code is currently being drafted, although there is considerable uncertainty as to when it

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may be adopted and there is some concern that it will not adequately address gaps with the core labour standards.

In relation to enforcement, social partners and international observers, including the ILO, are broadly agreed that Ukraine's labour inspectorate, the State Labour Service, is ineffective in enforcing the laws which fall under its mandate and does not conform to the requirements of relevant ILO Conventions. One key impediment is the regular imposition of moratoriums on the performance of labour inspections. The government has also passed several decrees and legal amendments in recent years which have further restricted the functioning of the SLS, including limits on the ability of labour inspectors to undertake unannounced inspections, limits on the frequency of labour inspections at individual enterprises and curtailments on the discretionary power of labour inspectors to initiate legal procedures without previous warning. In terms of the labour inspectorate's operations in practice, the ILO, the US Department of State and local trade unions have noted concerns relating to the number, status, training and conditions of service of labour inspectors.

### **Freedom of association and collective bargaining**

National law is mostly aligned with ILO standards, with some significant exceptions, notably relating to the right to strike. Nevertheless, there are significant issues in practice and in its most recent Global Rights Index, ITUC assigned Ukraine the lowest score: '5 – No Guarantee of Rights'.

The most significant issues raised by international observers and trade unions relate to the position of 'independent' trade unions (those not affiliated with the Federation of Trade Unions of Ukraine (FPU) – Ukraine's largest trade union confederation), with numerous legal and practical hurdles preventing independent union from effectively representing their members. For example, there are widespread reports that employers refuse to recognise independent unions and that unionised workers are pressurised into withdrawing their membership of independent unions. While collective bargaining coverage is relatively high in Ukraine, trade unions report that employers frequently refuse to engage in collective bargaining with independent unions.

### **Forced labour**

The law prohibits most forms of forced and compulsory labour and there are no significant gaps relating to the legal framework. There are general concerns relating to enforcement and with the US Department of State reporting that resources, inspections, and remediation are inadequate to effectively enforce the law around forced labour.

In practice, there are reports that forced labour occurs in Ukraine. There are particular concerns relating to conflict-affected areas including that women and girls have been kidnapped for the purposes of labour trafficking and that prisoners in rebel-controlled areas are subject to forced labour. Elsewhere in Ukraine, foreign nationals are particularly vulnerable to forced labour, particularly in the construction and agriculture sectors.

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## Child labour

Ukraine's legal framework on child labour is broadly adequate but there are some outstanding gaps with ILO core conventions, including in relation to the definition of 'light work' and permitting children under 16 to carry out vocational training involving hazardous tasks. In general, key concerns relate to the lack of appropriate enforcement, particularly in the informal economy and in separatist-controlled regions.

The most recent National Child Labour Survey (NCLS) was conducted in 2014-2015, and hence information on current practice is limited – itself an impeding factor in effectively addressing breaches. The NCLS estimated that around 264,100 children in Ukraine were involved in child labour, accounting for 5.1% of all children aged 5-18. The vast majority of children in child labour (94.5%) were employed in agriculture. US agencies and the ILO CEACR have also raised significant concerns around the prevalence of worst forms of child labour in Ukraine, including that a significant amount of internet child pornography originates in the country, that children are used in illegal coal mining, and that child soldiers are used by separatist forces in eastern Ukraine.

## Discrimination

Ukraine's legal framework offers relatively comprehensive protection against discrimination, although there are still some outstanding legal gaps with the relevant ILO conventions, including relating to sexual harassment and equal pay for work of equal value. There have been significant improvements to the legal framework in recent years, including, most recently, the repeal in October 2017 of a government order which had prohibited women from employment in 450 professions considered damaging to women's health, including bus driving, train driving and operating certain machinery.

However, enforcement and implementation of relevant legislation has lagged behind. For example, although the 'Law on Ensuring Equal Rights and Opportunities for Women and Men' and the 'Law on Preventing and Combating Discrimination' both contain provisions relating to responsibility for violations, actual mechanisms for bringing infringers of these legislative acts to criminal, administrative or even disciplinary liability are reportedly absent.

In terms of the situation in practice, the majority of stakeholder reports relate to gender discrimination, particularly during recruitment processes and on the basis of pregnancy and maternity. Civil society organisations and international observers, including the **UN Committee on Economic, Social and Cultural Rights**, have also reported issues relating to national and ethnic minorities, disability, HIV/AIDS status, sexual orientation and relating to internally displaced persons.

## Other working conditions

Structural weaknesses in the labour market significantly affect the application of core labour standards and national prospects pertaining to decent work. According to the EU-Ukraine Civil Society Platform and the ILO, the situation has deteriorated in recent years due to factors such as the

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ongoing conflict in Eastern Ukraine and high rates of outward migration, as well as a general lack of government actions or initiatives to address these issues. Specific issues raised by social partners and other key stakeholders are set out in the table below.

**Occupational safety and health.** Stakeholders, including the ILO, have raised concerns with various aspects of Ukraine's legislation on OSH. In general, concerns relate to the complexity of the legislation, which is made up of a high number of separate laws and regulations, resulting in significant administrative, bureaucratic and financial burdens, particularly compared to the level of capacity and resources available to ensure compliance.

According to the ILO, limitations on the power and autonomy of the labour inspectorate are a major impediment to promoting and enforcing OSH legislation, and OSH outcomes have been severely affected by repeated moratoriums on the functioning of the labour inspectorate. The provision of continual training to labour inspectors on OSH issues is scarce, and this is particularly problematic in light of the continual development of OSH legislation and the planned adoption of EU *acquis* on OSH. Overall, there are significant concerns relating to the situation in practice, particularly relating to informal workers and the mining sector.

**Wages.** There are significant issues relating to wage arrears and wage theft. According to latest figures, wage arrears are growing over time and have reached UAH 1.9 billion (approx. EUR 54 million), over half of which are in the provinces of Luhansk, Donetsk and Kharkiv (USDOS, 2017). There are particular concerns with the extent of wage arrears in the coal sector.

**Maternity Protection.** A local NGO has raised concerns that restrictive laws relating to the employment of pregnant women and women with children below the age of 3, including that they are not allowed to carry out overtime work or business trips limit women's participation and progression in employment. In practice, a study by UNDP and the Office of the Ukrainian Parliament Commissioner for Human Rights showed that women are sometimes not paid maternity leave in accordance with the law, and that employers do not always guarantee the same or similar work on return from maternity leave.

**Social security coverage.** While the legal coverage of the Ukrainian social security system is almost universal, international observers have noted that effective coverage is lower due to the prevalence of informal employment and undeclared work. Specific concerns have also been raised regarding access to pension and other social security payments for internally displaced persons and for those currently residing in rebel-controlled territories.

## **Status of ratification and reporting**

Ukraine has ratified all eight ILO fundamental (core) labour conventions without reservations and maintains their ratification. Ukraine has also ratified all four ILO governance (priority) conventions. Ukraine is up-to-date with all of its reporting obligations to the monitoring bodies of the ILO in relation to these conventions.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	(2017): Noted contradictory requirements in the Civil Code and the Law on Trade Unions relating to the point at which a trade union officially acquires legal personality. Noted significant restrictions on the right to strike including relating to the threshold for a decision to call a strike, restrictions for public servants and sanctions for striking workers. Expressed concerns relating to the constitutional prohibition on judges joining trade unions.
	C98	<i>No specific application issues raised.</i>
Forced Labour	C29	(2017): Expressed the need for more effective enforcement relating to forced labour.
	C105	(2017): Noted that punishments involving forced labour can be imposed in circumstances which contravene the Convention, including for holding or expressing political views, for violation of labour discipline and for participation in strike action.
Child labour	C138	(2017): Noted that children who are 15 years old may perform “light work” with a parent’s consent but that legislation does not define what constitutes light work activities.  (2017): Noted that the Labour Code (and the new draft Labour Code) provide that children of 15 years of age may exceptionally be authorised to work with the consent of their parents and that this is contrary to the minimum age for admission to employment specified by Ukraine upon ratification of C138 (16 years).
	C182	(2017): Noted concerns for children in conflict areas in Eastern Ukraine and for children who have been internally displaced by the conflict.
Discrimination	C100	(2015): Noted that while the law requires employers to ensure “equal pay for men and women for work involving equal skills and working conditions”, that this falls short of “equal remuneration for men and women for work of equal value” set out in C100.
	C111	(2015): Noted some gaps in relevant legislation, including that the legal definition of sexual harassment offers incomplete protection because it only covers situations where the victim is in a subordinate position to the harasser.

## References

ILO CEACR, [Observations and Direct Requests for Ukraine](#).

USDOS, 2017, [Country Reports on Human Rights Practices for 2016 – Ukraine](#).

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## 29. Targeted Surveys on application of core labour standards, Vietnam

This report has been developed to provide a picture of the application of core labour standards in Vietnam. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

### Progress

- Fundamental labour law reform (ongoing)
- Collective bargaining – several initiatives to expand scope and coverage of CBAs.
- Trafficking – new criminal provisions
- Child labour – still a concern, but declining incidence and improved policy framework
- Gender discrimination – strong legal framework and numerous initiatives

### Challenges

- Severe restrictions on freedom of association and trade union autonomy
- Withdrawal of US from TPP has reduced US-led funding / assistance for labour law reform process and related promotional activities (but government affirms progress on reforms)
- Broad restrictions on political / civil freedoms
- Lack of clarity on possible forced labour in drug rehabilitation centres and prisons

### Key context

Vietnam is a one-party state under the leadership of the Communist Party of Vietnam (CPV). The CPV formally retains control over the only permitted national trade union federation, the Vietnam General Confederation of Labour (VGCL), to which all unions must affiliate. This unitary trade union system severely restricts freedom of association. Vietnam's external relations, especially trade relations, also have significant implications for core labour standards. Recently concluded trade agreements with Pacific countries (CPTPP) and the European Union (EVFTA) contain strong labour rights commitments.

Although the state remains a prominent economic actor – state-owned enterprises accounted for almost 30% of GDP in 2016 – reforms since the mid-1980s have partially opened the country to private interests and foreign investment. Transition towards a market-oriented economy may require adjustment of Vietnam's industrial relations model to reflect the more competitive nature of labour-management relations in a market economy. Moreover, Vietnam's successful efforts to encourage FDI have resulted in multinational enterprises establishing manufacturing operations across the country. Although FDI enterprises are important contributors to growth (18.6% of GDP in 2016), they have also become the focus of allegations of labour rights abuses.



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More than three-quarters of the labour force are employed in the informal sector, where enforcement of labour laws is especially difficult. Many reports of labour rights concerns – including freedom of association, child and forced labour, and discrimination – relate to workers in the informal economy. Vietnam’s labour market profile also indicates gender-based horizontal and vertical segregation in employment (women clustered in low-paid sectors and more junior positions overall) and a persistent gender pay gap.

In general, Vietnamese legislation provides inconsistent coverage of core labour standards, with limited protections against forced labour, freedom of association, and collective bargaining. Freedom of association is a particular concern, effectively precluded by Vietnam’s unitary trade union system. However, the government has reaffirmed its intention to pursue comprehensive labour law reform in these areas.

There are a range of concerns about the enforcement of labour rights, especially in the large informal economy. Limited resources, gaps in official awareness/expertise, broad mandates for labour authorities, and inconsistent interagency coordination are identified as constraints. However, there are also areas of progress, including ongoing labour law reform and various programmes and initiatives to address specific areas of concern.

### **Freedom of association and collective bargaining**

Vietnam has not ratified ILO C87 or C98, and freedom of association and collective bargaining are severely constrained by law and in practice. The law establishes the VGCL as the sole national trade union federation, to which all unions are required to affiliate, and formally places the VGCL under the leadership of the CPV. Moreover, the law fails to distinguish between workers and management, allowing managers to serve as union officials and reportedly interfere in union affairs for the benefit of employers. Procedural requirements for strikes, permitted only in non-essential industries, are prohibitively complex and result in frequent illegal strikes. There are reports anti-union discrimination on the part of employers, especially against independent workers’ representatives.

The law permits collective bargaining for non-state employees at the enterprise, sectoral, and multi-employer levels, but it is silent on the right to collective bargaining in the public sector. However, most collective agreements simply replicate legal minimum conditions, although there has been recent progress in this area. However, inadequate consultations between employers and unions, the limited participation of grassroots members, and the lack of sectoral employers’ associations are among constraints identified by stakeholders. In the context of trade negotiations, the government has pledged fundamental reforms to bring national legislation into line with international standards, including with respect to freedom of association and collective bargaining.

### **Forced labour**

Vietnam has not ratified C105. However, extant legislation provides adequate protection against forced labour, albeit with some exceptions – there is no express prohibition on bonded labour, while anti-trafficking provisions do not clearly prohibit all forms of human trafficking. Concerns persist about the forced labour of detainees in state-run drug rehabilitation centres, although the government indicates such practices no longer occur. The government plans to ratify ILO C105 on completion of ongoing labour law reform.

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Enforcement of forced labour laws is inconsistent. Inadequate resources, poor interagency coordination, and limited understanding among officials about pertinent indicators, procedures, and legislation constrain enforcement and policy implementation. Pre-departure fees and deposit requirements for Vietnamese migrant workers increase their vulnerability to debt bondage and exploitation in third countries. However, important areas of progress include stronger anti-trafficking provisions in the new Criminal Code; Action Plans on human trafficking; improved regulation of recruitment agencies and fees; various training and awareness-raising initiatives; and ongoing collaboration with international organisations such as the IFC-ILO Better Work programme.

## **Child labour**

The legal framework concerning child labour is adequate and in line with international standards. However, there are concerns about enforcement, especially in the informal economy including children working in street situations and the hospitality sector. In the formal sector, adolescents may use using false identity papers to gain employment on the same terms as adults, exposing young workers to hazardous conditions. Resource constraints, a broad mandate for the labour inspectorate, and poor interagency coordination are cited as general factors contributing to enforcement issues.

To address child labour concerns, the government has adopted important legislative and wider policy measures, including new criminal offences related to child labour; targeted inspections; a National Action Plan; data collection; and awareness-raising for officials and communities. However, limited knowledge about child labour laws among families and employers, as well as broader structural factors such as poverty and internal migration (including unaccompanied minors), constraint efforts to eliminate child labour.

## **Discrimination**

In general, Vietnam has developed a strong legal framework concerning employment discrimination. However, there remain some remaining gaps in coverage, including the omission of certain criteria from expressly prohibited grounds of discrimination – for example, political views, nationality, sexual orientation; restrictions on women’s employment intended to ‘protect’ reproductive functions; and a lack of definitional clarity and specific penalties concerning anti-sexual harassment provisions.

In practice, non-discrimination laws are inconsistently enforced. There are reports of discrimination affecting recruitment, promotion, and pay, especially for women. The use of gendered language in job advertisements, the practice of asking female job candidates about family status and plans, and employers’ negative bias against women in their 30s due to assumed family responsibilities, are among the discriminatory practices identified by stakeholders. Additionally, prevalent gender norms and stereotypes about the social roles and professional aptitudes of women and men continue to constrain women’s equal access to and opportunities in employment.

## **Other working conditions**

Beyond core labour standards, several factors affect wider working conditions in Vietnam. High levels of informality leave many workers with irregular and inadequate incomes, exposure to unsafe working conditions, limited opportunity for skills development, and without social or employment security. Precarious employment is also a concern in the formal and semi-formal sector due to the increasing use of on-site contracting, temporary agency work, and short-term casual work.

**Occupational safety and health.** OSH laws are generally adequate, but issues remain concerning application/enforcement. There is limited awareness and capacity to apply OSH standards among employers, especially in small businesses, and enforcement by labour authorities is uneven. Most informal workers (including most rural workers) are not covered by occupational injury insurance.

**Working time.** Excessive overtime is a repeated concern across industrial sectors, especially export-oriented enterprises such as garments and electronics. The government has proposed extending overtime limits, a move strongly opposed by trade unions.

**Employment protection legislation.** Employers often omit full terms and conditions in copies of contracts provided to employees. Some employers may also ‘recommend’ the resignation of employees they wish to dismiss, thereby avoiding severance pay in cases where employees accept.

**Social security coverage.** There is limited coverage in the informal economy and within the ‘missing middle’ – those who fall between (contributory) social security and (non-contributory) social assistance. The government has frequently noted pervasive evasion of social security contributions by employers.

## Status of ratification and reporting

Vietnam has ratified five ILO fundamental (core) conventions, excluding C87, C98, and C105. The ILO’s Committee of Experts (ILO-CEACR) recently cited Vietnam’s ‘serious failure’ to respect its reporting obligations on several conventions (ILO-CEACR, 2017). However, in the context of commitments under the CPTPP and EVFTA, the government has pledged to give serious consideration to ratification of C87, C98, and C105.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified.</i>
	C98	<i>Convention not ratified.</i>
Forced Labour	C29*	(2017): Urged the government to ensure detainees in drug rehabilitation centres are not compelled to perform work; and that people working by virtue of military conscription laws only engage in work of a military nature [ <i>repeat of 2014 Obs</i> ].  Requested information on provisions allowing authorities to refuse resignations of civil servants indebted to the state; and the use of prison labour in private enterprises and compulsory labour for communal/national service. Urged the inclusion of forced labour as a criminal, not only administrative, offence [ <i>repeat of 2014 DR</i> ].
	C105	<i>Convention not ratified.</i>
Child labour	C138*	(2017): Urged the government to intensify efforts to eliminate child labour, noting its prevalence in Vietnam. Specifically, requested measures to strengthen the capacity of the labour inspectorate, particularly in the informal economy [ <i>repeat of 2014 Obs</i> ].  Noted Labour Code amendments raising the minimum age for children to engage in light work from 12 to 13 years, but requested information its date of adoption [ <i>repeat of 2014 DR</i> ].

	C182*	(2017): Urged the government to strengthen law enforcement capacity concerning child labour, especially sexual exploitation, and improve identification and support for victims <i>[repeat of 2014 Obs]</i> .  Requested information on reported initiatives to combat child labour, including national policies, anti-trafficking programmes, and rehabilitation of street children <i>[repeat of 2014 DR]</i> .
Discrimination	C100*	(2018): Requested clarification on whether ‘payment in kind’ is covered by extant equal pay laws. Also requested information on the impact of initiatives to reduce the gender pay gap and address underlying causes; and on pertinent training offered to judges and labour inspectors, citing few cases before courts <i>[repeats 2016 Obs]</i> .
	C111*	(2018): Noted the omission of ‘political opinion’ and ‘nationality’ from expressly prohibited grounds of discrimination, and requested information on practical measures to ensure non-discrimination on these grounds. Noted that women are barred from employment in work that might damage reproductive function, and requested the government limit such protective measures to maternity protections.  Welcomed recent legislative initiatives to address discrimination against women in hiring (e.g., preferential treatment schemes), but requested information on implementation. Also requested information on the implementation of provisions prohibiting workplace sexual harassment and a related Code of Conduct <i>[repeats 2016 Obs]</i> .  Noted how some government programmes perpetuate women’s employment in informal work and light industries where pay and conditions are poor. Requested measures – training, education – to provide women with equal access to higher paid occupations. Also requested the government implement schemes to incentivise employers to hire ethnic minorities and women; allocate resources to its Action Plan for employment of disabled people; and reinstate a quota system for disabled workers <i>[repeat of 2016 DR]</i> .

\* Regular reports out of cycle. Several ILO-CEACR comments repeat previous Observations and Direct Requests and thus may not reflect the current legislative or in-practice situation.

## References

ILO CEACR [Observations and Direct Requests for Vietnam](#).

ILO CEACR, 2017, [Case of serious failure \(CAS\) - Discussion: 2017. Published 106th ILC session \(2017\), Vietnam](#).