

ILO Conventions and the Covenant on Economic, Social and Cultural Rights:
One Goal, Two Systems

by

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Lejo Sibbel*

Introduction

“There is no single model of democracy, or of human rights or of cultural expression for all the world. But for all the world, there must be democracy, human rights, and free cultural expression. Human ingenuity will ensure that each society, within its own traditions and history, will enshrine and promote these values.”

Kofi Annan, Secretary-General of the United Nations

The history of mankind is marked by efforts to ensure respect for the inherent dignity of human beings. These efforts include the establishment in 1919 of the International Labour Organization (hereafter ILO) and the establishment in 1920 of the League of Nations, followed in 1945 by the United Nations (hereafter UN). Although it was created before the UN, the ILO became a specialized agency of the UN system in 1946 and has a close and long-standing relationship with the UN. When looking at the basic documents of both organizations, this is hardly surprising. The Preamble of the ILO Constitution begins with the statement that ‘universal and lasting peace can be established only if it is based upon social justice’, while the Preamble of the Charter of the UN states that one of its aims is ‘to promote social progress and better standards of life in larger freedom’. In other words, the two organizations share, at least partly, common goals. Other reasons for this close relationship are that membership of the two organizations is almost identical and, as standard-setting organizations, both function similarly.

It is fair to say that nowhere is the relationship between the ILO and the UN as strong and visible as it is in the area of human rights. Instruments, or parts thereof, adopted by the respective organizations have mutually reinforced each other, the supervisory mechanisms functioning within the two organizations have drawn upon each other’s findings, and the ILO and the UN have often cooperated on human rights matters through the exchange of information, meetings, conferences and technical and advisory assistance. Considering the mandate of the ILO, this link is probably strongest in the area of economic and social rights, an area also covered by the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR).

The relationship between economic, social and cultural rights and civil and political rights has been widely debated over the years. However, as early as 1950, the General Assembly declared, in Resolution 421(V), s. E, that ‘the enjoyment of civic and political freedoms and of economic, social and cultural rights are

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interconnected and interdependent'. The third preambular paragraph of both international covenants reiterates this declaration in treaty form, and on 25 June 1993, representatives of 171 states adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights, which in paragraph 5 states that 'all human rights are universal, indivisible and interdependent and interrelated'.

However, whereas it appears that the 'Asian view' on human rights places more emphasis on economic, social and cultural rights (simply put, collective rights), than on civil and political rights (again simply put, individual rights), one would expect a broad acceptance of the former set of rights. Nevertheless, when looking at the ten ASEAN member countries,¹ only Cambodia, the Philippines, Thailand and

Vietnam have ratified the ICESCR. On the other hand, all but one ASEAN member countries are also member states of the ILO and have ratified a number of ILO conventions which cover subjects related to the Covenant.² In this paper, an attempt will be made to illustrate the relationship between certain ILO conventions and the ICESCR, and the way in which the bodies charged with supervising their application interact. An overview of the progress made and obstacles encountered by some ASEAN member states in implementing the ILO conventions ratified by them gives some indication of how certain economic and social rights have been applied. It is clear that although ILO conventions and the ICESCR operate within two different, albeit related, systems, they have a common goal: to promote social progress and better standards of life in larger freedom.

Social Justice and Human Rights

The term 'human rights' had not yet firmly found its way into the international public law dictionary when the ILO was founded. Consequently, the Constitution of the ILO and even the Declaration of Philadelphia do not mention the term. Instead, they identify 'social justice' as the basis for the organization's work.

Article II(a) of the Declaration of Philadelphia states that 'all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'. This is the basic premise for action by the ILO. The principal right of all human beings to pursue both their material well-being and spiritual development is placed within a

framework of broad concepts of human rights (non-discrimination, freedom, dignity, etc.). The Declaration continues by specifying in Article III how the ILO envisages working towards the realization of this objective. It mentions, inter alia, measures to be taken in the areas of training, labour migration, conditions of work, collective bargaining, social security and occupational safety and health. When one takes Articles II and III of the Declaration together one can conclude that the concept of social justice encompasses certain human rights but goes beyond these rights in terms of detail and application. This can be illustrated by the call made on all states by the 1995 United Nations Social Development Summit to ratify and implement the ILO's fundamental human rights conventions, identified as the seven

¹ ASEAN (Association of Southeast Asian Nations) member countries are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

² Only Brunei Darussalam is not a member state of the ILO.

conventions which cover the areas of freedom of association, discrimination and forced labour and child labour.³ To date, the ILO has adopted 182 conventions, some of which go into detail with regard to subjects covered by the fundamental conventions while the remainder deal with other subjects altogether. Another such illustration is the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which declares that all members of the ILO, even if they have not ratified the fundamental human rights conventions of the ILO, have an obligation, arising from the very fact of membership, to respect, to promote and to realize the principles concerning freedom of association and the

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

The conclusion is thus that the concept of social justice does not coincide precisely, but overlaps with the concept of human rights. The question then would be how these two concepts relate to each other in practice. A review of the relationship between certain ILO Conventions and the ICESCR should shed some light on this question.

The Relationship between ILO Conventions and the ICESCR

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (hereafter UDHR), the ICESCR and the International Covenant on Civil and Political Rights (hereafter ICCPR). When the Universal Declaration was adopted by the General Assembly on 10 December 1948, the ILO had already effected 90 conventions, some of which deal with issues also covered by the Universal Declaration. One example of how the standard-setting efforts of the UN's predecessor, the League of Nations, and the ILO influenced the contents of the Universal Declaration concerns the issues of slavery and forced labour. Article 4 of the Universal Declaration states that 'no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'. The League of Nations had already adopted the Slavery Convention in 1926. It then turned to the ILO and asked

that it develop a more labour-oriented version of the same principle. In 1930, the ILO adopted the Forced Labour Convention (No. 29). These two international conventions were, in turn, the principal sources for Article 4 of the Universal Declaration.⁴

What holds true for the relationship between Article 4 of the Universal Declaration and ILO Convention No. 29, does so even more for the relationship between Articles 6-10 and 13 of the ICESCR and ILO conventions on the same subjects. When the Covenant was adopted in 1966, the ILO had already adopted all but one (the Minimum Age Convention, 1973 [No. 138]) of the fundamental human rights conventions referred to in Copenhagen. Consequently, when comparing Articles 6-10 and 13 of the Covenant with ILO conventions covering the same subjects, one

³ These are the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Minimum Age Convention, 1973 (No. 138).

⁴ L. Swepston, 'The Universal Declaration of Human Rights and ILO Standards; A Comparative Analysis on the Occasion of the 50th Anniversary of the Declaration's Adoption', (Geneva: International Labour Office, 1998), p. 8.

can see that they are basically summaries of the ILO Conventions that were already in existence.

The most telling example of the relationship between the Covenant and ILO conventions can be found in Article 8 of the Covenant that deals with freedom of association. Some of the phrases found in this article are taken directly from the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). For instance, whereas Article 8(1)(a) stipulates that state parties undertake to ensure 'the right of everyone to form trade unions and join the trade union of his choice, *subject only to the rules of the organization concerned ...*', Article 2 of ILO Convention No. 87 guarantees that 'workers and employers, without distinction whatsoever, shall have the right to establish and, *subject only to the rules of the organization concerned*, to join organizations of their own choosing without previous authorization' (emphasis added). Moreover, a clear recognition of the need for consistency, but probably more an acknowledgement of the fact that ILO Convention No. 87 provides more guarantees of protection than Article 8 of the Covenant, can be found in Article 8(3), which stipulates that Article 8 of the

Covenant does not authorize states that have ratified ILO Convention No. 87 'to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention'. Since, under international law, there is no difference in rank between the Covenant and ILO conventions, consistency is an important issue. It is generally considered that such consistency exists between the Covenant and the relevant ILO conventions.⁵ The difference is that, whereas the Covenant contains relatively broad statements of principles, ILO conventions on the same subjects are considerably more detailed and contain more guidance on means of implementation. This is a natural result of the 'division of labour' between the UN and the ILO. As a technical specialized agency of the UN system, it is the ILO's job to define in detail the requirements necessary for the realization of its mandate of achieving social justice, whereas it is the UN's job to define the general principles of human rights across the entire spectrum of concepts, such as health, education, housing, etc. Thus, as has also been shown above, when one talks about the relationship between the ICESCR and the relevant ILO conventions, it is clearly one of complementarity and definitely not one of conflict.

The Interaction between the Committee on Economic, Social and Cultural Rights and the ILO's Supervisory Bodies

Whereas compliance by states parties to the Covenant is monitored through only one supervisory mechanism, the Committee on Economic, Social and Cultural Rights, compliance of ILO standards is monitored through a number of different supervisory

mechanisms that mutually reinforce one another. It goes beyond the scope of this paper to discuss all these mechanisms in detail, and this paper will therefore focus on the regular supervisory mechanism of the ILO.⁶ States which have ratified a

⁵ An exception is Article 7(a) of the ICESCR, which provides for 'equal pay for equal work' for women, a notion which does not correspond with the 'equal pay for work of equal value' requirement contained in the Equal Remuneration Convention, 1951 (No. 100) of the ILO.

⁶ For a detailed account of the supervisory mechanism, see the *Handbook of Procedures relating to International Labour Conventions and Recommendations*, (Geneva: International Labour Office, 1998), Rev.2/1998.

particular convention are bound by Article 22 of the ILO Constitution to submit regular reports on their law and practice in the field covered by the convention. For the fundamental human rights conventions, the regular reporting period is every two years (whereas it is every five years for most other conventions). If necessary, reports can also be requested outside the regular cycle. Governments must communicate their reports to the most representative organizations of workers and employers in the country, which may provide their own comments on the application of the convention. Government reports and comments from employers' and workers' organizations are examined by the Committee of Experts on the Application of Conventions and Recommendations, which provides individual comments to governments on their efforts in applying ratified conventions. This Committee is made up of 20 independent experts in law and social policy from different regions in the world and meets annually in November/December. The Committee's general comments and its individual observations to countries are published every year in a report which is reviewed by the Committee on the Application of Standards of the International Labour Conference. This is a standing committee of the International Labour Conference, which takes place in June each year, and consists of representatives of governments, workers and employers. It also discusses in detail a number of cases of particular concern, often those which involve serious failures to apply one of the fundamental human rights conventions. The regular supervisory system creates a dialogue between the country and the ILO supervisory bodies which, in the vast majority of cases, leads

to step-by-step improvements in the area covered by a convention.⁷

Although there are obvious similarities between the supervisory mechanisms of the Covenant and the ILO in that both work on the basis of a reporting obligation and review by a committee, there are also some striking differences. The first, of course, is the two-stage review of compliance within the ILO system by two different committees, and the second is the ILO's option of requesting reports outside the regular cycle. Both these features, not available with the supervisory system of the Covenant, enhance the thoroughness and, to a certain degree, the speediness of the ILO regular supervisory mechanism.

There are also other differences that have nothing to do with the formal set-up of the two different systems but rather with institutional arrangements that affect the functioning of the two systems. The Committee of Experts of the ILO reviews some 2,000 reports each year, which cover all ILO Conventions. The only reason why it is able to do so is because the International Labour Office, the secretariat of the ILO, has an entire department devoted to preparing the review of these reports. In addition, whenever the supervisory mechanisms of the ILO identify that a country has difficulties in complying with a convention, the ILO offers assistance to the country concerned in order to solve these difficulties.⁸ In contrast, the Committee on Economic, Social and Cultural Rights cannot, unfortunately, avail itself of such institutional back-up.

Cooperation between the two mechanisms is basically one of exchange of information

⁷ This description of the functioning of the regular supervisory mechanism of the ILO was taken almost word for word from a brochure developed by Mr. T. de Meyer, Specialist on International Labour Standards and Labour Law of the ILO's South Asia Multidisciplinary Advisory Team in New Delhi, India.

⁸ In this regard it should be noted that ILO technical assistance in all fields is based on its standards and that, since 1964, more than 2,000 cases of improvement in labour legislation and social policy have been noted by the Committee of Experts.

mostly through their respective secretariats, although there are also cases where countries submitting reports, either to the Committee on ESCR or the Committee of Experts, refer specifically to reports submitted to the other organization.

The ILO provides the Committee on Economic, Social and Cultural Rights with a report before each session. This contains an indicative listing concerning the principal ILO conventions relevant to Articles 6-10 and 13 of the Covenant, information concerning the ratification of these conventions and comments made by the ILO supervisory bodies with regard to the application of these conventions by states that will be considered by the Committee at any particular session. The provision of such a report is based upon arrangements approved by the Governing Body of the ILO to give effect to resolution 1988 (LX) of 11 May 1976 of the United Nations Economic and Social Council, requesting that specialized agencies submit reports in accordance with Article 18 of the ICESCR on the progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities.

The information provided is subsequently used by members of the Committee on Economic, Social and Cultural Rights in their discussions with government representatives or to cross-reference against information provided in the government report and, when appropriate, they can request further information from the government. In addition to the written information provided, the Committee organizes a meeting prior to its substantive sittings at which all specialized agencies and UN bodies are invited to provide oral information concerning general developments within the respective

organizations that may be of interest to the Committee, as well as specific information concerning the countries under consideration, that may be of interest to the Committee but is not incorporated in the report (for instance, information on ILO technical assistance projects in the country).

Examples of cross-references to the ILO are scarce in the case of the four ASEAN members that have ratified the Covenant, since one (Thailand) only recently ratified the Covenant and has therefore not yet had to report, and the other three have either a partial (Philippines and Vietnam) or total (Cambodia) backlog in reporting. As a result, the Committee has so far discussed only the initial reports of the Philippines, which covered Articles 10-12 of the Covenant, and Vietnam, which covered Articles 1-15 of the Covenant. One available example, however, is that a member of the Committee asked the Philippines to clarify why it had not ratified the ILO Minimum Age Convention, 1973 (No. 138), to which the representative replied that this would probably be a matter of time.⁹ In another example, the Vietnamese representative, in reply to written questions put forward by the Committee, made reference to having benefited from the services of ILO experts in the preparation of a new labour code.¹⁰

For its part, the Committee of Experts of the ILO cross-references the information available within the government report and information provided by employers' and workers' organizations against information available in official reports of the different UN human rights supervisory mechanisms, including the Committee on Economic, Social and Cultural Rights. Unfortunately, there are no examples of such cross-references for the ASEAN members that have ratified the Covenant. Considering

⁹ UN Doc. E/C.12/1995/SR.12, paras. 6, 20 and 22. NB: the Philippines ratified ILO Convention No. 138 on 4/6/98.

¹⁰ UN Doc. E/C.12/1993/SR.9, para. 32.

that these four members have so far only submitted two reports this is not surprising. Although not ideal, one therefore has to look to other countries for examples. Thus, when discussing the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the Islamic Republic of Iran,¹¹ the Committee of Experts referred to a range of UN documents, including a Summary Record and the Concluding Observations of the Committee on Economic, Social and Cultural Rights.¹² In an example showing the dynamics that exist between different

human rights instruments, the Committee of Experts, discussing the application of Convention No. 111 in Bulgaria, noted from a Constitutional Court ruling that a certain legislative provision had been found contrary to ILO Convention No. 111, as well as the ICESCR and the ICCPR.¹³

From the above, one can conclude that, not only do ILO conventions and the ICESCR complement each other, but, in addition, a certain level of cooperation exists between the mechanisms entrusted with the supervision of their application.

The Application of ILO Conventions by ASEAN Member Countries

In the following section, the status of application of ILO conventions by ASEAN member countries¹⁴ is shown. This has been based on observations made by the Committee of Experts and is limited to the fundamental human rights conventions of the ILO. Considering the relationship between ILO conventions and the ICESCR, this can also be viewed as an indication of the status of application by the different ASEAN members of those parts of the ICESCR that correspond with the ILO conventions they have ratified. To this end, Annexes I and II contain a list of the principal ILO conventions relevant to Articles 6-10 and 13 and a list of those ILO conventions relevant to the ICESCR that have been ratified by one or more ASEAN member countries, respectively.

The section covers comments made by the Committee of Experts up to and including its 1998 session, published in 1998. The

report of the Committee's 1999 session is due to be published in March 2000.

Cambodia

Committee of Experts

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts noted a government report which referred to s. 15 and 16 of the new Labour Law, Ch. 1, s. V, which prohibits forced or compulsory labour and the hiring of people for work to pay off debts. It recalled, however, that a Sub-Decree establishing a Workday for Irrigation and Agriculture provides that all people, including armed forces, officials and public servants, have an obligation to perform irrigation work for 15 days a year, and students for seven days a year. The Committee noted that the provisions of this sub-decree did not meet the exemptions of 'minor communal services' or 'emergency' applicable to the general prohibition of forced labour.

¹¹ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 83rd Session, 1996, p. 289.

¹² UN Doc. E/C.12/1993/SR.8, and United Nations Doc. E/C.12/1993/7.

¹³ Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 80th Session, 1993, p. 323.

¹⁴ This includes ASEAN member countries that are also state members of the ILO and were present at the Manila Conference, i.e. Brunei Darussalam and Myanmar are excluded.

*Complementary Information*¹⁵

More recently ILO officials were informed that the Sub-Decree establishing a Workday for Irrigation and Agriculture was about to be withdrawn.

In 1999, Cambodia ratified all six previously unratified fundamental ILO conventions. The ILO has embarked on an intensive cooperation programme to implement these instruments in law and in practice, beginning with a series of seminars on the ratified conventions. This cooperation includes the dissemination and actual implementation of the Labour Code, assistance to trade unions, improvement of labour inspection and the setting up of a tripartite national Labour Advisory Committee. Furthermore, assistance is being provided in the drafting of a Labour Court Bill, to install a labour court system which can speedily follow up on individual and collective labour disputes. Cambodia is presently looking into the possibility of ratifying the Worst Forms of Child Labour Convention (No. 182).

Indonesia

Committee of Experts

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts continued its discussion on the situation of the Dayak people in East Kalimantan who, according to information submitted by the World Confederation of Labour, were being subject to conditions of debt bondage. It also discussed the impact on local communities, in relation to the risk of creating debt-incurred labour, of certain practices in commercial logging concessions, related company-designed community development projects and industrial forest plantations, as well as the conditions surrounding the transmigration programme.

In a 1997 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee of Experts discussed the need to strengthen the protection of workers so as to cover acts of anti-union discrimination, the need to adopt specific legislative provisions to protect workers' and employers' organizations against acts of interference by each other, and the restrictions imposed on the right to bargain collectively in the public and private sectors.

Complementary Information

Over the past two years, Indonesia has made considerable progress in the area of labour standards. It ratified ILO Convention No. 87 in June 1998 and accepted an ILO Direct Contacts Mission in August of that same year. In line with the recommendations of the Mission, a labour law reform programme was developed and implemented on the basis of a tripartite drafting process. In addition, in December 1998, a Letter of Intent was signed between the government and the ILO which formalized the government's intention to ratify the three fundamental human rights conventions it had not yet ratified, as well as the ILO's pledge to provide technical assistance. Within the framework of the above-mentioned processes, registration of trade unions has been widened, several pieces of labour legislation which have benefited from ILO inputs and been drafted through a tripartite consultation process will be considered by parliament, several labour activists have been released from imprisonment, an extensive series of awareness-raising workshops concerning the fundamental human rights conventions of the ILO has been held throughout Indonesia, and Indonesia ratified Convention Nos 105, 111 and 138. Indonesia is also expected to ratify Convention No. 182 in 2000.

¹⁵ The complementary information for all countries, except Indonesia and the Philippines, was provided by Mr. J. Grimsman, Senior Specialist on International Labour Standards and Labour Law of the ILO's East Asia Multidisciplinary Advisory Team in Bangkok, Thailand.

Lao People's Democratic Republic

Committee of Experts

There are no pending observations with regard to the four conventions ratified by Laos.

Complementary Information

Laos is cooperating with the ILO's International Programme for the Elimination of Child Labour (hereafter IPEC) and is looking to ratify the Worst Forms of Child Labour Convention (No. 182). The government also intends to submit the fundamental ILO conventions so far not ratified (i.e. all except the ratified Forced Labour Convention, No. 29) to parliament for ratification.

Malaysia

Committee of Experts

In a 1998 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee noted that s. 15 of the Industrial Relations Act (hereafter IRA), which limits the scope of collective agreements for companies granted 'pioneer status', was in the process of being amended. It also referred to the restrictions on collective bargaining contained in s. 13(3) of the IRA, with regard to matters indicated as internal management prerogatives (i.e. promotion, transfer, employment, termination, dismissal and reinstatement). The Committee also commented on s. 52 of the IRA which contains certain restrictions on the right to bargain collectively for public servants other than those engaged in the administration of the state.

Complementary Information

In the last four years, interest in the ILO's conventions (especially the fundamental ones) has risen considerably. A first concrete step was the ratification of the Equal Remuneration Convention (No. 100) and the Minimum Age Convention (No. 138) in 1997. Since then, a number of tripartite national and provincial seminars

and workshops have been held to disseminate knowledge of the ILO's fundamental conventions. Discussions with the government on the ratification of the Freedom of Association and Protection of the Right to Organize Convention (No. 87) are continuing. However, the problems raised in the Committee of Experts' Observation have not yet been fully overcome. The government intends to ratify the Worst Forms of Child Labour Convention (No. 182). Furthermore, the ILO and the Malaysian Trades Union Congress have held a series of workshops on ILO conventions and trade union rights, to assist unions in positioning themselves in the national context. The government has also approached the ILO for assistance in ratifying the Chemicals Convention (No. 170).

The Philippines

Committee of Experts

In a 1998 observation on the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Committee of Experts discussed certain discrepancies between national legislation (mostly the Labour Code) and the requirements of the Convention. These included compulsory arbitration in industries 'indispensable to the national interest', disproportionate sanctions for participation in illegal strikes, the registration requirement that at least 20% of workers in a bargaining unit are members of a union, and the requirement of ten unions to establish a federation.

In a 1998 observation on the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee pointed out that national legislation contained provisions that allowed for compulsory arbitration enforceable with penalties involving compulsory labour beyond services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

In a 1998 observation on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee noted with interest the initiatives of the government to integrate gender concerns in the enforcement of labour standards. It proposed to do this by incorporating violations of an Act strengthening prohibition on discrimination against women on inspection lists, as well as by prescribing women workers as one of the inspection priorities in 1997. It also discussed issues related to progress made in implementing the Anti-Sexual Harassment Act.

Complementary Information

The Philippines is currently undertaking a review of the Labour Code, which includes ensuring that it is in line with ratified ILO Conventions. It is also considering the ratification of Conventions No. 29 and 182, and has had technical discussions with the International Labour Office on steps required to move closer to full implementation of all ratified conventions. The Philippines also cooperates with IPEC.

Thailand

Committee of Experts

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts noted with interest that a new constitution had been adopted in 1997 which provides for the prohibition of forced labour, and that the Labour Protection Act of 1998 prohibits the employment of children under the age of 15. It also discussed issues related to the implementation of the Prevention and Suppression of Prostitution Act of 1996, the Labour Protection Act, the number and nature of inspections carried out and sanctions and prosecutions imposed, and pointed out in this respect that the Convention requires that the illegal exaction of forced labour should be punishable as penal offence.

In a 1998 observation on the Abolition of Forced Labour Convention, 1957 (No. 105), the Committee discussed legislation, the provisions of which may be used to impose forced labour as a means of political coercion or as a punishment for holding or expressing, even peacefully, certain political views. It also discussed the scope of certain sections of the Labour Relations Act and the State Enterprise Labour Relations Act insofar as the scope of sanctions under these acts involving compulsory prison labour is not limited to essential services. In addition, the Committee discussed the issue of the application of a section of the Criminal Code under which participation in any strike with the purpose of changing the laws of the state, coercing the government or intimidating the people was punishable with imprisonment involving compulsory labour. Finally, it discussed the use of forced labour as a means of labour discipline in relation to seafarers.

Complementary Information

Thailand is closely cooperating with the ILO and IPEC. It intends to ratify the Minimum Age Convention (No. 138). Ratification of the Worst Forms of Child Labour Convention (No. 182) is also envisaged. A new State Enterprise Labour Relations Act and a new Labour Relations Act are before parliament, and the ILO has given some input in the formulation of this legislation. However, the parliamentary process has taken an unduly long time and is not yet in its final stage. Furthermore, the draft legislation still contains a number of discrepancies with the requirements of the ILO's fundamental conventions, especially the ones on freedom of association.

Singapore

Committee of Experts

In a 1998 observation on the Forced Labour Convention, 1930 (No. 29), the Committee of Experts discussed the application of the Destitute Persons Act under which compulsory work can be imposed.

In a 1997 observation on the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Committee referred to the prohibition under section 17(2) of the Industrial Relations Act of negotiations relative to transfer and dismissal, as management prerogatives. It also discussed the discretion of the Industrial Arbitration Court to refuse to register collective agreements concluded in newly established enterprises.

No complementary information is available.

Vietnam*Committee of Experts*

There are no pending observations with

regard to the conventions ratified by Vietnam.

Complementary Information

Vietnam's Labour Code has been drafted with strong input from the ILO. However, the country still has a communist political system, and the single trade union is very much in this tradition. On the other hand, in 1997 Vietnam ratified the Equal Remuneration Convention (No. 100) and the Discrimination (Employment and Occupation) Convention (No. 111). Most recently the government approached the ILO for assistance in ratifying the remaining fundamental conventions.

Conclusion

It is clear that the relationship between the ILO conventions and the ICESCR is one of complementarity, with no element of conflict. This shows that the functional relationship between the UN and the ILO as a specialized agency is working as it should. What this means to individual governments in terms of ratification and application of the different instruments is their decision. One minimal conclusion can be drawn nevertheless; the ratification and implementation of one does not impede ratification and implementation of the other. In fact it probably facilitates it.

The social consequences of the Asian financial crisis brought home in a very unpleasant manner the message that, as it is phrased in the ILO Declaration on Fundamental Principles and Rights at Work, economic progress is essential but not sufficient to ensure equity, social progress and the eradication of poverty. As a consequence, there is growing awareness in most Asian countries that they need to be more socially responsible. When measured by progress made in the area of

labour standards, a number of ASEAN member countries are trying to be more socially responsible. A greater commitment by all ASEAN member countries to the application of economic and social rights, with the ratification of ILO conventions and the ICESCR as a possible first step, would send out a positive message in this respect.

However, the universality of human rights is a question that continues to be debated, and mostly so in the Asian region. In my view, the above-mentioned Article 5 of the Vienna Declaration ends that debate rather eloquently. It states that 'all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.

Annex I

Principal ILO conventions relevant to Articles 6-10 and 13 of the ICESCR:

Article 6 of the ICESCR

Unemployment Convention, 1919 (No. 2)
Forced Labour Convention, 1930 (No. 29)
Fee-Charging Employment Agencies Convention, 1933 (No. 34)
Employment Service Convention, 1948 (No. 88)
Fee-Charging Employment Agencies Convention, 1949 (No. 96)
Abolition of Forced Labour Convention, 1957 (No. 105)
Indigenous and Tribal Populations Convention, 1957 (No. 107)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)
Employment Policy Convention, 1964 (No. 122)
Paid Educational Leave Convention, 1974 (No. 140)
Human Resources Development Convention, 1975 (No. 142)
Workers with Family Responsibilities Convention, 1981 (No. 156)
Termination of Employment Convention, 1982 (No. 158)
Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168), Part II.
Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Article 7 of the ICESCR

Remuneration

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99)
Minimum Wage-Fixing Machinery Convention, 1970 (No. 131)

Equal remuneration

Equal Remuneration Convention, 1951 (No. 100)

Safe and healthy working conditions

White Lead (Painting) Convention, 1921 (No. 13)
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
Protection Against Accidents (Dockers) Convention, 1929 (No. 28)
Protection Against Accidents (Dockers) Convention, 1932 (No. 32)

Safety Provisions (Building) Convention, 1937 (No. 62)

Labour Inspection Convention, 1947 (No. 81)
Radiation Protection Convention, 1960 (No. 115)
Guarding of Machinery Convention, 1963 (No. 119)
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

Maximum Weight Convention, 1967 (No. 127)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Benzene Convention, 1971 (No. 136)
Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

Occupational Safety and Health Convention, 1981 (No. 155)

Occupational Health Services Convention, 1985 (No. 161)

Asbestos Convention, 1986 (No. 162)

Safety and Health in Construction Convention, 1988 (No. 167)

Chemicals Convention, 1990 (No. 170)

Night Work Convention, 1990 (No. 171)

Rest, limitation of working hours and holidays with pay

Hours of Work (Industry) Convention, 1919 (No. 1)
Weekly Rest (Industry) Convention, 1921 (No. 14)
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)

Forty-Hour Week Convention, 1935 (No. 47)

Holidays with Pay Convention, 1936 (No. 52)

Holidays with Pay (Agriculture) Convention, 1957 (No. 101)

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

Holidays with Pay Convention (Revised), 1970 (No. 132)

Part-time Work Convention, 1994 (No. 175)

Homework Convention, 1996 (No. 177)

Article 8 of the ICESCR

Right of Association (Agriculture) Convention, 1921 (No. 11)

Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Workers' Representatives Convention, 1971 (No. 135)

Rural Workers' Organizations Convention, 1975 (No. 141)

Labour Relations (Public Service) Convention, 1978 (No. 151)

Collective Bargaining Convention, 1981 (No. 154)

Article 9 of the ICESCR

Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)
 Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
 Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)
 Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
 Sickness Insurance (Industry) Convention, 1927 (No. 24)
 Sickness Insurance (Agriculture) Convention, 1927 (No. 25)
 Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)
 Old-Age Insurance (Agriculture) Convention, 1933 (No. 36)
 Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)
 Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)
 Survivor's Insurance (Industry, etc.) Convention, 1933 (No. 39)
 Survivor's Insurance (Agriculture) Convention, 1933 (No. 40)
 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)
 Unemployment Provisions Convention, 1934 (No. 44)
 Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48)
 Social Security (Minimum Standards) Convention, 1952 (No. 102)
 Equality of Treatment (Social Security) Convention, 1962 (No. 118)
 Employment Injury Benefits Convention, 1964 (No. 121)
 Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)
 Medical Care and Sickness Benefits Convention, 1969 (No. 130)
 Maintenance of Social Security Rights Convention, 1982 (No. 157)
 Employment Promotion and Protection Against Unemployment, 1988 (No. 168)

Article 10 of the ICESCR

(a) Maternity protection (re paragraph 2)

Maternity Protection Convention, 1919 (No. 3)
 Maternity Protection Convention (Revised), 1952 (No. 103)

(b) Protection of children and young persons in relation to employment and work (re paragraph 3)

Minimum Age (Industry) Convention, 1919 (No. 5)
 Minimum Age (Sea) Convention, 1920 (No. 7)

Minimum Age (Agriculture) Convention, 1921 (No. 10)
 Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)
 Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)
 Minimum Age (Sea) Convention (Revised), 1936 (No. 58)
 Minimum Age (Industry) Convention (Revised), 1937 (No. 59)
 Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)
 Minimum Age (Fisherman) Convention, 1959 (No. 112)
 Social Policy (Basic Aims and Standards) Convention, 1952 (No. 117)
 Minimum Age (Underground Work) Convention, 1965 (No. 123)
 Minimum Age Convention, 1973 (No. 138)
 Night Work of Young Persons (Industry) Convention, 1919 (No. 6)
 Night Work (Bakeries) Convention, 1925 (No. 20)
 Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)
 Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)
 White Lead (Painting) Convention, 1921 (No. 13), Art. 3
 Radiation Protection Convention, 1960 (No. 115), Art. 7
 Maximum Weight Convention, 1967 (No. 127), Art. 7
 Benzene Convention, 1971 (No. 136), Art. 11
 Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)
 Medical Examination (Seafarers) Convention, 1946 (No. 73)
 Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)
 Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)
 Medical Examination (Fishermen) Convention, 1959 (No. 113)
 Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)

Article 13 of the ICESCR

Human Resources Development Convention, 1975 (No. 142)

Annex II

Ratification Lists

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
<i>Dialogue + Cooperation 1/2001</i>									
1. Fundamental Human Rights Conventions									
Forced Labour, 1930 (No. 29)	X	X	X	X	X	X	X	X	X
Freedom of Association & Protection of the Right to Organize, 1948 (No. 87)	X	X		X			X		
Right to Organize & Collective Bargaining, 1949 (No. 98)	X			X	X	X	X	X	
Equal Remuneration, 1951 (No. 100)	X	X		X		X	X	X	
Abolition of Forced Labour, 1957 (No. 105)	X	X		X		X	X	X	
Discrimination (Employment and Occupation), 1958 (No. 111)	X	X					X		
Minimum Age, 1973 (No. 138)	X	X		X			X		
2. Others									
Hours of Work (Industry), 1919 (No. 1)					X				
Unemployment, 1919 (No. 2)					X				
Minimum Age (Industry), 1919 (No. 5)									
Night Work for Young Persons (Industry), 1919 (No. 6)	X		X	X		X			X
Minimum Age (Sea), 1920 (No. 7)				X		X			
Right of Association (Agriculture), 1921 (No. 11)				X		X			
Workmen's Compensation (Agriculture), 1921, (No. 12)				X		X			
White Lead (Painting), 1921 (No. 13)	X		X	X		X			

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
Weekly Rest (Industry), 1921 (No. 14)				X	X			X	X
Minimum Age (Trimmers and Stokers), 1921 (No. 15)				X	X	X			
Medical Examination of Young Persons (Sea), 1921 (No. 16)				X	X	X			
Workmen's Compensation (Accidents), 1925 (No. 17)				X	X	X			
Equality of Treatment (Accident Compensation), 1925 (No. 19)									
Minimum Wage-Fixing Machinery, 1928 (No. 26)					X				X
Marking of Weight (Packages Transported by Vessels), 1929 (No. 27)					X				X
Protection against Accidents (Dockers) (Revised), 1932 (No. 32)		X			X	X			
Workmen's Compensation (Occupational Diseases) (Revised), 1934 (No. 42)					X				
Holidays with Pay, 1936 (No. 52)					X				
Minimum Age (Industry) (Revised), 1937 (No. 59)							X		
Medical Examination of Young Persons (Industry), 1946 (No. 77)				X		X			X
Labour Inspection, 1947 (No. 81)				X		X	X	X	
Employment Service, 1948 (No. 88)							X		
Night Work of Young Persons (Industry) (Revised), 1948 (No. 90)							X		
Minimum Wage Fixing Machinery (Agriculture), 1951 (No. 99)		X							

Conventions	Cam	Indo	Laos	Mal	Myan	Sing	Phil	Thai	Viet
Weekly Rest (Commerce and Offices), 1957 (No. 106)							X		
Equality of Treatment (Social Security), 1962 (No. 118)				X					X
Guarding of Machinery, 1963 (No. 119)		X							X
Hygiene (Commerce and Offices), 1964 (No. 120)									X
Minimum Age (Underground Work), 1965 (No. 123)									
Medical Examination of Young Persons (Underground work), 1965 (No. 124)							X		
Maximum Weight, 1967 (No. 127)							X		
Rural Workers' Organizations, 1975 (No. 141)									
Occupational Safety and Health, 1981 (No. 155)							X		
Vocational Rehabilitation and Employment (Disabled Persons), 1983 (No. 159)									X

Key: Cam - Cambodia; Indo - Indonesia; Laos - Lao People's Democratic Republic; Mal - Malaysia; Myan - Myanmar; Sing - Singapore; Phil - Philippines; Thai - Thailand