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and
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Freedom of association: A user's guide

**Standards, principles and procedures
of the International Labour Organization**

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Freedom of association: A user's guide

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Citations in the text

Provided below is a list showing the sources of quotations from the ILO Constitution, the Declaration of Fundamental Principles and Rights at Work, and international labour Conventions and Recommendations used in this guide. The full titles of the Conventions are given in Annex 1.

- 13, 16, 17 Convention No. 87, Article 2
- 14 Convention No. 87, Article 9
- 20, 29 Convention No. 87, Article 3 (1) & (2)
- 26 Convention No. 87, Article 4
- 28 Convention No. 87, Article 8 (1) & (2)
- 28 Convention No. 87, Article 5
- 31 Convention No. 98, Article 2 (1)
- 31 Convention No. 98, Article 3
- 33 Convention No. 98, Article 1(1)
- 34 Convention No. 135, Article 1
- 35 Convention No. 98, Article 4
- 40 Recommendation No. 113, Paras. 1(1) & 4
- 42 Convention No. 135, Article 2 (1) & (2)
- 51 ILO Constitution, Article 19(e)
- 51 Follow-up to the Declaration, para. II (A) 1 & 2, (B) 1
- 53 ILO Constitution, Article 22
- 68 ILO Constitution, Article 24
- 69 ILO Constitution, Article 25
- 70 ILO Constitution, Article 26 (1), (2), (3), (4)
- 71 ILO Constitution, Article 28
- 72 ILO Constitution, Article 29 (2)

Preface

There are many different fiftieth anniversaries concerning freedom of association to be celebrated at the end of the twentieth century and the beginning of the next.

Between 1998 and 2001 the ILO is recalling the significant steps taken in this domain starting with the adoption, in 1948, of the fundamental Convention dealing with freedom of association (the Freedom of Association and Protection of the Right to Organize Convention, No. 87); in 1949, the birth of the other fundamental standard in this field (the Right to Organize and Collective Bargaining Convention, No. 98); in 1950, the elaboration of the procedure of the International Labour Organization for the protection of trade union rights; and, in 1951, the creation of the Freedom of Association Committee of the ILO.

These momentous events have marked in an enduring way the life of the Organization and, beyond that, the development and existence of workers' and employers' organizations throughout the world.

The extent of ILO action in respect of freedom of association depends, however, on these actions being better known than they are today by the social partners both at the national and international levels. This is why we thought it would be useful, during this time of anniversaries, to add to the ILO's publications on freedom of association a guide presenting a pedagogical approach to the questions raised in respect of the relevant ILO standards and procedures.

The guide should be considered as the informal, user-friendly accompaniment to *ILO law on freedom of association: Standards and procedures*. Published in 1995, the latter sets forth all the relevant legal documents concerning freedom of association (Conventions, procedures for special supervisory mechanisms, and so on) and can be used to identify the sources relevant to the situations described in this guide.

I am most grateful to David Tajgman and Karen Curtis for setting out in a concise but nevertheless exhaustive manner, thanks to their in-depth research and the clarity of their presentation, not only the various procedures available to ILO constituents but also the different circumstances in which these mechanisms can best be used.

This guide responds, I hope, to the expectations of those numerous individuals who consider that ILO studies concerning freedom of association were until now so legal in nature that their dissemination was limited in practice to a rather small circle of specialists.

In any event, this publication represents part of the constantly reinforced activities of the International Labour Organization and the International Labour Office to promote universal respect for the principles of freedom of association. May it contribute, through wide circulation and a deep and meaningful impact on the social partners, to making this fundamental freedom a reality for all. Such is my resolute and sincere wish.

Bernard Gernigon
*Chief
Freedom of Association Branch
International Labour Office*

Explanation of ILO terminology and abbreviations

To make this guide as concise as possible, a handful of ILO terms and abbreviations are repeatedly used. These include the following:

- **COE** is the ILO Committee of Experts on the Application of Conventions and Recommendations (see section 2.3, page 53).
- **CFA** is the ILO Governing Body's Committee on Freedom of Association (see section 2.5, page 58).
- The **Conference Committee** is the standing ILO Committee on the Application of Standards of the International Labour Conference (see section 2.3, page 53).
- **Digest** refers to the *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*. The *Digests* produced in 1985 and in 1996 are cited in this guide. They are major reference documents, as they collect and summarize important decisions made by the CFA about the application of FOA principles in cases brought before it.
- **FOA** stands for freedom of association.
- **FOA principles** are decisions which touch upon the basic elements necessary to freedom of association, as embodied in the ILO Constitution.
- **FOA standards** stem from the texts of international labour Conventions and Recommendations dealing with FOA. For a list of these, see Annex 1.
- **FFCC** is the ILO's Fact-Finding and Conciliation Commission on Freedom of Association (see section 2.4, page 57).
- **GS** stands for *General Survey*. A *General Survey* is a report made by the COE on the basis of reports sent by ILO member States under Article 19 of the ILO Constitution (see section 2.2, page 51). The GSs produced in 1984 and 1994 on freedom of association and collective bargaining are cited in this guide. They are important reference documents as they elaborate the views of the COE on the meaning and application of the FOA standards.
- **RCE** stands for *Report of the Committee of Experts on the Application of Conventions and Recommendations*. This is the "green book" published each year as a report to the International Labour Conference by the COE. These RCEs are important reference documents as they include the observations made by the COE concerning individual countries' application of ratified Conventions, including the FOA Conventions. For further explanation, see section 2.3, page 53.
- The **supervisory bodies** means those bodies which are engaged in the supervision of international labour standards. These include the COE, the CFA, the Conference Committee, the FFCC, and ad hoc committees and Commissions of Inquiry set up to handle Article 24 representations and Article 26 complaints. For further explanation, see the introduction to this guide.

To make this guide useful to a broad range of readers, it includes a limited number of quotations. These quotations are intended to provide a better sense of the thinking of the various supervisory bodies on issues of importance:

- *Quotations from ILO Conventions or Recommendations on FOA*
- *Quotations from supervisory bodies*
- *Quotations from the Digest of decisions and principles of the CFA*
- *Quotations from the General Surveys of the COE*

Citations to the origin of quotations or ideas discussed in this guide are provided. This makes it possible for readers to look up the information and reflect further on it. These citations are given in small print alongside the related quotation or idea. Quotations in charts appear in clockwise order from top to bottom.

- **Citations to ILO Conventions or Recommendations on FOA:** for example “C. 87” means “the Freedom of Association and Protection of the Right to Organize Convention, 1947 (No. 87)”.
- **Citations to the reports of the Committee of Experts on the Application of Conventions and Recommendations:** these reports are published yearly. “RCE 1994, Colombia, C. 98” means “the comment of the Committee of Experts concerning the application by Colombia of Convention No. 98 in its 1994 report”. “RCE 1994, para. 63” means “paragraph 63 in the general section of the Committee’s 1994 report”.
- **Citations to the *Digest of decisions*:** the most recent revision compiling CFA decisions was published in 1996. “CFA Digest of 1996, para. 482” means “paragraph 482 in the *Digest of decisions and principles of the Committee on Freedom of Association* published in 1996”.
- **Citations to the *General Survey of the Committee of Experts on the Application of Conventions and Recommendations*:** six General Surveys concerning freedom of association and collective bargaining have been published (1956, 1957, 1959, 1973, 1983 and 1994). “COE 1994 GS, para. 100” means “paragraph 100 of the *General Survey of the Committee of Experts* published in 1994”.
- **Citations to decisions of the Committee on Freedom of Association:** CFA reports are published as part of the *Official Bulletin* of the ILO. “CFA Case No. 1707, 294th Report, para. 152” means “the discussion of CFA Case No. 1707 appearing in paragraph 152 of the CFA’s 294th Report”.
- **Citations to discussions in the Committee on the Application of Standards:** “CC 1993, C. 87, Canada” means “the discussion in the Committee occurring during the 1993 International Labour Conference concerning the application of Convention No. 87 in Canada”.

Explanation of quotations used in the guide

Explanation of citations given in the guide

Introduction to this guide and to the freedom of association procedures of the ILO

Regular system of supervision

The practical influence and impact of the ILO's freedom of association (FOA) standards and principles – and the use of procedures for their enforcement – is nothing less than spectacular in the world of international jurisprudence. The purpose of this guide is to broaden the use of these standards, principles and procedures.

These standards, principles and procedures have been used:

- to offer support and guidance to countries around the world which have sought to introduce democracy;
- to secure the release from detention and arrest of trade unionists and employers' representatives alike;
- to maintain and promote the right of the social partners – employers' and workers' organizations – to bargain collectively on terms and conditions of employment and other issues of occupational concern;
- to protect individual workers against discrimination based on the exercise of their associational rights.

These results are assured through the ILO's supervisory procedures and mechanisms. To assist the reader, these bodies are introduced here, before the standards and principles themselves are explained.

The regular system of supervision depends on ratification of the ILO's Conventions on freedom of association and the obligation laid down in the ILO's Constitution to provide periodic reports on their application.

With regard to FOA principles, the independent, 20-member, *Committee of Experts (COE) on the Application of Conventions and Recommendations*:

- examines governments' reports on the application of freedom of association Conventions, where they have been ratified;
- receives comments from workers' and employers' organizations on the application of FOA Conventions, and considers them in their examination of governments' reports; and
- requests States which are not fully applying the relevant FOA provisions to take the necessary action to do so.

The Committee also examines reports from countries which have not ratified the FOA Conventions in respect of the state of law and practice in the country concerned, and eventual obstacles to ratification.

The tripartite standing *Committee on the Application of Standards* of the International Labour Conference (consisting of constituents from workers' organizations, from employers' organizations and government delegates):

- receives the report of the COE;
- on the basis of the COE report, discusses in public individual cases involving freedom of association; and
- discusses in public the state of law and practice, and eventual obstacles reported to the COE by countries which have not ratified the FOA Conventions.

Special supervisory mechanisms

The special supervisory mechanisms offer several avenues of recourse at the international level in respect of specific allegations of infringement of FOA principles. Each mechanism has its particular characteristics and benefits, but all require the laying of a charge.

The **ILO's Governing Body (GB)** is involved in handling all cases using special supervisory mechanisms. Details of its role in each mechanism can be found throughout Part 2.

The GB's tripartite, nine-member, *Committee on Freedom of Association (CFA)*:

- receives allegations of infringement of FOA principles by ILO member States from employers' and workers' organizations – whether or not the Conventions concerned have been ratified by the State in question;
- reviews the substance of a case with a view to sending it to the FFCC (see below);
- makes conclusions and recommendations based on the information before it, and asks the governments concerned to take steps to implement the recommendations; and
- brings its conclusions and recommendations before the GB and, where the government concerned has ratified the relevant FOA Convention, may pass aspects of the case to the COE for follow-up.

The *Fact-Finding and Conciliation Commission on Freedom of Association (FFCC)* is a neutral body composed of nine independent persons who normally work in panels of three. The Commission:

- examines complaints of infringement of freedom of association referred to it by the GB; and
- follows a procedure similar to that used by a Commission of Inquiry.

A *Commission of Inquiry (COI)* may be established, as an ad hoc body, on the basis of a complaint lodged under Article 26 of the ILO's Constitution. Each Commission:

- is composed of – usually three – neutral persons of high standing;
- organizes its work according to the requirements of the case involved; and
- reports its findings on factual questions and recommendations to the GB, via the Director-General of the ILO.

The complaint which initiates a COI can be referred to the International Court of Justice if the recommendations contained in a report of a COI are not accepted by the government concerned.

The *International Labour Office*, secretariat to the International Labour Organization, may also become specially involved in cases using the special supervisory mechanisms. For example:

- *direct contacts* may be made by ILO officials, on behalf of the Director-General of the ILO, in an attempt to solve difficulties in implementing FOA principles;
- *informal advisory services* can be provided, originating from ILO offices in the field, as well as from its headquarters in Geneva; and
- *technical assistance* impacting on the application of FOA principles, including in areas related to collective bargaining and sound industrial relations practices, has often been provided by the Office.

In Part 1 of the guide, the FOA standards and principles are explained briefly, highlighting their real impacts in practice. Part 2 returns to a detailed and practical discussion of the procedures and bodies mentioned in Part 1, highlighting how they can best be used to secure and promote FOA.

Care has been taken here to explain FOA standards, principles and procedures in a way which, on the one hand, can be useful to the layperson, and on the other, remains faithful to the views given by the supervisory bodies. Several ways have been used to do this:

- *Graphic representations* have been used to illustrate some of the approaches to FOA principles taken by the supervisory bodies.
- *“Yes/no” charts* have been used to elaborate the requirements associated with a number of principles. The charts are meant to help organize thinking about a real situation with a view to deciding whether it can be considered to be a violation of the established FOA principles. The charts will help decide whether to seek recourse to the FOA supervisory bodies and how to prepare the materials needed to make out a case. The questions in the coloured boxes of the charts are critical and need to be addressed. The statements of the supervisory bodies in the shaded boxes can help understand important principles and nuances.

The International Labour Office

Arrangement of the guide

- *Tables* have been used to summarize some of the most important approaches to implementing FOA principles.
- *Direct quotations* are provided from the relevant international instruments (see list on page viii), as well as from the supervisory bodies.
- *Brief reports of the facts* behind cases decided by the supervisory bodies are provided to give a fuller sense of the practical meaning of the principles.

This guide attempts to provide the most basic and the most important FOA principles in a user-friendly format. The ILO has produced other texts which are essential for a fuller understanding of the scope of FOA principles and procedures. A list of these publications appears in Annex 2.

PART 1

The impact of freedom of association standards and principles

1.1 Introduction

Freedom of association principles have been elaborated by the ILO's supervisory bodies over the past 50 years. They have also been applied by those bodies:

- The CFA has explained its views in more than 2,000 cases involving detailed and specific facts.
- The COE has provided insights from a longer-term perspective. It has examined the reports of countries which have ratified the ILO's FOA Conventions explaining how those Conventions are applied, and the reports of countries which have not ratified them that explain obstacles to their ratification.
- The Conference Committee has brought its tripartite influence to bear on the application of FOA standards and principles through its public discussions during the annual June sessions of the International Labour Conference concerning, among other things, individual cases of FOA infringement.
- Various COIs and the FFCC have provided insights in a handful of highly publicized cases involving FOA principles.

In each of these contexts, freedom of association standards and principles have had an impact – laws have been changed, individuals released from prison, the right to organize or bargain collectively expanded.

Part 1 of this guide explains the ILO's FOA standards and principles in the context of this impact. It explains how these principles have been used in real situations to protect freedom of association and the manner in which the supervisory machinery can be used to this end.

1.2 Civil liberties

The ILO and its supervisory bodies have time and again recognized a critical relationship between the associational rights of workers' and employers' organizations and civil liberties: if they are to function properly, such organizations must be able to carry out their activities in a broader climate of freedom and security. The right of association, although it might exist in law, cannot exist in practice if, for example:

- the State arbitrarily arrests and detains trade union leaders;
- the property of organizations is confiscated without a court order; or
- private parties, with impunity, physically threaten trade unionists.

Protection by the State from these types of threats – in relation to the exercise of freedom of association – is a human right, respect for which can be insisted upon through the ILO.

In 1970, the International Labour Conference adopted a resolution concerning trade union rights and their relation to civil liberties. The resolution contains a list of the fundamental rights essential for the exercise of freedom of association. They are addressed in turn here.

The right to freedom and security of person and freedom from arbitrary arrest and detention

The announcement of the release of trade unionists from arrest or detention – sometimes in situations where those concerned have been subjected to harsh treatment or torture – is the most dramatic example of the success of the ILO's human rights work.

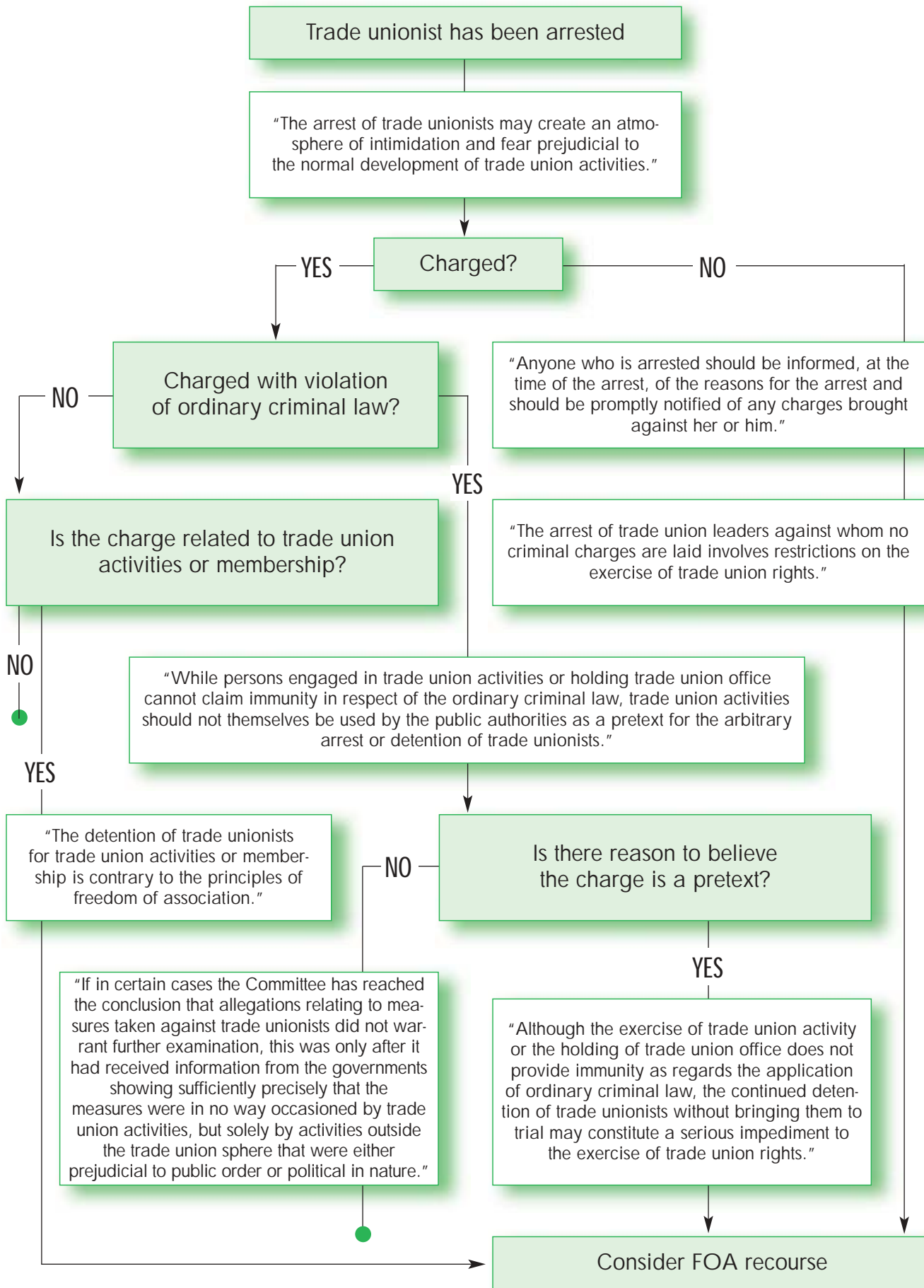
FOA principles demand that the State not interfere with the exercise of associational rights. These rights concern the exercise of basic trade union activities, and arrest or detention, physical threats, assaults or disappearances can all constitute interference.

Where trade unionists – leaders, rank-and-file members, or organizers of a trade union even before it is formed – are arrested:

- due process must be respected: they must be charged and must have access to legal representation;
- they may not be arrested or detained for the exercise of legitimate trade union activities; and
- where they are charged with violation of ordinary criminal law, the charge must not be a pretext for the suppression of the association.

Figure 1 provides a summary of these basic rights.

Figure 1. Civil liberties: Arrest and detention



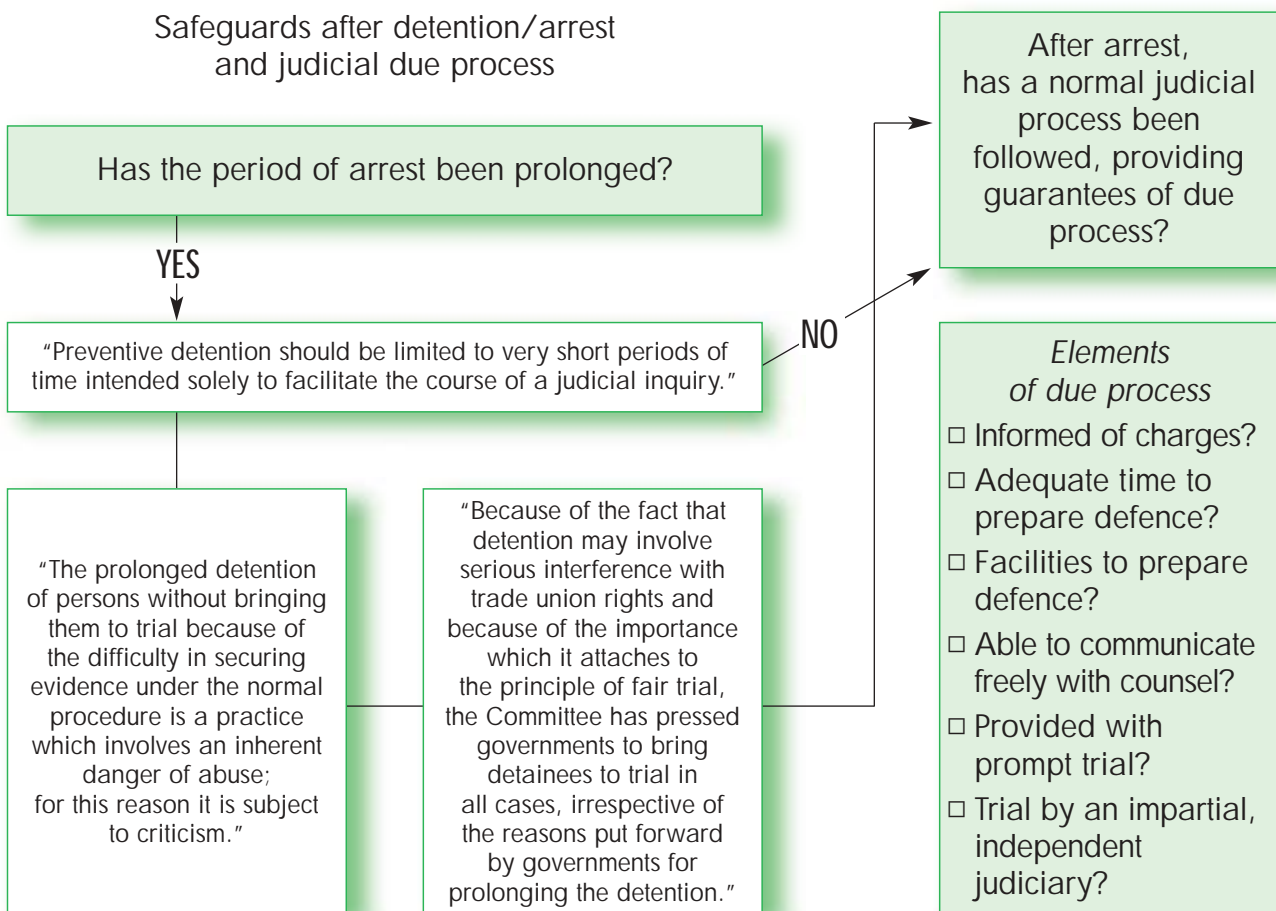
CFA Digest of 1996, para. 76; CFA Digest of 1996, para. 95; CFA Digest of 1996, para. 82; CFA Digest of 1996, para. 83; CFA Digest of 1996, para. 72; CFA Digest of 1996, para. 115; CFA Digest of 1996, para. 91 (see also paras. 111 and 114).

After an arrest or detention has occurred – for whatever reason – trade unionists have the right to a fair trial and assurances of due process (see figure 2).

“ Any trade unionist who is arrested should be **presumed innocent** until proven guilty after a **public** trial during which he or she has **enjoyed all the guarantees necessary** for his or her defence. ”

CFA Digest of 1996, para. 171

Figure 2. Civil liberties: Judicial safeguards



CFA Digest of 1996, para. 87; CFA Digest of 1996, para. 92; CFA Digest of 1996, para. 90.

The implications of due process are found throughout FOA principles, including:

- in all cases of arrest or detention;
- in situations warranting investigation, such as the disappearance of trade unionists;
- in situations of confiscation of property;
- where searches are made of trade union premises;
- review of restrictions on publication; and
- where an administrative authority has dissolved or suspended an association.

Where trade unionists are physically assaulted, disappear or are murdered, a serious obstacle is placed before the exercise of associational rights:

- State involvement in the event cannot be tolerated.
- Regardless of whether the State is directly involved or implicated, an independent judicial inquiry should determine the facts of the case.
- Those responsible should be punished, and repeated acts prevented.

Nor may the State stand idly by and permit private parties or individuals to threaten the life, security, physical or moral integrity of the person.

The 1970 resolution noted, in particular, the freedom to hold opinions without interference and to see, receive and impart information and ideas through any media and regardless of frontier.

With regard to licences to publish:

- the issuance of any mandatory licence for publication should not be at the mere discretion of the licensing authorities;
- in practice, the issuance of a licence should not be a method of prior restraint on the subject matter of publication;
- applications for licences should be dealt with promptly;
- fees or bonds should not have the effect of restricting publication.

Administrative withdrawal of licences, and the control of printing facilities or of paper supply, should be subject to judicial review.

The supervisory bodies have taken a broad view of trade unions' freedom of expression.

“ The **fear** of the authorities of seeing a trade union newspaper serve political ends unrelated to trade union activities or which, at least, lie far outside their normal scope, is not sufficient reason to refuse to allow such a newspaper to appear. ” But,

“ it is only in so far as trade union organizations take care not to allow their occupational demands to assume a **clearly** political character that they can legitimately claim that there should be no interference in their activities. ”

CFA Digest of 1996, paras. 160 and 164

The State must also not interfere with the exchange of information. Actions which can be incompatible with the free exercise of trade union rights and civil liberties include:

- tampering with correspondence;
- surveillance of workers in respect of trade union activities; and
- interfering in union meetings and the exercise of free speech.

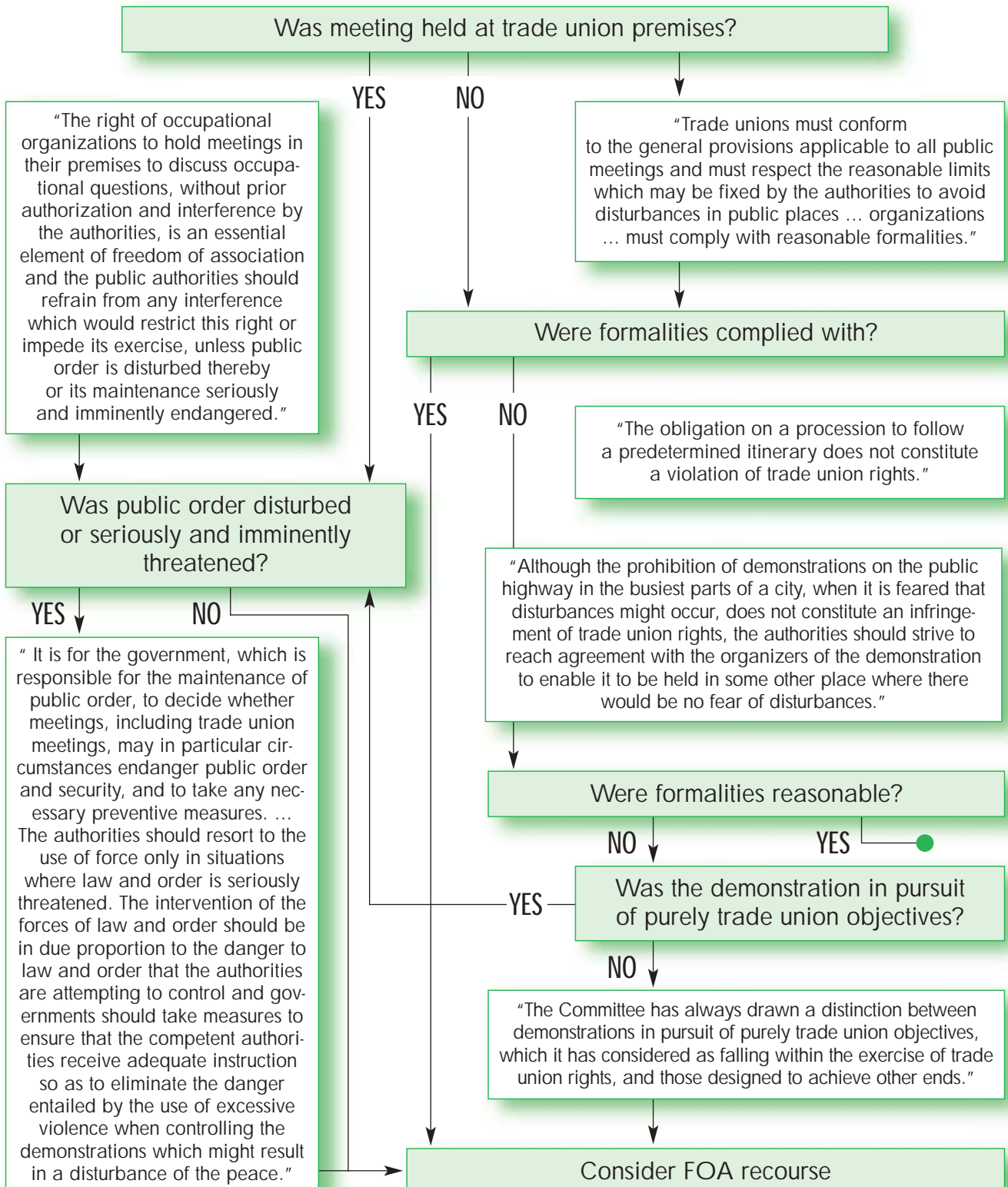
The freedom of opinion and expression

The freedom of assembly

In exercising the freedom of assembly, trade unions have met state interference both before meetings or demonstrations – where permission for them was not given – or at the time of the meeting or demonstration – where the State has intervened either to maintain the peace or to break up an otherwise peaceful meeting.

Figure 3 helps determine what constitutes interference in assembly.

Figure 3. Civil liberties: Interference in assembly



CFA Digest of 1996, paras. 141, 142; CFA Digest of 1996, para. 145; CFA Digest of 1996, para. 136; CFA Digest of 1996, para. 133; CFA Digest of 1996, paras. 143, 137; CFA Digest of 1996, para. 130.

Protection of trade union premises and property

Trade union premises may be searched, but only where a warrant has been made by the judicial authority, when that authority has good reason to believe that evidence of criminal proceedings under the ordinary law will be found on the premises:

- The actual search must be restricted to the purpose for which the warrant was issued.
- Judicial review is required for any similar search by the authorities, i.e. of private homes of trade unionists, workplaces, and so on.

The COE noted with satisfaction in connection with recommendations made by an ILO COI that property expropriated from leaders of an employers' organization by the Government was returned.

RCE 1992, C. 87, Nicaragua

Governments may not call a “**state of emergency**” for the purpose of evading freedom of association principles or ignoring civil liberties.

Other considerations

The supervisory bodies have “ emphasized that the freedom of association Conventions do not contain any provision permitting derogation from the obligations arising under the Convention, or any suspension of their application, based on a plea that an emergency exists. ”

CFA Digest of 1996, para. 186

Thus, for example,

- restrictions on the right to strike,
- detention or arrest of trade unionists,
- the passage of legislation aimed at anti-social disruptive elements, but used against workers for the exercise of legitimate trade union rights,
- trial by military tribunal,
- restrictions on trade union meetings,
- restrictions on publications,
- suspension or dissolution of associations by administrative authority,
- the declaration of martial law affecting freedom of association, or
- unilateral setting or changing of terms of employment,

can all be contrary to the application of freedom of association principles, even when put in place on the grounds of a “state of emergency”.

In a case where restrictions were placed on trade union rights during a state of emergency, the CFA, while noting that the state of emergency had come to an end, urged the Government to redress any wrongs that might have been inflicted on trade unionists at that time and to ensure that any of them who might have been dismissed for their union activity be reinstated in their jobs.

Bolivia, 306th Report, Case No. 1831, para. 151

A fine line sometimes divides **purely political matters** and other matters affecting freedom of association.

“ Political matters which do not impart the exercise of freedom of association are outside the competence of the Committee (on Freedom of Association). The Committee is not competent to deal with a complaint that is based on subversive acts, and it is likewise incompetent to deal with political matters that may be referred to in a government's reply. ” But,

“ measures which, although of a political nature and not intended to restrict trade union rights as such, may nevertheless be applied in such a manner as to affect the exercise of such rights. ”

CFA Digest of 1996, paras. 202, 204

Care should be taken in expending resources to pursue cases which are of a purely political nature not impacting on freedom of association.

1.3 Organizational rights

The Committee of Experts considers that the freedom to establish organizations is the foremost among trade union rights and is the prerequisite without which the other guarantees enunciated in Conventions Nos. 87 and 98 would remain a dead letter. This freedom depends on three principles:

- that no distinctions are made among those entitled to the right of association;
- that there is no need for previous authorization to establish organizations; and
- that there is freedom of choice with regard to membership of such organizations.

Table 1 summarizes the basic requirements of these organizational rights.

Table 1. Organizational rights: Basic requirements

No distinctions	No previous authorization	Freedom of choice in membership
<ul style="list-style-type: none"> ■ Applied to all categories of workers and employers ■ There may be no distinction on the basis of: occupation, sex, colour, race, creed, nationality, or political opinion ■ Exception: rights of armed forces and police decided by the State 	<p>Requirements for the formation and operation of organizations must not be such as to restrict freedom of association</p>	<p>Rules and practices may not unduly affect:</p> <ul style="list-style-type: none"> ■ organizational structure and composition ■ organizational plurality ■ trade union security

“ 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. ”

Convention No. 87, Article 2

The right to organize is very broad, applicable to all:

- employers; and
- workers – including persons who do not work under contracts of employment.

It is to be guaranteed by the State. Furthermore, the State may not make distinctions in that guarantee on the basis of:

- occupation;
- sex;
- colour;
- race;
- creed;
- nationality; or
- political opinion.

The only exception to the principle concerns the armed forces and the police.

No distinction

States, in many cases examined by the supervisory bodies, have attempted to restrict this right or to draw distinctions in its application. The ILO's principles have been used to protect this right.

A distinction which is clearly contrary to FOA principles concerns employment in the **public service**. Persons in the public service must enjoy the right to organize, and the supervisory bodies have said so repeatedly in cases involving, for example:

- civil servants, who should be able to establish an organization of their own choosing to represent their interests. Furthermore, the administrative cancellation of a civil servants' association is incompatible with the principles of freedom of association (CFA, Case No. 1189, 238th Report, paras. 251 and 260);
- port employees who, by custom and agreement, had been outside the coverage of the Trade Unions Act and therefore without the right to organize (CFA Digest of 1996, para. 218);
- teachers, who should have the opportunity to form occupational organizations (CFA Case No. 1176, 244th Report, para. 271).

The COE noted with satisfaction that the Province of British Columbia repealed Section 80 of the University Act which had limited the right of university teachers to establish organizations of their own choosing. The COE had requested the Government to make the change.

RCE 1993, C. 87, Canada

The State may decide how the right of association is applied to the armed forces and the police but, in doing so, those who are placed within these categories must be strictly defined.

“ The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations. ”

Convention No. 87, Article 9

Thus, for example, the supervisory bodies have found that

- civilian workers in the manufacturing establishments of the armed forces (CFA Digest of 1996, para. 223),
- civilian staff working at the Army Bank (CFA Digest of 1996, para. 224),
- firefighters (RCE 1991, C. 87, Japan), and
- personnel in a maritime safety agency (RCE 1994, C. 98, Japan),

are not “armed forces or police” for the purposes of the Convention and must therefore also have the right to organize.

The COE noted with satisfaction that the right to belong to the trade union of their choice was restored to workers at Government Communication Headquarters. The COE had been requesting the restoration of the right for several years despite the Government's arguments that it considered these workers to be members of the armed forces.

RCE 1999, C. 87, United Kingdom

Likewise, firefighters and prison guards have never been found to be “armed forces and the police” by the supervisory bodies – and therefore must have the right to organize.

Restrictions placed on senior public officials' organizations – not allowing them, for example, to join organizations with other public servants – are acceptable if

- the restrictions are limited to persons exercising senior managerial or policy-making responsibilities, and
- the restrictions do not limit their right to establish their own organizations.

This same rule is applied to restrictions imposed by the State on the right of managerial or executive staff in the *private sector* to organize.

Moving to **other forms of discrimination or distinction**, the supervisory bodies have consistently asked States to change their law and practice with regard to:

- making citizenship of members a precondition for establishing a trade union;
- making citizenship a precondition for membership of a trade union;
- the requirement that a trade union should have a certain proportion of citizens as members;

The COE noted with satisfaction that the Government of Panama amended provisions of its Labour Code including that which required that 75 per cent of the members of a trade union must be Panamanian. The COE had been requesting the Government to do so in line with FOA.

RCE 1996, C. 87, Panama

- conditions of residence or reciprocity for non-citizens' membership of unions;
- restrictions placed on minors' right to organize;
- restrictions on people's right to become or remain a trade union member for professing certain political opinions or having engaged in political activities (except those which advocate violence), and on their membership of other political organizations.

No previous authorization

“ 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.** ”

Convention No. 87, Article 2

An explicit requirement of permission from the State to form an organization is as incompatible with FOA principles as are rules which operate implicitly as systems of previous authorization. The supervisory bodies have had numerous cases involving such systems.

On the other hand, the supervisory bodies have said that States are free to set formalities in their legislation as may be appropriate to ensure the normal functioning of organizations, provided that those requirements do not impair the guarantees provided by Convention No. 87. So FOA principles are violated where:

- government authority has discretionary power to refuse registration (CFA Digest of 1996, para. 244);

The Awami Labour Union – Daewoo Motorway Construction Project was registered in 1996 after judicial intervention and the filing of a complaint against the Government of Pakistan in 1994 alleging, among other things, refusal to register the union.

CFA Case No. 1726, 305th Report, paras. 51-53

- there is no recourse to a judicial authority against a refusal to grant authorization to establish a trade union (CFA Digest of 1996, para. 264);

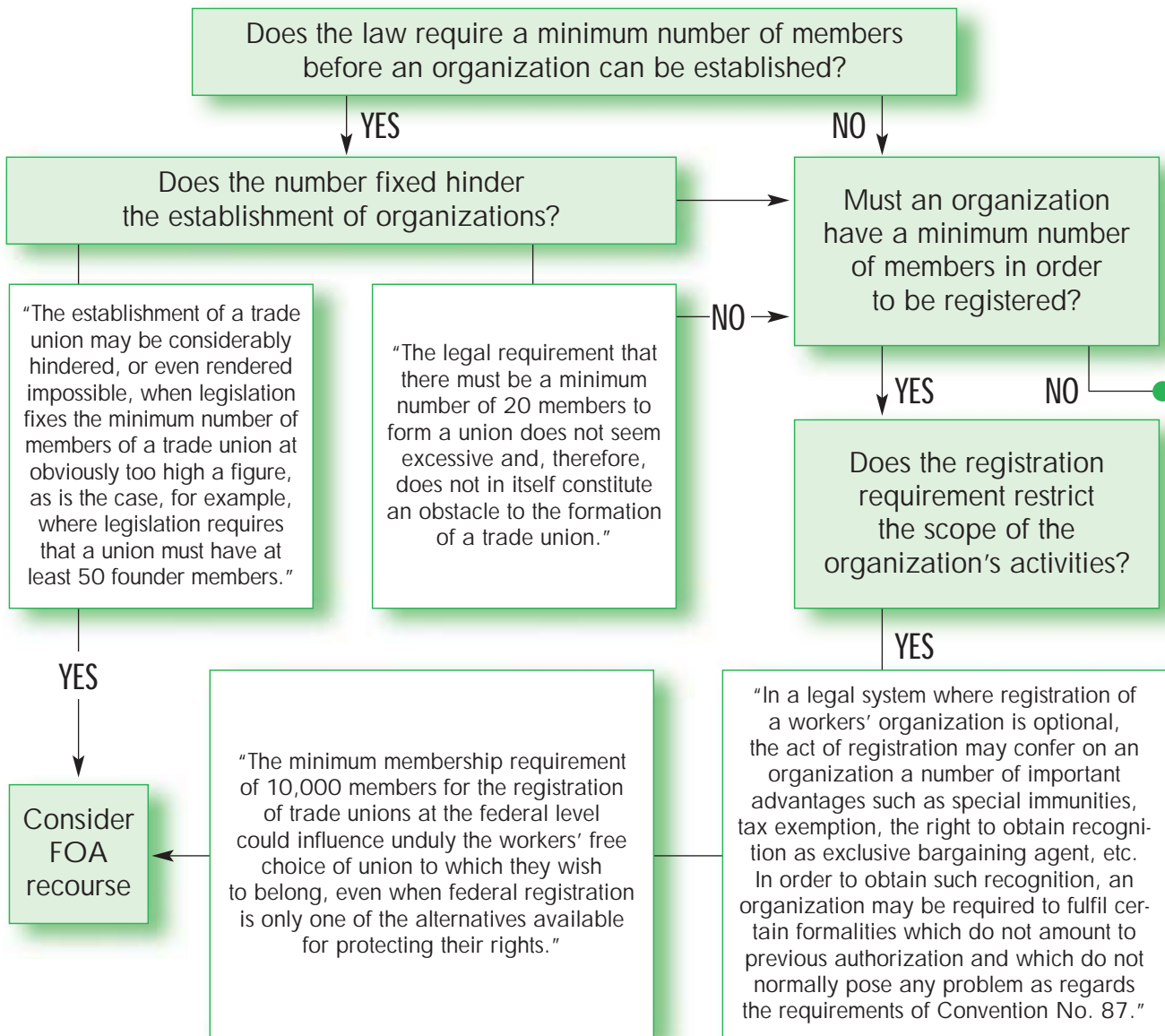
The Government of Nigeria amended its legislation in 1999 so as to re-establish the right to appeal against an administrative denial of registration following the examination of a complaint and an ILO direct contacts mission to the country.

CFA Case No. 1793, 315th Report, para. 22

- the establishment of an organization is blocked because leaders are detained on suspicion of criminal acts (CFA Digest of 1985, para. 272); or
- minimum membership requirements are placed on organizations (see figure 4).

In addition to excessive registration requirements, FOA principles may be infringed where arrangements for recognition of a trade union for the purposes of collective bargaining are excessively restrictive (see figure 11, page 39).

Figure 4. Organizational rights: Minimum membership requirements



CFA Digest of 1996, para. 269; CFA Case No. 1559, 284th Report, para. 263 (a); CFA Digest of 1996, para. 255; CFA Digest of 1996, para. 256.

“ 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. ”
 Convention No. 87, Article 2

Freedom of choice in membership

Workers and employers have the right to establish organizations of their own choice and to join them, subject only to the rules of the organizations concerned. The supervisory bodies have reviewed many cases involving restrictions on that choice. The implications of these restrictions fall into three categories:

- structure and composition of organizations;
- trade union unity or pluralism; and
- clauses respecting trade union security.

While certain restrictions may be placed on the structure and composition of organizations, the supervisory bodies have found some to be contrary to FOA principles. Such restrictions attempt to affect, for example,

- the size of organizations by imposing minimum membership requirements (COE 1994 GS, para. 81), and
- the rights of certain categories of workers to organize, such as public servants, managerial staff or agricultural workers (COE 1994 GS, para. 85).

The Industrial Relations (Reform) Act 1993 amended the provision in the 1990 Australian federal law which required a membership of 10,000 as a prerequisite for voluntary registration. Registration conferred important rights and benefits. The CFA case was filed by the International Organization of Employers and the Confederation of Australian Industry.

CFA Case No. 1559, 292nd Report, para. 16

Figure 5. Organizational rights: Restrictions on special categories

Permissible restrictions and their limitations on special categories of workers

Public servants:

Forbidding them to form or join mixed (members from other sectors) organizations at the first level

"The Committee considers that it is admissible for first-level organizations of public servants to be limited to that category of workers, subject to two conditions: firstly, that their organizations are not also restricted to employees of any particular ministry, department or service, and secondly, that they may freely join federations and confederations of their own choosing, like organizations of workers in the private sector. However, provisions stipulating that different organizations must be established for each category of public servants are incompatible with the right of workers to establish and join organizations of their own choosing".

Executives, managers, confidential employees:

Prohibited from joining or forming organizations open to lower-grade workers

"... restrictions are compatible with freedom of association provided that two conditions are met: first, that the persons concerned have the right to form their own organizations to defend their interests; and, second, that the category of executive and managerial staff is not so broadly defined as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their actual or potential membership."

Agricultural and domestic workers:

Restrictions on first-level organizations

"Because of the nature of their work and the conditions in which they carry it out, rural workers are in something of a special category. In the opinion of the Committee, while restrictions can be imposed on first-level organizations of rural workers, they should nevertheless be entitled to affiliate to federations and confederations of their own choosing, in whatever way they deem appropriate."

Under Convention No. 87, **trade union diversity** – more than one trade union or workers’ organization with members from a given category of workers – must be possible. Thus:

- a trade union monopoly may not be established by law;
- a monopoly may not be established in fact, for example by attributing in law particular trade union functions to a specifically designated trade union, or by giving the competent authorities discretionary power in law to refuse the registration of a trade union when they believe that an already registered union adequately represents the workers concerned; and
- where a single organization is voluntarily established by workers or employers, the possibility of forming other organizations must remain.

Systems which prohibit **union security** practices, as well as systems which permit such practices (without mandating them), are compatible with FOA principles.

The COE has left it “ to the practice and regulations of each State to decide whether it is appropriate to guarantee the right of workers not to join an occupational organization or, on the other hand, to authorize and, where necessary, to regulate the use of union security clauses in practice. ”

COE 1994, GS, para. 100

The effect of laws which

- make it compulsory to join a particular union, or
 - designate a specific trade union as the recipient of union dues,
- is to establish a trade union monopoly, and is contrary to FOA principles.

“ However, provisions which require deduction at source of contributions by all workers, whether or not they are union members, to a majority union, without mentioning a specific trade union, are, in the view of the COE, compatible with FOA principles. ”

COE 1994, GS, para. 103

Governments may not place one occupational organization at an advantage or disadvantage in relation to another, as this may influence workers’ choice regarding the organization to which they intend to belong.

In 1993, the COE noted with interest the repeal of provisions in Madagascar under which only members of trade unions belonging to a revolutionary organization had the right to be elected to workers’ committees. These provisions placed one organization at a disadvantage to another.

RCE 1993, C. 87, Madagascar

1.4 Dispute resolution

Freedom of association principles have had an impact on methods used to resolve disputes concerning collective bargaining between employers' and workers' organizations, as well as with governments.

Motives underlying strike action have undergone important changes in recent years, in the light of technological advances, increasing globalization and the conditions in which goods and services are produced, and their relationship with work. In this context, the COE has noted that

“ strikes have recently been held in some countries ‘for the protection of employment’ or ‘against delocalization’ sometimes with backing from employers. ”

COE 1994 GS, para. 140

The impact can be most clearly seen in four particular areas:

- the right to strike;
- the methods used to resolve disputes involving particular categories of workers;
- the promotion of dispute resolution mechanisms hand in hand with the promotion of voluntary collective bargaining; and
- restrictions on strike objectives or methods, and excessive prerequisites.

Right to strike

“ Workers' organizations shall have the right to ... organize their ... activities and to formulate their programmes. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. ”

Convention No. 87, Article 3 (1) & (2)

In principle, employers and workers, and their organizations, should be left alone in resolving their disputes: the methods they decide upon are part of the organization of their activities and programmes. In practice, the State has often intervened, either

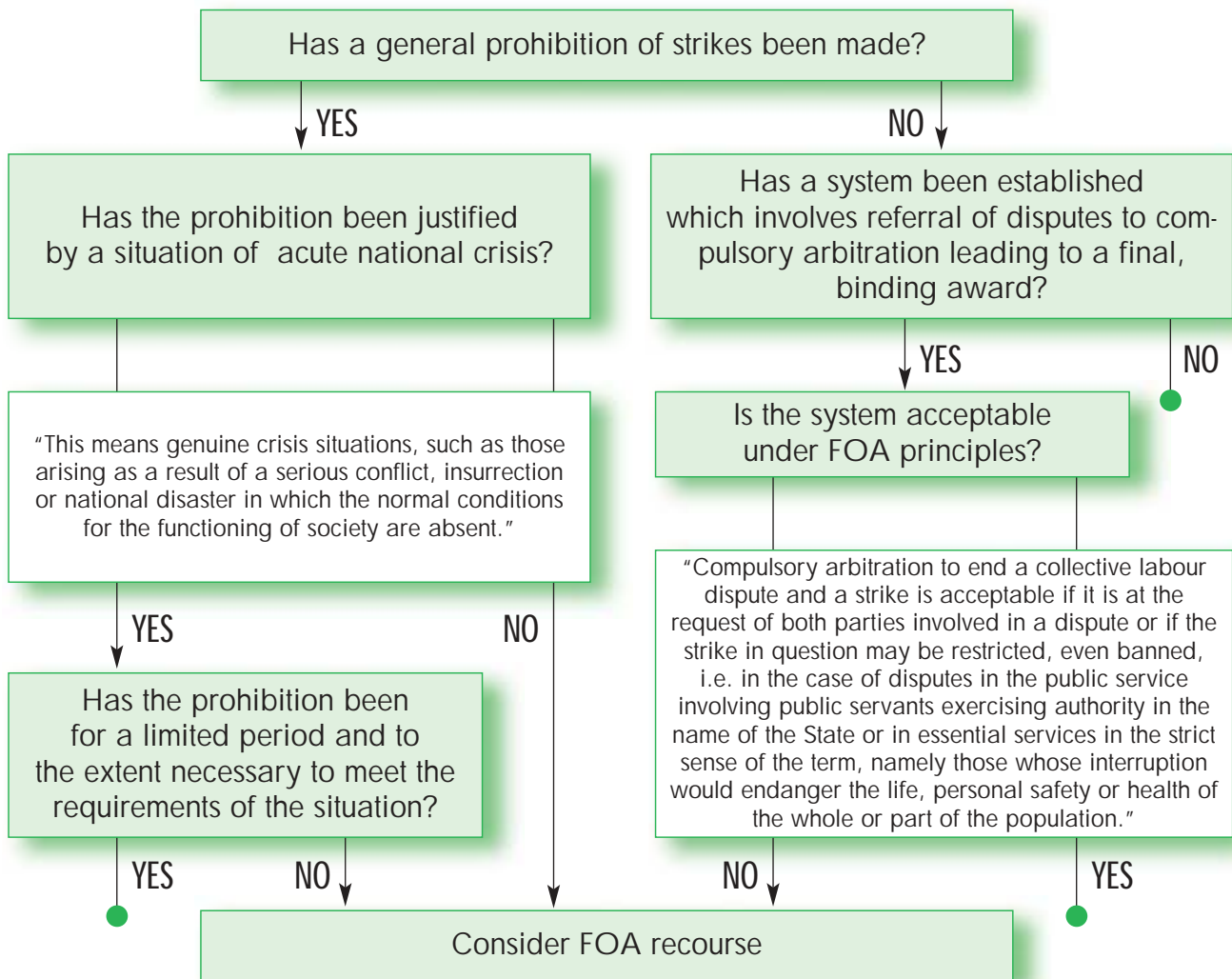
- with regard to workers in general, or in a particular industry, or
- as concerns its own workers.

“ ...[T]he Committee [of Experts] emphasizes that the right to strike cannot be considered as an absolute right: not only may it be subject to a general prohibition in exceptional circumstances, but it may be governed by provisions laying down conditions for, or restrictions on, the exercise of this fundamental right. ”

COE 1994 GS, para. 151

The supervisory bodies have intervened in cases where the State's restrictions have been excessive. Such cases have involved general prohibitions of strikes by all workers (see figure 6).

Figure 6. Dispute resolution: General restrictions on the right to strike



CFA Digest of 1996, para. 515; COE 1994 GS, para. 152.

Other cases handled by the supervisory bodies have involved specific restrictions on the strike action of certain categories of workers considered permissible because

- of their status (public service),

Resolution mechanisms used for specific categories

“ ...[T]he Committee [of Experts] considers that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. ”

COE 1994 GS, para. 158

Where almost all union leaders and members who took part in a strike were customs officials, the CFA looked upon them as public servants exercising authority in the name of the State. It was alleged that 144 persons were dismissed. Although the strike was justifiably declared illegal, the CFA noted that large-scale dismissals involve a serious risk of abuse, and called upon the government concerned, with a view to encouraging a return to harmonious industrial relations, to endeavour to facilitate the reinstatement of the dismissed workers. The Government, in its follow-up reply, indicated that in fact only nine union leaders had been dismissed and that harmonious industrial relations prevailed. The CFA concluded that reinstatement no longer appeared feasible.

CFA Case No. 1719, 304th Report, paras. 413-414; 308th Report, para. 52

- of the functions they perform (“essential services” or role in the industrial relations system) – see figure 7,

“ ...[T]he Committee [of Experts] ... considers that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population. ... [P]rohibition [of strikes in essential services in the strict sense of the term] may be justified, accompanied, however, by compensatory guarantees. ”

CFA 1994 GS, paras. 159 and 162

Five workers dismissed from their jobs in a trolleybus enterprise for having participated in a strike were reinstated following the CFA's conclusion that the enterprise was not an essential service. The CFA recommended that all be reinstated and called for the deletion from the relevant list in legislation of industries and enterprises which were not essential within the strict meaning of the term.

CFA Case No. 1849, 306th Report, paras. 22-23

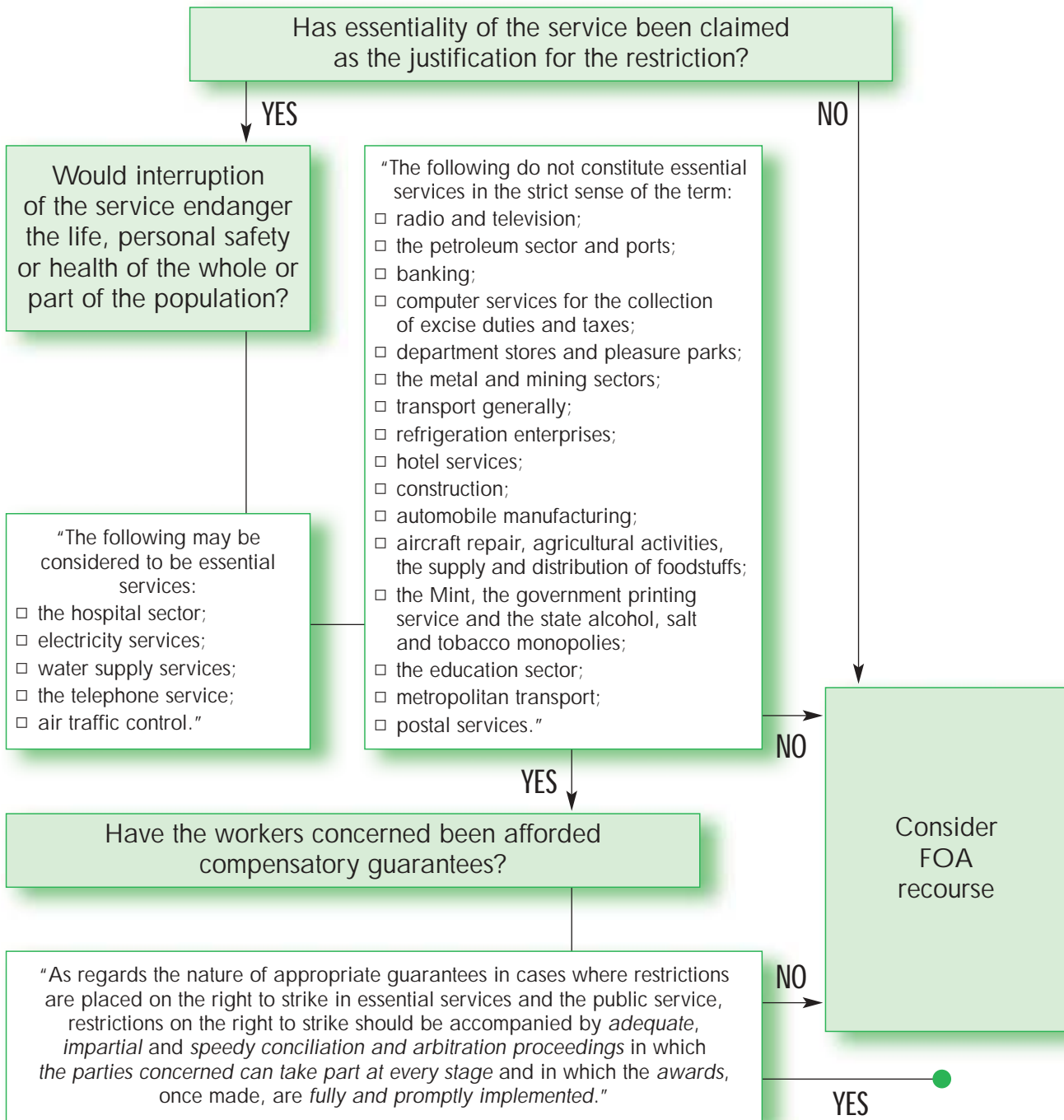
- of their hierarchical rank (managerial staff), or
- a combination of these.

In this area, FOA principles have often been used to adjust restrictions on the right to strike, with the result of improving other mechanisms used to resolve disputes for these categories of workers.

Upon their conclusion that the electricity sector was an essential service, the CFA noted that before their right to strike could be restricted workers in the sector needed to benefit from compensatory procedures for the settlement of disputes and the presentation of their demands. These did not exist, and the CFA urged the government concerned to ensure that adequate, impartial and speedy conciliation and arbitration procedures were put in place. The COE later noted with satisfaction that a new labour code providing these procedures had been put in place.

CFA Case No. 1549, 277th Report, para. 447; RCE 1993, C. 87, Dominican Republic

Figure 7. Dispute resolution: Essential services



CFA Digest of 1996, para. 545; CFA Digest of 1996, para. 547; CFA Digest of 1996, para. 544.

Negotiated minimum services

While taking a strict view on when and how the right to strike can be limited, the supervisory bodies have promoted the use of negotiated minimum services in certain cases where, for example, the authorities had previously resorted to an absolute ban on strikes although the services concerned could not be considered essential in the strict sense of the term.

“ In order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term. ”

COE 1994 GS, para. 160

There are two requirements for the use of a minimum services approach:

- It must be a *minimum service*, limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear by the strike action.
- The workers' organizations involved should be able to *participate in defining such a service* along with the employers and relevant public authorities.

It is also recommended that the minimum services be defined *before* a dispute arises.

The CFA suggested that the law prohibiting strikes in the railway service and urban public rail transport be amended as these were not, as the Government argued, essential services. The Committee did not, however, exclude the possibility of establishing a minimum service in these enterprises to maintain activities strictly essential for the safety of machinery and equipment, and for the prevention of accidents, with the participation of the workers' organizations concerned.

CFA Case No. 1521, 273rd Report, para. 19

In another case, involving a strike organized in the public transport sector, the CFA observed that the strike was legal, provided that minimum services be provided to satisfy essential social needs and to ensure the safety of equipment. It noted, however, that the legislation did not specify whose decision it was to fix the level of minimum services, and there was no evidence to suggest that there had been negotiations in this instance concerning the minimum services required. The Government subsequently amended the legislation to provide for the determination of minimum services through agreements reached between the parties concerned. In the absence of an agreement, such services will be determined through arbitration. Furthermore, the National Constitutional Court had since laid down the criteria of need, adaptation and proportionality for determining minimum services.

CFA Case No. 1486, 268th Report, para. 152, and CFA Case No. 1782, 299th Report, paras. 326 and 327

FOA principles have also been influential in limiting restrictions placed on strike objectives or methods, or on the obligation to give advance notice. In particular, principles have been developed in respect of:

- political strikes;

“ Strikes of a **purely political nature and strikes decided systematically long before negotiations take place** do not fall within the scope of the principles of freedom of association. ”

But, “ while **purely political strikes** do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes, in particular where aimed at criticizing a government’s economic and social policies ” .

CFA Digest of 1996, paras. 481 and 482

Although the Government considered a general strike called in 1993 to be political in nature and therefore not protected by FOA principles, the CFA noted that a substantial part of the responsible trade union’s claims were of a social and economic nature. The CFA urged the Government to refrain in future from arresting or detaining trade leaders or members for their legitimate trade union activities.

CFA Case No. 1713, 291st Report, para. 574

- sympathy strikes, which should be lawful when the initial strike is lawful (CFA Digest of 1996, para. 486);
- picketing, in that prohibition is justified only if action ceases to be peaceful (CFA Digest of 1996, para. 584); and
- prerequisites for a lawful strike.

“ The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations. ”

CFA Digest of 1996, para. 498

The supervisory bodies have found a number of prerequisites to be acceptable and not inconsistent with FOA principles:

- take strike decisions by secret ballot (CFA Digest of 1996, para. 503);
- give 20 days’ notice of a strike in services of social or public interest (CFA Digest of 1996, para. 504);
- take a second strike vote if a strike has not taken place within three months of the first (CFA Digest of 1996, para. 514); and
- give prior notice to the employer before calling a strike (CFA Digest of 1996, para. 503).

A number of prerequisites have been found to be excessive, or potentially so:

- a decision by over half of all the workers involved in order to declare a strike; (CFA Digest of 1996, para. 507); and
- a quorum requirement of two-thirds (CFA Digest of 1996, para. 511).

1.5 State interference

Cases before the supervisory bodies have dealt with a variety of types of governmental interference in the full exercise of freedom of association, including:

- dissolution and suspension of organizations;
- interference in the establishment of federations;
- limitations on international affiliation;
- interference in the drawing up of organization rules and constitutions;
- interference in freely electing trade union leaders; and
- the failure to protect against acts of interference.

Dissolving and suspending organizations

“Workers’ and employers’ organizations shall not be liable to be dissolved or suspended by administrative authority.”

Convention No. 87, Article 4

Where **administrative authorities** are concerned, the supervisory bodies have said, first and foremost, that national legislation should not provide for intervention by administrative authorities in dissolving and suspending organizations. Rather, the supervisory bodies ask governments to change such legislation to bring it into conformity with FOA principles.

In recent years, the COE has noted with satisfaction changes in the laws of several countries which remove the power from administrative authorities to dissolve trade unions. Some of these cases involve Colombia (RCE 1992, C. 87, Colombia), Madagascar (RCE 1991, C. 87, Madagascar), Venezuela (RCE 1991, C. 87, Venezuela) and Argentina (RCE 1989, C. 87, Argentina).

Where legislation does empower the administration to take such action, conformity with FOA principles depends on the answers to a number of questions (figure 8).

Figure 8. State interference: Safeguards in cases of administrative intervention

<i>“Yes” answers bring the action closer in line with FOA principles</i>	YES	NO
Is effect given to the action only after judicial review?	<input type="checkbox"/>	<input type="checkbox"/>
Is there a right to appeal to an independent and impartial judicial body?	<input type="checkbox"/>	<input type="checkbox"/>
Is the judicial body permitted to examine the substance of the case?	<input type="checkbox"/>	<input type="checkbox"/>
Is the judicial body permitted to study the grounds for the administrative measure?	<input type="checkbox"/>	<input type="checkbox"/>
Has the judicial body authority to rescind the administrative action?	<input type="checkbox"/>	<input type="checkbox"/>

In a case involving a trade union organization voluntarily dissolving itself, the decision was:

- freely taken;
- by a congress convened in a regular manner;
- by all the workers concerned.

Such a dissolution, the CFA concluded, would not be regarded as an infringement of freedom of association.

CFA Case No. 338, 73rd Report, para. 42

The supervisory bodies have dealt not only with cases involving dissolution and suspension action by administrative authorities, but with such action taken by judicial and legislative authorities as well.

Where **judicial authorities** take the action:

- it is preferable that dissolution should be a remedy of last resort, applied after exhausting other possibilities with less serious effects for the organization as a whole;
- normal due process should as a rule be applied in judicial proceedings involving possible dissolution or suspension, including:
 - trial by an impartial and independent judiciary;
 - adequate time to prepare a defence;
 - the right to an appeal; and
 - a prompt hearing.

Action taken by **legislative authorities** may well also be contrary to FOA principles. It is the right to a defence and an appeal which has been the main concern of the supervisory bodies.

In a 1984 case involving Poland, the Commission of Inquiry emphasized, “ ... although it is true that Article 4 of the Convention refers only to measures taken by administrative authorities, the fact remains that dissolution by legislative authorities entails consequences that are just as irremediable as a definitive dissolution by administrative authorities since neither admits of appeal to independent bodies ” .

COE 1994 GS, para. 183

(The conclusions of the Commission were instrumental in focusing international attention on the free trade union movement in Poland at the time.)

“ It is [furthermore] essential to determine whether a given dissolution by legislative authority prevents workers from maintaining their membership and pursuing their activities in trade unions of their own choosing; if this is the case, such legislation would not be in conformity with the Convention. ”

COE 1994 GS, para. 183

Respect for national law

FOA principles do not give workers' and employers' organizations immunity from the law of the land. The principles do, however, require that the law of the land not impair the exercise of freedom of association.

“ In exercising the rights provided in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention. ”

Convention No. 87, Article 8 (1) & (2)

In a case involving an unforeseen or “wildcat” strike, the CFA noted that the union involved had not followed the procedure for calling a lawful strike, including notice of the dispute to the Ministry and a mandatory cooling-off period. In such a situation, the CFA found that the union had not followed the law of the land and the law itself did not impair the guarantees provided for in the Convention. Moreover, there was no evidence that the resulting arrests were for any other reason than maintaining law and order.

CFA Case No. 1336, 241st Report, para. 46

Interference in establishing federations

“ Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers. ”

Convention No. 87, Article 5

Workers and employers have long understood that there is strength in numbers; their organizations are likely to have greater influence where they are able to represent large numbers of people. Thus, FOA principles include a specific reference to the right to combine at higher levels, that is, between occupations and internationally, and the right of these organizations to freely engage in activities for the furtherance of their members' interests.

As concerns **national bodies**, the supervisory bodies have asked governments to change their legislation and practice in cases where, for example:

- a requirement of an excessively large minimum number of member organizations has been imposed;
- a prohibition has been imposed on setting up more than one confederation per occupation, branch of activity or region;
- the law enumerates which federations may be legally established;
- prior authorization is required before a federation may be legally established; or
- other excessive conditions are imposed, such as requiring a two-thirds majority vote of the members of federations for the establishment of a confederation.

As concerns **international affiliation**, the supervisory bodies have acted in cases where, for example:

- only a single, named national body is permitted to affiliate internationally;
- a prohibition is placed on international affiliation;
- prior authorization by the public authorities is required for international affiliation;
- restrictions or conditions are placed on assistance, communications or contacts resulting from international affiliations.

The COE noted with satisfaction that, among other things the Committee had been commenting upon for several years, the Labour Code of 1993 abolished the ban on subsidies or economic assistance to unions from foreign organizations.

RCE 1994, C. 87, Paraguay

Limitations on international affiliation

“ Workers’ and employers’ organizations shall have the right to **draw up their constitutions and rules**, to **elect their representatives** in full freedom, to **organize their administration and activities** and to **formulate their programmes**. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. ”

Convention No. 87, Article 3 (1) and (2)

Interference in drawing up organization rules and constitutions

The restraint from interference which the authorities must exercise under Article 3 (2) of Convention No. 87 is conditioned by Article 8, cited above: organizations are not immune from laws of the land which do not otherwise impede the exercise of FOA principles.

Table 2 shows where the supervisory bodies have stepped in to ask the governments concerned to change their laws and practices.

A number of guidelines can be distilled from cases handled by the supervisory bodies:

- Legislation should lay down only *formal requirements* as regards trade union constitutions.
- Constitutions and rules should *not be subject to prior approval* at the discretion of the public authorities.
- The *risk of arbitrary interference* by the authorities in the election process posed by specific regulations should be minimal.

Table 2. State interference in organizations

Constitutions and rules	Election of representatives	Administration and activities	Formulation of programmes
<ul style="list-style-type: none"> ■ Where a first-level trade union may be required to conform to the constitution of a single federation ■ Where the constitution of a new trade union may be subject to approval by the central administration of the existing organization ■ Where the sole central organization or higher-level organizations specified by the law may have the exclusive right to elaborate the by-laws of first-level trade unions ■ Where the constitutions may have to be drawn up by the public authorities ■ Where trade unions may be required to follow a model constitution which contains more than certain purely formal clauses, or to use such a model as a basis ■ Where the approval of constitutions and rules of occupational organizations is subject to the discretionary power of the public authorities ■ Where the public authorities have the right to require amendments to constitutions 	<ul style="list-style-type: none"> ■ Where very precise rules are laid down in public law on the subject of trade union elections, thus enabling the public authorities to interfere in the voting process ■ Where there is supervision by the administrative authorities or the single trade union central organization of the election procedure, for example by requiring the presence of labour inspectors or representatives of the administration ■ Where the results of elections must be accepted or approved by the public authorities before they can be given effect ■ Where legislation requires <i>all</i> candidates for office to belong to the respective occupation, enterprise or production unit, or be actually employed in this occupation, either at the time of candidature or during a certain period prior to election ■ Where legislation sets nationality as a condition for trade union office ■ Where political beliefs or affiliations (or lack of them) is set as a condition for trade union office ■ Where a condition for trade union office is that candidates be free of any criminal conviction ■ Where a restriction is placed on re-election 	<ul style="list-style-type: none"> ■ Where there is permanent control by the authorities in that the law establishes the minimum contribution of members ■ Where regulations specify the proportion of union funds that have to be paid to the federations or require that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities ■ Where administrative authorities have the power to examine the books and other documents of an organization without safeguards of ordinary due process ■ Where administrative authorities may conduct an investigation and demand information at any time ■ Where there is a legislative provision which interferes with organizations' right to dispose of all their fixed and movable assets unhindered 	<ul style="list-style-type: none"> ■ See section 1.4, "Dispute resolution", concerning restrictions placed on the right to strike ■ See section 1.7, "Promotion of collective bargaining", concerning restrictions placed on collective bargaining ■ Where organizations are forbidden from making financial contributions for any political activity ■ Where there is a total ban on any political activities by trade unions ■ Where legislation establishes a close relationship between trade union organizations and a single political party in power

After having dissolved several unions' executive councils and appointed government administrators by Executive Decree, the Government heeded the observations and recommendations made by the supervisory bodies, repealed the dissolution decrees and withdrew the government administrators. The unions were able to conduct new elections of the officers without government interference.

CFA Case No. 1793, 312th Report, paras. 19 and 20.

- Foreign workers should be allowed to take union office after a *reasonable period of residence*, conditions of nationality should not be imposed.

The COE noted with satisfaction that following its comments, the law was amended to permit the election to trade union office of any person who had been resident in the country for at least five years.

RCE 1989, C. 87, Guinea

- Requirements imposed on financial administration should be limited to those intended to protect the rights of members and to *ensure sound and efficient management*.
- Legislative provisions concerning the political activities of organizations should *balance the legitimate interest* of organizations in *expressing their point of view* on matters of economic and social policy affecting their members and workers in general, on the one hand, and the separation of political activities in the strict sense of the term and trade union activities (required to ensure the requisite *independence of the organization*), on the other.

“ Any removal or suspension of trade union officers which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which the officers have been freely elected by the members of their trade union. ”

COE 1994 GS, para. 122

Failure to protect against acts of interference

“ Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. ”

Convention No. 98, Article 2 (1)

“ Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles. ”

Convention No. 98, Article 3

The State must protect employers and workers against acts of interference. Not doing so is tantamount to the State's own interference with FOA principles. The supervisory bodies have asked governments to amend their legislation in this regard in many cases.

After the COE had requested the Government concerned to adopt provisions "establishing means of redress and sufficiently effective and dissuasive sanctions for acts of anti-union discrimination and interference", a new law of 1993 made a punishable offence "actions or omissions on the part of employers, workers, or their respective organizations, which are in breach of" Convention No. 98, including provisions prohibiting interference.

RCE 1994, C. 98, Costa Rica

They have also acted in specific cases, requesting governments to take action to remedy interference by employers or employers' organizations.

In a case involving allegations that management had interfered with the organizing activities of workers by supporting the formation of a rival organization, and otherwise interfering with workers in their organizing efforts (transfers, demotions, and so on), the CFA recalled to the Government its responsibility to provide adequate protection against acts of anti-union discrimination and hoped that then forthcoming legislation would conform to this principle. Ultimately three workers were reinstated in their former positions, dissuasive penalties against anyone preventing the exercise of FOA rights were incorporated into law, and collective agreements were reached in the enterprise with the assistance of government mediation.

CFA Case No. 1571, 278th Report, para. 548;
279th Report, paras. 400-421; 284th Report, para. 23

“ Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. ”

Convention No. 98, Article 1 (1)

1.6 Anti-union discrimination

FOA principles require the State to protect workers against anti-union discrimination in their employment. This normally means that:

- *legislative provisions* must prohibit acts of anti-union discrimination and these provisions must be broad enough in scope to cover all possible types of such discrimination, such as refusal to hire, dismissal, transfer, demotion, or refusal to train;

and that:

- *national procedures* exist to ensure that complaints of anti-union discrimination are examined promptly, impartially, inexpensively and effectively.

Substance of protection

Figure 9. Anti-union discrimination: Quality of protection

“Yes” answers bring the mechanism closer in line with FOA principles

	YES	NO
Is there protection against anti-union discrimination, both based on trade union membership and on legitimate trade union activities?	<input type="checkbox"/>	<input type="checkbox"/>
Does protection cover former activities/membership?	<input type="checkbox"/>	<input type="checkbox"/>
Is there protection even where the union is not recognized by the employer?	<input type="checkbox"/>	<input type="checkbox"/>
Does protection cover activities outside the workplace?	<input type="checkbox"/>	<input type="checkbox"/>
Does protection provide broad cover, i.e all acts that are prejudicial to workers, and to past and future employees?	<input type="checkbox"/>	<input type="checkbox"/>
Are there additional protective measures for trade union leaders?	<input type="checkbox"/>	<input type="checkbox"/>
Does protection cover dismissal of workers because of a legitimate strike?	<input type="checkbox"/>	<input type="checkbox"/>
Is there protection against blacklisting?	<input type="checkbox"/>	<input type="checkbox"/>

Figure 10. Anti-union discrimination: Quality of the procedure

“Yes” answers bring the mechanism closer in line with FOA principles

	YES	NO
Is the mechanism impartial and seen as such by the parties?	<input type="checkbox"/>	<input type="checkbox"/>
Is the mechanism inexpensive?	<input type="checkbox"/>	<input type="checkbox"/>
Is the mechanism really effective against anti-union discrimination?	<input type="checkbox"/>	<input type="checkbox"/>
Does the mechanism provide for appeal against a judgement?	<input type="checkbox"/>	<input type="checkbox"/>
Does the mechanism provide for sufficiently dissuasive sanctions, including civil remedies and penal sanctions?	<input type="checkbox"/>	<input type="checkbox"/>
Is the mechanism prompt, ensuring rapid examination of complaints?	<input type="checkbox"/>	<input type="checkbox"/>
Is reinstatement a possible remedy?	<input type="checkbox"/>	<input type="checkbox"/>

The supervisory bodies have in many cases asked governments to act in specific situations to ensure that the workers involved are protected against anti-union discrimination.

In a case involving a large number of abusive dismissals for union activities, the CFA requested the Government concerned to secure the reinstatement of the trade unionists. The CFA took note of measures adopted by the Government to secure the reintegration of those concerned and protective legislative initiatives taken by the Government.

CFA Case No. 1082

In other cases, governments have changed their legislative provisions to improve protections against anti-union discrimination.

Between 1994 and 1996, the COE specifically noted its satisfaction in six cases where States had changed their laws on anti-union protection to conform to the Committee's comments: Costa Rica (1994), Paraguay (1994), Dominican Republic (1994), Colombia (1995), Gabon (1996) and Austria (1996).

Recourse under the Workers' Representatives Convention, 1971 (No. 135), is also available where anti-union discrimination has occurred or where legislative protections are inadequate.

“ Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. ”

Convention No. 135, Article 1

The COE noted with satisfaction that a new law laid down guarantees against acts of discrimination – including dismissal – against workers' representatives because of their trade union activities.

RCE 1994, C. 135, Costa Rica

Furthermore, public servants engaged in the administration of the State who are not included within the scope of Convention No. 98 (Article 6) are to be protected against anti-union discrimination in employment by virtue of Article 4 of the Labour Relations (Public Service) Convention, 1978 (No. 151).

“ Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. ”

Convention No. 98, Article 4

1.7 Promotion of collective bargaining

Over the years, the supervisory bodies have handled a broad range of cases impacting on collective bargaining and its promotion. Many of these cases challenged action by a government on the grounds that it restricted voluntary collective bargaining due to:

- the imposition of compulsory arbitration;

The CFA noted with interest information that legislation which provided independent compulsory arbitration in a case involving the railway transport sector was no longer in effect. The legislation had ended a strike in that sector and given rise to a FOA case. The CFA had recommended that the Government concerned return to voluntary collective bargaining in the sector.

CFA Case No. 1438, 279th Report, para. 14

- intervention of authorities in the drafting of collective agreements;
- the requirement of administrative approval of freely concluded collective agreements;

The COE noted with interest that works-level collective agreements were no longer subject to prior approval. It continued to note with regret that agreements at other levels were still subject to prior approval and requested the Government to amend the legislation in this respect.

RCE 1996, C. 98, Argentina

- the cancellation of agreements because they were contrary to national economic policy;
- administrative or legislative intervention preventing compliance with currently applicable collective agreements or requiring the renegotiation of existing agreements;

The CFA noted with satisfaction the repeal of legislated transitional rules which had overridden certain previously negotiated collective agreements.

CFA Case No. 1760, 299th Report, para. 20

Where bargaining's voluntary character has been restricted

Further application of the principle of promoting collective bargaining

- the compulsory extension of the period for which collective agreements are in force;
- restrictions imposed by the authorities on future collective bargaining; and
- restrictions on clauses to index wages to the cost of living.

Where the Government concerned had enacted a law providing for the derogation, prohibition, and inapplicability of wage indexation procedures in employment contracts, the CFA called for restoration of free collective bargaining as soon as possible.

CFA Case No. 1639, 286th Report, para. 94

The COE, through Government's periodic reporting on the ratified Convention, monitors efforts at liberalizing collective bargaining and tripartite consultation.

RCE 1998, C. 98, Argentina

The Collective Bargaining Convention, 1981 (No. 154), elaborates further the aims of measures taken to promote collective bargaining. The following are FOA principles:

- Collective bargaining should be made possible for **all employers and all groups of workers**.

The supervisory bodies have dealt with cases involving, for example:

- Limitations placed on collective bargaining of public employees: all **public service workers other than those engaged in the administration of the State** should enjoy collective bargaining rights.

(CFA Digest of 1985, para. 597)

- Limitations placed on the right of workers in **export-processing zones** to engage in collective bargaining: these workers should have the right to bargain collectively.

(CFA Case No. 1726, 294th Report, para. 409)

(The CFA continues to supervise this case.)

- Limitations placed on workers in **state-owned commercial or industrial enterprises**: these workers should have the right to bargain collectively.

(CFA Case Nos. 1429, 1436, 1636, 1657, 1665, 259th Report, para. 796)

(The CFA continues to supervise these cases.)

The COE noted with satisfaction the provisions of the 1992 Labour Code adopted by the Dominican Republic granting workers in the export-processing zone of the country the right to bargain collectively.

RCE 1994, C. 98, Dominican Republic

- Collective bargaining should be progressively **extended to all matters** including determining working conditions and terms of employment, regulating relations between employers and workers, and regulating relations between employers or their organizations and a workers' organization or workers' organizations.

“ The COE considers measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with [FOA principles]. ”

COE 1994 GS, para. 250

The supervisory bodies have acted in many cases on the issue of **scope of bargaining**.

- The exclusion, for example, of **working time** from the scope of collective bargaining, unless there is government authorization, would seem to infringe FOA principles.

CFA Case No. 1370, 248th Report, para. 224

Following the case, the law was amended to the satisfaction of the COE.

RCE 1994, C. 98, Portugal

- Legislation **amending collective agreements**, for example, concerning the crewing of ships, is not in conformity with Convention No. 98.

CFA Digest of 1985, para. 628

- Where an agreement on a check-off system was changed by legislation, the CFA concluded that it should be possible for collective agreements to provide for a system for the **collection of union dues**, without interference by the authorities.

CFA Case No. 1594, 289th Report, para. 24; 297th Report, para. 21

- The establishment of **rules of procedure** agreed between employers' and workers' organizations should be encouraged.

The determination of the level of collective bargaining (at the enterprise, geographic area, sectoral or national levels) is to be left to the discretion of the parties. Therefore, the CFA has not considered the **refusal of employers to bargain at a particular level** as an infringement of freedom of association.

Similarly, however, legislation should in no way interfere with the possible legitimate trade union action which might be taken to influence the choice of bargaining level. Thus, the prohibition of strikes aimed at ensuring multi-employer agreements would be contrary to FOA principles.

CFA Case No. 915, 202nd Report, para. 53; CFA Case No. 1698, 295th Report, para. 259

Recognition of trade unions for the purpose of collective bargaining

Where a system of recognition of trade unions for the purpose of collective bargaining operates in a way which hinders or otherwise fails to promote collective bargaining, the supervisory bodies have noted difficulties in properly applying freedom of association principles.

Problems may begin where trade unions are asked to show that they actually represent the workers for whom they seek to establish collective bargaining. Where the national system gives the employer full latitude to decide whether or not to bargain with the trade union, the supervisory bodies have looked to see that the government is generally promoting employers' recognition on a reasonable showing of representativeness. Where the government uses a system which makes the employer's recognition compulsory upon a particular showing of representativeness, the supervisory bodies have scrutinized the system.

- Collective bargaining should **not be hampered by the absence of rules** governing the procedures to be used or by the inadequacy or inappropriateness of such rules.

In one case, where there were legislated **time-limits** of 105 days within which employers had to reply to proposals by workers, and six months within which a collective agreement had to be concluded, the CFA thought it desirable to reduce these periods in order to encourage and promote the development of voluntary negotiation – particularly in view of the fact that the workers in the country in question were unable to take strike action.

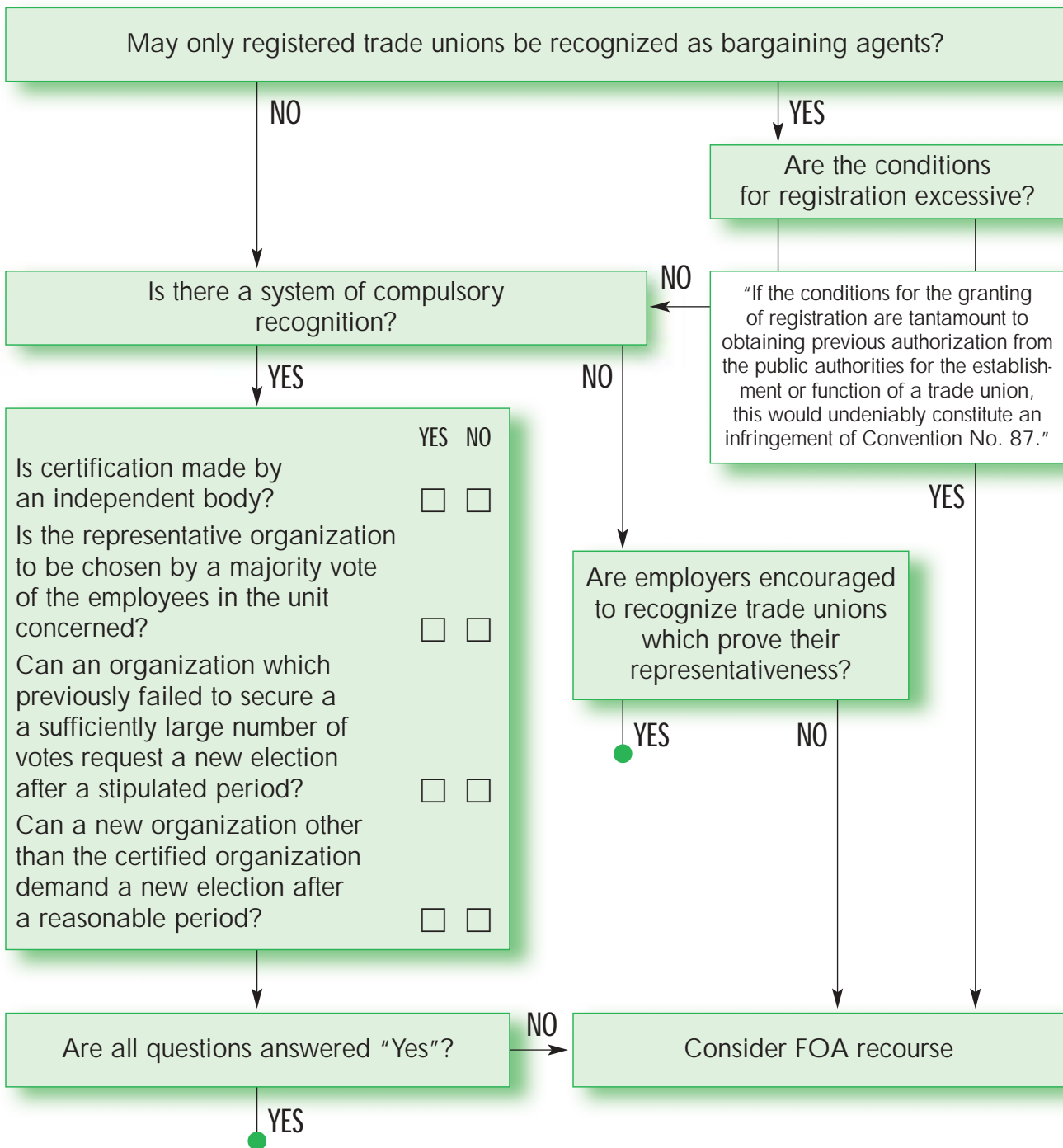
CFA Case No. 654, 133rd Report, para. 244

- Bodies and **procedures for the settlement of labour disputes** should be so conceived as to contribute to the promotion of collective bargaining.

The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), sets forth some of the essential characteristics of such machinery:

- joint nature of machinery;
- voluntary recourse;
- procedures free of charge and expedition.

Figure 11. Promotion of collective bargaining: Exclusive representation



CFA Digest of 1996, para. 259.

Under some systems, the employer may give recognition only on a showing of 50 per cent support by all members of a bargaining unit. This might be impossible to establish if there were more than one union offering to bargain for the workers concerned. FOA principles are compromised in such a case.

“ The Committee [of Experts] considers that, under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members. ”

COE 1994 GS, para. 241

1.8 Consultation practices

Consultation principle

“ Measures appropriate to national conditions should be taken to promote effective consultation and cooperation at the industrial and national levels between public authorities and employers’ and workers’ organizations, as well as between these organizations, for the purposes ... [of] promoting mutual understanding and good relations between public authorities and employers’ and workers’ organizations, as well as between these organizations, with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living. ”

Recommendation No. 113, Paras. 1 (1) & 4

Bearing in mind the principles set out in the Recommendation concerning Consultation and Cooperation between Public Authorities and Employers’ and Workers’ Organizations at the Industrial and National Levels, 1960 (No. 113), the supervisory bodies have promoted the idea of tripartite consultation.

In one case, the CFA expressed the importance, for the preservation of a country’s social harmony, of regular consultations with employers’ and workers’ representatives. Such consultation, the Committee felt, should involve the whole trade union movement, irrespective of the philosophical or political beliefs of its leaders.

CFA Digest of 1996, para. 924

Such consultations should occur during the preparation of legislation,

- which affects the interests of employers and workers, and their organizations’ interests,
- in the field of labour law,

In a case involving broad reform of freedom of association rights, draft legislation concerning trade unions, collective labour disputes and the right to strike, and collective bargaining were the subject of discussion with an ILO direct contacts mission. The mission made comments on the legislation. In this case, the CFA drew the Government’s attention to the importance of prior consultation of employers’ and workers’ organizations before the adoption of all legislation respecting the field of labour law, and hoped that it would do so.

CFA Case No. 1492, 272nd Report, para. 78

- affecting collective bargaining or conditions of employment, or

Unions complained to the CFA that the Government had announced its intention to abolish provisions concerning wage indexation. This had been done, according to the trade unions, without any prior consultation with the social partners despite a written assurance that consultation would take place. The legislation was adopted by Parliament, and the indexation clauses in the collective agreements were abolished until the next round of negotiations which would take place one year later, in spring 1987. In these circumstances, the CFA pointed out that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organizations of workers and employers.

CFA Case No. 1338, 246th Report, para. 43

- through which the government seeks to alter bargaining structures in which it acts in fact or indirectly as employer.

The CFA observed that the Public Sector Restraint Act, 1991, went beyond what it had previously considered to be normally acceptable limits that might be placed temporarily on collective bargaining, because the Act cancelled previously negotiated agreements and in so far as the Government had expressed its intention to extend the initial one-year period of wage restraint by exacting further legislation. The CFA invited the Government to resume wide and constructive consultations with the trade unions concerned, with a view to restoring collective bargaining in accordance with FOA principles. The Committee stressed the importance of adequate consultation prior to the introduction of legislation through which the Government seeks to alter bargaining structures in which it acts in fact or indirectly as employer.

CFA Case No. 1607, 284th Report, para. 594

1.9 Facilities for workers' representatives

“ Such facilities in the undertaking shall be afforded to workers’ representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. In this connection account shall be taken of the characteristics of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned. ”

Convention No. 135, Article 2 (1) & (2)

In addition to the Workers’ Representatives Convention, 1971 (No. 135), the FOA rights found in other standards imply certain facilities to workers wanting to organize or conduct their trade union affairs.

The supervisory bodies have been called upon to secure appropriate facilities for workers’ representatives in cases including such matters as

- access to the workplace,

The amendment to Act No. 358 of 1974 on the Position of the Trade Union Representative at the Workplace grants regional trade union representatives, in certain circumstances, the right to gain admittance to workplaces where they themselves are not employed and to carry out trade union activities there.

RCE 1993, C. 135, Sweden

The CFA asked the government concerned to guarantee access of trade union representatives to workplaces, with due respect for the rights of property and management, so that trade unions could communicate with workers in order to apprise them of the potential advantages of unionization.

CFA Case No. 1523, 284th Report, para. 138

- the provision of appropriate facilities,

The CFA asked the government concerned to provide appropriate facilities for union work – to meet its obligations under ratified Convention No. 135 – even after the privatization of state-owned enterprises.

CFA Case No. 1565, 279th Report, para. 381

- the collection of dues, and

“ ...in the absence of other arrangements for the collection of trade union dues, workers’ representatives authorized to do so by the trade union should be permitted to collect such dues regularly on the premises of the undertaking. ”

CFA Digest of 1985, para. 326

Workers' trade union associations which had been granted trade union status under the then new Act on Trade Union Associations – adopted to the satisfaction of the COE to replace the law which had been the subject of COE comments for many years – enjoy a number of privileges, including the right to deduction of trade union dues.

RCE 1989, C. 87, Argentina

■ facilities on plantations.

“ ...it is of special importance that the entry of trade union officials into plantations for the purpose of carrying out lawful trade union activities should be readily permitted, provided that there is no interference with the carrying on of the work during working hours and subject to any appropriate precautions being taken for the protection of the property. ”

CFA Digest of 1985, para. 220

The COE had asked the Government concerned to guarantee the right of trade union leaders to hold meetings on plantations. It later noted an administrative order “of compulsory application” providing that “vigilance shall be increased in all sectors, including plantations, to ensure that the right of association of workers and their trade union leaders is not impeded”.

RCE C. 87, Costa Rica

PART 2

Procedural options for enforcing freedom of association standards and principles

2.1 Introduction to the common issues

A summary of mechanisms available for the supervision of FOA principles was presented in the introduction to this guide. Each of these mechanisms have been put in place with a single purpose: improving respect for FOA principles and the exercise of FOA rights. Part 2 explains in more detail how to make use of these supervisory mechanisms.

These details are presented with the users of the mechanisms – those interested in having recourse to infringements of FOA principles – in mind. Thus, the pages which follow give an overview of:

- the preliminary issues which should be resolved before recourse is taken and which are common to each mechanism; and
- grounds for deciding which supervisory mechanism can or should be used.

Common issue 1. The facts

Before any action can be taken, it is necessary to learn the *facts surrounding a possible infringement of FOA principles*. Securing the facts means answering the question:

Who did what, when and how?

in the light of requirements under FOA principles. Part 1 of this guide gives information which should be sufficient guidance as to what constitutes an infringement of FOA principles.

Investigation of the facts should be made with a view to how they will be presented to a supervisory body. For example:

- Does the possible infringement involve an action with ongoing implications, such as infringement embodied in legislation or in policy?
- Does the possible infringement involve a specific act or occurrence – perhaps requiring immediate remedial action – such as the arrest or detention of trade unionists, the seizing of an organization's assets, the dissolution of an organization, or the break-up of a trade union meeting?

- Are witnesses necessary to show the possible infringement (for example, to give statements as to what happened), or can the possible infringement be seen through public documents (for example, in legislation or the text of a policy document)?

With this in mind, the process of learning the facts should include collecting – in the appropriate form – the information necessary to make out a case. Relevant legislation, court orders and judgements, witness statements, police reports, and so on, should all be copied for possible presentation to the supervisory bodies. If copying is impossible, detailed and specific notes should be taken of the information. For example:

- “A four-page, handwritten, ‘police incident report’, dated 1 May 1999, was read/seen by trade unionist John Doe on 3 May 1999 at Police Headquarters.”
- “Legislative Decree No. 478-A of 1999, ‘Declaration of Emergency’ is a one-page document published by the Government on 1 May 1999.”
- “Mary Doe, secretary to the executive director, can provide an eyewitness account of the entry (without a court order) by administrative authorities into trade union offices on 1 May 1999.”

It is important for the supervisory bodies to have objective evidence of the facts; allegations of violation of FOA principles without supporting objective evidence renders the task of the supervisory bodies more difficult. This is why focus must be placed on statements of fact and factual events.

Once the facts of a possible infringement are known, two important questions can begin to be answered:

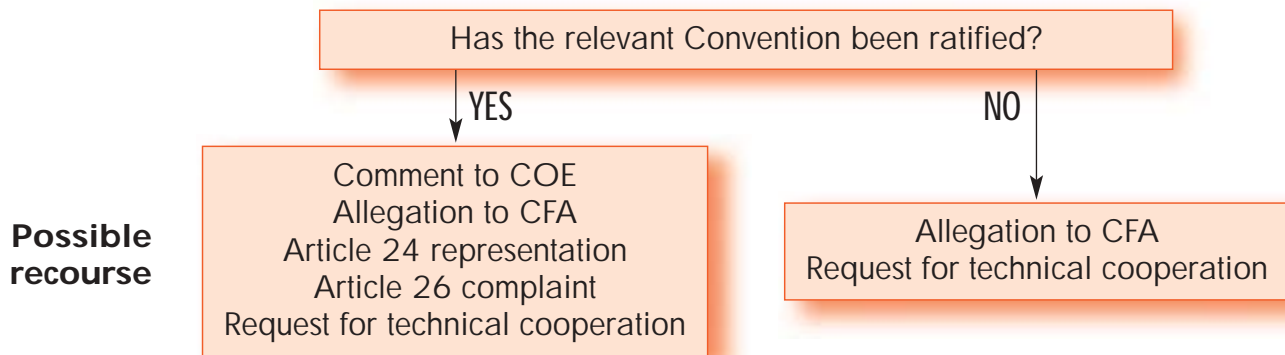
- Are FOA principles likely to have been infringed?
- Which of the supervisory mechanisms provides the most appropriate recourse to the infringement?

Once again, Part 1 should provide sufficient information to give an answer to the first question. In the pages which follow, more information about the various procedures will be given to help answer the second question.

Ratification of the relevant ILO Convention on FOA is required only for certain types of recourse.

Common issue 2. Ratification

Figure 12. Procedural options: Ratification and available mechanisms



Remember: An ILO Convention is the basis only for certain specific FOA principles. For example, the obligation to promote collective bargaining flows from Convention No. 98 and not from Convention No. 87. Care must be taken to ensure that the Convention which is the basis for recourse to a supervisory mechanism is known. It is also necessary to ascertain whether the State involved has ratified the Convention.

How does one find out if the country concerned has ratified the relevant FOA Convention?

Annex 1 gives a list of ratifications of FOA Conventions as of 15 September 1999. In addition, the ILO systematically makes this information public.

Other ways of finding out are as follows:

- contact the local or nearest ILO Office;
- contact the ILO's International Labour Standards and Human Rights Department, CH-1211 Geneva 22, Switzerland;
- consult the ILOLEX database (<http://ilolex.ilo.ch:1567>) or the Internet homepage of the International Labour Standards Department (<http://www.ilo.org/public/english/50normes/index.htm>);
- consult ILO texts on freedom of association (many include ratification lists);
- consult the most recent issue of Report III, Part 2, to the International Labour Conference, "List of ratifications by Convention and by country" (issued yearly in June).

Remember: For the process to begin, certain rules must be followed for each procedure. The pages which follow detail these procedural requirements.

Table 3. Procedural options: Characteristics of supervisory mechanisms

Procedure	Interim intervention	Authoritative conclusion	Form of evidence
(a) Regular system of supervision			
Committee of Experts on the Application of Conventions and Recommendations (COE) <i>(ratification required)</i>	None	<ul style="list-style-type: none"> ■ Varies, depending on when the worker/employer comment is received in relation to the COE meeting in November/December ■ Depending on the nature of the case, the COE will normally ask the government for additional information before it indicates a conclusion or requests a change in law or practice 	Written only
Conference Committee <i>(ratification required)</i>	None	Strong language can be found in Conference Committee's conclusions involving the case	Government concerned may be asked to provide particulars, usually orally. Government may also provide written information
(b) Special systems of supervision			
Committee on Freedom of Association <i>(ratification not required)</i>	Yes	Varies depending on promptness of government response to request for information on the case and the urgency of the case (two months to one year)	<ul style="list-style-type: none"> ■ Written ■ Oral testimony heard only rarely
Fact-finding and Conciliation Committee on Freedom of Association <i>(ratification not required if State agrees to jurisdiction)</i>	No	Usually takes at least one to two years	Investigative – written as well as oral testimony
Article 24 representation <i>(ratification required)</i>	No	Usually referred to CFA when concerning FOA. Time span slightly longer than if complaint made directly to CFA	Written
Article 26 complaint <i>(ratification required)</i>	Yes	If Commission of Inquiry (COI) is established, one to two years	<ul style="list-style-type: none"> ■ Written and oral testimony ■ Investigative powers
(c) International Labour Office assistance			
Informal advisory mission <i>(no ratification required)</i>	None	None are made	Information-gathering typically has a technical focus
Direct contacts mission <i>(no ratification required)</i>	Report of the mission is normally given to the appropriate supervisory body for its information	General conclusions are made while leaving final conclusions to supervisory bodies	General fact-finding may occur
Technical assistance <i>(no ratification required)</i>	None	None are given but important recommendations may be made	Information-gathering typically has a technical focus

Tripartite forum	Publicity	Special characteristics
(a) Regular system of supervision		
No	<ul style="list-style-type: none"> ■ Partially high – COE reviews case and issues comments ■ Comments arising out of a communication made by a workers' or an employers' organization tend to be published as "observations", with potential for high publicity 	<ul style="list-style-type: none"> ■ Publicity is potentially high ■ Potential tripartite review by the Conference Committee ■ Where a Convention with a five-year reporting cycle is involved (i.e. Convention No. 135), the COE normally requests a report out of cycle when it receives a comment from workers or employers ■ Review focuses more on adequacy of legislation than on a given factual aberration
Yes	High possibility of public discussion of case	Case cannot be handled in the Conference Committee unless it comes first before the COE; ratification is therefore required and the elements in question should be brought before the COE
(b) Special systems of supervision		
Yes	High – cases published quickly after conclusions and recommendations are made; cases deal with specific facts which can often attract media attention	<ul style="list-style-type: none"> ■ Can review both legislative matters and factual violations of FOA ■ Useful for focus on a particular enterprise or specific union leaders and members having been detained or suffering anti-union discrimination
No	High – the special procedure singles out such cases from others	<ul style="list-style-type: none"> ■ Independent members ■ Investigative authority ■ Government consent required
Yes	High – cases found in a separate CFA report	On FOA issues, GB normally refers the matter to the CFA. If time is short, consideration should be given to the delay of at least one GB session caused by the need for a GB decision to refer a case to the CFA.
<ul style="list-style-type: none"> ■ Decision to establish a COI lies with the ILO's tripartite GB ■ The COI is an expert (not tripartite) group 	High – discussion in GB and special publication of findings	<ul style="list-style-type: none"> ■ Complaint can only come from a worker or employer in their capacity as an ILC delegate in June; otherwise complaints may emanate from member States also having ratified the Convention at any time ■ Possible to take evidence in the country
(c) International Labour Office assistance		
No	Normally low	Usually helpful for legislative review and advice
No	May be high, depending on combined use with supervisory mechanisms	Government's consent necessary to enter territory
No	Normally low	<ul style="list-style-type: none"> ■ If funding is needed, a donor must be found ■ Can be very effective in resolving technical difficulties and for legislative review

Selecting the supervisory mechanism

Several supervisory mechanisms are available to choose from when recourse to an infringement of FOA principles is desired. Experience has shown that each mechanism has characteristics which can make a difference for the party bringing the charge. These mechanisms can be compared on the basis of at least six *common characteristics*:

- The **speed of interim intervention** is the time it might take for a preliminary intervention by the ILO to occur, if one is available at all under a particular procedure. In the case of detained trade unionists, for example, the organization concerned can request the ILO to intervene directly with the government.
- The **speed of reaching authoritative conclusions** is the time it might take before the supervisory mechanism can process the allegation and give an indication as to whether a FOA infringement has occurred.
- The **nature of the allegation** concerns whether the complaint refers to a factual situation such as anti-union discrimination in a given enterprise or whether the problem is more legislative in nature.
- The **form in which evidence can be presented** refers to the possibility of evidence being given in person or through personal visit, or wholly in written form.
- Whether the supervisory body is a **tripartite forum** (or may eventually come before a tripartite forum) may be of importance.
- The **publicity** attached to the mechanism can be important, as it is mostly through moral persuasion that the supervisory mechanisms produce results.

The CFA recalled, in its 193rd Report (1979) that “ the influence which it can have is above all a moral one. It derives from the objectiveness of the procedures which the Committee follows and the persuasive effect and the authority of the conclusions unanimously reached on the basis of established principles by such a body as the Committee, which is composed of Government, Employers’ and Workers’ members. Finally, this influence derives to some extent from the publicity which the conclusions of an international body entail ” .

CFA 193rd Report, para. 8

In addition, some mechanisms – and supervisory bodies related to a mechanism – have **particular characteristics** related to them. Knowing these characteristics may help the potential user decide which mechanism is the most appropriate.

Table 3 gives an overview of both the common and particular characteristics of the various mechanisms.

With this introduction, the following sections provide information on each of the supervisory mechanisms.

Although its influence is less clear, reporting by governments which **have not ratified** the FOA Conventions on application of the principles has had an impact – both on the application of the principles in the States concerned and globally.

2.2 Article 19 reports on unratified Conventions and Recommendations

“ ...[I]f the Member does not obtain the consent of the authority, or authorities within whose competence the matter [of ratification] lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention. ”

ILO Constitution, Article 19 (e)

The Article 19 obligation is currently used as the basis:

- for the production of General Surveys concerning different instruments selected yearly by the GB; and
- for the reporting called for in the follow-up to the ILO's Declaration on Fundamental Principles and Rights at Work, 1998.

General Surveys on freedom of association have been produced in 1956, 1957, 1959, 1973, 1983 and 1994. A mini-survey was also carried out in 1998 and published in the COE general report of 1999.

Reporting for General Surveys and on obstacles

“ The purpose [of the annual follow-up to the Declaration] is to provide an opportunity to review each year, by means of simplified procedures..., the efforts made in accordance with the Declaration by Members which have not yet ratified all the fundamental Conventions. ... The follow-up will cover each year the four areas of fundamental principles and rights specified in the Declaration. ... The follow-up will be based on reports requested from Members under article 19, paragraph 5(e), of the Constitution. The report forms will be drawn up so as to obtain information from governments which have not ratified one or more of the fundamental Conventions [including Conventions Nos. 87 and 98], on any changes which may have taken place in their law and practice, taking due account of article 23 of the Constitution and established practice. ”

Follow-up to the Declaration, para. II (A) 1 & 2, (B) 1

The information from the annual follow-up reports will be reviewed by the GB, following examination by a group of experts. It will also be part of information used in a Global Report to be produced as part of the follow-up.

Whether they result in preparation of a *General Survey* or information to the GB under the Declaration, *reports under Article 19 give four important opportunities*:

- for the reporting State to consider its application of the Conventions and the advisability of ratification;
- for the COE, where a *General Survey* is to be produced, to consolidate its views on the meaning of the instruments concerned;
- for all the parties concerned to determine what obstacles stand in the way of ratification and possible ways of overcoming them; and
- for identifying areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights.

These opportunities suggest the use that can be made of article 19 in influencing application of FOA principles at the national level:

- Employers' and workers' organizations, as well as the government concerned, should have thoroughly **analysed the State's application** of the FOA principles in law and in practice when a report is requested. Analysis, done independently by those most concerned by the matter, could be useful in particular cases – especially where there is an opportunity to publicize issues which stand in the way of application. The technical assistance of the International Labour Office may be requested.
- **Consultation** about issues which stand in the way of application can be useful in finding solutions for application and promoting ratification.
- Employers' and workers' organizations can **comment** directly to the ILO about the application of the Convention or Recommendation.

In preparing its 1994 GS, the COE received information and comments from four workers' and employers' organizations concerning unratified Conventions, in addition to information provided concerning ratified Conventions.

COE 1994 GS, para. 21

Since the ILO Director-General began in May 1995 his campaign promoting ratification of FOA Conventions, 11 ratifications of Convention No. 87, and 16 ratifications of Convention No. 98 had been registered as of 12 February 1999. The Director-General used the Article 19 obligation to request reports on obstacles to ratification – focusing attention of the governments concerned on the possibility of ratification.

GB 274/LILS/5, Annex 1

“ Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request. ”

ILO Constitution, Article 22

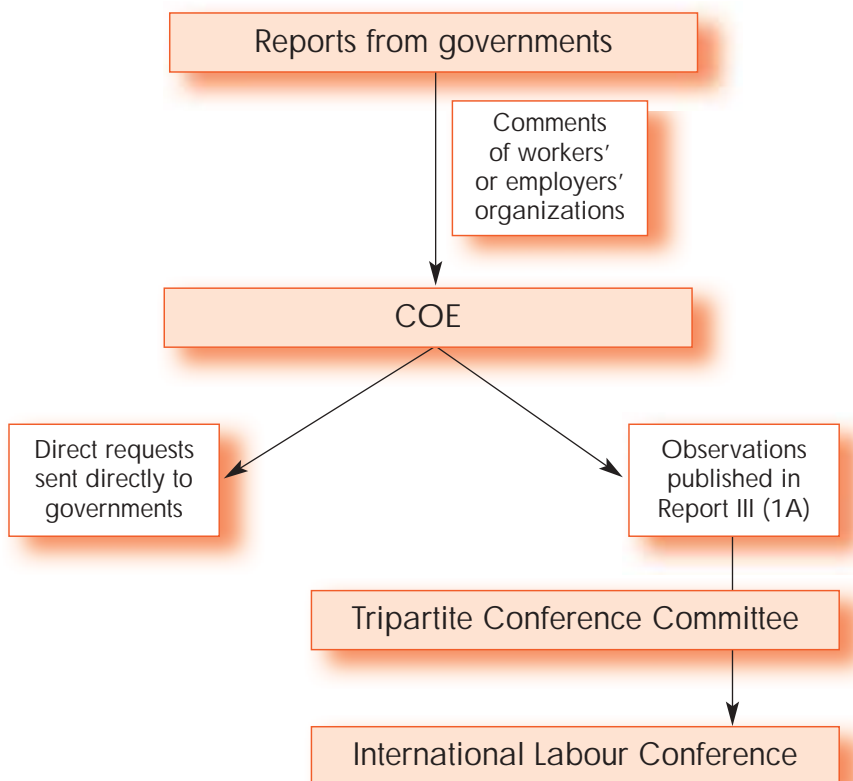
2.3 Reports and comments to the Committee of Experts

Where a State ratifies an ILO Convention – including one concerning FOA – it becomes obliged to provide reports on the application of the Convention. According to the established system:

- reports are due every other year for Conventions Nos. 87 and 98;
- reports are due every five years for Conventions Nos. 11, 135, 141, 151 and 154;
- reports must provide information on steps taken to apply the Convention in law and in practice;
- reports must indicate to which representative employers' and workers' organizations the government has communicated copies of the report; and
- reports must indicate whether any comments have been received from the organizations of employers and workers regarding the practical application of the Convention (figure 13).

Comments from workers' and employers' organizations

Figure 13. Regular supervision: Comments of employers' and workers' organizations



Action by the COE These reports are reviewed by the COE. Employers' and workers' organizations are encouraged to provide the COE with any comments they might have on the application of the Conventions concerned. These comments are one recourse available for bringing a FOA violation to the attention of the supervisory bodies.

Such comments:

- may be sent directly to the International Labour Standards and Human Rights Department of the International Labour Office and need not be sent through the government;
- need not be sent at the same time as the government's report, nor is it necessary to wait until the year when the report is due; and
- may be sent by any employers' or workers' organization.

What is the immediate effect of such comments?

- The Office will include the comments with the file reviewed by the COE concerning the State and its application of the Convention concerned.
- The Office will normally send a copy of the comments to the government concerned and ask for any comments the government might have. If there is insufficient time before the meeting of the COE, or if the COE does not receive the government's comments, it will normally review the substance of the comments received in the following year.
- The COE will review the comments and the file. This will be done even if the report from the government is not due until another year. In timing the sending of a comment, it must be remembered that the COE meets in November/December each year. Thus, it is possible that a comment received at the beginning of November will not be considered by the COE until its meeting in the *following* year.
- Once considered, the COE usually publishes an observation in its report to the International Labour Conference. If the government has not had time to reply, the COE will often merely request the government to provide further information on the matters raised. When government replies are inadequate, the COE has often made forceful statements in its observations where there appears to be a real problem in applying FOA standards.
- Once an observation is placed in the COE report, it is possible that the case will be one of those called individually for discussion during the meeting of the Conference Committee on the Application of Standards at the International Labour Conference in June.

Once the COE has sent its observation, the government will normally provide additional information and, ultimately, the COE may ask the government to change the law and/or practice. Depending on the severity of the allegation, the COE may ask the government to send its reports in an accelerated fashion. This will mean that the report will be due the very next year. Otherwise, the report will not be due until the normal reporting year for the Convention involved.

If the COE asks for a change in law or practice, it will not stop asking for the change until it has been made. Where some years go by without a change, it becomes more likely that the case will be selected for discussion by the Conference Committee.

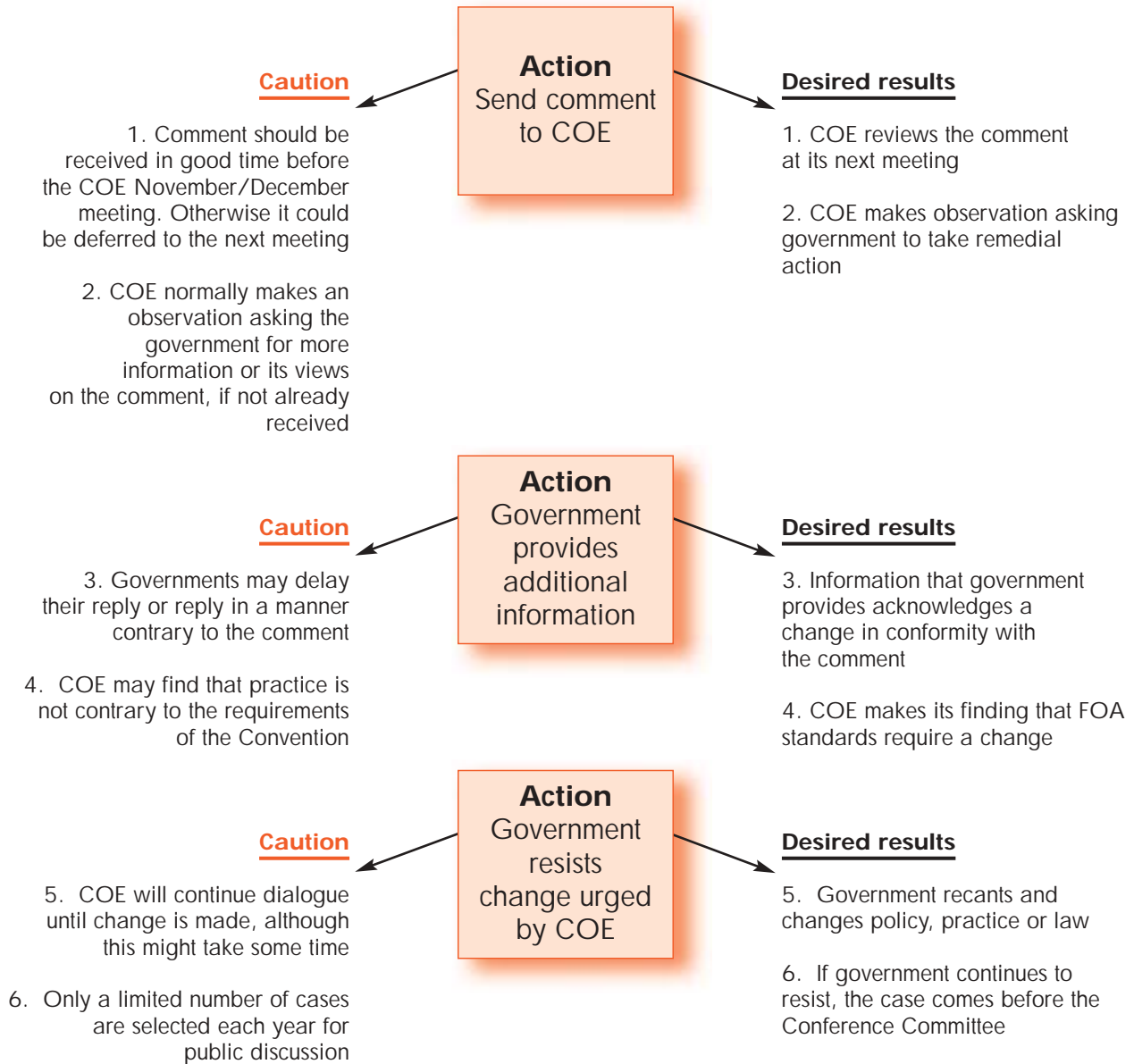
The tripartite Conference Committee holds its meetings in public during the International Labour Conference. Each year, the officers of the Committee – including the Chair (a government delegate) and Co-Chairs (the employers’ and workers’ spokespersons) – select, from the hundreds of observations made by the COE in its report, a handful (between 20 and 40) for individual discussion. For such discussions, the government concerned is asked to publicly explain what the situation is with respect to application of the Convention. All members of the Committee, including workers’ and employers’ delegates, have the opportunity to publicly comment on the case, raise questions and suggest solutions.

In practice, airing of the allegation in the Conference Committee can have an important impact. Often discussion of the individual case heightens public awareness of the situation and brings pressure to bear on the government concerned. In practice, it may take some time before the Groups – employers, workers, and governments – in the Conference agree on the particular case being brought up for discussion.

Figure 14 shows the steps – and care – that need to be taken in order to use the COE and Conference Committee processes in the regular system of supervision.

Action by the Conference Committee

Figure 14. Regular supervision: Results and cautions



The Fact-Finding and Conciliation Commission on Freedom of Association (FFCC) was set up by the ILO's Governing Body in January 1950 following negotiations with the Economic and Social Council of the United Nations. The FFCC is a neutral body composed of nine independent persons who normally work in panels of three. Its mandate is to examine alleged violations of FOA principles.

2.4 Fact-Finding and Conciliation Commission on Freedom of Association

In practice today, the FFCC is rarely used. This is so for a number of reasons, relevant in a variety of circumstances:

Background and function

- Where a complaint alleging violation of FOA principles is made concerning **a member of the ILO**, technically this is reviewed by the CFA with a view to a recommendation on whether to pass the complaint to the FFCC for examination. In practice, however, the CFA most often has sufficient information to examine the substance of allegations and thus does not normally recommend that the case be referred to the FFCC.
- Where a complaint alleges violations of FOA principles concerning **a non-member of the ILO** but a member of the United Nations, an arrangement is in place for the United Nations to use the ILO's services, including the FFCC, for the purpose of examining the allegation. This arrangement requires, however, the agreement of the country concerned. In practice, this agreement is typically not easy to secure.

Table 4 gives a summary of FFCC procedures.

Table 4. FFCC procedures: Recourse to the FFCC in the light of other procedures

Is the government concerned: ►	A member of the ILO?	Not a member of the ILO?
Has the government concerned: ▼	▼	▼
Ratified the relevant FOA Convention? ►	<ul style="list-style-type: none"> ■ COE can receive comments ■ CFA can receive the allegation and would not normally recommend referral to FFCC ■ Articles 24 and 26 can be used ■ Office assistance can be requested 	<ul style="list-style-type: none"> ■ COE can receive comments (i.e. supervision of a ratified Convention continues even if a State is no longer an ILO member) ■ Use of FFCC would require consent of the government
Not ratified the relevant FOA Convention? ►	<ul style="list-style-type: none"> ■ CFA can receive allegation and would not normally recommend referral to FFCC 	<ul style="list-style-type: none"> ■ Use of FFCC would require consent of the government

2.5 Allegations to the Committee on Freedom of Association

Background and function

The Governing Body (GB) of the ILO set up, in 1951, a Committee on Freedom of Association (CFA). The CFA has nine members in all, three each drawn from Employers', Workers' and Government groups in the GB. Since 1978, the CFA has been chaired by an independent person. It meets three times a year, just preceding the usual meetings of the GB in March, June and November.

“ ...[T]he CFA examines complaints containing allegations of violations of the Conventions on freedom of association, regardless of **whether or not** the countries concerned have ratified those instruments. The consent of the governments concerned is not necessary in order for these complaints to be examined: the legal basis for this concept resides in the Constitution of the ILO and the Declaration of Philadelphia, according to which member States, by virtue of their membership in the Organization, are bound to respect the fundamental principles contained in its Constitution, particularly those concerning freedom of association... ”

COE 1994 GS, para. 19

Formally, the responsibility of the Committee is to consider, with a view to making a recommendation to the GB, whether cases are worthy of examination by the GB and referral to the FFCC.

As it receives many new cases each year, an important aspect of the CFA's work is collecting the positions of the complainant and the government concerned – even before its task of reviewing the substance of the information made available. This is important to remember, as the information provided by both the complainants and the governments concerned can contribute to the speedy resolution of cases.

Receivability

Complaints to the CFA should be sent to:

The Director-General
International Labour Organization
CH-1211 Geneva 22
Switzerland

In order for a case to be receivable, complainants must submit allegations in a certain manner (table 5). The first thing to remember is that the correspondence communicating a complaint should say *clearly* that its intent is to lodge a complaint with the ILO's CFA.

Table 5. CFA procedures: Receivability of complaints

Requirements in all cases	Details which may be important in particular cases
1. Complaint must come from an employers' or workers' organization	<ul style="list-style-type: none">(a) The organization may be national and must have a direct interest in the matter.(b) The organization may be international, having consultative status with the ILO.*(c) The organization may be international, where allegations relate to matters directly affecting their affiliated organization.(d) If information about the organization is not known by the CFA, the organization should provide information with the complaint, including:<ul style="list-style-type: none">(i) information about its membership;(ii) its statutes/by-laws;(iii) information about its national/international affiliations;(iv) any information that would lead to an appreciation of the nature of the organization.(e) Complaints emanating from organizations in exile, which have been dissolved or have failed to satisfy the national administration of its lawful existence, are not automatically deemed irreceivable, but are rather considered on the basis of the information provided in (d) above.(f) The organization must have a permanent existence which makes it possible to correspond with it.
2. Complaint must be in writing	<ul style="list-style-type: none">(a) A copy of a communication to a third party is not sufficient: the written communication must be directed to the ILO.(b) The document may be sent by fax, but it must be followed by an original document.
3. Complaint must be signed by a representative of a body entitled to make a complaint	<ul style="list-style-type: none">(a) An "entitled representative" includes, for example, a president or executive director. It would not include, for example, a clerical assistant to the president or a lower-level official of the organization.(b) A request for anonymity will be respected only after the Director-General has examined the complaint and concluded that it contains allegations of some degree of gravity which have not previously been examined by the Committee.(c) Electronic mail is not receivable, as it cannot be signed.

* Non-governmental international organizations having general consultative status with the ILO: International Co-operative Alliance; International Confederation of Free Trade Unions; World Confederation of Labour; International Federation of Agricultural Producers; World Federation of Trade Unions; International Organization of Employers; Organization of African Trade Union Unity; and Pan-African Employers' Confederation.

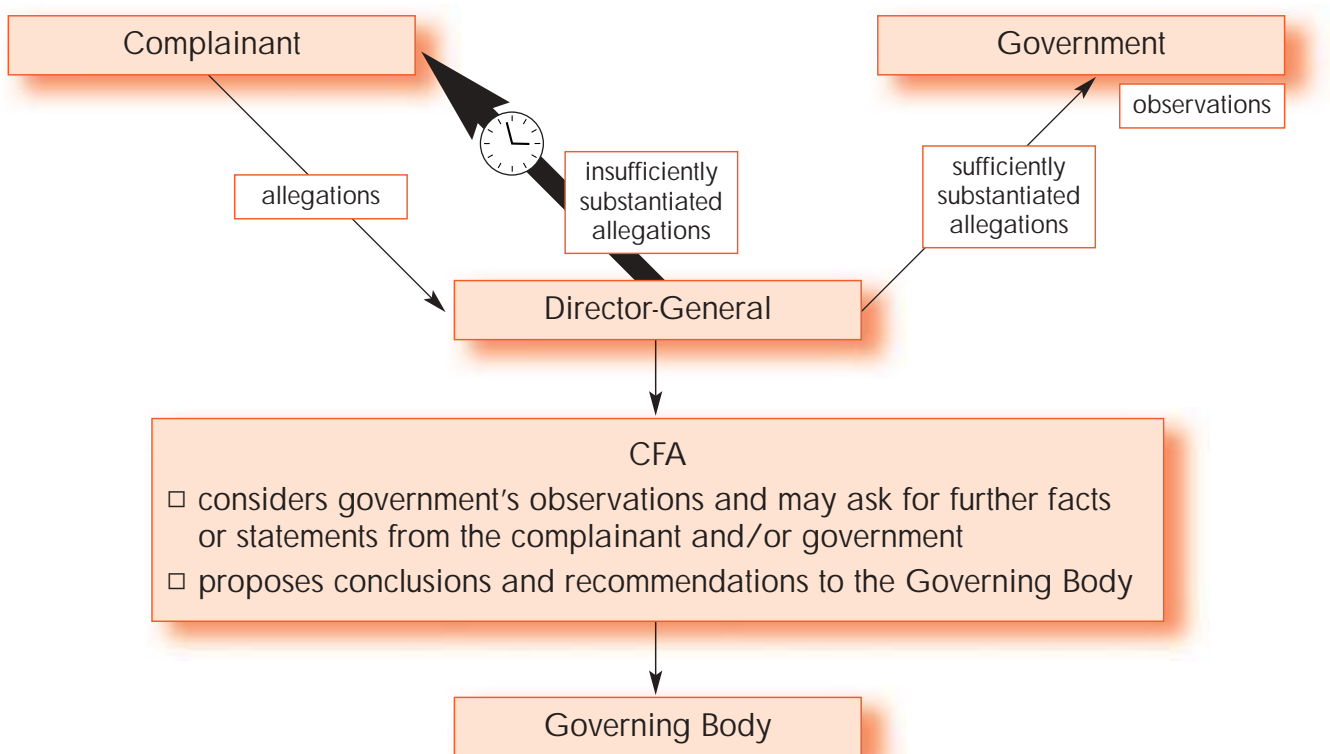
Preliminary substantive issues

Several preliminary substantive issues repeatedly arise in the CFA's review of complaints. They are discussed here:

- The allegations in the complaint should **not be purely political in character**.
- The **allegations should be clearly stated and fully supported by evidence**. It is of utmost importance to the ILO Director-General that complaints are resolved speedily and that information in support of allegations is as complete as possible. These are related ideas, in that the Director-General in each case communicates with both the complainant and the government concerned in such a manner as to ensure that the facts and the positions of the parties put before the CFA are as complete as possible.

Figure 15 shows the approach taken, where complainants are systematically asked to supplement insufficiently substantiated complaints or complaints which are not supported by objective evidence.

Figure 15. CFA procedure: Handling of allegations and observations



“ The Committee regrets that it has not received from the complainants the detailed and precise information that was requested from them in support of their complaint ... In these circumstances, the Committee recommends the Governing Body to decide that this case does not call for further examination. ”

CFA Case No. 1232, 238th Report, para. 39

- **National remedies need not necessarily have been exhausted** before there is recourse to the CFA. The CFA determines in each case individually the importance of this general principle.

In a case alleging anti trade union dismissals, violations of a collective agreement, and procedural delays involving a strike action, the Ministry of Labour had initiated legal proceedings with a view to penalizing the employer and providing reinstatement and compensation for the workers affected. Eleven months had passed between the anti-union acts alleged by the complainant and the Ministry's judicial application for sanctions against the enterprise. Although the Government asked that the national procedures be allowed to run their course, the Committee expressed its concern at the slowness and the lack of efficiency of the procedures, and requested the Government to take measures to ensure that the procedures were carried out rapidly. It further addressed the merits of the case.

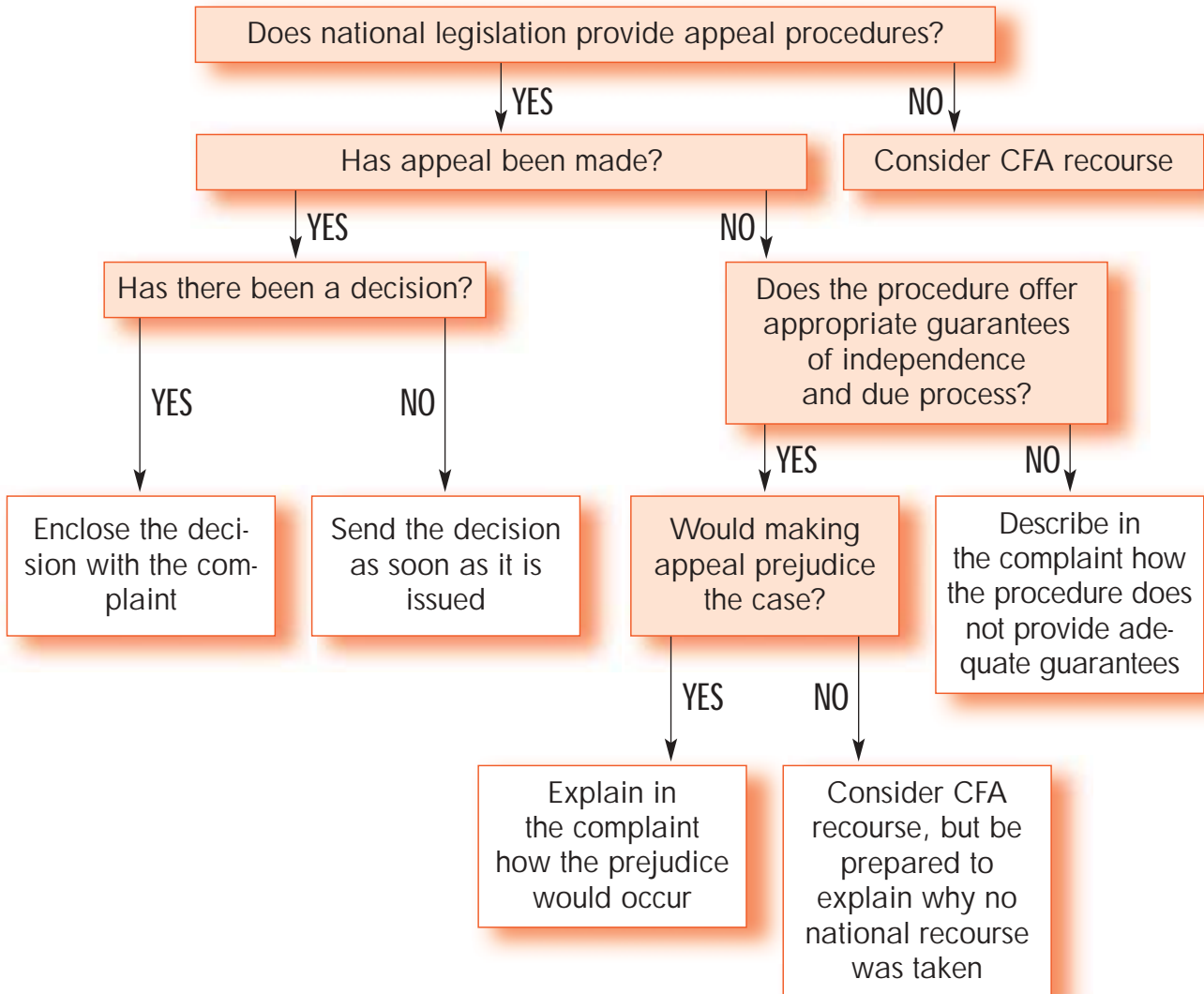
CFA Case No. 1879, 305th Report, para. 183

“ ... cases concerning anti-union discrimination contrary to Convention No. 98 should be examined rapidly, so that the necessary remedies can be really effective. An excessive delay in processing cases of anti-union discrimination, and in particular a lengthy delay in concluding the proceedings concerning the reinstatement of the trade union leaders dismissed by the enterprise, constitutes a denial of justice and therefore a denial of the trade union rights of the persons concerned. ”

CFA Case No. 1879, 305th Report, para. 202

Complainants must keep this in mind when preparing their complaints. Figure 16 may help in organizing an approach to the issue of exhaustion of national remedies – an “appeal” against the action alleged to violate FOA – in a particular case.

Figure 16. CFA procedure: Concerning appeal to national remedies



Several procedures are followed to ensure the speediest possible handling.

A distinction is drawn between **urgent** and less urgent cases.

Speedy action: Urgent cases and delayed observations

“ Matters involving human life or personal freedom, or new or changing conditions affecting the freedom of action of a trade union movement as a whole, and cases arising out of a continuing state of emergency and cases involving the dissolution of an organization are treated as cases of urgency. ”

CFA Procedures, para. 55

In urgent cases, the CFA:

- deals with the case on a priority basis;
- is authorized to make appropriate recommendations for the protection of the parties concerned during the entire period that the case remains under consideration;
- submits its report immediately to the GB.

In practice, for example, an ILO field office may be called upon to hasten the sending of government observations on complaints, or the taking of interim action *pending* review of the case by the CFA.

A complainant may wish for a case to be handled as a matter of urgency. The complainant should clearly state why the case is urgent if such handling is desired.

Where time is of the essence, the Director-General may also take steps to attempt to resolve the difficulty – even before a case is pending, but with the hope of preventing or mitigating the harm done.

Where a government was alleged to have arbitrarily prevented an official of an employers' organization from leaving the country to attend an important ILO seminar for employers, the Director-General of the ILO – at the request of others attending the seminar – addressed a telegram to the Minister for Foreign Affairs of the government concerned asking the Minister to intervene in order to facilitate the departure of the official. The Minister did not act, and allegations involving all the facts of the case were made to the CFA. The conduct of government officials was ultimately exposed and the Government's inaction was strongly deplored by the CFA.

CFA Case No. 1317, 241st Report, para. 292

Once the Office has determined that there is sufficient information from the complainant to support the complaint, observations on the allegations are requested from the government concerned. The CFA normally examines the substance of the complaint once the government has provided its observations.

Where the government concerned **delays in sending observations** on the complaint:

- special communications may be sent by the Director-General after the CFA mentions the government concerned in a special introductory paragraph to its report;
- in a non-urgent case, the CFA will issue an “urgent appeal” for observations from the government, if none are received after three requests;
- action to secure a reply may be taken by the Chair of the CFA, on behalf of the Committee, during the International Labour Conference through contacts made with the delegation of the government concerned; and
- the CFA may also proceed with its examination of the complaint *without* the government’s observations.

In accordance with the procedural rules set out in paragraph 17 of the 127th Report, approved by the GB, the CFA may present a report on the substance of these cases, even if the observations or information requested from the governments have not been received in due time. The Committee accordingly requests the governments to transmit their observations or information as a matter of urgency.

Direct and preliminary contacts

At various stages in the procedure, recourse may be had to **direct contacts** whereby a representative of the Director-General of the ILO – who can be an independent person or an ILO official – is sent to the country concerned in order to ascertain the facts relating to a case and to seek solutions to the difficulties encountered (CFA, 193rd Report, para. 26):

- Direct contacts *may occur* either during the examination of the case or at the stage of the action to be taken on the recommendations of the GB.
- Direct contacts can *only be established at the invitation* of the governments concerned, or at least with their consent.

In a case involving a range of allegations, including the lodging of an Article 26 complaint by a Workers’ delegate to the 1992 International Labour Conference, the CFA considered that it would be highly appropriate, in view of the importance of the complaints and the seriousness of the issues raised, that a representative of the Director-General visit the country. Côte d’Ivoire indicated that it was prepared to accept a direct contacts mission to investigate the case further. The mission comprised Mr Keba Mbaye, former vice-President of the International Court of Justice, first honorary President of the Supreme Court of Senegal and member of the COE, accompanied by officials of the Office.

CFA Case Nos. 1594 and 1647, Report

Upon receiving complaints of a particularly serious nature, and after having received the prior approval of the Chair of the CFA, the Director-General may appoint a representative whose mandate would be to carry out **preliminary contacts**.

Possible purposes of preliminary contacts are:

- to transmit to the competent authorities in the country the concern to which the events described in the complaint have given rise;
- to explain to those authorities the principles of freedom of association involved;
- to obtain from the authorities their initial reaction, as well as any comments and information with regard to the matters raised in the complaint;
- to explain to the authorities the special procedure in cases of alleged infringements of trade union rights, and in particular the direct contacts method which may subsequently be requested by the government in order to facilitate a full appraisal of the situation by the CFA and the GB;
- to request and encourage the authorities to communicate as soon as possible a detailed reply containing the observations of the government on the complaint.

CFA 193rd Report, para. 28

The CFA will examine the complaint once it has all the necessary information before it.

“ The Committee will decide, in the appropriate instances and taking into account all the circumstances of the case, whether it should hear the parties, or one of them, during its sessions so as to obtain more complete information on the matter. ”

CFA Procedures, para. 66

A hearing may exceptionally occur where:¹

- the complainants and the government have submitted contradictory statements on the substance of the matters at issue; or
- in cases in which the CFA considers it useful to have an exchange of views on certain matters with the government concerned and the complainants in order to appreciate more fully the factual situation, examine the possibilities for solving the problems and seek conciliation; or
- in other cases where particular difficulties have arisen in the examination of questions involving the implementation of its recommendations.

Hearing of the parties and review of the allegations

¹ For further information concerning a possible hearing of the parties, see ILO: “Procedures of the Fact-Finding and Conciliation Commission and the Committee on Freedom of Association for the examination of complaints alleging violation of freedom of association”, Annex I of *Freedom of association*, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Geneva, 4th (revised) ed., 1996), para. 66. See also CFA 193rd Report, para. 30.

CFA conclusions and recommendations

Once the CFA has examined the case, it normally makes a report on the case with conclusions and recommendations. This is given to the GB for its approval.

- The CFA may say in its conclusions and recommendations that the case calls for *no further examination*. This normally occurs where the CFA finds no violation of FOA.
- The CFA may issue an interim report with *interim conclusions and recommendations*, where the government concerned is asked to provide additional information or to take action to assist the CFA in examining the case further or reaching definitive conclusions. The government concerned may also be asked to remedy aspects of the case and report back to the CFA on the measures which have been taken. The CFA will normally re-examine the case after a period of time has passed. After the re-examination, the CFA may make new interim conclusions and recommendations in light of any new information provided.
- The CFA may make conclusions asking that it be *kept informed of developments*. This may occur where the CFA does not need additional information for its examination of the case, and reaching of conclusions, but where it wants to leave the matter open in order to follow developments before closing the case.
- The CFA may make *definitive conclusions and recommendations*, where the government has been asked to take action and has reported back to the CFA on the measures taken. The case can be brought to a final conclusion in the eyes of the Committee.

With the report of the CFA before it, the GB has the opportunity to discuss cases handled in the report. Any discussion takes place in a private session. Once the GB adopts (perhaps with modification) the CFA's report with its conclusions and recommendations in different cases, the conclusions and any recommendations will be sent to the government concerned for action.

The CFA will follow up on each of its open cases in ways appropriate to the most recent conclusions and recommendations. It receives new information from governments and complainants for further examination of the case. It may ask for additional information in cases where there is a delay in requested information being provided.

Ultimately, the case will be closed or definitive conclusions and recommendations will be reached.

As part of their conclusions and recommendations, the CFA may bring an aspect of a case to the attention of the COE. This occurs only where the FOA Convention has been ratified, and thus the COE periodically requests government reports on application of the Convention. The COE will then ask the government concerned what measures it has taken to give effect to the recommendations of the CFA. The COE will do this until they are satisfied that the necessary measures have been taken.

In cases brought to the attention of the COE by the CFA, the COE has been able to express its satisfaction, for example:

- when all teachers dismissed following a strike had been reinstated in their original services, sanctions that had been applied to suspended public employees had been set aside, and all political prisoners and administrative detainees had been freed (CFA Case No. 1266, 241st Report, para. 141; RCE 1989, C. 98, Burkina Faso);
- where the government concerned had refunded the salaries of 31 worker-students with respect to their earlier strike (CFA Case No. 1349, 243rd Report, para. 194; RCE 1989, C. 98, Malta);
- where a prohibition on strikes was lifted and restrictions on collective bargaining were removed (CFA Case No. 1458, 262nd Report, para. 124; RCE 1991, C. 87, Iceland);
- where broad reform of labour laws enabled the emergence of eight central trade union organizations and many federations and first-level trade unions where previously monopoly trade unionism was imposed by law and enforced through coercion (CFA Case No. 1904, 306th Report, para. 78; RCE 1991, C. 87, Romania);
- where reformed labour laws prohibited solidarist associations from engaging in trade union activities or collective bargaining, improved protection against anti-union discrimination, and eliminated provision for unequal treatment between solidarist associations and trade union associations (CFA Case No. 1483, 275th Report, para. 240; RCE 1994, C. 87, Costa Rica).

2.6 Article 24 representations

Allegations by industrial associations of employers and workers

The ILO Constitution provides a special procedure for the examination of allegations from employers' and workers' organizations that a ratified ILO Convention is not being effectively observed.

“ In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made and invite that government to make such statement on the subject as it may think fit. ”

ILO Constitution, Article 24

The GB has established a procedure for determining the receivability of representations, and then for their examination.² Where a representation is deemed receivable, it is referred to an ad hoc tripartite committee for examination. Where the representation concerns FOA principles, the GB normally refers it to the CFA for examination.

Receivability

Once the Office acknowledges receipt of the representation and the government concerned is informed, the Officers of the GB make a recommendation to the GB concerning its receivability. The checklist for receivability should be consulted (figure 17).

**Figure 17. Article 24 representations:
Requirements for receivability**

To be receivable, each of the following must be answered "Yes".		
	YES	NO
Has the representation been communicated to the ILO in writing?	<input type="checkbox"/>	<input type="checkbox"/>
Does the representation come from an industrial association of employers or workers?	<input type="checkbox"/>	<input type="checkbox"/>
Does the representation make specific reference to article 24 of the Constitution?	<input type="checkbox"/>	<input type="checkbox"/>
Does the representation concern a Member of the ILO?	<input type="checkbox"/>	<input type="checkbox"/>
Does the representation refer to a Convention to which the Member in question is a party, i.e. is there a ratification in force?	<input type="checkbox"/>	<input type="checkbox"/>
Does the representation indicate in what respect it is alleged that the Member has failed to secure the effective observance within its jurisdiction of that Convention?	<input type="checkbox"/>	<input type="checkbox"/>

² Standing orders concerning the procedure for the examination of representations under Articles 24 and 25 of the Constitution of the International Labour Organization.

Once examined by the ad hoc tripartite committee, a report of findings is referred to the GB for approval or adoption. The GB may also decide to publish the case.

“ If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it. ”

ILO Constitution, Article 25

Representations concerning FOA principles are normally examined by the CFA, under its procedures (see section 2.5). The CFA will report its finding to the GB, and the GB will refer the case to the COE for follow-up.

In its 1995 Report, the COE noted information provided by the GB in respect of, among 14 others, three representations concerning FOA principles. The representation in each case had been referred to the CFA:

- In one case, the CFA had adopted interim conclusions
- In another case the CFA had asked to be kept informed of the results of negotiations taking place on the matter at issue
- In the last case, the COE noted that the representation in question had just been referred to the CFA

RCE 1995, paras. 24, 28, 31

2.7 Article 26 complaints

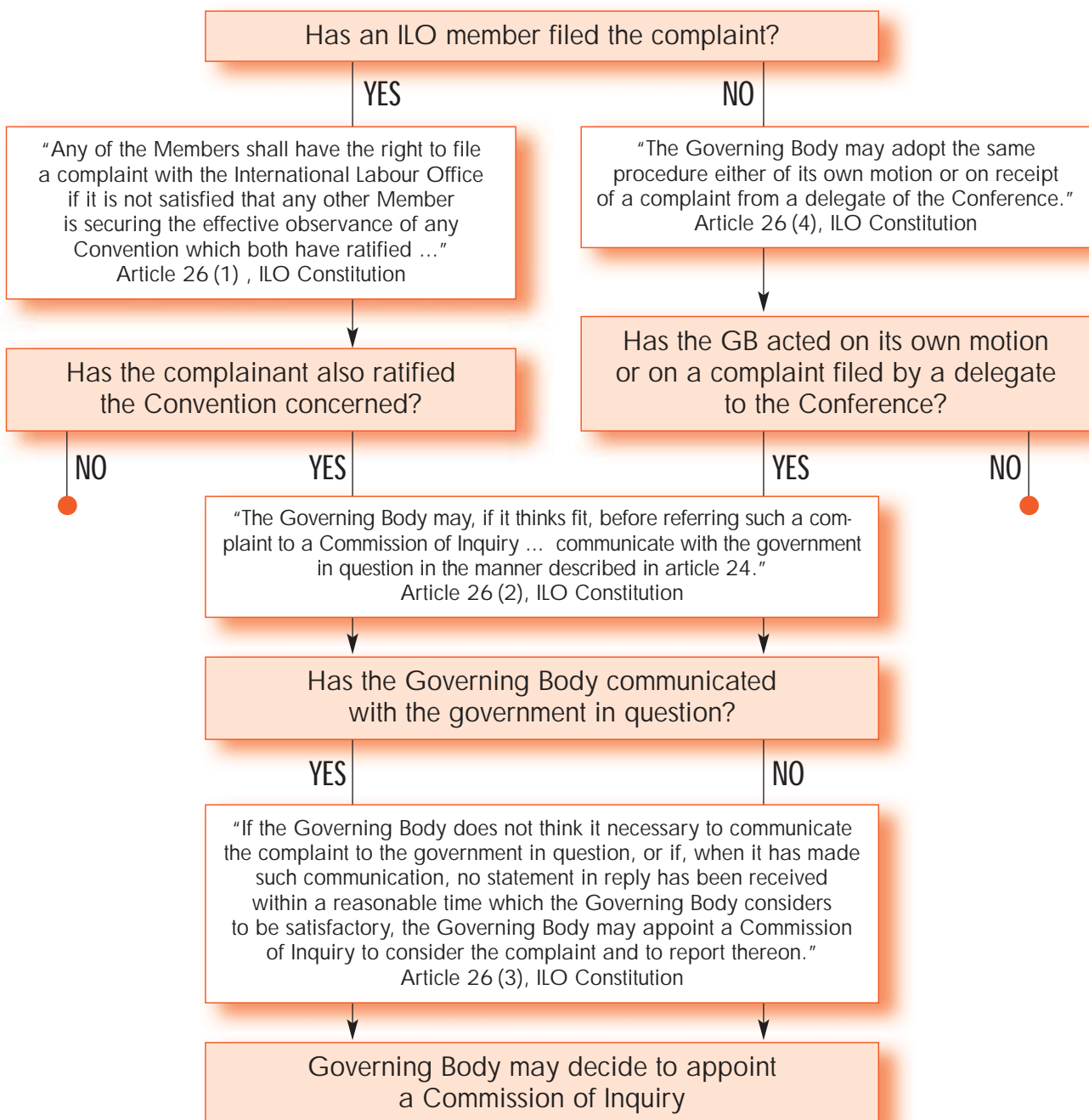
Allegations leading to a Commission of Inquiry

The ILO's Constitution provides the possibility for complaints to be filed alleging the non-effective observance of a ratified ILO Convention, including FOA Conventions. Such complaints may be made by member States also having ratified the Convention in question. The GB has authority over the handling of such a complaint and may decide to appoint a formal Commission of Inquiry for its examination.

The Governing Body may also act on its own motion, or on receipt of a complaint from a delegate – employer, worker or government – to the International Labour Conference, in setting up a Commission of Inquiry.

Figure 18 shows the steps for dealing with an Article 26 complaint.

Figure 18. Article 26 complaints: Action before appointment of a Commission of Inquiry



In handling Article 26 complaints involving FOA, the GB normally refers the matter first to its CFA. The CFA may examine the complaint, and ask the government for its observations and the complainant for additional information, before taking a final decision to set up a Commission of Inquiry.

In one situation, the CFA had been examining various CFA allegations before several employers' delegates to the 1987 ILC made a complaint under article 26. The GB referred the matter to the CFA for its recommendation. Only after several further examinations of the cases – including interim recommendations to the government concerned and requests for further information – did the CFA recommend to the GB that a Commission of Inquiry be constituted.

CFA Case 1344, 1442, 1454, 264th Report, para. 42 (n);
267th Report, para. 36 (g); 269th Report, para. 35

A Commission of Inquiry normally conducts a full investigation of a complaint, including a visit to the country concerned – if permitted by the government – and the publication of a report usually running into hundreds of pages.

Commission of Inquiry

“ When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken. ”

ILO Constitution, Article 28

Follow-up to the Commission's report

Once the Commission of Inquiry has issued its report, including conclusions and recommendations, the GB will want to follow up on steps taken to implement the recommendations. Where FOA is involved, the GB may refer the matter to its CFA, and in turn to the COE for follow-up in the course of reporting on ratified Conventions.

“ The Committee takes note of the report presented by the Commission of Inquiry established in accordance with article 26 of the ILO Constitution to examine the complaint against Nicaragua concerning the application of Conventions Nos. 87 98 and 144. The Committee notes in particular that in paragraph 546 of its recommendations the Commission of Inquiry considers that the Government should indicate, as from 1991, in its reports submitted under article 22 of the Constitution, the measures taken in law and in practice to give effect to its recommendations on the application of these Conventions during the period in question. Consequently, the Committee asks the Government to provide detailed information on the measures taken to give effect to the recommendations of the Commission of Inquiry. ”

COE 1991, C. 87, Nicaragua

The complaint may also be referred to the International Court of Justice after the Commission's work is completed.

“ Each of these governments [making the complaint and with which the complaint is concerned] shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission; and, if not, whether it proposes to refer the complaint to the International Court of Justice. ”

ILO Constitution, Article 29 (2)

The International Labour Office is mandated to carry out the instructions of the Director-General, and this includes providing assistance where possible to improve workers' and employers' freedom of association.

2.8 Assistance by the International Labour Office

Wherever there is a difficulty in applying FOA standards and principles, calling upon the Office for appropriate assistance might be a type of “recourse” to be taken to improve the situation.

Types of assistance

Types of assistance include:

- *seminars* aimed at providing general information about FOA standards and principles, and/or resolving particular national difficulties in their application;
- *analysis of and advice on legal drafts* in the light of FOA standards and principles, where doing so could improve their application through an improved legal framework;
- requesting an *opinion of the Office* on the meaning or interpretation given to a particular provision of an ILO FOA Convention or Recommendation;
- *direct contacts* in the context of ongoing procedures such as a complaint before the CFA or an Article 26 complaint; or
- an *informal advisory* visit where such a visit could improve the application of FOA in the country concerned.

A number of considerations should be kept in mind in relation to the possibility of assistance provided by the Office:

Considerations

- **A question of political will?** Often difficulties with implementation of FOA standards and principles involve the political will of decision-makers. With this in mind, the question that should be asked before a request for assistance is made is (a) whether there is a political will to resolve the situation, and (b) whether the assistance being requested may improve overall labour relations and promote resolution of the problem.
- **Funding.** The Office's resources are limited. Where costs might involve such items as lodging for participants in seminars, provision will have to be made and a source of funding needs to be found.
- **Requests for assistance should be specific.** Where a promotional or educational activity is concerned, who is the target audience and what outcome is hoped for from the activity? What issues should be dealt with in a requested promotional or educational activity? Where a mission by ILO officials is considered, who might be considered to conduct the mission – senior international civil servants or persons external to the ILO? Persons from within the region, or outside? And what result is hoped for as of the mission?

- **Requests to ILO Multidisciplinary Advisory Teams (MDTs).** Many of the ILO's MDTs have specialists in international labour standards who might be able to provide the assistance requested. Often assistance from this source can be quick and sensitive to local conditions. Contact the nearest ILO Office to establish the situation of the MDT covering the country concerned.

Requests for assistance

Requests for assistance should be sent to:

Freedom of Association Branch
Human Rights and International Labour Standards Department
International Labour Organization
CH-1211 Geneva 22
Switzerland

ANNEXES

Annex 1.

List of ratifications by country as of 15 September 1999

- Right of Association (Agriculture) Convention, 1921 (No. 11)
- Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)
- 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)

Country	Convention							
	11	84	87	98	135	141	151	154
Afghanistan						×		
Albania	×		×	×				
Algeria	×		×	×				
Angola				×				
Antigua and Barbuda	×		×	×				
Argentina	×		×	×			×	×
Armenia					×		×	
Australia	×		×	×	×			
Austria	×		×	×	×	×		
Azerbaijan			×	×	×		×	×
Bahamas	×			×				
Bahrain								
Bangladesh	×		×	×				
Barbados	×		×	×	×			
Belarus	×		×	×			×	×
Belgium	×	×	×	×			×	×
Belize	×		×	×	×		×	×
Benin	×		×	×				
Bolivia			×	×				
Bosnia and Herzegovina			×	×	×			
Botswana			×	×			×	

Country	Convention							
	11	84	87	98	135	141	151	154
Brazil	×			×	×	×		×
Bulgaria	×		×	×				
Burkina Faso	×		×	×	×	×		
Burundi	×		×		×			
Cambodia			×	×				
Cameroon	×		×	×	×			
Canada			×					
Cape Verde			×	×				
Central African Republic	×		×	×				
Chad	×		×	×	×		×	
Chile	×		×	×				
China	×							
Colombia	×		×	×				
Comoros	×		×	×				
Congo	×		×					
Costa Rica	×		×	×	×	×		
Côte d'Ivoire	×		×	×	×			
Croatia			×	×	×			
Cuba	×		×	×	×	×	×	
Cyprus	×		×	×	×	×	×	×
Czech Republic			×	×				
Democratic Republic of the Congo	×			×				
Denmark	×		×	×	×	×	×	
Djibouti	×		×	×				
Dominica	×		×	×				
Dominican Republic			×	×				
Ecuador	×		×	×		×		
Equatorial Guinea								
Egypt	×		×	×	×			
El Salvador						×		
Eritrea								
Estonia			×	×	×			
Ethiopia	×		×	×				
Fiji	×			×				
Finland	×		×	×	×	×	×	×
France	×	×	×	×	×	×		
Gabon	×		×	×	×			×
Gambia								
Georgia			×	×				
Germany	×		×	×	×	×		
Ghana	×		×	×			×	

Country	Convention							
	11	84	87	98	135	141	151	154
Greece	×		×	×	×	×	×	×
Grenada	×		×	×				
Guatemala	×		×	×		×		×
Guinea	×		×	×	×		×	
Guinea-Bissau				×				
Guyana	×		×	×	×	×	×	
Haiti			×	×				
Honduras			×	×				
Hungary			×	×	×	×	×	×
Iceland	×		×	×				
India	×					×		
Indonesia			×	×				
Iran, Islamic Republic of								
Iraq	×			×	×			
Ireland	×		×	×				
Israel			×	×		×		
Italy	×		×	×	×	×	×	
Jamaica	×		×	×				
Japan			×	×				
Jordan				×	×			
Kazakhstan								
Kenya	×			×	×	×		
Korea, Republic of								
Kuwait			×					
Kyrgyzstan			×	×				
Lao People's Democratic Republic								
Latvia			×	×	×		×	×
Lebanon				×				
Lesotho	×		×	×	×			
Liberia			×	×				
Libyan Arab Jamahiriya				×				
Lithuania			×	×	×			×
Luxembourg	×		×	×	×			
Madagascar	×		×	×				
Malawi	×			×				
Malaysia	×			×				
Malaysia (Peninsular)	×							
Mali	×		×	×	×	×	×	
Malta	×		×	×	×	×		
Mauritania	×		×					
Mauritius	×			×				

Country	Convention							
	11	84	87	98	135	141	151	154
South Africa			×	×				
Spain	×		×	×	×	×	×	×
Sri Lanka	×		×	×	×			
Sudan				×				
Suriname	×		×	×	×		×	×
Swaziland	×		×	×				
Sweden	×		×	×	×	×	×	×
Switzerland	×		×	×		×	×	
Syrian Arab Republic	×		×	×	×			
Tajikistan			×	×				
Tanzania, United Republic of	×			×	×			×
Thailand								
The former Yugoslav Republic of Macedonia			×	×	×			
Togo	×		×	×				
Trinidad and Tobago			×	×				
Tunisia	×		×	×				
Turkey	×		×	×	×		×	
Turkmenistan			×	×				
Uganda	×			×				×
Ukraine	×		×	×				×
United Kingdom	×	×	×	×	×	×	×	
United Arab Emirates								
United States								
Uruguay	×		×	×		×	×	×
Uzbekistan					×			×
Venezuela	×		×	×		×		
Viet Nam								
Yemen			×	×	×			
Yugoslavia	×		×	×	×			
Zambia	×		×	×	×	×	×	×
Zimbabwe				×	×			

Annex 2.

Additional reading

ILO law on freedom of association: Standards and procedures (Geneva, ILO, 1995).

Freedom of association and collective bargaining. General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948, and the Right to Organize and Collective Bargaining Convention (No. 98), 1949 (Geneva, ILO, 1994).

Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (Geneva, ILO, fourth (revised) edition, 1996).

Freedom of association: A workers' education manual (Geneva, ILO, second (revised) edition, 1987).

