

# **Fundamental ILO labour standards: their role in the Mining Certification Evaluation Project**

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2 April 2003

This paper has been prepared as a result of discussion at the MCEP Working Group meeting of 6 March. It seeks to answer the following questions:

- What are international labour standards and how have they been created?
- What are “core” or “fundamental” labour standards?
- How widespread is support for international labour standards in general and for fundamental labour standards in particular?
- What is the relevance of fundamental labour standards to the MCEP?
- Are there other ILO standards highly relevant to the MCEP?

Note: this document draws heavily on information from the website of the ILO: [www.ilo.org](http://www.ilo.org) and that site is recommended for further research.

## **What are International Labour Standards and how have they been created?**

International labour standards refer to conventions and recommendations adopted by the International Labour Organisation, the oldest body of the United Nations system (and the only body to carry over from the pre-WWII League of Nations).

Conventions are international treaties that are legally binding on nations that have ratified them. Recommendations are advisory only. There are more than 180 conventions and 185 recommendations. They cover a wide range of issues, from basic human rights through to the treatment of women and disadvantaged groups to specific health and safety standards for various industries and occupations. The initial focus of the ILO was in mitigating extremes of “injustice, hardship and privation” in the workplace but its mandate has broadened in line with other UN bodies into fostering social justice and cooperation with a focus on the workplace.

International labour standards are adopted by the annual International Labour Conference. The conference is made up of member States, of which there are 175. States which are the worst violators of labour rights sometimes choose not to be members, as do some very small States that have little formal sector employment. Member States are required to field tripartite delegations – representing governments, business and labour, and is unique among UN

and multilateral bodies in doing so. Business and labour delegations routinely meet separately from government so those groups do not automatically reflect government views.

## **What are “core” or “fundamental” labour standards?**

The Governing Body of the ILO has decided that eight Conventions should be considered fundamental to the rights of human beings at work, implemented and ratified by all member States of the organization. These are called *Fundamental ILO Conventions*. These conventions are referred to in *The Declaration on Fundamental Principles and Rights at Work* adopted in 1998. The Declaration requires that, even where member States have not ratified fundamental conventions, they are required by the act of membership to “respect, promote, and to realize” the principles of those conventions.

The eight fundamental conventions cover four key areas and are as follows:

### **Freedom of association**

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

### **The abolition of forced labour**

- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)

### **Equality**

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Equal Remuneration Convention, 1951 (No. 100)

### **The elimination of child labour**

- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

(Note: the full text of the conventions can be obtained at [www.ilo.org/ilolex/english/index.htm](http://www.ilo.org/ilolex/english/index.htm) )

A brief description of these fundamental standards is as follows:

*Freedom of association:* workers and employers shall be free to form associations for the protection of their interests, and to bargain collectively. In addition to the “freedom of speech and association” doctrine, which is fundamental to basic political rights, this is done in respect of workers because they are, in general, in an inferior bargaining position with respect to employers.

*Abolition of forced labour:* advances the concepts of the anti-slavery movement; people cannot be regarded as free in the exercise of their rights as citizens where they are forced to supply labour. Further, free workers

cannot bargain for reasonable wages and conditions where they must compete with labour supplied under duress on a non-market basis.

*Equality*: requires equal pay for work of equal value between men and women. Seeks to eliminate discrimination in employment on the basis of race, colour, sex, religion, political opinion, national extraction or social origin.

*Elimination of child labour*: aims to protect non-adults from exploitation in the workforce, and to ensure that employment does not prevent them receiving education to, inter alia, improve their employment opportunities. There are restrictions in employment of persons under 18, becoming stricter for persons under 15 (light work that does not interfere with schooling) and an absolute proscription on employment of persons under 13 (12 for developing countries). The second convention on the worst forms of child labour proscribes debt bondage, child trafficking, prostitution and similar.

Basic and fundamental as they are, it cannot be assumed that, in Australia or other developed countries, laws and practices currently in place always exceed these basic standards and therefore render them less relevant. Breaches can be as minor, but important, as the overwork of children on newspaper deliveries and in corner shops to the point where their schooling is affected (the UK) to the highly problematic use of prison labour in the USA to provide commercial services in competition with companies employing free labour.

## **How widespread is support for international labour standards in general and for fundamental labour standards in particular?**

ILO conventions vary significantly in how widely ratified they are. As with other international treaties, delegates may vote in favour of a convention but this does not always lead to ultimate ratification by the member State.

Conventions are legally binding on ratifying States, but there is little machinery to enforce compliance. States may be the subject of findings by ILO expert bodies and the Conference that they are in breach of conventions but this may not routinely lead to action achieving compliance; States sometimes choose to ignore or perpetually dispute such findings.

As stated above, compliance with fundamental labour standards is a prerequisite of ILO membership. In practice this has not always resulted in member States complying. Australia has been found by ILO bodies to be in breach of conventions 87 and 98 in that the Australian Workplace Relations Act (1996) fails to support collective bargaining and unfairly restricts the right to strike, thereby impeding the benefits of freedom of association.<sup>1</sup> The Australian Government disputes those findings.

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<sup>1</sup> Committee of Experts on the Application of Conventions and Recommendations (CEACR): Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Australia (ratification: 1973) Published: 2001  
CEACR: Individual Observation concerning Convention No. 98, Right to Organise and

In the most extreme case, that of Burma/Myanmar where forced labour is routinely used by the military government, increasing exhortations at the governing body level are gradually leading to ILO member States (European Union members in particular) to restrict government assistance measures to that country.

The vast majority of ILO member States have ratified all or most of the fundamental conventions. The least number of ratifications of a fundamental convention is 123 (for No. 138 on child labour) and the most is 160 (for No. 100 on equal pay for men and women). The United States is unusual in having ratified only three of the eight; it is joined only by Afghanistan, China, Laos, Myanmar, Oman, Qatar, Somalia, the Solomon Islands and Vietnam (of which three are failed states).

Australia has ratified six of the eight conventions. The exceptions are those on child labour. The former federal ALP Government was working towards ratification of convention 138. (Deficiencies had been found in State legislation with regard to legislative regulation of light work for children under 15, and work jeopardising the health, safety or morals of adolescents under 18.) The federal Coalition Government has not ratified any ILO convention since its election in 1996. (Convention 182 on the worst forms of child labour was adopted by the ILO in 1999.)

## **What is the relevance of fundamental labour standards to the MCEP?**

MCEP is seeking to develop principles and criteria, and from them measurable and auditable on-ground performance standards for mine sites, with the goal of having an independent third party certification process for the mining industry.

One set of principles and criteria are “social” (the others being environmental, governance and economic). Human rights have already been identified as relevant.

The Fundamental ILO Conventions set out key minimum standards which are essential in all workplaces worldwide if workers are to have dignity at work, to be free from arbitrary discrimination and persecution, and to be able to bargain for reasonable wages and conditions.

If the MCEP is to have any minimum performance standards with respect to the rights of mineworkers, it should begin with these internationally agreed minimum standards. It may choose to go beyond them (and arguably should if it is seeking to require high performance) but should not fall short of them.

It should be noted just how “basic” these fundamental conventions are. They do not:

- set rates of pay; or
- set hours of work; or
- set occupational health and safety standards.

They do *not* require collective bargaining (a common misconception). They *do* require that employers recognise and respect the right of employees to bargain collectively, and that employers constructively engage in collective bargaining where employees choose to do so.

### **Are there other ILO labour standards highly relevant to the MCEP?**

If MCEP seeks to go beyond the absolute minimum standards for workplaces worldwide, then there are two obvious candidates in terms of ILO conventions highly relevant to the mining industry. They are:

- the Safety and Health in Mines Convention 1995 (No. 176)
- the Indigenous and Tribal Peoples Convention, 1989 (No. 169)

The *Safety and Health in Mines Convention* seeks to describe in general terms the framework of laws and regulations that governments should have in place to regulate the safety and health of mining. It also describes the rights and responsibilities of employers and employees.

As a relatively recent convention it has 19 ratifications. (It takes many nations considerable time to amend their laws prior to ratification. If Australia had been keen to ratify – it hasn’t been since 1996 - it would still have taken 2-3 years due to Commonwealth-State negotiations. At the 1995 adoption of the convention, Australian governments, business and unions all supported ratification.) Ratifying states include the United States, South Africa (two major mining States), and European States such as Germany, Spain, Austria, Sweden, Norway, Portugal and Ireland.

The convention is alone as the only internationally agreed standard for mine safety and health workplace practice. The importance of ILO standards in occupational health and safety was reinforced in recent years by the decision of the International Standards Organisation (ISO) to *not* pursue standards in this area due to the existing role and activity of the ILO.

The *Indigenous and Tribal Peoples Convention* is not limited to workplace issues. It seeks in general terms to protect the rights and opportunities of such peoples, including through special measures addressing their needs. The convention requires governments to recognize customary practices and traditional land uses. It specifically provides a role for indigenous and tribal people in the management of natural resources on their lands.

It is my understanding that Convention 169 is rare in international law in directly addressing the needs of indigenous people (as opposed to matters of

racial discrimination which are dealt with under other international law). For this reason it was identified as highly relevant by indigenous people participating in the Mining, Minerals and Sustainable Development (MMSD) process. This led to its listing as a key reference point for industry at page xxvii of the Executive Summary of the MMSD final report, *Breaking New Ground*.

Convention 176 was also identified at the same point in the MMSD report, as was Convention 98 (on the right to organize and collective bargaining).

It is also worth noting at this point that other longstanding and recent international initiatives concerning labour rights implicitly or explicitly reference fundamental ILO labour standards. These include the OECD's *Guidelines for Multinational Enterprises*, the UN Secretary General's *Global Compact* and the *Global Reporting Initiative*.

## **Conclusion**

The eight Fundamental ILO Conventions plus Conventions 169 on indigenous people and 176 on safety and health in mines are highly relevant to the development of performance standards for the mining industry.

ILO conventions may currently not be popular with some Australian policy-makers or well-known in Australia but there are no other comparable international workplace standards in existence. They are not aspirational documents; they are minima that responsible governments and employers should readily exceed.

It is difficult to conceive of any standard developed within Australia that will have either applicability or credibility internationally if it does not comply with (and preferably surpass) existing agreed minimum human rights standards in the workplace.