



Canada's
Shameful
Secret

backgrounder

Canada's Shameful Secret

Failure to ratify and promote
ILO's core Conventions
respecting fundamental
rights at work

MARCH 2009



Canada's shameful secret

Canada has a shameful secret when it comes to human rights at work. It is one of the few countries in the world that have yet to ratify all eight of the international standards recognized as being fundamental to the rights of human beings at work.

Canada has yet to ratify those standards governing forced labour, the minimum age for working and the right to collective bargaining.

This is an international embarrassment for Canada as it puts us close to the bottom of countries in the world which have not formally recognized the internationally fundamental rights of human beings at work.

There are eight standards recognized as being fundamental to the rights of human beings at work all around the world. These standards have been developed by the International Labour Organization (ILO), a United Nations agency based in Geneva, Switzerland specializing in developing and promoting international human and labour rights Conventions which are recognized around the world.

The standards are referred to as the *core* Conventions of the ILO. These core ILO Conventions have been ratified by the overwhelming majority of ILO member States, irrespective of their political, religious, cultural or social context.

Unfortunately, Canada is one of the few countries that have not ratified all eight.

Over two thirds of the 182 member States of the ILO (126 out of 182 countries), have ratified all eight core Conventions. Only 12 percent of the ILO's member States (23 out of 182 countries) have ratified five or less of the eight core Conventions. This places Canada close to the bottom 10 percent of countries in the world in terms of formally not recognizing internationally accepted fundamental human rights at work.

International Labour Organization

Founded in 1919, the International Labour Organization (ILO) is the only surviving major creation of the Treaty of Versailles, which brought the League of Nations into being. The ILO became the first specialized agency of the UN in 1946. Canada has been a major participant in the ILO from the beginning and was a founding member of the organization in 1919. Montreal was home to the ILO during the Second World War.

Since 1919, the International Labour Organization has maintained a system of international labour standards known as ILO Conventions, aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

These Conventions have been developed under the ILO's unique *tripartite* structure where governments, employers and workers' organizations from around the world cooperate and come to an international consensus on what the minimal labour standards for work should be.

The ILO Conventions are an essential component in the international framework for ensuring that the growth of the global economy provides benefits to all. The Conventions provide a level playing field on social standards to avoid a race to the bottom. They help promote democracy within nation states and within the global community. They also help promote higher levels of economic equality and make labour markets work better from the point of economic growth, efficiency and fairness.

There are 188 ILO Conventions covering a range of fundamental labour rights to rights of workers in specific industries and trades. The first Convention, adopted in 1919, developed standards for establishing the hours of work for industrial workers. The last Convention to be adopted in June 2007 – No. 188 – covers workers employed in the commercial fishing industry.

Eight ILO core Conventions

The most important Conventions are referred to as the eight *core* Conventions of the ILO. These Conventions contain fundamental labour rights that should be respected by all member countries, regardless of their level of development.

The ILO has identified these eight Conventions as the basis on which all other workers' rights can be built. They provide for the necessary conditions for the improvement of individual and collective rights at work. The eight core Conventions cover four fundamental principles and rights:

- freedom of association and collective bargaining;
- elimination of forced labour;
- effective abolition of child labour; and
- elimination of discrimination in respect of employment and occupation.

The eight ILO core Conventions which are recognized as fundamental to workers' rights worldwide are:

1. Convention No. 29 – Forced Labour, 1930
2. Convention No. 87 – Freedom of Association and Protection of the Right to Organise, 1948
3. Convention No. 98 – Right to Organise and Collective Bargaining, 1949
4. Convention No. 100 – Equal Remuneration, 1951
5. Convention No. 105 – Abolition of Forced Labour, 1957
6. Convention No. 111 – Discrimination (Employment and Occupation), 1958
7. Convention No. 138 – Minimum Age, 1973
8. Convention No. 182 – Worst Forms of Child Labour, 1999.

(See Appendix 1 for a brief description of each of the eight core Conventions.)

In 1998, the ILO grouped the basic rights and principles encompassed in these eight core Conventions into the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*. The Declaration commits all

ILO member States, whether or not they have ratified the core Conventions, to respect the labour principles covered by the core Conventions. The *Follow-Up*, among other things, calls for reports by countries that have not ratified one or more of the core Conventions, on the status of implementing the various rights.

Canada supported the adoption of the *Declaration* and by doing so agreed “to respect, to promote and to realize in good faith” the rights and principles of the eight core Conventions. The official position of the federal government to the *Declaration* is that “*Canada attaches great importance to the Declaration ... as a key instrument for the promotion of the fundamental principles of freedom of association and collective bargaining. ... Its implementation will contribute significantly to improving the lives of working people and their families.*”

Because the core ILO Conventions are essential labour standards, they have been integrated in a range of guidelines for global corporations, such as:

- the UN Global Compact;
- the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights;
- the OECD Guidelines for Multinational Enterprises; and most recently,
- the June 2008 ILO Declaration on Social Justice for a Fair Globalization.

Why has Canada not ratified three of the core Conventions?

The official reasons why Canada has not ratified ILO core Conventions No. 29, No. 98 and No. 138 are somewhat obscure, contradictory and difficult to understand.

At the ILO, the Canadian government has repeatedly pledged to abide by these eight international core human rights standards. Canada expressly recognized in 2000 “*that Canada does not expect other governments to respect standards which it does not apply to itself*”.

Successive governments have failed to outline reasons for Canada's refusal to ratify the remaining three core Conventions. Details on which governments in Canada object to ratification and the precise nature of their concerns remain unknown. There has been no public debate, and little Parliamentary discussion regarding Canada's failure to ratify the three remaining core ILO Conventions.

In fact, the only public record of any federal-provincial-territorial consultations on ratifying the Conventions are the brief descriptions contained in the occasional Canadian government reports to the ILO on the status of ratifying each of the core ILO Conventions.

Convention No. 29

Canada is one of only nine countries in the world that have not ratified Convention No. 29.

In 1959 Canada ratified the more stringent ILO *Convention No. 105 – Abolition of Forced Labour*, which prohibits forced or compulsory labour as a means of political coercion, but yet 40 years later, is still unable to ratify the more general Convention No. 29 on Forced Labour.

Based upon its reporting to the ILO, the Canadian government stated in 2004 that it “*is continuing to work with all Canadian jurisdictions with a view to completing the procedures for the ratification*”.

At one point, the Canadian government expressed concern that the interpretation of Article 2 of the Convention was that prison labour must be carried out “under the supervision and control of a public authority”. It suggested that this interpretation would result in Canada being noncompliant of the Convention because the Ontario government contracted to a private company to operate a prison in Penetanguishene.

This prison privatization experiment is the only example of private prisons in Canada, and it has been shown to be a dismal failure. When the contract ended in November 2006, the management of the prison went back

to the public sector. So it's reasonable to expect that this concern no longer applies.

It is critical that Canada joins with the 173 countries around the world which have to date ratified Convention No. 29.

Convention No. 98

Canada is one of only 29 countries in the world that have not ratified Convention No. 98.

In its 2003 report to the ILO, the Canadian government expressed concern that it might not be compliant with Convention No. 98 because in some jurisdictions of Canada:

“some or all of the following categories of workers may be excluded from collective bargaining legislation, but are nevertheless entitled to negotiate with their employers on a voluntary basis: agricultural workers, domestic workers, and members of the medical, dental, architectural, legal and engineering professions”.

Its position had changed in 2008, when it reported to the ILO that it was *“pursuing discussions with provincial and territorial governments concerning ratification”.*

This change of position appears to have been connected to a decision of June 2007 by the Supreme Court of Canada which ruled that collective bargaining is a constitutional right of all Canadians protected under Article 2(d) of the *Canadian Charter of Rights and Freedoms*.

The Canadian government reported that the decision could have significant implication for industrial relations and Canada's position with respect to ratification of Convention No. 98.

It is critical that Canada joins with the 153 countries around the world which to date have ratified Convention No. 98.

Convention No. 138

Canada is one of only 51 countries in the world that have not ratified Convention No. 138.

Canada was quick to ratify Convention No. 182 – Worst Forms of Child Labour in 2000, only one year after it was adopted by the ILO, but yet seems unable to ratify Convention No. 138 on minimum working age for children, which was adopted by the ILO 36 years ago.

In 2005, the Canadian government informed the ILO that “*while there is a high degree of conformity with the principles of Convention No.138 in Canada, legislative changes would be required in **all** jurisdictions in order to meet the specific technical requirements of the instrument*”. However, there was no mention of the specific legislation changes required.

In 2008, the Canadian government reported that it was “*pursuing discussions with provincial and territorial governments concerning ratification of Convention No.138*”.

It is critical that Canada joins with the 131 countries around the world which have to date ratified Convention No. 138.

Canada’s lack of transparency in ratifying ILO Conventions

It’s difficult to decide on the real reasons behind Canada’s failure to ratify the three remaining core ILO Conventions. Because there is little transparency in the process for ratification, it’s unclear whether the ratification is being delayed by ideological opposition to the fundamental rights embodied in the three Conventions, or straightforward neglect by our political leaders of Canada’s international obligations regarding rights at work.

Not only has Canada failed to ratify three of the core ILO Conventions, we have one of the worst ratification records of all ILO member States, having only ratified 31 of the ILO’s 188 Conventions.

It's obvious that Canada's current ratification process for ILO Conventions is in serious need of greater transparency and Parliamentary debate.

Prior to the 1960s, debate and approval by Parliament of ILO Conventions was the norm. This is not the case anymore. The contrasting experience of Australia, New Zealand and the United Kingdom is noteworthy where there is a very transparent ratification process providing Parliamentarians an opportunity to provide input and question the ratification process.

In these countries, ILO Conventions are tabled in Parliament for at least 15 days prior to ratification which provides greater opportunity for public debate and education on a country's role in promoting and adhering to fundamental human rights at work.

The ratification process by the Canadian government must also incorporate to a much greater degree the well-respected ILO principle of tripartism. Our government has historically engaged the labour movement, as well as employer organizations, in the development and adoption of ILO Conventions at the annual conferences of the ILO.

But when it comes to consulting the labour movement and employer organizations in the federal/provincial/territorial discussions of ratification of ILO Conventions, ILO's spirit of social dialogue and tripartism is nonexistent.

Yes Canada can recognize fundamental human rights at work!

The labour movement must become more engaged in lobbying the federal, provincial and territorial governments to have a more transparent and public consultative approach to ratifying ILO Conventions. We should not accept the hypocrisy of our federal government playing a leadership role at the ILO in developing international labour standards while not being prepared to ratify all eight fundamental core ILO Conventions.

At a time when the core ILO Conventions are becoming increasingly important and recognized as a part of international trade agreements between countries, it is critical that Canada catches up with the overwhelming number of countries around the world which have ratified all eight core Conventions. There is no reason why we cannot.

APPENDIX I

Core ILO Conventions

Recognizing the Fundamental Human Rights at Work

1. Convention No. 29 – Forced Labour, 1930

This Convention prohibits all forms of forced or compulsory labour, which is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered voluntarily”. There are a few exceptions provided such as work required by compulsory military service or prison work of convicted inmates which is supervised by a public authority. It has been ratified by 173 countries.

2. Convention No. 87 – Freedom of Association and Protection of the Right to Organise, 1948

This Convention sets forth the right for workers and employers to freely organize and to participate in their administration and activities without interference from public authorities. It has been ratified by 149 countries.

3. Convention No. 98 – Right to Organise and Collective Bargaining, 1949

This Convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination as well as the right to negotiate their terms and conditions of employment by means of collective agreements. It has been ratified by 159 countries.

4. Convention No. 100 – Equal Remuneration, 1951

This Convention requires countries to ensure the application of the principle of equal remuneration for men and women workers for work of equal value. It has been ratified by 166 countries.

5. Convention No. 105 – Abolition of Forced Labour, 1957

This Convention prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. It has been ratified by 173 countries.

6. Convention No. 111 – Discrimination (Employment and Occupation), 1958

This Convention requires countries to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation. It has been ratified by 168 countries.

7. Convention No. 138 – Minimum Age, 1973

This Convention sets the general minimum age for employment or work at not less than the age of completion of compulsory schooling and, in any case, not less than 15 years (13 for light work). It has been ratified by 151 countries.

8. Convention No. 182 – Worst Forms of Child Labour, 1999

This Convention requires countries to eliminate the worst forms of child labour, including all forms of slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict, child prostitution and pornography. It has been ratified by 169 countries.