



**Study on the Right to Organise
in the Health and Commerce sectors of
Brazil, Colombia, Guatemala, Nepal and the Philippines**

Final report, 1 May April 2023

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About WageIndicator Foundation

WageIndicator started in 2000 to contribute to a more transparent labour market by publishing easily accessible information online. It collects, compares and shares labour market information through online and face-to-face surveys, desk research and a broad variety of other research methods. It publishes the collected information on national websites, thereby serving as an online library for cost of living and wage information, labour law, and career advice, both for workers, employers, policy makers and researchers. The WageIndicator websites and related communication activities reach out to millions of people each month. By 2023, WageIndicator has offices in Amsterdam (HQ), Bratislava, Buenos Aires, Cairo, Cape Town, Düsseldorf, Jakarta, Islamabad, Maputo, Pune, Sarajevo and Venice. The foundation has a core team of 40 people and some 200 associates - specialists in wages, labour law, industrial relations, data science, data collection, statistics - from all over the world. On a yearly basis, WageIndicator Foundation offers 150 internships to students from different universities. FLAME University in Pune, India, plays a key role in the intern program.

For more information: www.wageindicator.org

Acknowledgements

This study on the Right to Organise in the health and commerce sectors of Brazil, Colombia, Guatemala, Nepal and the Philippines, was funded by the Trade Union Solidarity Centre of Finland “SASK”.

WageIndicator would like to thank SASK’s contacts through trade union partner PSI and WageIndicator in-country researchers for their thorough research, contacts and overviews of the country reports: Claudia de Fatima dos Santos, María Soledad Rodriguez, Jane Lynn Capacio, Rolando (Bobbit) Librojo, Sachin Tiwari, Karina Maharjan, and Luis Eduardo Palma. Similarly, WageIndicator would like to thank its team at the Islamabad Office for their desk research: Iftikhar Ahmad, Ambreen Riaz, Nasir Zaman and Tasmeena Tahir.

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Citation: Ahmad, I., Capacio, J.L., Librojo, R., Tiwari, S., & Palma, L.E. (2023). *Right to Organise in Brazil, Colombia, Guatemala, Nepal and the Phillipines*. WageIndicator Foundation, Amsterdam and Trade Union Solidarity Centre of Finland SASK, Helsinki.

Introduction and methodology

The freedom of association and the rights to organise and bargain collectively are fundamental rights. These are rooted in the ILO Constitution and the Declaration of Philadelphia, which is annexed to the ILO Constitution.¹ The freedom of association is also proclaimed under the Universal Declaration on Human Rights.² The rights are enshrined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.³ ILO refers to these as enabling rights, allowing the promotion and realisation of decent working conditions.⁴

The study, commissioned by SASK⁵, focuses on the right to organise and negotiate in health and commerce sectors in selected countries, namely Brazil, Colombia, Guatemala, Nepal, and the Philippines.

The study limits itself to the key aspects of freedom of association and the right to collective bargaining, which include the following:

1. Relevant ILO Conventions and their incorporation in the national legislation (C087, C098; C149; C151)
2. Right to organise (in law) for general and healthcare workers
3. Information on trade unions and their membership
4. Right to collective bargaining (in law) and detailed information on collective agreements as well as their scope
5. Health sector specific questions on the right to organise and collective bargaining (negotiation).

The current study involves the compilation of information on rights to organise and negotiate in five countries, in terms of the law as well as in practice. The work was initiated with a table of ratifications for the following four conventions.

1. C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
2. C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
3. C149 - Nursing Personnel Convention, 1977 (No. 149)
4. C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

For the purpose of this study, it was checked if these conventions are ratified by the countries covered under this study. The next step was to check the observations and direct requests of the ILO's Committee of Experts on the Application of Conventions and Recommendations⁶, the country's Constitution and relevant labour legislation regarding provisions on trade union rights. Such information is already available under the WageIndicator Labour Law Database⁷ and ILO⁸. In order to understand trade union rights from a de-jure perspective, a detailed analysis of labour legislation was conducted.

¹ https://www.ilo.org/dyn/normlex/en/f?p=1000:62:::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration

² Art. 20 of the UDHR 1948 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³ https://www.ilo.org/dyn/normlex/en/f?p=1000:62:::NO:62:P62_LIST_ENTRIE_ID:2453911:NO

⁴ https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_096122.pdf

⁵ <https://www.sask.fi/in-english/>

⁶ <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>

⁷ <https://wageindicator.org/labour-laws>

⁸ https://www.ilo.org/dyn/natlex/natlex4.home?p_lang=en

In order to understand the on-ground situation on labour rights, we used the ITUC's Global Rights Index⁹, USDOS's Country Reports on Human Rights Practices¹⁰ and SDG indicator 8.8.2.¹¹

Similarly, in order to understand the in-practice situation of FOA&CB rights, the study considered country cases before the ILO's Committee on Freedom of Association.¹² Other than these sources, WageIndicator contracted seven independent researchers to conduct more in-depth research in the countries. The researchers did a combination of additional desk research, focus groups with trade unions and workers representatives, interviews with trade unions and worker representatives and a small survey (specifically for Nepal), in order to understand the situation and corroborate the information collected through desk research. For health sector specific information, interviews were conducted with local experts.

The results from the combined research methods can be found in the detailed country reports. Transcripts, recordings and additional study material is with WageIndicator and is available upon request.

Notes on Country Studies

The results from the research in countries showed that follow-up research with government bodies, unions and often specific people in occupations is needed to fully understand all issues. These issues include, but are not limited to questions around the exact number of collective bargaining agreements that exist within countries, and the exact demands for nurses and other occupations. The table below shows a list of the main and key informants for the research in the countries. More people were consulted than listed below, but not everyone wanted to be mentioned in this study.

⁹ <https://www.globalrightsindex.org/en/2022>

¹⁰ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/>

¹¹ Indicator 8.8.2 measures level of national compliance with labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status. The indicator is calculated by the ILO.

¹² <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>

List of key informants in-countries and their affiliations

Name	Designation	Affiliation	Country	Methodology	Sector
Gita Thing Poudel and Neel Kumari Maharjan	President	NEVA (Nepal Health Volunteers Association)	Nepal	Interview / survey	Health
Chij Dhakal	President	All Nepal Shop and Sales Workers Union, All Nepal Petroleum Workers' Union	Nepal	Interview / survey	Commerce
Umesh Giri	President	NHWEU	Nepal	Interview / survey	Health
Alok Malla	President	UNI Nepal	Nepal	Interview / survey	Commerce
Santosh Giri	President	NCAWU	Nepal	Interview/survey	Commerce
Khem Raj Khadka	President	Nepal Hotel Restaunt and Casino workers union	Nepal	Interview/survey	Commerce
Bhagwati Khadka	President	Nepal Beautician Union	Nepal	Interview/survey	Commerce
Rita Bhujel	President	HEVON	Nepal	Interview / survey	Health
Pramila Gautam	President	NHWEU, helping hands hospital	Nepal	Interview	Health
Pratima Bhatta	Organizer/ treasurer	Union of private hospitals & healthcare workers in Nepal (UNIPHIN)	Nepal	Interview	Health
Jorge Enrique Moreno Garcia	Business administrator at the Presidency of the Republic	UNUTRACUN, UTC	Colombia	Interview(s)	Commerce
Olga Yolanda García Villamil	Manager at IPS (Institute for Health Services)	Union member	Colombia	Interview(s)	Health

Mirna Nij	Political Council of Global Unions, STEG Health, Private and State. President at the ILO sub-commission for mediation and conflict resolution	Guatemala's Women's Union Federation, head of INTECAP union, union representative for indigenous peoples and land possession	Guatemala	Interview(s)	Health and Commerce
Maria das Gracia Reis	Board member of Sindicato de Trabajadores de Comercio de São Paulo	Sindicato de Trabalhadores de Comercio de São Paulo	Brazil	Interview(s)	Commerce
Sandro Alex de Oliveira Cezar	Responsible for the management of SINTSAÚDERJ, President of the CNTSS and of the CUT/RJ.	Federation of Sindicatos de Trabalhadores de la Salud, Trabajo y Seguridad Social-FENASPS, responsible for the management of SINTSAÚDERJ, President of the CNTSS and of the CUT/RJ.	Brazil	Interview(s)	Health
Julio Coj	Member of the board of UNISITRAGUA	UNISITRAGUA (Union Sindical de Trabajadores de Guatemala), member of CGTG	Guatemala	Interviews	Commerce and Health
Jesus (Jess) Obien	President	UFSW (Unified Filipino Service Workers)	Philippines	Focus group	Health
Conrad (Rudy) Ladio	General Secretary	UFSW (Unified Filipino Service Workers)	Philippines	Focus group	Health
Jimmy Abana	Deputy General Secretary	UFSW (Unified Filipino Service Workers)	Philippines	Focus group	Health

Dante Valdez	President	De los Santos Medical Center Employees Association - UFSW)	Philippines	Focus group	Health
Rene Capito	President	Alliance of Filipino Workers (AFW)	Philippines	Focus group	Health and Commerce
Ferdinand Gan	Vice President	Alliance of Filipino Workers (AFW)	Philippines	Focus group	Health and Commerce
Robert Mendoza	President	Alliance of Health Workers (AHW)	Philippines	Interview	Health
Julius Cainglet	Vice President for Research, Advocacy and Partnerships	Federation of Free Workers (FFW)	Philippines	Interview	Commerce
Du	President General, legal counsel for hospitals	National Federation of Labour (NFL)	Philippines	Interview	Health
Roland dela Cruz	Executive Vice President	PACIWU/CIO	Philippines	Interview	Commerce

BRAZIL



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NORTH
ATLANTIC
OCEAN

Equator 0°

15°

Tropic of Capricorn

30°

0 200 400 600 800 km

45°

B R A Z I L

- ☉ National capital
- ⊙ State capital
- City
- ✈ Major airport
- - - International boundary
- Brazil state boundary



Status of Labour Market related Sustainable Development Goals in Brazil			
Indicators	Brazil	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US\$1.9 PPP)	2.18	2022	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than US\$1.9 a day.
1.3.1: The population effectively covered by a social protection system, including social protection floors	69.9	2020	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.
5.5.2: Proportion of women in senior and middle management positions	37.2	2021	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
5.5.2: Proportion of women in managerial positions	38.8	2021	
8.2.1: Annual growth rate of output per worker (GDP constant 2011 international \$ in PPP)	-4.29	2022	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.
8.3.1: Proportion of informal employment in non-agriculture employment Total	35.2	2021	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services.
8.3.1: Proportion of informal employment in non-agriculture employment Men	36.3	2021	
8.3.1: Proportion of informal employment in non-agriculture employment Women	33.9	2021	
8.5.1: Average hourly earnings of women and men employees	14.99	2021	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value.
8.5.2: Unemployment rate (Total, 15+)	13.16	2021	
8.5.2: Unemployment rate (Women, 15+)	16.41	2021	
8.5.2: Unemployment rate (Women, 15-24 years)	33.61	2021	
8.5.2: Unemployment rate (Men, 15+)	10.66	2021	
8.5.2: Unemployment rate (Men, 15-24)	24.18	2021	
8.6.1: Proportion of youth (15-24 years) not in education, employment, or training)	23.38	2021	By 2030, substantially reduce the proportion of youth not in employment, education, or training
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Total)	1.2	2016	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms.
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Girls)	0.7	2016	
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Boys)	1.7	2016	
8.8.1: Non-fatal occupational injuries per 100,000 workers	1374	2017	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
8.8.1: Fatal occupational injuries per 100,000 workers	7.43	2011	
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	N/A	N/A	The exact measurement method and scoring for this indicator needs to be developed.
SDG indicator 9.2.2 - Manufacturing employment as a proportion of total employment (%) -- Annual	11.77	2021	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries.
SDG indicator 10.4.1 - Labour income share as a percent of GDP (%) -- Annual	61.4	2019	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.
Source; ILO Data (https://ilostat.ilo.org/)			

Legal Framework for the Right to Organise and Negotiate

A. Introduction

Labour rights in Brazil, including the right to organize and negotiate, are set forth in its Constitution¹³ and the consolidated Labour Code¹⁴. Brazil's Constitution guarantees freedom of association and provides for collective bargaining and the right to strike.¹⁵ The Constitution also addresses forced labour, trafficking, discrimination, protections for women and children in the workplace, minimum wages, working hours, skills training, and social security.¹⁶

The Consolidated Labour Code¹⁷ of Brazil 1943 governs individual and collective employment relations, including the freedom of association, collective bargaining, and the right to strike. Brazil has ratified eight of the ten fundamental ILO conventions.¹⁸

Table 1 indicates the convention ratified by Brazil and other countries in the study.

Table 1: Ratification of ILO Conventions, CFA Cases, and State of Workers' Rights

	C87	C98	C149	C151	C154	CFA cases (active, follow-up, closed)	LRI rating	ITUC rating	SDG Indicator 8.8.2
Brazil	Not Ratified	Ratified (18 Nov 1952)	Not Ratified	Ratified (15 Jun 2010)	Ratified (10 July 1992)	(0,1,71)	81.5 (Trade Union:50)	5 (No guarantee of rights)	N/A
Colombia	Ratified (16 Nov 1976)	Ratified (16 Nov 1976)	Not Ratified	Ratified (8 Dec 2000)	Ratified (8 Dec 2000)	(17,21,179)	73 (Trade Union:50)	5 (No guarantee of rights)	4.84 (2020)
Guatemala	Ratified (13 Feb 1952)	Ratified (13 Feb 1952)	Ratified (09 May 1995)	Not Ratified	Ratified (29 Oct 1996)	(5,10,96)	54 (Trade Union:0)	5 (No guarantee of rights)	5.38 (2020)
Nepal	Not Ratified	Ratified (11 Nov 1996)	Not Ratified	Not Ratified	Not Ratified	(0,0,4)	72 (Trade Union:50)	3 (Regular violations of rights)	N/A
Philippines	Ratified (29 Dec 1953)	Ratified (29 Dec 1953)	Ratified (18 June 1979)	Ratified (10 Oct 2017)	Not Ratified	(1,4,27)	70.5 (Trade Union:25)	5 (No guarantee of rights)	3.97 (2020)

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

C149 - Nursing Personnel Convention, 1977 (No. 149)

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

C154 - Collective Bargaining Convention, 1981 (No. 154)

Sources: ILO NORMLEX Country Profiles <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> (ratifications and Committee on Freedom of Association cases)

<https://labourrightsindex.org/heatmap-2022> (WageIndicator Labour Rights Index 2022)

¹³ Constitution of Brazil, 1988 (https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

¹⁴ the Consolidated Labour Laws (Law No. 5.452 of 1943) https://www.equalrightstrust.org/sites/default/files/ertdocs//Decree-Law%20No.%205%2C452_Consolidation%20of%20Labor%20Laws.pdf

¹⁵ Art. 8 of the Constitution of Brazil, 1988 (https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

¹⁶ Art. 3, 5-8, 39 & 201 of the Constitution of Brazil, 1988 (https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

¹⁷ http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm

¹⁸ https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102571

The eight fundamental conventions of the ILO that have been ratified by Brazil are Convention No. 29 on Forced Labor, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, Convention No. 155 on the Occupational Safety and Health and Convention No. 182 on the Worst Forms of Child Labor. The two conventions that have yet not been ratified by Brazil are Convention No. 087 on Freedom of association and protection of the right to organize, and the Convention No. 187 on Promotional Framework for Occupational Safety and Health.

B. Freedom of Association

The Brazilian Constitution¹⁹ and Consolidated Labour Laws²⁰ provide for freedom of association and allow workers and employer to join and form unions as well as professional associations (except for armed forces, uniformed police and firefighters). Workers are allowed to join unions without prior authorization. Similarly, no one can be forced to join or not join a union. Law also requires that there can be only one trade union to represent an occupational or economic category in a given area, as defined by workers and employers.

It is lawful to form an association for the purposes of study, advocacy and coordination of economic or professional interests of all those who, as employers, employees, agents or self-employed workers or professionals are engaged in the same activity or profession or activities or similar or related professions.²¹ The registration of trade unions is regulated by Ordinance No. 501 of 2019 which requires that “for the request for union registration, the union entity must access the National Register of Union Entities - CNES, and follow the instructions there for the issuance of the registration request, requiring the digital certificate”.²² While registration is a requirement, authorization from state authorities is not as the Constitution says the following: the law may not require authorization from the State for a union to be established, except for registration with the competent agency, prohibiting the Government from interfering and intervening in the trade union organization.²³ Professional associations must meet the following requirements to be recognized as unions:

- (a) To have, at least, one third of legally constituted companies’ membership, in the case of employers’ association; or a third of employees or workers of the same class or exercising the same profession in the case of an association of employees or workers;
- (b) Duration of 3 years for the Board’s mandate;
- (c) The position of president of a professional association must be exercised by a born Brazilian and the other positions related to administration and representation must be exercised by Brazilians.

These associations, called trade unions, represent the same or similar economic activity or profession. The trade unions have the right to represent their respective categories or professions, participate in collective bargaining, collaborate with the state, and impose contributions on those who participate in the category or profession. In line with Labour Law reform of 2017 (Law No. 13467/2017), union contribution is now voluntary (earlier it was compulsory) and depends on the worker’s prior and express consent to it. Moreover, though the affiliation with trade union is voluntary, trade unions have the right to represent all workers within their trade or territory to conclude collective bargaining agreement. They also have the duty to collaborate with public authorities for social solidarity, provide legal aid to members, and promote conciliation in labour agreements. The union must follow certain conditions for its functioning, such as prohibitions on political propaganda and activities not related to the purposes of the union.²⁴

¹⁹ Art. 8 of the Constitution of Brazil, 1988

²⁰ Consolidated Labour Laws, Decree-Law No. 5452 http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm

²¹ Art. 511 of the Consolidated Labour Laws, Decree Law No. 5452 of 1943

²² Art. 3 of the Ordinance 501 of 2019 <https://www.in.gov.br/web/dou/-/portaria-n%c2%ba-501-de-30-de-abril-de-2019-86041786>

²³ Art. 8(I) of the Constitution of Brazil, 1988

²⁴ Art. 511-521 of the Consolidated Labour Laws, Decree Law No. 5452 of 1943

C. Right to Organize

The Constitution of Brazil prohibits employers from dismissing a worker who is a trade union member from the moment such worker registers as a candidate for a leadership or representative position in the trade union; if elected, even as an alternate, the worker may not be dismissed until one year after termination of the term of office, unless the worker commits a gross misconduct, as provided by law.²⁵ The Consolidated Labour Laws further provide that a worker elected to a union administration position or professional representation, including before a collective deliberation body, cannot be prevented from exercising functions, nor transferred to a place or job that makes it difficult or impossible for the worker to perform their union duties.²⁶ Moreover, workers' representatives at workplace are also protected as follows: from the date of application until one year after the end of the term of office, the member of the Employee Representatives Committee shall not be arbitrarily dismissed as such not to be based on disciplinary, technical, economic or financial reasons.²⁷

D. Right to Bargain Collectively

Right to collective bargaining is guaranteed under the Constitution²⁸ as unions are required to participate in the collective negotiations. The rights is further regulated under the Consolidated Labour Laws.²⁹ Unions and employers can reach agreement on various working conditions.³⁰ However, according to the Consolidated Labour Laws, a collective agreement may be declared null and void if it conflicts with the government's economic or financial policy or the wage policy in force.³¹

Certain provisions must be added in a collective agreement. These include information about the parties concluding the agreement, validity period of agreement, categories or classes of workers covered by the agreement; etc.³² Parties to a collective agreement are not allowed to stipulate duration of a collective agreement that exceeds two years.³³

In line with Labour Law reform of 2017 (Law No. 13467/2017)³⁴, the collective bargaining agreements prevail over the provisions of Labour Law in respect of the following matters: working hours; annual hours banking system; meal and rest breaks; employee representatives in the enterprises; annual holiday exchange, incentive and profit-sharing plans, telework and intermittent work and other topics as specified article 611-A of the Consolidated Labour Law.³⁵

E. Right to Strike

The right to strike is guaranteed under Brazilian Constitution³⁶; it is up to the workers to decide when to exercise it and upon the interests to be defended thereby. The legislation must specify which services or activities are important and must address the community's immediate needs.

²⁵ Art. 8(VIII) of the Constitution of Brazil, 1988

²⁶ Art. 543 of the Consolidated Labour Laws, Decree Law No. 5452 of 1943

²⁷ Art. 510(D)(3) of the Consolidated Labour Laws, Decree Law No. 5452 of 1943

²⁸ Art. 8(VI) of the Brazilian Constitution

²⁹ http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm

³⁰ Art. 611 of the Consolidated Labour Laws, Decree Law No. 5452 of 1943

³¹ Art. 611A of the http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm

³² Art. 613 of the Decree-Law No. 5.452 of 1943

³³ Art. 614 of the Decree-Law No. 5.452 of 1943

³⁴ Law No. 13467/2017

³⁵ Art. 611A of the http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm

³⁶ Art. 9 of the Brazilian Constitution, 1988

Parties responsible for committing violations must face legal consequences. The freedom to strike is likewise protected under Law No. 7.783 of 1989.³⁷ The said law allows for collective cessation of work if negotiations fail or arbitration is not possible, but the employer must be informed 48 hours in advance. The union entity calls for a meeting to define worker demands and decide on the strike. The strike must be peaceful and not violate the rights of others. Employers cannot force employees to work and strikers cannot block access to work or cause harm. The employment contract is suspended during the strike and it is illegal to terminate or hire replacement workers. The Labor Court will make a decision on the validity of the claims. The following are considered essential services: water treatment and supply; production and distribution of electricity, gas and fuels; medical and hospital assistance; distribution and commercialization of medicines and food; funeral homes; public transport; collection and treatment of sewage and garbage; telecommunications; safekeeping, use and control of radioactive substances, nuclear equipment and materials; processing of data related to essential services; air traffic control & bank clearing.³⁸

During a strike in essential services, unions, employers, and workers must agree to maintain the provision of these services to meet the community's urgent needs. If the parties do not comply and ensure a minimum service, the government will step in. The decision to strike must be communicated to employers and users at least 72 hours in advance. Failure to comply with the norms of the law and prolonging the strike after an agreement, convention, or decision by the Labor Court is considered an abuse of the right to strike. The responsibility for any illegal or criminal acts during the strike will be determined based on labor, civil, or criminal law. The right to strike and its limits are defined by a complementary law. Employers are prohibited from shutting down operations in order to hinder negotiations or prevent workers from pursuing their demands (known as a lockout).³⁹

The Sustainable Development Goal indicator 8.8.2 measures the level of national compliance with fundamental labour rights (freedom of association and collective bargaining (FACB)). Based on ILO textual sources and national legislation, countries are scored on a scale of 0 to 10 (0 is best; 10 is worst). Brazil is not covered under SDG Indicator 8.8.2 however we can glean into the situation of workers' rights by considering the trade union indicator from the Labour Rights Index which shows that Brazil scores 50 (out of 100) on the trade union indicator.

Table 2: SDG Indicator 8.8.2 and LRI-TU Indicator

Level of national compliance with Labour rights among Brazil and neighboring countries, 2023		
	SDG Indicator 8.8.2	Labour Rights Index (Trade Union Indicator)
Argentina	2.88 (2020)	100 (2022)
Bolivia	2.94 (2020)	0 (2022)
Chile	2.68 (2020)	50 (2022)
Colombia	4.84 (2020)	50 (2022)
Costa Rica	1.91 (2020)	50 (2022)
Brazil	Not covered	50 (2022)

The value of SDG Indicator 8.8.2 can range between 0 to 10, with 0 being the best possible score (indicating higher levels of compliance with the freedom of association and collective bargaining (FACB) rights) and 10 the worst (indicating lower levels of compliance with FACB rights based on ILO textual sources and national legislation). The Trade Union indicator under the Labour Rights Index has a range from 0 to 100, with 100 being the best possible score and 0 the worst. Sources: ILO Data; WageIndicator Labour Rights Index

³⁷ https://www.planalto.gov.br/ccivil_03/leis/l7783.htm

³⁸ Art. 1 to 11 of the Law No. 7.783, 1989

³⁹ Art. 11 to 17 of the Law No. 7.783, 1989

The Global Competitiveness Index, based on 12 pillars, gives an overview about the Brazilian economy. The Labour Market Pillar, 8th Pillar, measures labour market efficiency through statistical data and executive opinion surveys among employers, provides Brazil’s view on various aspects, including the labour market efficiency pillar elaborated upon by surveys among employers and other statistical data.

Brazil ranks 105th out of 141 countries (1st is the best) at the pillar. Out of twelve indicators, the best rankings are Ratio of wage and salaried female workers to male workers % (47th), Reliance on professional management 1–7 (best) (53rd), and Redundancy costs weeks of salary (68th). The worst rankings are Hiring and firing practices (133rd), Cooperation in labour-employer relations 1–7 (best) (128) and Flexibility of wage determination (123) (see more details in the Table below).

Table 3: Labour Market Efficiency in Brazil, 2019

Index Component	Value	Score	Rank
8th pillar: Labour market	-	53.5	105
Flexibility 0–100	-	48.4	126
8.01 Redundancy costs weeks of salary	15.5	76.0	68
8.02 Hiring and firing practices 1–7 (best)	2.8	29.3	133
8.03 Cooperation in labour-employer relations 1–7 (best)	3.6	44.1	128
8.04 Flexibility of wage determination 1–7 (best)	4.3	54.8	123
8.05 Active labour market policies 1–7 (best)	2.6	27.4	103
8.06 Workers' rights 0-100 (best)	62.0	62.0	104
8.07 Ease of hiring foreign labour 1–7 (best)	3.6	43.9	110
8.08 Internal labour mobility 1–7 (best)	4.0	49.9	111
Meritocracy and incentivization 0–100	-	58.5	91
8.09 Reliance on professional management 1–7 (best)	4.5	58.6	53
8.10 Pay and productivity 1–7 (best)	3.4	40.4	116
8.11 Ratio of wage and salaried female workers to male workers %	0.83	78.6	47
8.12 Labour tax rate %	39.4	56.4	137

Source: The Global Competitiveness Report, 2019 (8th pillar: Labour Market Efficiency)\

F. Observations on Labour Legislation

Despite the existence of an extensive labour legislation in Brazil, some observations have been made by the international bodies like ILO Committee of Experts on Application of Conventions and Recommendations, International Trade Union Congress and United States’ Department of State Country Reports on Human Rights Practices. The comments are mainly relevant to the right to organize, the right to collective bargaining, and the right to strike.

According to ITUC’s Global Rights Index, Brazil is one of the ten worst countries in the world for working people. Workers in Brazil have long faced issues such as anti-union discrimination, and violations of collective bargaining agreements. Due to the government's inadequate handling of the COVID-19 outbreak, the country's collective bargaining system dropped by 45% since 2017, and employees, notably in the health and meat industries, observed worsened working conditions and reduced health and safety regulations. Brazil is rated a 5 by the International Trade Union Confederation, suggesting that workers' rights are not guaranteed and that they are subject to authoritarian governments and unfair labour practises.⁴⁰

⁴⁰ Rating of 5 is explained by the ITUC in its Global Rights Index as follows: “**5. No guarantee of rights**

Countries with the rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices.”

https://files.mutualcdn.com/ituc/files/2022-ITUC-Rights-Index-Exec-Summ-EN_2022-08-10-062736.pdf

Issued highlighted by ITUC⁴¹

The following issues have been highlighted by the ITUC under its Global Rights Index. Union organization and collective bargaining are restricted under Brazilian labour legislation.

1. One-third of workers in a certain category must be union members in order to form a union.
2. At each level, only one union is permitted (municipal, inter-municipal, state, or federal). Firefighters and certain governmental personnel are not allowed to organise.
3. Collective agreements may be terminated after a maximum of two years if they clash with the government's economic and financial plans. In public and mixed firms, collective bargaining is limited, and real pay increases are subject to specified restrictions.
4. Certain workers with better education and higher earnings may be exempt from collective bargaining.
5. The idea of favorability has been eliminated, and employment regulations can only be deviated from for a restricted set of rights.
6. Civil servants lack collective bargaining rights, and certain autonomous employees lack the ability to organise.
7. During a legal strike, an employer may substitute employees to protect machinery or products. Strikes can be prohibited by using the "interdito proibitório" instrument.⁴²

Issues highlighted by CEACR⁴³

1. The Committee requests that the Government specify whether collective agreement clauses that may have been temporarily set aside by individual agreements concluded between the employer and the worker or by unilateral decisions taken by the employer under the terms of MP No. 927 (promulgated in 2020 at the start of COVID) are now fully applicable.⁴⁴
2. Recalling the fundamental importance of ensuring effective protection against anti-union discrimination, the Committee has asked the Government to ensure that the legislation expressly defines concrete and sufficiently hindering punishments against all acts of anti-union discrimination.
3. The Committee has asked the Government to take the appropriate actions, in cooperation with the represented social partners, for the amendment of sections 611-A and 611-B of the Consolidated Labour Laws in order to more specifically define the circumstances in which provisions derogating from the legislation may be negotiated, as well as the scope of such

⁴¹ ITUC Global Rights Index 2022 <https://www.globalrightsindex.org/en/2022>

⁴² <http://www.defensoria.pi.def.br/interdito-proibitorio-pode-ser-ajuizada-no-juizado/>

The prohibitory ban or interdiction is a procedural mechanism for the defense of possession that is about to be molested, or is implicitly or expressly threatened. In practice, therefore, it is a preventive action.

⁴³ Observation (CEACR) - adopted 2020, published 109th ILC session (2021); Right to Organise and Collective Bargaining Convention, 1949 (No. 98);

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4061795,102571

⁴⁴ The provisional measures No. 927 (MP No. 927 of 22 March 2020) and No. 936 (MP No. 936 of 1 April 2020), adopted in response to the COVID-19 pandemic, severely prejudiced the right to collective bargaining by ensuring that individual agreements between the employer and the worker prevail over collective bargaining machinery. MP No. 936 was later converted into Act No. 14.020.

https://www.planalto.gov.br/ccivil_03/ato2019-2022/2020/lei/l14020.htm

clauses. This is done while highlighting the necessity of attaining, to the extent feasible, tripartite agreement on the fundamental norms of collective bargaining.

4. Under section 444 of the Consolidated Labour Laws, workers who have a higher education diploma and receive a wage that is at least two times higher than the ceiling for benefits under the general social security scheme may derogate from the provisions of the applicable collective agreements in their individual contracts of employment. This excludes the workers from the protection of fundamental conventions and labour legislation on the basis of their remuneration. The Committee has asked the Government to take necessary steps and ensure that Section 444 of the Consolidated Labour Laws is in accordance with the Convention.
5. The Committee notes that the 2017 labour legislation reform did not remove section 623 of the Consolidated Labour Laws.⁴⁵ As a result, the Committee once again urges that the Government should take the required steps to amend the legislation so that “restrictions on collective bargaining in relation to economic matters should only be possible in exceptional circumstances, that is in the case of serious and insurmountable difficulties in preserving jobs and the continuity of enterprises and institutions”.

Issues raised in USDOS Country Report⁴⁶

1. The law provides for freedom of association for all workers (except members of the military, military police, and firefighters); the right to bargain collectively with some restrictions; and the right to strike.
2. The law limits organizing at the enterprise level. By law the armed forces, military police, and firefighters may not strike.
3. The law stipulates certain restrictions, such as *unicidade* (in essence, one union per occupational category per city), which limits freedom of association by prohibiting multiple, competing unions of the same professional category in a single geographical area.
4. The law stipulates that a strike may be ruled “disruptive” by the labor court, and the union may be subjected to legal penalties if the strike violates certain conditions, such as if the union fails to maintain essential services during a strike, notify employers at least 48 hours before the beginning of a walkout, or end a strike after a labour court decision.
5. The law prohibits employers from hiring substitute workers during a legal strike or fire workers for strike-related activity, provided the strike is not ruled abusive.

⁴⁵ Section 623 of the Consolidated Labour Laws:

“A provision of a Convention or Agreement that, directly or indirectly, contravenes a prohibition or disciplinary rule of the Government’s economic-financial policy or concerning the current salary policy will be null and void”.

⁴⁶ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/brazil/>

UNIONS AND THEIR MEMBERSHIP	
Major trade union federations in different sectors	<p>As of 2008, Figures from the Brazilian Labour Ministry indicated that there are about 18,000 unions in the country.</p> <p>In 2019, the trade union density rate was 13%⁴⁷ which had slumped from 14.6% in 2018. The categories of trade unions in Brazil are:</p> <p>A: Association of Collectors of the Metropolitan Landfill of Jardim Gramacho B: CUT (Central Única dos Trabalhadores) C: Autonomous Workers' Center D: Single Workers' Central E: Brazilian Confederation of Christian Workers F: General Confederation of Workers G: National Confederation of Agricultural Workers H: Federation of Industries of the State of São Paulo I: Union Force</p> <p>is currently the main trade union federation in Brazil and Latin America and the fifth largest in the world. It has 3,800 affiliates with 7.8 million members, representing 24 million workers in those sectors and regions where the CUT is active.⁴⁸</p>
Trade union density	<p>The officially recognized trade union centers are the CUT, the FS, the General Workers' Union (UGT), the Brazilian Workers' Trade Union Federation (CTB), the New Workers' Union Central (NCST), and the Central Brazilian Union (CSB). Trade union density (% of employees) was 12.7% (in 2019).</p> <p>The CUT is currently the main trade union federation in Brazil and Latin America and the fifth largest in the world. It has 3,800 affiliates with 7.8 million members, representing 24 million workers in those sectors and regions where the CUT is active.⁴⁹. At its peak, more than 5,000 people worked in Associação dos Catadores do Aterro Metropolitano de Jardim Gramacho. Federação das Indústrias do Estado de São Paulo has FIESP has 52 representative units in the state of São Paulo, representing 133 employer's trade unions and 130,000 industries.⁵⁰</p>
Trade union density and female trade union membership	<p>The CUT is the largest trade union center in Latin America and the fifth largest in the world, bringing together 30.4 percent of all unionized workers in Brazil, according to the study headed by Godinho. Gender parity has turned the CUT into a vanguard trade union within the women's movement and an exception "not only within the trade union movement of Brazil, but the whole of Latin America and, perhaps, the world," Junéia Martins Batista, who heads the National Women's Secretariat (SNMT, previously CNMT) of the CUT, shared it with Equal Times.⁵¹</p> <p>Generally speaking, unionization is higher among women and in the less developed regions of Brazil, the North and Northeast. As per Pesquisa Nacional por Amostra de Domicílio Contínua (Pnad Contínua): Características Adicionais do Mercado de Trabalho 2019, Instituto Brasileiro de Geografia e Estatística (IBGE). Women make 10.9% of the total unionized workers in Brazil as of 2019.⁵² Public administration, defense and social security, education, human health and social services: 18.4%. Trade, repair of motor vehicles and motorcycles :7.4</p>

⁴⁷ https://www.ilo.org/shinyapps/bulkexplorer27/?lang=en&id=ILR_TUMT_NOC_RT_A

⁴⁸ <https://www.scielo.br/j/ee/a/rXqj8FsZBdQMmQMGYGxDMSH/?lang=en> https://www.ilo.org/shinyapps/bulkexplorer40/?lang=en&segment=indicator&id=ILR_TUMT_NOC_RT_A&ref_area=BRA

https://en.wikipedia.org/wiki/Category:Trade_unions_in_Brazil

<https://library.fes.de/pdf-files/iez/13761.pdf>

⁴⁹ <https://www.scielo.br/j/ee/a/rXqj8FsZBdQMmQMGYGxDMSH/?lang=en>

https://www.ilo.org/shinyapps/bulkexplorer40/?lang=en&segment=indicator&id=ILR_TUMT_NOC_RT_A&ref_area=BRA

https://en.wikipedia.org/wiki/Category:Trade_unions_in_Brazil

<https://library.fes.de/pdf-files/iez/13761.pdf>

⁵⁰ <https://library.fes.de/pdf-files/iez/13761.pdf>; <https://www.oecd.org/employment/collective-bargaining-database-Brazil.pdf>;

<https://edition.cnn.com/2012/06/05/world/americas/brazil-landfill-closure/index.html>

https://en.wikipedia.org/wiki/Federa%C3%A7%C3%A3o_das_Ind%C3%BAstrias_do_Estado_de_S%C3%A3o_Paulo#cite_note-dci.com.br-4

⁵¹ <https://www.equaltimes.org/cut-brazil-a-trade-union-centre-at?lang=en#.Y6BSJXZBxdg>

<https://www.ituc-csi.org/IMG/pdf/gap-1.pdf>

⁵² Pesquisa Nacional por Amostra de Domicílio Contínua (Pnad Contínua): Características Adicionais do Mercado de Trabalho 2019, Instituto Brasileiro de Geografia e Estatística (IBGE).

Significant changes since the year 2000	<p>Trade Unions in Transformation, New Horizons for the Hemispheric Trade Union Movement: The Trade Union Confederation of the Americas (TUCA) elaborate on this topic.</p> <p>The predicament of trade unions in Brazil in the aftermath of the alterations in the labour law in 2017 has also been elaborated in considerable length.⁵³</p>
Limitations on the right to organize in the public sector	<p>Workers in the public service in Brazil were not entitled to a collective working relationship with the public administration until the promulgation of the 1988 Constitution. Without the right to organise and no right to strike, they could not join trade unions, and thus could not act jointly or articulate as social partners. They were denied any form of expression of their common interests and desires, as well as the practical means to struggle for them.⁵⁴</p> <p>Legislative Decree 206 of 08 April 2010 guarantees the right to strike to civil servants in item VII Article 37 of the Federal Constitution of 1988, but no specific regulation has been adopted, despite the extension of trade union rights and guarantees that earlier were applicable only to the private sector. As a result, public sector workers continue to be denied their full rights.</p> <p>Single trade union system imposed by law and/or a system banning or limiting organising at a certain level (enterprise, industry and/or sector, regional and/or territorial, national) also limits the right to organize in the public sector since only one union is permitted at each level, e.g., municipal, inter-municipal, state or federal (Art. 516 Labour Law).</p>
Limitations on the right to negotiate in the public sector	<p>According to section 37 of the constitution of Brazil 1988, the right to strike shall be exercised in the manner and within the limits defined by the specific law. Despite the institutional recognition of the right to strike, workers increasingly organise protests in the form of work stoppages whereas public administrations refuse to negotiate.⁵⁵</p> <p>The lack of regulation on the right to strike for public servants also has a severe impact on public service users (citizens who are faced with long strikes). Civil servants are often compelled to return to work on the basis of legal judgments that point to the illegality of the strike, because of the lack of appropriate legal rules. The result is cyclic strike action. In 2014, the Brazilian Conservative party proposed a bill to restrict public servants' right to strike. The bill sought to limit general strikes, require notice, penalize strikers, replace them with contract workers, and designate most public services as essential. Unions oppose the bill as it violates workers' rights, limits their autonomy, and restricts their freedom to organize. They call for a contractual system that includes negotiation, mediation, and arbitration. The right to strike and collective bargaining are linked, and both parties must be willing to negotiate to achieve results.</p> <p>Another bill, Complementary Law Project 45/22, regulates the right of public servants to strike provided for in the Brazilian Constitution of 1988. The Bill provides for a possibility of deduction of wages for strike days; the dismissal for just cause of the employee who participates in an illegal strike. The Bill is still awaiting the designation of rapporteur in the Administration and Public Service Commission.⁵⁶</p>
<p>In the public sector, are there limitations on the right to strike</p> <p>Limitations on the right to strike in the public sector</p>	<p>Yes! In the public sector, there are restrictions on strikes.</p> <p>Although in the public sector, all workers are considered essential workers, it is necessary to maintain the minimum number of employees in the office, so a strike is unlikely.</p> <p>In any case, and if it happens, it can be a reason for justified dismissal</p>
Limitation on right to organise in particular occupations	<p>Categories of Workers Prohibited or Restricted from Forming or Joining a Union, or from Holding a Union Office: Firefighters and various other state employees do not have the right to organise. Civil servants, including those not employed in the administration of the state, have no collective bargaining rights.</p>

⁵³ <https://library.fes.de/pdf-files/iez/13861.pdf> ; <https://www.equaltimes.org/in-brazil-workers-rights-have-been#.Y6FKFXZBxdg>

⁵⁴ <https://www.world-psi.org/en/right-strike-public-sector-brazil>

⁵⁵ <https://www.world-psi.org/en/right-strike-public-sector-brazil>

⁵⁶ For more details, please see: <https://www.camara.leg.br/propostas-legislativas/2319190#CTRAB>

	<p>• Law No. 7783 of 28 June 1989 : Art. 13 provides that in essential services, trade unions are obliged to communicate the strike decision to users and employers at least 72 hours prior to the strike. As per Article 10 the following are considered essential services:</p> <ul style="list-style-type: none"> • Water treatment and supply; production and distribution of electricity, gas and fuels; • Medical and hospital assistance; • Distribution and commercialization of medicines and food; • Funeral homes; • Public transport; • Collection and treatment of sewage and garbage; • Telecommunications; • Safekeeping, use and control of radioactive substances, nuclear equipment and materials; • Processing of data related to essential services; • Air traffic control and air navigation; • Bank clearing; • Medical and expert activities related to the general social security system and social assistance; • Medical and forensic activities related to the characterization of the physical, mental, intellectual or sensory impediment of the person with a disability; • Other medical-expert services of the career of Federal Medical Expert indispensable to meet the urgent needs of the community.
ILO CONVENTIONS AND LEGISLATION	
Ratification information about major conventions	<p>Brazil has only ratified C098 - Right to Organise and Collective Bargaining Convention, 1949 along with C151 of the Labour Relations (Public Service) Convention.⁵⁷</p> <p>Brazil has ratified 95 Conventions in total, of which 67 are in effect, 20 have been denounced, and 8 instruments abrogated. In the last 12 months, no new conventions have been ratified.</p> <ul style="list-style-type: none"> • C098 was ratified on 18 November 1958 and it is in effect • C151 was ratified on 15 June 2010 and it is in effect <p>Brazil did not ratify Convention No. 87 because the Convention allows the plurality of unions, and this goes against the Brazilian Constitution. Article 8 of the Brazilian Constitution defines the unity of territorial unions. Union unity is defined as a limitation imposed by the government against the freedom of workers to participate in the union of their choice. This is because the government only allows one union per profession or category of profession, per region. For example, in an entire city, all metalworkers in all industries can only be members of the single authorized metalworkers' union in that city. Therefore, if Brazil ratifies C087, there would be a conflict between the international norm and the internal norm. C149 has not been ratified.</p>
Enactment of legislation in compliance with the convention	<p>The process with the ILO conventions in Brazil is: the decree is made, promulgated, and regulated; however, of the conventions that have been ratified by Brazil, many have not been regulated. For more details, please see the start of the country chapter.</p>
COLLECTIVE AGREEMENTS	
Number of collective bargaining agreements per sector	<p>There was no data that could be found on the number of collective bargaining agreements in Brazil.</p> <p>According to information provided by the interviewees, in the public sector, there are no collective agreements. In the private sector, there are individual enterprise level agreements but they are not registered.</p>
Scope of collective bargaining (national, sectoral, company or workplace)	<p>There are two types of collective bargaining agreements in Brazil: sectoral and firm-level CBAs. In sectoral CBAs, unions negotiate with employer associations representing establishments in a specific industry and geography. In firm-level CBAs, unions negotiate with individual employers. Given their wider coverage, sectoral agreements typically set general floors for workers' wages</p>

⁵⁷ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102571

	<p>and non-wage benefits. Firm-level agreements build on these general floors to expand fringe benefits for workers.⁵⁸</p> <p>Collective bargaining happens both at the sectoral level and company level. The collective bargaining agreement, in accordance with the relevant rules, takes place at the sectoral or industry level within a region (state or municipality). These agreements can be related to wages, overtime payments, tenure, outsourcing, social benefits, etc.⁵⁹</p>
<p>Is there a minimum number or percentage of membership to form a union that has the right to start CBA-negotiations;</p> <p>Statutory requirements for forming a trade union and to start CBA negotiations</p>	<p>The requirement for the establishment and registration of a trade union are explained at the start of the country chapter. There is no provision in the Consolidated Labour Laws on determining the representativity of a trade union to engage in collective bargaining. Art. 617 of the Consolidated Labour Laws, however, does provide that when workers of a given firm decide to implement a collective agreement with the relevant enterprises, they should communicate that decision to the trade union representing the economic category they belong to. However, if the said trade union does not assume the bargaining direction in the 8 days following the receipt of the communicated decision and if the federation and/or confederation the trade union belongs to does not react either after a certain deadline, workers concerned can go on with the negotiations by their own. For the purpose of deliberating upon the Agreement, the trade union must convene a general meeting of directly interested workers, whether unionized or not.</p> <p>Excessive representativity or the minimum number of members required for the establishment of a union.</p> <p>The number of members required in order to establish a union in a particular territorial basis has to be one-third of all workers of a specific category. There is an absence of recourse to an independent body in the event of administrative refusal to register a trade union. Trade unions can only appeal to the Ministry of Labour against refusal of registration (Article 575 of the Consolidated Labour Laws)</p>
<p>NEGOTIATION SYSTEM IN GENERAL</p>	
<p>General information on the negotiation system</p>	<p>Under art. 515 of the Consolidated Labour Laws, Professional associations must meet the following requirements to be recognized as trade unions:</p> <p>(a) To have, at least, one-third of employees or workers of the same class or exercising the same profession in the case of an association of employees or workers;</p> <p>(b) Duration of 3 years for the Board's mandate;</p> <p>(c) The president position must be exercised by a born Brazilian and the other positions related to administration and representation must be exercised by Brazilians.”</p>
<p>Limitations on the right to organise (state)</p>	<p>Constitutionally, it is forbidden the creation of more than one trade union organization, at any level, representing a professional or economic category, on the same territorial basis. The basis shall be defined by the workers or employers concerned, but it may not be inferior to the area of a Municipality.⁶⁰</p> <p>Brazilian legislation only recognizes the right to unpaid trade union leave for public servants elected to the union office.</p>
<p>Limitations on the right to organise (employers)</p>	<p>Employers cannot refuse, impose, discriminate, or treat an employee differently because of their union membership status. Employees are free to engage with whichever trade unions they prefer.</p> <p>Companies make it difficult for the union to enter the company to discuss their proposals, not providing schedules, for example. Often the union meets at the member's home or elsewhere, so the employer is unaware of its membership.</p>
<p>Major hindrances to the right to organize</p>	<p>Case No 2656 (Brazil) - Complaint date: 14-APR-08</p> <p>Union of Workers in the Petro-Chemical Industries of the State of Paraná (SINDIQUIMICA-PR) supported by the Single Confederation of Workers (CUT)</p> <p>The complainant organization's allegations concern acts of anti-union discrimination (refusal to allow union officials access to the workplace, discrimination in personal appraisals, dismissal of a worker, and retention of workers as a result of a strike).⁶¹</p>

⁵⁸ https://economics.mit.edu/sites/default/files/inline-files/CBFW_paper_CLS.pdf

⁵⁹ <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/brazil>

⁶⁰ https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:BRA,,2021:NO

⁶¹ <https://www.ilo.org/dyn/normlex/en/f?>

[p=1000:20060:0::FIND:NO:20060:P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102571,1495811](https://www.ilo.org/dyn/normlex/en/f?p=1000:20060:0::FIND:NO:20060:P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:102571,1495811)

	They do not have an explicit retaliation, but there is a “veiled threat”, of dismissal, so much so that the employee prefers not to have his associate fee deducted from the payroll so as not to have his image of being associated with a trade union.
Major topics of collective bargaining	As a rule, any right can be negotiated unless the law expressly states that such is non-waivable or non-negotiable. This is usually the case with the labour rights listed in the Brazilian Federal Constitution and those listed under a article 611-B of the Consolidated Labour Laws. Additionally, the Labour Reform introduced a principle known as “predominance of Collective Bargaining Agreements over the law”, which has greatly encouraged companies to negotiate with unions. As a rule, Collective Bargaining Agreements take place at the industry level within a certain region (usually a State or a Municipality) and refer, in general, to wages, tenure, overtime, outsourcing, social benefits, and procedures for election of members of the Labour Accident Prevention Committee. ⁶²
LIMITATIONS ON THE RIGHT TO ORGANISE	
Right to organize and negotiate in public and private healthcare	No. In private health sector, the Consolidated Labour Law provides for the regulation of the process. In public health sector, the right does not exist.
Limitations on the right to organize in public healthcare	The rights themselves are not limited, what is limited is the right to trade. The rights of workers in general in public administration are guaranteed by the movements that public servants make. The main occupations that are extremely limited are health workers such as doctors, nurses and technicians.
HEALTH CARE SYSTEM	
Information about the healthcare system in the country	Health care is a complex economic and social system, which combines market elements and public and social interest. This combination in Brazil, like systems in China and United States of America, is operationalized through the public and private system. The sector represents approximately 9% of the country’s GDP, of which 56% is privately sourced and 44% is of public origin. The private sector includes a structure with 711 private health institutions, 47 million beneficiaries and revenues of US\$30 billion a year. Leading Sub-Sectors: - Chronic diseases – blood pressure, diabetes, cardiovascular - Contraceptives - Rare Diseases - Generic Drugs - Infectious Diseases – HIV and Hepatitis C - Weight Loss, Vitamins and Sport Nutrition ⁶³
General description of how the health care is provided	The Unified Health System, created from the Federal Constitution of 1988, is based on the principle of health as a citizen’s right and duty of the state. Currently, approximately 75.5% of the Brazilian population is served solely and exclusively by the Public System, which, despite its historical achievement in scope and access, suffers strongly owing to chronic underfunding. The other 24.5% of the population have access to health through private health [, which is strongly linked to the care of people through individual or family contracts (19%), business (68%) and collective (13%). The Sistema Único de Saúde (SUS) is Brazil's national health system that reaches universal health coverage within the country. It is decentralized with administrative responsibilities at all levels of government: federal, state, and municipal. The delivery of care is handled at the state and municipal level. ⁶⁴

⁶² <https://practiceguides.chambers.com/practice-guides/doing-business-in-2022/brazil/trends-and-developments>
<https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/brazil#:~:text=As%20a%20rule%2C%20Collective%20Bargaining,the%20Labour%20Accident%20Prevention%20Committee>

⁶³ <https://bmhealthservres.biomedcentral.com/articles/10.1186/s12913-021-07376-2>
<https://www.trade.gov/country-commercial-guides/brazil-healthcare>

⁶⁴ <https://bmhealthservres.biomedcentral.com/articles/10.1186/s12913-021-07376-22>
<https://www.trade.gov/country-commercial-guides/brazil-healthcare>
[https://www.publichealth.columbia.edu/research/comparative-health-policy-library/brazil-summary#:~:text=The%20Sistema%20%C3%9Anico%20de%20Sa%C3%BAde%20\(SUS\)%20is%20Brazil's%20national%20health,the%20state%20and%20municipal%20level](https://www.publichealth.columbia.edu/research/comparative-health-policy-library/brazil-summary#:~:text=The%20Sistema%20%C3%9Anico%20de%20Sa%C3%BAde%20(SUS)%20is%20Brazil's%20national%20health,the%20state%20and%20municipal%20level)

Who is in charge for the health care services, public, private, work-related health insurances?	The Single Health System (Sistema Único de Saúde - SUS), established in 1988, guarantees all residents universal access, completely free of charge, to public health services and to private hospitals under agreement. ⁶⁵
Share of public and private health care	<p>Public healthcare in Brazil exists in the form of a Beveridgian tax-financed, free at the point of care, universal system named the Sistema Único de Saúde—Unified Health System (SUS), created in 1988 with the writing of a new constitution at the end of the military dictatorship. In 2013, SUS was responsible for 61.7% of medical visits and, in 2019, 64.6% of hospital admissions in the country were paid by SUS. Private healthcare in Brazil consists of private out-of-pocket services and a large private health insurance market, with over 48 million users, or 24.9% of the Brazilian population, but a higher share of the total health expenditure in the country. According to the Organization for Economic Co-operation and Development (OECD) classification of the role of private health insurance in a healthcare system, the Brazilian model of private plans and services would be classified as a duplicate and supplementary model. Since healthcare is a constitutional right in Brazil and SUS is a universal system, private plan holders are not excluded from it.⁶⁶</p> <p>Brazil has high overall spending on health but the public share is low.</p> <p>Health care in Brazil is financed by a wide range of actors with the public <i>Sistema Único de Saúde</i> (SUS), private health insurance schemes and direct payments by private household being by far the most important payers. In 2019, Brazil allocated 9.6% of its GDP to health care. This share has been growing since 2000, up from 8.3%. The total share is relatively high given Brazil's state of economic development.⁶⁷</p>
Structure of nursing personnel	<p>Nursing is an essential profession and core in the structure of health professions in Brazil and worldwide. It is a professional category organized in a peculiar way, whose internal structure consists of three categories: Nurse, Nursing Technician, and Nursing Assistant.</p> <p>It is a contingent of more than 2 million professionals, present in the 5,570 municipalities, the 27 units of the Federation, as well as in all organizational structures of the Brazilian health system, namely, hospitals, outpatient clinics, health centers, UBS, UPAS, SAMUs, ESF, among others.⁶⁸</p>
Education required for each professional group (nurses, assistant nurses, etc.)	Upon completion of a bachelor's degree at a nursing school, the NCLEX exam is performed to obtain the nursing license, a permit for the approved individual to practice as a registered nurse or practical nurse. ⁶⁹
SALARY	
Salary of healthcare professionals	<p>The most paid careers are Health Care & Medical (631,656 BRL), just above Management & Business (438,909 BRL per annum). Brazilian employees earn an average income of 16 BRL per hour (USD 3.09).</p> <p>The salary varies drastically across different sectors, industries, and job titles. The most paid careers are Health Care & Medical (631,656 BRL), just above Management & Business (438,909 BRL per annum).</p> <p>A person working in Factory and Manufacturing in Brazil typically earns around 5,850 BRL per month. Salaries range from 2,170 BRL (lowest average) to 14,700 BRL (highest average, actual maximum salary is higher).⁷⁰</p>

⁶⁵ <https://fr.april-international.com/en/health-insurance-brazil>

⁶⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8835064/>

⁶⁷ <https://www.oecd-ilibrary.org/sites/b4393767-en/index.html?itemId=/content/component/b4393767-en>

⁶⁸ <https://www.scielo.br/j/csc/a/wqFyYK4y9f8WZPmkvrwVsQ/?format=pdf&lang=en>

⁶⁹ <https://www.scielo.br/j/reben/a/DxdgPB9Ggcfpfc6Bb8sMrH/?lang=en#:~:text=Upon%20completion%20of%20a%20bachelor's,registered%20nurse%20or%20practical%20nurse.>

⁷⁰ <https://www.timedoctor.com/blog/average-salary-in-brazil/>

Wage gap between the public and private sector workers	The public-sector wages are higher than private-sector wages in Brazil and are decreasing at federal, state, and municipal levels. These differences are greater in large municipalities and metropolises. ⁷¹
MORE ON HEALTH	
Required education for a nurse	Upon completion of a bachelor's degree at a nursing school, the NCLEX exam is performed to obtain the nursing license, a permit for the approved individual to practice as a registered nurse or practical nurse. ⁷²
What kind of education is required for a practical nurse,	<p>The first level/field occurs when there is application of an examination to obtain a license or professional registration. In the United States, for example, this is when Registered Nurses (RN) or Licensed Practical Nurses (LPN) holds an individual and private license, resulting from an evaluation that states they have acquired basic knowledge required for practicing.</p> <p>The license issued by a regulatory body (such as the National Council of State Boards of Nursing [NCSBN] in the USA) warrants the public that nurses have complied with predetermined standards for professional practice. Without this license, nurses are not Licensed or Registered, because what provides them the mandatory status to exercise is registration, not the scope of training. That is, access to the career is not due to the termination of training at different levels, but by an examination that certifies the knowledge acquired (13-15).</p> <p>The regulation of career access through examinations is based on the product of training process, without direct focus on the educational system or gaps of the training process. Thus, the reason for approval of the proposed National Licensure Exam for Brazilian Nurses (NLEXB-N) in Brazil seems to be inconsistent, which focuses on the premise that, when regulating access, it inhibits training nurses in the distance education modality. Its application should be problematic since it is situated in the field of regulation of access to professional career and not in the training process, because in Brazil formal educational training and regulatory professional practice belong to different fields of legislation.</p> <p>In addition, the proposal NLEB-N addresses measurement of skills related to learning how to know that is one of the three skills foreseen for training nurses in Brazil by the DCN. It is recognized that its application as a test of knowledge assessment has proved insufficient to evaluate the competence acquired by doing (skills) and being professional (attitudes) in the professional field.⁷³</p>
What kind of education is required for a health care assistant?	Community Health Workers (CHWs) are most often selected by local health committees and have to be literate. The training of community health workers is conducted in regional health schools operated by the national Ministry of Health using curriculum approved by the Ministry of Education. The curriculum consists of 8 weeks of training from local nurses, followed by 4 weeks of supervised field training. These include training on home visits and on how to conduct a family census, but also on specific priority health care interventions. CHWs are not trained to address health needs, but rather they are trained to recognize health needs and encourage communities to seek care. CHWs also receive monthly and quarterly ongoing training. ⁷⁴
How is the health care provided?	The Sistema Único de Saúde (SUS) is Brazil's national health system that reaches universal health coverage within the country. It is decentralized with administrative responsibilities at all levels of government: federal, state, and municipal. The delivery of care is handled at the state and municipal level. ⁷⁵

⁷¹ https://ideas.repec.org/a/spr/ijlaec/v62y2019i4d10.1007_s41027-019-00190-9.html#:~:text=The%20results%20show%20that%20public,in%20large%20municipalities%20and%20metropolises

⁷² <https://www.scielo.br/j/reben/a/DxdgPB9Ggcfspfc6Bb8sMrH/?lang=en#:~:text=Upon%20completion%20of%20a%20bachelor's,registered%20nurse%20or%20practical%20nurse>

⁷³ <https://www.scielo.br/j/reben/a/DxdgPB9Ggcfspfc6Bb8sMrH/?lang=en>

⁷⁴ <https://www.oecd-ilibrary.org/sites/189077f3-en/index.html?itemId=/content/component/189077f3-en>

⁷⁵ [https://www.publichealth.columbia.edu/research/comparative-health-policy-library/brazil-summary#:~:text=The%20Sistema%20C3%9Anico%20de%20Sa%C3%BAde%20\(SUS\)%20is%20Brazil's%20national%20health,the%20state%20and%20municipal%20level](https://www.publichealth.columbia.edu/research/comparative-health-policy-library/brazil-summary#:~:text=The%20Sistema%20C3%9Anico%20de%20Sa%C3%BAde%20(SUS)%20is%20Brazil's%20national%20health,the%20state%20and%20municipal%20level)

Indicate the share of public health care.	<p>Brazil devoted less of its public budget to health (10.5%) than most OECD countries in 2019, well below the average of 15.3%.</p> <p>Health care is a complex economic and social system, which combines market elements and public and social interest. This combination in Brazil, like systems in China and United States of America, is operationalized through the public and private system. As indicated above, the sector represents approximately 9% of the country's GDP, of which 56% is privately sourced and 44% is of public origin. In the private sector includes a structure with 711 private health institutions, 47 million beneficiaries and revenues of US\$30 billion a year.⁷⁶</p>
Indicate the share of private health care.	The share of the private sector in provision of healthcare is 56%. Approximately 23% of Brazilians have private health plans which grants them access to care at private facilities. ⁷⁷
Is the right to organize and negotiate the same in public and private health care?	The rights themselves are not limited, what is limited is the right to trade. The rights of workers in general in public administration are guaranteed by the movements that public servants make. The main occupations that are extremely limited are health workers such as doctors, nurses and technicians.
What is the salary of health care professionals compared to other sectors?	<p>The salary varies drastically across different sectors, industries, and job titles. The most paid careers are Health Care & Medical (631,656 BRL), just above Management & Business (438,909 BRL).</p> <p>A person working in Factory and Manufacturing in Brazil typically earns around 5,850 BRL per month. Salaries range from 2,170 BRL (lowest average) to 14,700 BRL (highest average, actual maximum salary is higher).⁷⁸ Nurses, doctors, lab technicians, and other medical and healthcare practitioners earn BRL 12,800 (USD 2,454.13) on average. This figure includes all benefits that are expected from employers.⁷⁹</p>
Is there a gap between the private and public sector? If so, how big is it?	<p>The law, approved in congress and approved by the president on 5 August, mandates a floor of R\$4,750/month for nurses; 70% of this amount (or R\$3,325) for nurse technicians; and 50% (or R\$2,375) for nursing assistants. The law was recently suspended due to an injunction issued by Justice Luis Roberto Barroso of the STF, who questioned the lack of mechanisms to finance the associated costs.⁸⁰</p> <p>In a statement of against the judge's ruling, the Healthcare Workers Union of Campinas and Region (Sinsaúde Campinas), an affiliate of the Federation of Healthcare Workers of the State of São Paulo, proclaimed:</p> <p>“The approval of this law, which sets a more dignified minimum salary for nurses, nurse technicians, nursing assistants and midwives, was the result of more than 30 years of struggle by healthcare workers' organizations, and provided social justice to a group of workers that was and is on the front line to fight the pandemic and in the provision of one of the most essential services of society, which is caring for the health of the people. Even the STF's own decision, contradictorily, states that these workers deserve the new minimum, but then denies them that right. The Justice (Barroso) preferred to serve healthcare companies in the private sector, some of which are multinational; these companies form the supplementary health network and receive the most profits from the healthcare sector in our country.”</p> <p>The National Confederation of Social Security Workers (CNTSS/CUT), in a press release, expressed its “annoyance and indignation with the measure taken by Judge Barroso since the entire process of implementing the law was discussed exhaustively, including studies on its financial impact, involving parliamentarians, workers and representatives of the private and public sectors. The attitude reiterates the uncompromising stance of employers who refuse to comply with the law, once again harming and undervaluing nursing workers.”⁸¹</p>

⁷⁶ <https://www.oecd.org/health/oecd-reviews-of-health-systems-brazil-2021-146d0dea-en.htm>

⁷⁷ <https://www.publichealth.columbia.edu/research/comparative-health-policy-library/brazil-summary>

⁷⁸ <https://www.time doctor.com/blog/average-salary-in-brazil/>

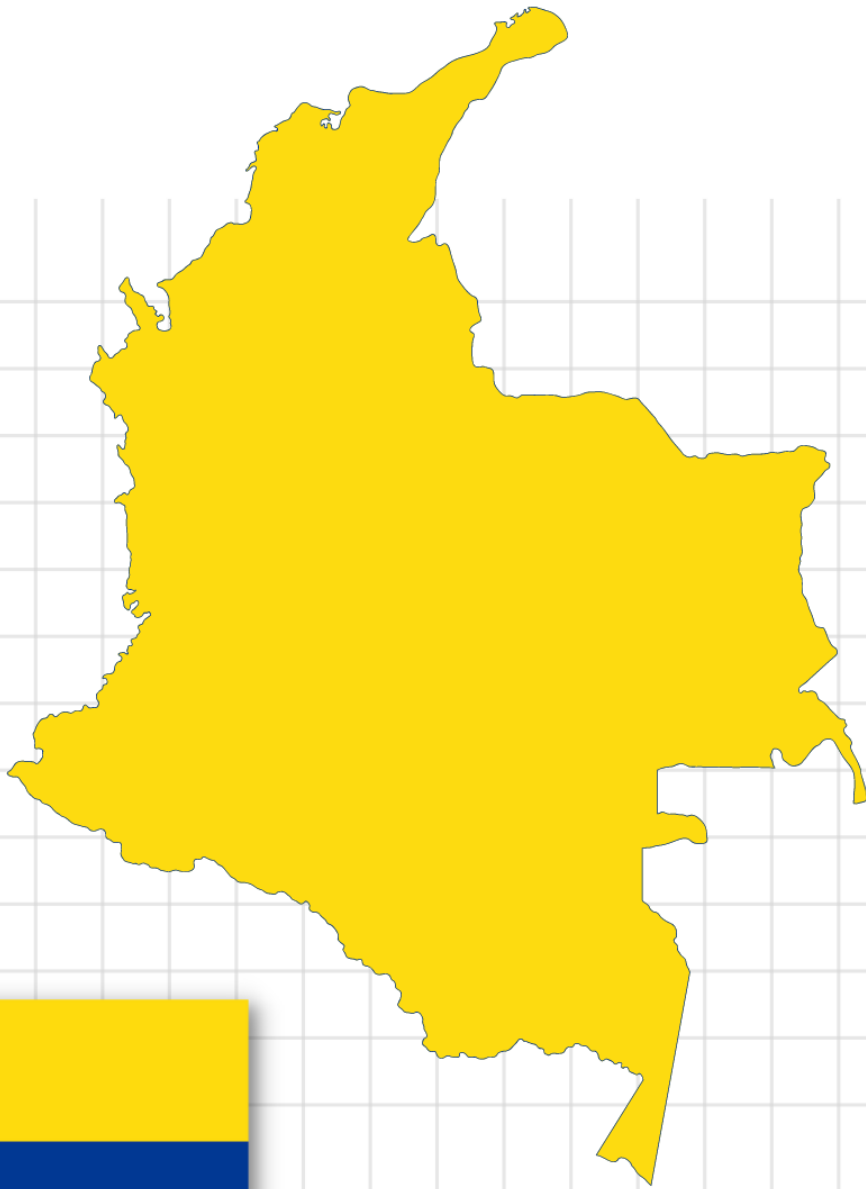
<http://www.salaryexplorer.com/salary-survey.php?loc=30&loctype=1&job=33&jobtype=1>

⁷⁹ <https://www.outsourceaccelerator.com/articles/average-salary-in-brazil/>

⁸⁰ <https://uniglobalunion.org/news/brazilian-care-workers-take-action-to-defend-new-federal-nursing-minimum-wage/>

⁸¹ <https://uniglobalunion.org/news/brazilian-care-workers-take-action-to-defend-new-federal-nursing-minimum-wage/>

COLOMBIA





Status of Labour Market related Sustainable Development Goals in Colombia			
Indicators	Colombia	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US\$1.9 PPP)	1.92	2022	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than US\$1.9 a day.
1.3.1: The population effectively covered by a social protection system, including social protection floors	52.5	2020	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.
5.5.2: Proportion of women in senior and middle management positions	30.3	2021	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
5.5.2: Proportion of women in managerial positions	35.3	2021	
8.2.1: Annual growth rate of output per worker (GDP constant 2011 international \$ in PPP)	4.35	2022	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.
8.3.1: Proportion of informal employment in non-agriculture employment Total	58.6	2021	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services.
8.3.1: Proportion of informal employment in non-agriculture employment Men	57.9	2021	
8.3.1: Proportion of informal employment in non-agriculture employment Women	59.4	2021	
8.5.1: Average hourly earnings of women and men employees	6516.26	2021	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value.
8.5.2: Unemployment rate (Total, 15+)	13.9	2021	
8.5.2: Unemployment rate (Women, 15+)	18.13	2021	
8.5.2: Unemployment rate (Women, 15-24 years)	31.7	2021	
8.5.2: Unemployment rate (Men, 15+)	10.9	2021	
8.5.2: Unemployment rate (Men, 15-24)	19.42	2021	
8.6.1: Proportion of youth (15-24 years) not in education, employment, or training)	27.26	2021	By 2030, substantially reduce the proportion of youth not in employment, education, or training
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Total)	2	2019	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms.
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Girls)	1.3	2019	
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Boys)	2.7	2019	
8.8.1: Non-fatal occupational injuries per 100,000 workers	3.71	2017	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
8.8.1: Fatal occupational injuries per 100,000 workers	0	2017	
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	4.84	2020	The exact measurement method and scoring for this indicator need to be developed.
SDG indicator 9.2.2 - Manufacturing employment as a proportion of total employment (%) -- Annual	10.82	2021	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise the industry's share of employment and gross domestic product, in line with national circumstances, and double its share in the least developed countries.
SDG indicator 10.4.1 - Labour income share as a percent of GDP (%) -- Annual	53.41	2019	Adopt policies, especially fiscal, wage, and social protection policies, and progressively achieve greater equality.
Source; ILO Data (https://ilostat.ilo.org/)			

Legal Framework for the Right to Organise and Negotiate

A. Introduction

Labour rights in Colombia, including the right to organize and negotiate, are set forth in its Constitution⁸², the Substantive Labour Code⁸³, the Procedural Code of Labour and Social Security⁸⁴, any sector-specific legislation, and ratified international conventions⁸⁵, that are incorporated into national legislation. Colombia's Constitution guarantees freedom of association and provides for collective bargaining and the right to strike.⁸⁶ The Constitution also addresses forced labour, trafficking, discrimination, protections for women and children in the workplace, minimum wages, working hours, skills training, and social security.⁸⁷

The Substantive Labour Code of Colombia 1950 governs individual and collective employment relations, including the freedom of association, collective bargaining, the settlement of collective labor disputes, including mediation and arbitration, and the right to strike.⁸⁸

The Procedural Code of Labour and Social Security of 1948 regulates labour court procedures, including participation in conciliation and arbitration efforts between employers and employees or their representatives, and special procedures concerning protection from dismissal for trade union officials.⁸⁹

Colombia has ratified eight of the ten fundamental ILO conventions.⁹⁰ Table 1 indicates the convention ratified by Colombia and other countries in the study.

	C87	C98	C149	C151	C154	CFA cases (active, follow-up, closed)	LRI rating	ITUC rating	SDG Indicator 8.8.2
Brazil	Not Ratified	Ratified (18 Nov 1952)	Not Ratified	Ratified (15 Jun 2010)	Ratified (10 July 1992)	(0,1,71)	81.5 (Trade Union:50)	5 (No guarantee of rights)	N/A
Colombia	Ratified (16 Nov 1976)	Ratified (16 Nov 1976)	Not Ratified	Ratified (8 Dec 2000)	Ratified (8 Dec 2000)	(17,21,179)	73 (Trade Union:50)	5 (No guarantee of rights)	4.84 (2020)

⁸² Constitution of Colombia, 1991 (https://www.constituteproject.org/constitution/Colombia_2015?lang=en)

⁸³ The Substantive Labour Code, 1951 (<https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Codigo/30019323>)

⁸⁴ Procedural Code of Labour and Social Security (http://www.secretariasenado.gov.co/senado/basedoc/codigo_procedimental_laboral.html)

⁸⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102595

⁸⁶ Art. 38, 48 & 56 of the Colombian Constitution (https://www.constituteproject.org/constitution/Colombia_2015?lang=en)

⁸⁷ Art 13, 17, 38, 39, 43, 44, and 53-56 of the Colombian Constitution (https://www.constituteproject.org/constitution/Colombia_2015?lang=en)

⁸⁸ The Substantive Labour Code, 1951 (<https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Codigo/30019323>)

⁸⁹ http://www.secretariasenado.gov.co/senado/basedoc/codigo_procedimental_laboral.html

⁹⁰ ILO, *Ratifications by Country*, in ILO Normlex,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102595 The eight fundamental conventions of the ILO that have been ratified by Colombia are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, and Convention No. 182 on the Worst Forms of Child Labor. The two conventions that have yet not been ratified by Colombia are Convention No. 155 on the Occupational Safety and Health and the Convention No. 187 on Promotional Framework for Occupational Safety and Health.

Guatemala	Ratified (13 Feb 1952)	Ratified (13 Feb 1952)	Ratified (09 May 1995)	Not Ratified	Ratified (29 Oct 1996)	(5,10,96)	54 (Trade Union:0)	5 (No guarantee of rights)	5.38 (2020)
Nepal	Not Ratified	Ratified (11 Nov 1996)	Not Ratified	Not Ratified	Not Ratified	(0,0,4)	72 (Trade Union:50)	3 (Regular violations of rights)	N/A
Philippines	Ratified (29 Dec 1953)	Ratified (29 Dec 1953)	Ratified (18 June 1979)	Ratified (10 Oct 2017)	Not Ratified	(1,4,27)	70.5 (Trade Union:25)	5 (No guarantee of rights)	3.97 (2020)

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

C149 - Nursing Personnel Convention, 1977 (No. 149)

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

C154 - Collective Bargaining Convention, 1981 (No. 154)

Sources: ILO NORMLEX Country Profiles

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> (ratifications and Committee on Freedom of Association cases)

<https://labourrightsindex.org/heatmap-2022> (Labour Rights Index 2022)

<https://www.globalrightsindex.org/en/2022> (ITUC Global Rights Index 2022)

https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=SDG_0882_NOC_RT_A (ILOSTAT, SDG Indicator 8.8.2)

B. Freedom of Association

Colombia ratified ILO Convention No. 11 on the Right of Association in Agriculture in 1933 and Convention No. 87 on Freedom of Association and Protection of the Right to Organize in 1976. Colombia also ratified Convention 151 on Labour Relations in Public Services in the year 2000.⁹¹

The Constitution and Substantive Labour Code of Colombia guarantee the right of freedom of association and the right to organize trade unions without prior authorization or government intervention. The Constitution of Colombia states that a new union will be legally recognized upon basic registration of the union's constituting documents.⁹² The Labour Code also requires that a new union be registered with the Ministry of Social Protection before it can formally function. Except for the police and armed forces, all employees over 14 years of age have the right to form or join trade unions. The Labour Code prohibits employers from dismissing or suspending the trade union personnel or modifying their working conditions to prevent the exercise of freedom of association.

There are four types of unions in Colombia:

- a company-level union formed by workers of different professions, trades, or specialties in the same company;
- an industry union or a branch of activity union formed by workers in the same industry or branch of economic activity;
- a craft union formed by workers of the same profession, trade, or specialty; and
- a union of varying trades established by workers that are involved in diverse, dissimilar, or unconnected professions. However, such a union may only be established when the number of workers of the same activity, profession, or trade does not reach the legal minimum to form a craft union.⁹³

⁹¹ ILO, *Ratifications by Country*, in ILO Normlex, please see footnote above.

⁹² Art. 38-39 of the Colombia Constitution; Art. 12 & 353 of the Substantive Labour Code of Colombia

⁹³ Art. 356 of the Substantive Labour Code of Colombia

A minimum of 25 workers or affiliates is required to establish or maintain a trade union.⁹⁴ All levels of trade unions in Colombia may join local, regional, national, professional or industrial federations. Moreover, every federation may join a confederation. Federations and confederations hold the same powers as any union, except for the declaration of strike.⁹⁵

C. Right to Organize

Colombia ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining on 16 November 1976 and Convention No. 154 on Collective Bargaining on 8 December 2000.⁹⁶ The Substantive Labour Code prohibits individuals (employers and others) from interfering with workers' trade union rights and expressly bars employers from limiting or pressuring workers in the exercise of their right of association.⁹⁷ The following are considered acts of anti-union discrimination by the employer:

- a. To obstruct or hinder the affiliation of its personnel to a union organization of those protected by the law, by means of gifts or promises, or to condition to that circumstance the obtaining or conservation of employment or the recognition of improvements or benefits;
- b. To dismiss, suspend or modify the working conditions of workers because of their activities aimed at the foundation of trade union organizations.
- c. To refuse to negotiate with trade union organizations that had submitted their petitions in accordance with legal procedures.
- d. To dismiss, suspend or modify the working conditions of its unionized personnel, in order to prevent or spread the exercise of the right of association;
- e. To adopt repression measures against workers for having accused, testified, or intervened in administrative investigations aimed at verifying the violation of this provision.

Individuals who infringe upon the right to organize of others may be punished for each infraction with a fine ranging between five and 100 times the current legal minimum monthly salary, in addition to the criminal responsibility that might be applicable. Colombia's Constitution also recognizes the right of *fuero sindical*.⁹⁸ Founding members of a union receive *fuero sindical* for a maximum period of six months, from the day the union is established and up to two months after registration. Therefore, they may not be dismissed, nor their working conditions may be deteriorated, nor be transferred to other establishments of the same company or to a different municipality, without just cause, previously qualified by the labour judge.

The following types of workers benefit from the *fuero sindical*:

- 1) The members of the board of directors and deputy directors of every union, federation or confederation. This protection is granted to the 5 principal and 5 alternates, maximum. This protection lasts for the term of the mandate (term of office) plus six more months.
- 2) Two members of the Statutory Complaints Commission that are designated by the trade unions, federations or confederations for the same period as the board of directors plus six more months.⁹⁹

⁹⁴ Art. 359 of the Substantive Labour Code of Colombia

⁹⁵ Art. 417 of the Substantive Labour Code of Colombia

⁹⁶ ILO, *Ratifications by Country*, in ILO Normlex, please see footnote 9

⁹⁷ Art. 345 of the Substantive Labour Code of Colombia

⁹⁸ Art. 39 of the Constitution of Colombia

⁹⁹ Art. 406 of the Substantive Labour Code of Colombia

D. Right to Bargain Collectively

Colombia's Constitution guarantees the right of collective bargaining.¹⁰⁰ The Substantive Labour Code grants private sector trade unions and employers or employers' associations the right to enter into collective bargaining agreements in order to establish working conditions.¹⁰¹ Trade unions of the public sector workers are not allowed to enter into collective agreements.¹⁰²

There are two types of collective bargaining agreements that are recognized in Colombia: collective conventions¹⁰³ (collective agreement between an employer and unionized workers) and collective pacts¹⁰⁴ (collective agreements signed between an employer and non-unionized workers). Where a trade union represents more than one-third of the company's workers, all the workers in the enterprise are covered by the collective bargaining agreement (and no collective pacts can be signed). Generally, only the trade union members are party to a collective agreement, however, as in the above case, the collective agreement is extended to all workers in the enterprise. The Government has the authority to extend a collective bargaining agreement to other companies if certain conditions regarding the minimum number of workers from industry and similarity of economic and technical capacity are met.¹⁰⁵

A collective bargaining agreement must be in writing and must be submitted to the Ministry of Labour within 15 days following the date it was signed. If the length of collective agreement is not clearly mentioned, it is presumed to continue indefinitely for successive 6-month periods. A collective bargaining agreement may be revised in case of unforeseeable and serious changes in the economy. If the parties cannot reach an agreement on the revisions, the labour court decides whether and how to revise the agreement.¹⁰⁶

E. Right to Strike

Colombia's Constitution guarantees workers the right to strike, except for workers in essential public services. The Substantive Labour Code also protects workers' right to strike but prohibits strikes in public services.¹⁰⁷ There is no obligation on trade unions to give prior notice to the employer regarding the strike. The strike may only be agreed upon within 10 business days after the termination of a direct settlement between workers and the employer.¹⁰⁸ If workers agree on a collective cessation of work, the strike may only begin after 2 business days from the declaration and no more than 10 business days after the decision.¹⁰⁹

A strike is deemed illegal in the following cases:

- 1) If it is held by a public service;
- 2) If it is held in order to pursue purposes other than professional and economic purposes;
- 3) If the direct settlement procedure did not take place prior to the strike;
- 4) If the strike was not declared by the general assembly of workers in the terms provided by law;
- 5) If it takes place outside the deadlines established by law;
- 6) If it is not peaceful; and

¹⁰⁰ As above

¹⁰¹ Art. 467 of the Substantive Labour Code of Colombia

¹⁰² Art. 416 of the Substantive Labour Code of Colombia

¹⁰³ Art. 467-480 of the Substantive Labour Code of Colombia

¹⁰⁴ Art. 481 of the Substantive Labour Code of Colombia

¹⁰⁵ Art. 472 of the Substantive Labour Code of Colombia

¹⁰⁶ Art. 469 & 480 of the Substantive Labour Code of Colombia

¹⁰⁷ Art. 56 of the Constitution of Colombia

¹⁰⁸ Art. 444 of the Substantive Labour Code of Colombia

¹⁰⁹ Art. 445 of the Substantive Labour Code of Colombia

7) If it is held in order to demand from the authorities to perform any type of act that is reserved to their own decision.¹¹⁰

The legislation prescribes that public service is any organized activity that tends to meet the needs of general interest on a regular and continuous basis, in accordance with a special legal regime, whether carried out by the State, directly or indirectly or by private entities. The following activities are considered public services:

- a) Those that are provided in any of the branches of public power;
- b) Transport companies by land, water, and air; and of the aqueduct, electricity and telecommunications;
- c) Those of health establishments of all kinds, such as hospitals and clinics;
- d) Those of social welfare, charity and charitable establishments;
- e) All types of hygiene and hygiene services of the populations;
- f) Those of exploitation, processing and distribution of salt; and
- g) Those of exploitation, refining, transport and distribution of oil and its derivatives, when they are destined to the normal supply of fuels in the country, in the opinion of the government.¹¹¹

The employer is authorized to adopt contracts during the strike for the resumption of the suspended services, prior permission of the labor inspector, in the cases the operation of the dependencies is essential to avoid serious damage to the safety and conservation of workshops, premises, equipment, machinery or basic elements; the execution of work aimed at crop conservation; the care of livestock. However, such contracts can only be adopted if strikers do not authorize the work of the necessary personnel in these units and maintain a minimum service. The employer may take legal action against those responsible of compensation for the damages caused. In case of an illegal strike, the Ministry of Labor and Social Security, the Public Ministry or the employer may request the labor justice to suspend or cancel the legal status of the union. Similarly, the employer is also entitled to dismiss those workers, including those protected by *fuero sindical* who had intervened or participated in an illegal strike.¹¹²

The Sustainable Development Goal indicator 8.8.2 measures the level of national compliance with fundamental labour rights (freedom of association and collective bargaining (FACB)). Based on ILO textual sources and national legislation, Colombia received a score of 4.84 in 2020 (0 is best; 10 is worst). Compared to neighbouring countries, Colombia's score is worse. Similar results are found for Colombia and other countries when the Trade Union indicator from the Labour Rights Index is considered.

Table 2: SDG Indicator 8.8.2 and LRI-TU Indicator

Level of national compliance with labour rights among Colombia and neighbouring countries		
	SDG Indicator 8.8.2	Labour Rights Index (Trade Union Indicator)
Chile	2.68 (2020)	50 (2022)
Costa Rica	1.91 (2020)	50 (2022)
Cuba	10 (2015)	0 (2022)
Honduras	4.34 (2020)	25 (2022)
Mexico	1.94 (2020)	50 (2022)

¹¹⁰ Art. 450 of the Substantive Labour Code of Colombia

¹¹¹ Art. 430 of the Substantive Labour Code of Colombia

¹¹² Art. 449-450 of the Substantive Labour Code of Colombia

Nicaragua	0.36 (2017)	75 (2022)
Colombia	4.84 (2020)	50 (2022)

The value of SDG Indicator 8.8.2 can range between 0 to 10, with 0 being the best possible score (indicating higher levels of compliance with the freedom of association and collective bargaining (FACB) rights) and 10 the worst (indicating lower levels of compliance with FACB rights based on ILO textual sources and national legislation).

The Trade Union indicator under the Labour Rights Index has a range from 0 to 100, with 100 being the best possible score and 0 the worst.

Sources: ILO Data; Labour Rights Index

The Global Competitiveness Index, based on 12 pillars, gives an overview about the Colombian economy. The Labour Market Pillar, 8th Pillar, measures labour market efficiency through statistical data and executive opinion surveys among employers.

Colombia ranks 73rd out of 141 countries (1st is the best) at the pillar. Out of twelve indicators, the best rankings are internal labour mobility (31st), the ratio of wage and salaried female workers to male workers (64th), and cooperation in labour-employer relations (66th). The worst rankings are hiring and firing practices (117th) and workers' rights (115th) (see more details in the Table below).

Table 3: Labour Market Efficiency in Colombia, 2019

Index Component	Value	Score	Rank
8th pillar: Labour market	-	59.2	73
Flexibility 0–100	-	55.0	88
8.01 Redundancy costs weeks of salary	16.7	73.5	76
8.02 Hiring and firing practices 1–7 (best)	3.2	36.7	117
8.03 Cooperation in labour-employer relations 1–7 (best)	4.5	58.1	66
8.04 Flexibility of wage determination 1–7 (best)	5.0	66.7	67
8.05 Active labour market policies 1–7 (best)	2.9	32.2	90
8.06 Workers' rights 0-100 (best)	55.0	55.0	115
8.07 Ease of hiring foreign labour 1–7 (best)	4.1	51.8	75
8.08 Internal labour mobility 1–7 (best)	5.0	66.0	31
Meritocracy and incentivization 0–100	-	63.3	66
8.09 Reliance on professional management 1–7 (best)	4.3	55.5	67
8.10 Pay and productivity 1–7 (best)	3.6	44.0	94
8.11 Ratio of wage and salaried female workers to male workers %	0.75	68.4	64
8.12 Labour tax rate %	18.6	85.3	80

Source: The Global Competitiveness Report, 2019 (8th pillar: Labour Market Efficiency)

F. Observations on Labour Legislation

Despite the existence of extensive labour legislation in Colombia, some observations have been made by international bodies like the ILO Committee of Experts on Application of Conventions and Recommendations, the International Trade Union Congress, and the United States' Department of

State Country Reports on Human Rights Practices. The comments are mainly relevant to the right to organise, the right to collective bargaining, and the right to strike.

According to ITUC's Global Rights Index 2022, Colombia is one of the ten worst countries in the world for working people. The major problems are murders of trade unionists and impunity of perpetrators, rampant union busting, and dismissals of workers. Although murders of trade unionists have subsided in Colombia during recent years, it remained the deadliest country for workers and union members, with thirteen assassinations in 2021-2022. The ITUC survey further reports that another six murder attempts, and 99 death threats were recorded during the same period. Without any adequate protection provided to them, trade unionists and their families remained under constant threat to their lives. The working of trade unions is also hindered and obstructed as employers were involved in union-busting activities through targeted dismissals and non-renewal of contracts. ITUC Global Rights Index gives Colombia a rating of 5, meaning there is no guarantee of workers' rights in the country. ITUC explains that "Countries with a rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices".

Issued highlighted by ITUC¹¹³

1. There are problems related to various contractual arrangements, such as workers' cooperatives, service contracts, and civil and commercial contracts, which cover genuine employment relationships and are used to prevent workers from setting up trade unions. According to trade unionists, a law of July 2008 on workers' cooperatives has not resolved the situation. In 2011, the government adopted a decree which stipulates that no worker, including the workers associated with cooperatives, could be hired without the labour rights established in law, and imposes severe penalties on cooperatives that practice labour mediation (Decree 2025 of 2011).
2. The pension system is not covered by collective bargaining (Law no.100 of 1993).¹¹⁴
3. The collective 'pacts' arranged directly with the workers should not be used to undermine the position of trade union organisations or the possibility of negotiating collective agreements with them. Law no. 1453 of 2011 stipulates that those who grant collective "pacts" that provide better conditions, overall, for non-unionised workers than the conditions set out in the collective agreement for unionised workers in the same enterprise shall be liable to a sentence of between one (1) and (2) years and a fine of one hundred (100) to three hundred (300) times the legal minimum wage.
4. Article 417, section (i), of the Labour Code still prohibits federations and confederations from calling strikes.
5. Article 450, paragraph 2, of the Labour Code also allows for the dismissal of workers who have taken part in a strike that was declared illegal, even when the illegality is the result of requirements that are contrary to the principles of freedom of association.
6. Laws that ban strikes remain applicable to a wide range of public services that are not necessarily essential.

¹¹³ ITUC Global Rights Index 2022

<https://www.globalrightsindex.org/en/2022>

¹¹⁴ The Government is however of the view that Legislative Act No. 1 of 2005 does not prevent the parties to collective bargaining, in both the public and private sectors, from improving on pensions through supplementary benefits based on voluntary savings.

Issues highlighted by CEACR¹¹⁵

1. The Committee urged the Government to continue strengthening its efforts and the resources allocated for the provision of adequate protection for all trade union leaders and members who are at risk, and for their organizations, with full attention and the necessary resources being directed at the sectors most affected by anti-union violence.
2. The Committee also urged the Government to ensure that all acts of anti-union violence, including homicides and other acts, occurring in the country are investigated and that the instigators and perpetrators are convicted.
3. The Committee has requested the Government to provide information on the allegations made by the trade union confederations concerning the alleged acts of “espionage” (such as surveillance) against a series of trade union leaders.
4. Under Colombian legislation, one or more unions can undertake to provide services or perform work through their members for one or more enterprises or employers’ organizations. These are referred to as trade union contracts. The major trade unions are of the view that trade union contracts perpetuate and extend unlawful employment mediation and undermine trade union action through the creation of false unions. The trade union federation (CUT and CTC) further allege that trade union contracts undermine the purpose and independence of trade unions, are an obstacle to the effective exercise of trade union rights by workers, and permit the maintenance of unlawful employment mediation in the health sector. CGT is also of the view that trade union contracts may be a valid precept for strong trade unions, however, in practice, a substantial number of associated work cooperatives have been converted into false unions to conclude trade union contracts, particularly in the health sector. There were 567 trade union contracts in force between January and June 2020, of which 95.8 per cent were in the health sector. The trade union federations (CUT and CTC) reiterate in their most recent observations that the concept of trade union contracts, which involve an enterprise providing additional finance to the trade union: (i) blurs the purpose for which trade unions are established; and (ii) places constraints on their independence in relation to the enterprise and disguises the nature of the true employer. The Committee notes that the two trade union confederations also consider that: (i) the proliferation of trade union contracts is persisting since, between January and June 2020, it was reported that 567 trade union contracts were registered; (ii) up to now the Government has not undertaken any reform of the rules to limit their use, and has certainly not proposed any reform for their elimination from Colombian legislation; (iii) the labour inspection services have been reluctant to consider the investigation of trade union contracts as unlawful means of employment mediation and, when carrying out inspections, they confine themselves to formal requirements concerning the conclusion and validity of the trade union contract; and (iv) up to the present, there is no indication that any penalties have been imposed against any of the over 1 700 trade union contracts in existence in the country, which are concluded with supposedly independent unions that are not known to the real trade union movement. The Committee has requested the Government to: (i) plan and conduct in the near future a detailed assessment of the use of

¹¹⁵ The text is based on the following sources.

[Observation \(CEACR\) - adopted 2020, published 109th ILC session \(2021\) on Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

[Direct Request \(CEACR\) - adopted 2020, published 109th ILC session \(2021\) on Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

[Observation \(CEACR\) - adopted 2021, published 110th ILC session \(2022\) on Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

[Direct Request \(CEACR\) - adopted 2021, published 110th ILC session \(2022\) on Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

trade union contracts, in particular in the health sector; and (ii) after sharing the results of this assessment with the social partners, take the necessary measures, including legislative measures where necessary, to ensure that the precept of trade union contracts does not undermine the trade union rights of workers and is not used for purposes that are incompatible with Article 10 of the Convention.

5. The Committee requested the Government to take the necessary measures to amend section 417 of the Substantive Labour Code, which prohibits the right to strike of federations and confederations.
6. The three major trade union confederations (CUT, CTC, and CTG) have alleged that there are certain discrepancies in the findings of the trade union census carried out in 2017, especially with regard to the alleged inclusion of false trade unions engaged in employment mediation through trade union contracts. According to this census, there are 1,368,626 members of first-level unions, of whom 1,342,051 are in the seven confederations registered in the country.
7. The Committee has urged the Government to take the necessary measures to ensure that the conclusion of collective accords with non-unionized workers (pactos colectivos) is only possible in the absence of trade union organizations.
8. Collective bargaining should be possible at all levels and should be promoted in a manner that is appropriate to national conditions and that, in accordance with Article 5(2)(d) of the Collective Bargaining Convention, 1981 (No. 154), which has been ratified by Colombia, the Government is required to ensure that collective bargaining is not hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules, the Committee requests the Government: (i) following consultations with the social partners, to take measures, including legislative measures, for the effective promotion of collective bargaining in the private sector, especially at levels higher than the enterprise level; and (ii) to provide detailed information on the coverage rate of collective bargaining in the private sector.

Issues raised in USDOS Country Report

1. Members of associated workers' cooperatives are not allowed to form unions, since the law recognizes members of a cooperative as owners.
2. The law does not permit members of the armed forces, police, and persons performing "essential public services" to strike.
3. The law limits strikes to periods of contract negotiations or collective bargaining and allows employers to fire trade unionists who participate in strikes or work stoppages ruled illegal by the courts.
4. The law stipulates that offenders repeatedly misusing CTAs or other labor relationships shall receive the maximum penalty and may be subject to losing their legal status to operate. Employers who engage in antiunion practices may also be imprisoned for up to five years, although government officials acknowledged a fine was more likely than imprisonment. Prohibited practices include impeding workers' right to strike, meet, or otherwise associate, and extending better conditions to members of collective pacts than to union members.
5. The Ministry of Labor leads a tripartite Interinstitutional Commission for the Promotion and Protection of the Human Rights of Workers, with participation by the government, organized labor groups, and the business community.
6. The government continued to include in its protection program labour activists engaged in efforts to form a union, as well as former unionists under threat because of their past activities. As of July 2021, the National Protection Unit (NPU) was providing protection to 290 trade union

leaders or members. The NPU reported it did not maintain information on the budget dedicated to unionist protections. Between January 1 and June 30, 2021, the NPU processed 174 risk assessments of union leaders or members; 91 of those individuals were assessed as facing an “extraordinary threat,” and the NPU provided them protection measures. The NPU reported that the average time needed to implement protection measures upon completion of a risk analysis was 60 days in regular cases or five days in emergency cases. NGOs complained that this length of time left threatened unionists in jeopardy. According to the new report (2022 Country Reports on Human Rights Practices, launched on 20 March 2023), the NPU provided protection to 253 trade union leaders or members, a decrease from the prior year. Between January and August 2022, the NPU processed 280 risk assessments of union leaders or members; 94 of those individuals were assessed as facing an “extraordinary threat,” and the NPU provided protection to them.

7. In cases of unionist killings from previous years, the pace of investigations and convictions remained slow, and high rates of impunity continued, although progress was made in the rate of case resolution. Violence, threats, harassment, and other practices against trade unionists continued to affect the exercise of the right to freedom of association and collective bargaining. The Attorney General’s Office reported 232 cases of homicides of unionists between January 2011 and January 2021. The Attorney General’s Office reported advancements in 43 percent of these cases: 65 sentences against defendants had been handed down in 43 cases; 38 cases had reached the trial phase; seven cases had charges filed; and nine cases had warrants for arrest, while 116 cases remained under preliminary investigation. Labor groups stated more needed to be done to address impunity for perpetrators of violence against trade unionists and the large number of threat cases.

UNIONS AND THEIR MEMBERSHIP	
Major trade union federations in different sectors	<p>In 2009 only around 4% of workers in Colombia were unionized.¹¹⁶</p> <p>The movement is fragmented, with more than 2000 registered unions and three national centres¹¹⁷ – the CUT has 546,000 members and is unaffiliated internationally. CTC is affiliated with the International Confederation of Free Trade Unions (ICFTU) and has 51,000 members. CGT is affiliated with the World Confederation of Labour (WCL) and has 122,000 members.¹¹⁸</p> <p>Data from the three central trade union centres – representing approximately 94% of the registered unionisation rate – suggested that the membership rate dropped by 8.5% from 2012 to 2019.</p> <p>Overall, the trade union density of employees (i.e., paid employment jobs) experienced a downturn from 15% in 2012 to 11% in 2019, which is lower than Latin American average at 16%.¹¹⁹</p>
Trade union density	<p>According to ILOSTAT¹²⁰, ((the international source for labour statistics, maintained by the ILO), the 2019 data for Colombia indicates that the trade union density is at 4.7%.¹²¹</p> <p>The women’s share in total trade union membership is 41%.</p>
Significant changes since the year 2000	<p>In an individual case before the ILO Committee on Application of Standards, the following information was presented by the Colombian government in 2021.¹²² “Between 2001 and 2020, there were a total of 966 convictions relating to acts of anti-union violence, of which 815 concerned homicides of members of the trade union movement.</p> <p>The figures for murders in Colombia show enormous progress in the reduction of violence. While in 2002 there were 16,382 murders, in 2020 there were 455, or a reduction of 97.2 per cent. The State and the social partners are continuing to show commitment to combating anti-union violence, the rapid investigation and punishment of those responsible for homicides and to seeking a peaceful working environment.”</p> <p>“Second, under the terms of section 200 of the Penal Code, the Office of the Prosecutor-General of the Nation has given priority to cases denounced under section 200 of Act No. 599. The data provided by the Government on cases of potential violations of section 200 of the Penal Code show that the claims of “complete impunity” made by trade union confederations in relation to the application of this provision are not accurate. There were 2,727 cases between 2011 and October 2020. Of these, 91.02 per cent have been completed, and only 8.98 per cent are under investigation. It is an error to consider that the criminal justice system must assume a leading role in the management of industrial relations. As a mechanism ultima ratio, the penal system, as in all democratic countries, takes action when there are no other ways of preventing and resolving legal disputes. There has also been significant progress in processes for the investigation and prosecution of this crime.”</p>
ILO CONVENTIONS AND LEGISLATION	
Ratification information about major conventions	<p>C087: Freedom of Association and Protection of the Right to Organise Convention (ratified in 1976)</p> <p>C098: Right to Organise and Collective Bargaining Convention (ratified in 1976)</p> <p>C149: Nursing Personnel Convention (not ratified)</p> <p>C151: Labour relations (Public Service) Convention (ratified in 2000)</p>

¹¹⁶ https://en.wikipedia.org/wiki/Trade_unions_in_Colombia;
[https://www.jstor.org/stable/10.14213/inteuniorigh.23.1.0016#:~:text=The%20movement%20is%20fragmented%2C%20with,Confederation%20of%20Labour%20\(CGT\)](https://www.jstor.org/stable/10.14213/inteuniorigh.23.1.0016#:~:text=The%20movement%20is%20fragmented%2C%20with,Confederation%20of%20Labour%20(CGT))

¹¹⁷ <https://justiceforcolombia.org/about-colombia/trade-unions/#:~:text=The%20Colombian%20trade%20union%20movement%20is%20fragmented%2C%20with%20more%20than%202%2C000%20registered%20unions%20and%20three%20national%20centres>

¹¹⁸ American Center for International Labor Solidarity (2006), Justice For All: The Struggle for Worker Rights in Colombia

¹¹⁹ <https://www.ulandssekretariatet.dk/wp-content/uploads/2020/10/LMP-Colombia-2020-final1.pdf>

¹²⁰ <https://ilostat.ilo.org/topics/union-membership/>

¹²¹ The trade union density rate is the share of employees who are union members, expressed as a percentage.

¹²² https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_COUNTRY_ID:4111542,102595

Enactment of legislation in compliance with the convention	Please see detailed provisions on legislation at the start of this chapter. Furthermore, Decree no. 160 of 2014, which regulates Law no. 411 of 1997 approves Convention No. 151. ¹²³
COLLECTIVE AGREEMENTS	
Number of collective bargaining agreements per sector	In 2001, 149 collective pacts covering 33,580 workers were registered, in comparison with 328 collective bargaining agreements covering 80,985 workers. According to ILOSTAT, the collective bargaining coverage rate in Colombia stood at 15.7% in 2016. ¹²⁴
Scope of collective bargaining (national, sectoral, company or workplace)	According to OECD, prior to the pandemic, the number of collective agreements signed in the private sector increased steadily, from 380 agreements in 2017 to 572 in 2019. However, the pandemic complicated the negotiation process and there has been a significant drop in agreements in 2020 (only 194 collective agreements were signed that year) and 2021 (273 agreements). In contrast, a major collective bargaining process with all trade union confederations has been completed in the public sector. On August 2021, the government signed a new agreement that will benefit around 1.2 million workers in the public sector, for a period of two years. ¹²⁵ Collective bargaining generally happens at the company level. However, if a collective agreement comprises more than 2/3 (66.67%) of the workers of an industrial branch of an economic region, the Government may extend it (partially or totally) to other companies of the same industry in that region. The two limitations are that the companies must have the same or similar technical and economic capacity and there are no collective agreements in the company that provide better conditions for workers. ¹²⁶
Statutory requirements for forming a trade union and to start CBA negotiations	Each trade union requires a minimum of 25 affiliated workers in order to be constituted and to subsist. If the collective agreement is negotiated by a trade union whose affiliates exceed one-third of the total number of workers of that company (even after the signing of the agreement), the agreement is extended to all workers of the company, whether or not unionized. ¹²⁷ The Ministry of Labour has also been developing an electronic trade union registration system (Sistema de Información de Archivo Sindical, SIAS) with the support of the Government of Canada and in collaboration with the ILO. The system will register statutes, collective pacts and agreements, union service contracts and other actions of the trade union organisations and will provide reports and statistics on the subject, including on the number of workers covered, to monitor their developments. The system was launched in November 2021, but is still being fine-tuned. ¹²⁸
NEGOTIATION SYSTEM IN GENERAL	
General information on the negotiation system	Please see the detailed provisions above When a workers' organization does not meet the representation criteria, collective agreements may only be concluded by non-unionized workers if the union or unions do not group more than 1/3 of the workers of a company. ¹²⁹

¹²³ <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=57218>

¹²⁴ <https://ilostat.ilo.org/topics/collective-bargaining/>

OECD and AIAS (2021), Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts, OECD Publishing, Paris, www.oecd.org/employment/ictwss-database.htm.

*The collective bargaining coverage rate represents the share of employees covered by one or more collective agreement, in percent.

¹²⁵ https://www.oecd-ilibrary.org/sites/efa41fd3-en/1/3/4/index.html?itemId=/content/publication/efa41fd3-en&csp_=2f00b899b67cc59191158bc7ce842511&itemIGO=oecd&itemContentType=book

¹²⁶ Art. 472 of the Substantive Labour Code

¹²⁷ Art. 471 of the Substantive Labour Code

¹²⁸ https://www.ilo.org/lima/programas-y-proyectos/WCMS_844554?lang=es

¹²⁹ Art. 481 of the Substantive Labour Code

Level of salary negotiation	Salaries and wages are set by the state at a statutory level. Under the collective agreements, negotiated at the company level or territorial level, the wage levels may also be set.
Important topics covered under collective bargaining	The Substantive Labour Code grants private sector trade unions and employers or employers' associations the right to enter into collective bargaining agreements in order to establish working conditions. ¹³⁰ Trade unions of public sector workers are not allowed to enter into collective agreements. ¹³¹
Major hindrances to the right to organize	<p>In Colombia, legal, political, and administrative state procedures act as tripwires to impede union organizing and offer little or no support or legal recourse in labor disputes. The law severely limits workers' rights to bargain collectively and strike. In some cases, when the state actors have ties to paramilitary organizations, Colombian government pronouncements have put union leaders' lives in jeopardy.¹³²</p> <p>For many years, Colombia has been recognised as one of the most dangerous countries in the world for activists and trade unionists. The Colombian state confirms that 145 social movement leaders were murdered in 2021 alone. When workers at the German multinational Fresenius in Colombia organised trade unions and began negotiations, at least two of their elected leaders were threatened with death.</p> <p>Julian Parra and Claudia López are both Quirónsalud (a Fresenius subsidiary) workers who received death threats. Claudia reported the details of these threats to the local police. Julian was forced to flee Colombia.</p> <p>Between February and December 2019, units of the Colombian Army followed up on more than 130 people, including union leaders and human rights defenders. The vice president of the National Union of State Workers and Public Services of Colombia (UTRADEC), Humberto Correa, confirmed that he had been a victim of persecution due to his work as Secretary of Human Rights of the CGT and as the promoter of the report to the Truth Commission regarding the murder of trade union leaders.¹³³</p>
HEALTH SECTOR INFORMATION – ILO CONVENTIONS AND LEGISLATION	
Ratification status of conventions	C149: Nursing Personnel Convention (not ratified) C151: Labour relations (Public Service) Convention (ratified in 2000)
LIMITATIONS ON THE RIGHT TO ORGANISE	
Right to organize and negotiate in public and private healthcare	<p>The Substantive Labour Code allows union contracts. Through a union contract, a company may contract a union, at times formed explicitly for this purpose, for a specific job or work; the union then in essence serves as an employer for its members. Workers who belong to a union that has a union contract with a company do not have a direct employment relationship with either the company or the union. Labor disputes for workers under a union contract may be decided through an arbitration panel versus labor courts if both parties agree. Of nearly 600 union contracts in Colombia, around 95% are in the health sector.</p> <p>Trade union license – The State obliges the employer to allow unionized workers to attend union meetings or activities within the working days.¹³⁴</p>
	Under the current Colombian legislation, the unions representing public sector workers are not allowed to put forward demands or sign collective agreements, since their right to collective bargaining is limited to submitting "respectful requests" that do not cover key aspects of industrial relations such as wages, benefits, and employment contracts. As of

¹³⁰ Art. 467 of the Substantive Labour Code of Colombia

¹³¹ Art. 416 of the Substantive Labour Code of Colombia

¹³² <https://www.solidaritycenter.org/wp-content/uploads/2015/02/ColombiaFinal-1.pdf>

¹³³ <https://survey.ituc-csi.org/Colombia.html?lang=en#tabs-3> summarise information from 2018 to 2021 in this page

¹³⁴ <https://www.asinta.com/countries/employee-benefits-in-colombia/>

<p>Limitations on the right to organize in public healthcare</p>	<p>this date, the government has failed to put its legislation in conformity with Convention 98.</p> <p>The 1991 Colombian Constitution recognises the right to strike for all workers except for members of the armed forces, the police, and workers providing essential public services as defined by law. Similarly, the Constitution charges the legislative authorities with making provisions governing the right to strike. However, this task has not yet been fulfilled. In practice, laws dating back to between 1956 and 1990 which ban strikes remain applicable to a wide range of public services.¹³⁵</p> <p>In the health sector, there are no trade unions. There are only associations that work towards improving the level of medical personnel, recognition of rights, improvement in research, accreditations, participation in congresses, symposiums, and everything that contributes to academic, labour and social activity of the health sector.</p> <p>The limitations in public attention are not determined by the unions, they are defined by the high number of patients that saturate the System that does not have sufficient capacity to meet the demand at the national level, which delays the attention times, slowness in the availability of schedules to award medical appointments with specialists, in the limitation that doctors have for the prescription of medications, in the agility to access specialized procedures, surgeries or treatments of chronic diseases among others.</p>
<p>HEALTH CARE SYSTEM</p>	
<p>Information about the healthcare system in the country</p>	<p>Colombia has a General System of Social Security in Health (SGSSS) with two regimes, the contributory regime (RC) and the subsidized regime (RS).</p> <p>Colombia has a mixed public-private health care system, and although official data indicate more than 95% of health coverage, research in this field has demonstrated the persistence of barriers to accessing health care services.¹³⁶</p> <p>The Entidades Promotoras de Salud (EPS) manages the program, sets the prices, and establishes the benefits and coverage levels. The health care services are then administered by local EPS insurance providers. There are 32 EPS providers certified by the Ministry of Health.</p> <p>There are 27, both private and public, EPS in Colombia that manage the insurance scheme for the Contributory Plan. Once workers voluntarily affiliate to an EPS and make their first payment, they are given a card that serves as a certificate of affiliation. Each delegation collects the payments of its affiliated members of the Contributory Plan, deducting from this amount disability costs, maternity leaves, promotional activities, and the UPC (Per capita Payment Unit).</p>
<p>Share of public and private health care</p>	<p>In 2021, around 93 percent of Colombia's population was affiliated with the public health care system, slightly down from 93.2 percent reported a year earlier. This figure has been constantly decreasing since 2015 when the share of inhabitants with public health insurance amounted to 96.48 percent. In that year, Colombia was forecast to allocate the equivalent of seven percent of its gross domestic product (GDP) to health care.</p>
<p>General description of how the health care is provided.</p>	<p>There are significant differences in the standard of care between rural and urban areas. For instance, in Bogota, Medellin, and Cali, nearly 100% of the public is covered by health insurance. Also, the standards of healthcare are excellent. But in rural areas, health coverage is more limited. Furthermore, the standards of care are very limited, and clinics may be basic. For those who can afford it or who have insurance, being treated in a private facility means a more comfortable experience at a modern facility. While many Colombian doctors do speak English, at private facilities you're all but guaranteed to have multilingual staff. As well, wait times are considerably shorter.¹³⁷</p>

¹³⁵ https://www.ituc-csi.org/IMG/pdf/Colombia_20-11-06_final-2.pdf

¹³⁶ <https://journals.sagepub.com/doi/full/10.1177/21582440211016844>

¹³⁷ <https://www.statista.com/statistics/878058/share-individuals-affiliated-health-social-security-colombia/>

	<p>In Colombia, government spending on health, as a percentage of GDP, was 7.71 percent in 2019; which includes both government and private spending. Total health expenditure is estimated at 73 percent of government expenditure and 27 percent of private expenditure.</p>
<p>Information on healthcare services in the public and private sectors and work-related health insurance</p>	<p>The Colombian health system is made up of a large social security sector and a shrinking exclusively private sector.</p> <p>Its central axis is the General System of Social Security in Health (SGSSS) with its two regimes, the contributory regime (RC) and the subsidized regime (RS).</p> <p>The Contributory Regime corresponds to people who pay an affiliation to the General Health System, whose contribution is directly proportional to the affiliate's income and the Subsidized System is the one paid by the State for the low-income population and/or who are in a condition of vulnerability (SISBEN).</p> <ul style="list-style-type: none"> - National Superintendent of Health (https://www.supersalud.gov.co/) provides general supervision. - Ministry of Health (https://www.minsalud.gov.co/) administers the occupational healthcare program. - <i>Colombia's healthcare system</i> operates a public health insurance plan called Entidades Promotoras de Salud (EPS). - Colombia's public medical plan is handled by the Ministry of Health and managed by the Entidades Promotoras de Salud (Health Promoting Entity) EPS office. While the health care is administered by several local Colombian EPS insurance providers.¹³⁸
<p>Structure of nursing personnel</p>	<p>The nursing hierarchy refers to the organizational structure of nurses within a health Entity, based on education, certifications, and work experience.</p> <p>In each health institution, the structure of the nursing staff may vary, but the general basic positions are:</p> <ul style="list-style-type: none"> - Director of Nursing - Deputy Director of Nursing - Licensed nurse - Nurse practitioner - Nursing assistants - Stretcher bearers <p>There are no professional midwives in Colombia. However, there are two categories of nursing personnel: nursing professionals, who possess a university education; and nursing auxiliaries, with training in the nonformal education system, who receive a technician/nursing auxiliary certificate.¹³⁹</p>
<p>Education required for each professional group (nurses, assistant nurses, etc.)</p>	<p>AICOFAEN is the Colombian Association of Nursing Education Faculties, which manages education regarding nursing.</p> <p>At least a 3-4 year bachelor's degree in nursing is required for nursing, it offers the possibility to work in a great variety of medical organizations, such as public and private hospitals, and medical centers or to provide care in the patient's home. It is also possible to choose which kind of patients to work with, for example, to become a neonatal nurse, a geriatric nurse, a flight nurse, etc.</p> <p>Educational level required:</p> <ul style="list-style-type: none"> - Director of Nursing: Entry into this role typically requires a Master's or Ph.D. from a recognized university and experience as a licensed nurse. - Assistant Director of Nursing: Must have an MSN or DNP and have extensive

<https://www.internationalinsurance.com/health/systems/colombia.php>

¹³⁸ <https://nomadicfire.com/colombian-health-insurance#:~:text=Colombia's%20public%20medical%20plan%20is,local%20Colombian%20EPS%20insurance%20providers.>

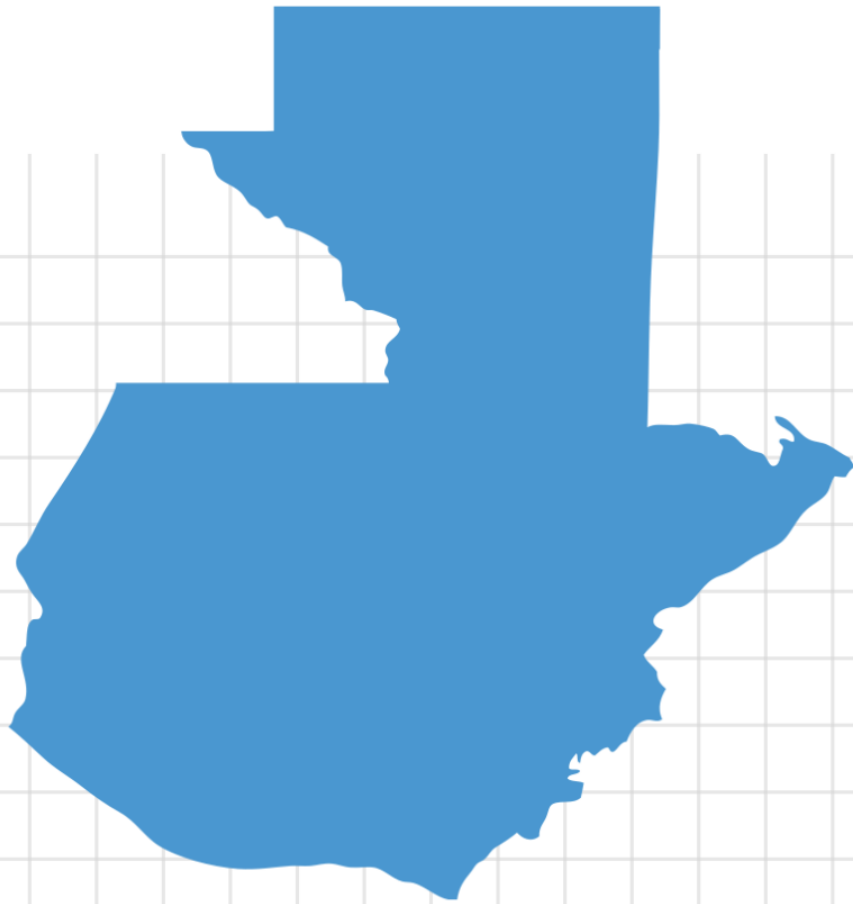
¹³⁹ <https://iris.paho.org/bitstream/handle/10665.2/42706/colcasestudyeng.pdf?sequence=1&isAllowed=y>

	<p>clinical experience. You may consider pursuing a nursing executive certification or pursuing a graduate degree that focuses specifically on nursing management and leadership.</p> <ul style="list-style-type: none"> - Registered Nurse: Must have an associate's degree in nursing, and earn a diploma in an approved nursing program. - Practicing Nurse: Must complete an approved training program at a Technical and/or Skilled Institute for a minimum of one year and pass a licensing exam. - Nursing Assistants: Training requirements are not as intensive as the requirements for other levels of nursing degrees. They are required to complete a state-approved training program and pass a competency exam. Auxiliary training programs generally require a high school diploma or equivalent as a prerequisite. - Stretcher bearers: Basic service personnel, with approved high school studies and training in hospital first aid services. You can scale as you advance in technical studies or training to be an Assistant.
SALARY	
Salary of healthcare professionals	<p>It is not possible to establish a salary scale in the health sector, since the income of these professionals depends on the degree of specialization, type of private or public entity for which they work, shifts, city, professional recognition, and position, among others.</p> <p>Salary levels for health professionals in Colombia are attractive when compared to those of other sectors, especially for individuals with specialized degrees. Colombia's salary trends for those working in the health sciences differ according to degree level. The public sector's pay grades for civil servants are coordinated by the Public Management Department, which sets salary premiums based on education level for master's or doctorate degrees. In private institutions, salary grades are determined by each organization's own. Professionals who graduated in education sciences at all education levels were paid the lowest wages. Health sciences at the undergraduate and master's levels have lower salaries than areas such as engineering, law, economics, administration, and other similar areas. Over time, salaries for specializations and doctorates in health sciences have been increasing more than those for engineering degrees. Professionals with a doctorate degree in health sciences, such as engineers, have increased their average salaries, on a par with educational sciences; however, their salaries are still significantly lower than those in the fields of economics, administration, etc. Pay levels vary among professions, with nurses and bacteriologists receiving Col\$1.35 million/year.¹⁴⁰</p>
Wage gap between the public and private sector workers	<p>Public sector employees in Colombia earn 11% more than their counterparts in the private sector, however, there are private health entities with a lot of recognition or degree of specialization that pay higher salaries to doctors and nurses compared to the public sector. Public sector employees in Colombia earn 11% more than their private sector counterparts on average across all sectors.¹⁴¹</p>

¹⁴⁰ <https://openknowledge.worldbank.org/bitstream/handle/10986/22027/9781464805943.pdf>

¹⁴¹ <https://openknowledge.worldbank.org/bitstream/handle/10986/22027/9781464805943.pdf>

GUATEMALA





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Status of Labour Market related Sustainable Development Goals in Guatemala			
Indicators	Guatemala	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US\$1.9 PPP)	2	2022	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than US\$1.9 a day.
1.3.1: The population effectively covered by a social protection system, including social protection floors	14.5	2020	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.
5.5.2: Proportion of women in senior and middle management positions	39.4	2019	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
5.5.2: Proportion of women in managerial positions	36.8	2019	
8.2.1: Annual growth rate of output per worker (GDP constant 2011 international \$ in PPP)	-0.49	2022	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.
8.3.1: Proportion of informal employment in non-agriculture employment Total	72.2	2019	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services.
8.3.1: Proportion of informal employment in non-agriculture employment Men	68.6	2019	
8.3.1: Proportion of informal employment in non-agriculture employment Women	76.9	2019	
8.5.1: Average hourly earnings of women and men employees	N/A	N/A	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value.
8.5.2: Unemployment rate (Total, 15+)	2.19	2019	
8.5.2: Unemployment rate (Women, 15+)	2.91	2019	
8.5.2: Unemployment rate (Women, 15-24 years)	5.68	2019	
8.5.2: Unemployment rate (Men, 15+)	1.82	2019	
8.5.2: Unemployment rate (Men, 15-24)	4.04	2019	
8.6.1: Proportion of youth (15-24 years) not in education, employment, or training)	28.19	2019	By 2030, substantially reduce the proportion of youth not in employment, education, or training
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Total)	N/A	N/A	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms.
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Girls)	N/A	N/A	
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Boys)	N/A	N/A	
8.8.1: Non-fatal occupational injuries per 100,000 workers	N/A	N/A	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
8.8.1: Fatal occupational injuries per 100,000 workers	N/A	N/A	
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	5.38	2020	The exact measurement method and scoring for this indicator needs to be developed.
SDG indicator 9.2.2 - Manufacturing employment as a proportion of total employment (%) -- Annual	11.65	2019	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries.
SDG indicator 10.4.1 - Labour income share as a percent of GDP (%) -- Annual	46.83	2019	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.
Source; ILO Data (https://ilostat.ilo.org/)			

Legal Framework for the Right to Organise and Negotiate

A. Introduction

Labour rights in Guatemala, including the right to unionization and negotiation are set forth in its Constitution,¹⁴² and the Labour Code (Decree No. 330).¹⁴³ Guatemala's Constitution guarantees freedom of association and provides for the right to strike and collective negotiations.¹⁴⁴ The Constitution also addresses forced labour, trafficking, discrimination, protections for women and children in the workplace, minimum wages, working hours, skills training, and social security.¹⁴⁵

The Labour Code governs individual and collective employment relations, including the freedom of association, collective bargaining, the settlement of collective labour disputes, including mediation and arbitration, and the right to strike.

In Guatemala the Unions are classified by their nature of purpose. There are three main categories of unions.¹⁴⁶

- a) Unions, when they are formed by workers of the same profession or trade or if they are employers, of the same economic activity;
- b) Company, when they are made up of workers from various professions and trad that provides their services in the same company or in two of more equal companies
- c) Industry, when they are made up of workers from various professions or trades who provide their services in companies in the same industry and represent half plus one of the workers and/or employers in that activity.

Guatemala has ratified eight of the ten fundamental ILO conventions.¹⁴⁷

Table 1: Ratification of ILO Conventions, CFA Cases, and State of Workers' Rights

	C87	C98	C149	C151	C154	CFA cases (active, follow-up, closed)	LRI rating	ITUC rating	SDG Indicator 8.8.2
Brazil	Not Ratified	Ratified (18 Nov 1952)	Not Ratified	Ratified (15 Jun 2010)	Ratified (10 July 1992)	(0,1,71)	81.5 (Trade Union:50)	5 (No guarantee of rights)	N/A

¹⁴² Constitution of Guatemala, 1993 (https://www.constituteproject.org/constitution/Guatemala_1993.pdf)

¹⁴³ Guatemalan Labour Code (Decree No 1441)

(https://www.mintrabajo.gob.gt/images/Documentacion/Leyes_Ordinarias/Decretos/CODIGO_DE_TRABAJO_Imagen_Actualizada_2021.pdf). The original decree number of the Labour Code is Decree No. 330 which was enacted in 1947. In 1961, the Labour Code was replaced by a new Decree No. 1441. This is how the Labour Code is identified now.

¹⁴⁴ Art. 34,104,106 of the Guatemalan Labour Code

¹⁴⁵ Art. 4, 100, and 102, of the Constitution of Guatemala, 1993 (https://www.constituteproject.org/constitution/Guatemala_1993.pdf)

¹⁴⁶ Art. 215 of the Guatemalan Labour Code

¹⁴⁷ ILO, *Ratifications by Country*, in ILO Normlex,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102595

The eight fundamental conventions of the ILO that have been ratified by Guatemala are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, and Convention No. 182 on the Worst Forms of Child Labor. The two conventions that have yet not been ratified by Colombia are Convention No. 155 on the Occupational Safety and Health and the Convention No. 187 on Promotional Framework for Occupational Safety and Health.

Colombia	Ratified (16 Nov 1976)	Ratified (16 Nov 1976)	Not Ratified	Ratified (8 Dec 2000)	Ratified (8 Dec 2000)	(17,21,179)	73 (Trade Union:50)	5 (No guarantee of rights)	4.84 (2020)
Guatemala	Ratified (13 Feb 1952)	Ratified (13 Feb 1952)	Ratified (09 May 1995)	Not Ratified	Ratified (29 Oct 1996)	(5,10,96)	54 (Trade Union:0)	5 (No guarantee of rights)	5.38 (2020)
Nepal	Not Ratified	Ratified (11 Nov 1996)	Not Ratified	Not Ratified	Not Ratified	(0,0,4)	72 (Trade Union:50)	3 (Regular violations of rights)	N/A
Philippines	Ratified (29 Dec 1953)	Ratified (29 Dec 1953)	Ratified (18 June 1979)	Ratified (10 Oct 2017)	Not Ratified	(1,4,27)	70.5 (Trade Union:25)	5 (No guarantee of rights)	3.97 (2020)

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

C149 - Nursing Personnel Convention, 1977 (No. 149)

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

C154 - Collective Bargaining Convention, 1981 (No. 154)

Sources: ILO NORMLEX Country Profiles

[\(ratifications and Committee on Freedom of Association cases\)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0)

<https://labourrightsindex.org/heatmap-2022> (Labour Rights Index 2022)

<https://www.globalrightsindex.org/en/2022> (ITUC Global Rights Index 2022)

https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=SDG_0882_NOC_RT_A (ILOSTAT, SDG Indicator 8.8.2)

B. Freedom of Association

Guatemala ratified ILO Convention No. 11 on the Right of Association in Agriculture in 1988 and Convention No. 87 on Freedom of Association and Protection of the Right to Organize in 1952.¹⁴⁸ Guatemala has not ratified Convention 151 on Labour Relations in Public Services.¹⁴⁹

The Constitution and Labour Code guarantee the right to freedom of association and the right to organize trade unions without prior authorization or government intervention. The Constitution of Guatemala states that only a Guatemalan by birth have the right to intervene in the organization, direction and advising of labour unions and a new union will be legally recognized upon basic registration of the union's constituting documents.¹⁵⁰ The Decree also requires that a new labour agreement must always be executed in writing in three copies for each parties and the employer is bilged to send one copy to the Administrative Department of Labour in the Ministry of Labour and Social Welfare within fifteen days after its celebration, modification or renewal.¹⁵¹ If within the same company there are several unions of workers or workers belonging to several unions, their respective collective agreements may coexist; but the conditions of a collective contract that entails greater advantages for its workers than those established by another collective contract for a different sector or group of workers, must be applied to the latter whenever it is a matter of work carried out under the same conditions.¹⁵²

¹⁴⁸ ILO, *Ratifications by Country*, in ILO Normlex, (https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102667)

¹⁴⁹ ILO, *Ratifications by Country*, in ILO Normlex, (https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102667)

¹⁵⁰ Art. 38, 39 & 102 of the Decree Guatemalan Labour Code

¹⁵¹ Art.39 of the Guatemalan Labour Code

¹⁵² Art. 42 of the Guatemalan Labour Code

Workers who are 14 years of age or older can join a union, but minors cannot be members of its Executive Committee and Advisory Council. No person has the option to be a part of two or more unions simultaneously.¹⁵³

C. Right to Organize

Guatemala has ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining on February 19, 1952 and Convention No. 154 on Collective Bargaining on October 29, 1996.¹⁵⁴ The Executive Branch, through the Ministry of Labor and Social Welfare and under the responsibility of its head, must draw up and put into practice a national policy for the defense and development of trade unionism, in accordance with these provisions of the Labour Code:¹⁵⁵

1. Guarantee the exercise of the right to freedom of association;
2. Take the appropriate measures to protect the free exercise of the right to unionize, in accordance with the Political Constitution of the Republic, the international labour treaties and conventions ratified by Guatemala, this (Labour) Code, its regulations and other labour and welfare laws;
3. Maintain a free legal advisory service for workers who wish to organize unions and will disclose the labour and social security laws on a regular basis; and
4. Promote consultation and cooperation with representative organizations of employers and workers who enjoy the right to freedom of association.

It is unlawful for employer representatives to belong to workers unions due to their nature of position within the company because they are obliged to defend the employer's interests in preferential manner.¹⁵⁶

Unions are prohibited from granting special privileges to their founders, executive representatives or consultants, whether by reason of age, sex, seniority or any other circumstance, except for the advantages that are inherent to the correct performance of union positions.¹⁵⁷ The penalties applicable on unions are fine and dissolution in situations when they function against the law¹⁵⁸

The main activities of unions are.¹⁵⁹

- a. Enter into collective agreements on working conditions and other agreements of general application for the company's workers;
- b. Ensure at all times the economic and social well-being of the worker and their personal dignity;
- c. Create, manage or subsidize institutions, establishments, social works and non-profit commercial activities that contribute to improving the standard of living of workers and are of common use to their members, such as cooperatives, sports, educational, cultural entities, assistance and social security. This also includes consumer goods stores and supply of inputs and work tools.
- d. In general, all those activities that are not in conflict with its essential purposes or with the

¹⁵³ Art. 212 of the Guatemalan Labour Code

¹⁵⁴ ILO, *Ratifications by Country*, in ILO Normlex, (https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102667)

¹⁵⁵ Art. 211 of the Guatemalan Labour Code

¹⁵⁶ Art. 212 of the Guatemalan Labour Code

¹⁵⁷ Art. 208 of the Guatemalan Labour Code

¹⁵⁸ Art. 213 of the Guatemalan Labour Code

¹⁵⁹ Art. 214 of the Guatemalan Labour Code

laws.

D. Right to Bargain Collectively

Guatemala Constitution guarantees the right of collective bargaining.¹⁶⁰ The Labour Code grants private sector trade unions and employers or employers' associations the right to enter into collective bargaining agreements in order to protect the rights of workers.¹⁶¹ Collective Bargaining can be exercised between one or more unions of workers and one or more employers, or one or more unions of employers, in order to regulate the conditions in which the work must be provided and all other matters relating to it.¹⁶²

For the negotiation of a collective bargaining agreement, the respective union or employer will forward to the other party for their consideration, through the nearest administrative labor authority, the draft agreement to be discussed in the meeting. If thirty days after the application was submitted by the respective union or employer, the parties have not reached a full agreement on its stipulations, any of them can go to the labor courts, raising the corresponding collective conflict, so that they can be resolved. For this purpose, the parties are requested to draft a list of requests, verification of the agreed points before the Conciliation Court to make a decision.¹⁶³

The collective agreement on working conditions must include the duration of the agreement and the day it should come into effect. It is understood that its validity cannot be set for a period of less than one year nor more than three years. A collective agreement is automatically extended if neither party denounces it at least one month in advance.¹⁶⁴

E. Right to Strike

The Constitution of the Guatemala gives its workers the right to strike and the stoppage of work after all conciliation procedures have been exhausted. These rights can be exercised solely for reasons of economic-social order.¹⁶⁵

The associations, groups, and unions formed by the workers of the State and its decentralized and autonomous entities, are not allowed to participate in partisan political activities. The activities of strike should not affect the provision of essential public services.¹⁶⁶

The strike is considered fair in the events when it is due to the non-compliance with the individual and collective labour contracts or employer's unjustified refusal to grant economic improvements that the workers are demanding. A strike is unfair when none of these reasons is present. If the strike is declared fair, the Labour and Social Welfare Courts must order the employer to pay the wages corresponding to the days the workers have been on strike. Workers who, due to the nature of their functions, must work during strike will have the right to double salary. If a strike is declared unfair, the striking workers will not have the right to a salary for the duration of the strike and those who have worked will not have the right to double salary.¹⁶⁷

A strike cannot be carried out by the.¹⁶⁸

¹⁶⁰Art. 106 of the Guatemalan Labour Code

¹⁶¹ Art. 106 of the Guatemalan Labour Code

¹⁶² Art. 49 of the Guatemalan Labour Code

¹⁶³ Art. 51 of the Guatemalan Labour Code

¹⁶⁴ Art. 53 of the Guatemalan Labour Code

¹⁶⁵ Art. 104 of the Guatemalan Labour Code

¹⁶⁶ Art. 116 of the Constitution of Guatemala, 1993

¹⁶⁷ Art. 242 of the Guatemalan Labour Code

¹⁶⁸ Art. 243 of the Decree No. 330, 2021Guatemalan Labour Code

- a) Workers of the transport companies while they are on work.
- b) Workers of clinics and hospitals, public hygiene and cleanliness; and those who work in companies that provide motor power, lighting, telecommunications, and water processing and distribution plants to serve the population, as long as the necessary personnel are not provided to prevent such services from being suspended, without causing serious and egregious damage. immediate to public health, safety and economy
- c) State security forces.

In the case if the strike is declared illegal and the workers are continuing it the Court can authorize the employer to terminate their employment contracts within the time of twenty days without taking any responsibility on his part.¹⁶⁹

The Sustainable Development Goal indicator 8.8.2 measures the level of national compliance with fundamental labour rights (freedom of association and collective bargaining (FACB)). Based on ILO textual sources and national legislation, Guatemala received a score of 5.4 in 2020 (0 is best; 10 is worst). Compared to neighboring countries, Guatemala’s score is worse. Similar results are found for Guatemala and other countries when the Trade Union indicator from the Labour Rights Index is considered.

Table 2: SDG Indicator 8.8.2 and LRI-TU Indicator

Level of national compliance with labour rights among Guatemala and neighboring countries, 2023		
	SDG Indicator 8.8.2	Labour Rights Index (Trade Union Indicator)
Costa Rica	1.91 (2020)	50 (2022)
Cuba	10 (2015)	0 (2022)
Honduras	4.34 (2020)	25 (2022)
Mexico	1.94 (2020)	50 (2022)
Nicaragua	0.36 (2017)	75 (2022)
Guatemala	5.4 (2020)	0 (2022)

The value of SDG Indicator 8.8.2 can range between 0 to 10, with 0 being the best possible score (indicating higher levels of compliance with the freedom of association and collective bargaining (FACB) rights) and 10 the worst (indicating lower levels of compliance with FACB rights based on ILO textual sources and national legislation). The Trade Union indicator under the Labour Rights Index has a range from 0 to 100, with 100 being the best possible score and 0 the worst.

Sources: ILO Data; Labour Rights Index

The Global Competitiveness Index, based on 12 pillars, gives an overview about the Guatemala economy. The Labour Market Pillar, 8th Pilar, measures labour market efficiency through through statistical data and executive opinion surveys among employers provides Guatemala’s view on various aspects, including the labour market efficiency pillar elaborated upon by surveys among employers and other statistical data.

Guatemala ranks 122nd out of 141 countries (1st is the best) at the pillar. Out of twelve indicators, the best rankings are internal labour mobility (3rd), Cooperation in labour-employer relations (32nd), and Ease of hiring foreign labour (50th). The worst rankings are Active labour market policies (133rd) and workers’ rights (122) (see more details in the Table below).

Table 3: Labour Market Efficiency in Guatemala, 2019

Index Component	Value	Score *	Rank
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¹⁶⁹ Art. 244 of the Guatemalan Labour Code

8th pillar: Labour market	-	50.9	122
Flexibility 0–100	-	48.0	129
8.01 Redundancy costs weeks of salary	27.0	52.1	113
8.02 Hiring and firing practices 1–7 (best)	3.8	47.1	75
8.03 Cooperation in labour-employer relations 1–7 (best)	5.0	66.2	32
8.04 Flexibility of wage determination 1–7 (best)	5.1	69.0	57
8.05 Active labour market policies 1–7 (best)	1.9	15.7	133
8.06 Workers' rights 0-100 (best)	3.0	3.0	122
8.07 Ease of hiring foreign labour 1–7 (best)	4.4	56.2	50
8.08 Internal labour mobility 1–7 (best)	5.5	75.0	3
Meritocracy and incentivization 0–100	-	53.8	107
8.09 Reliance on professional management 1–7 (best)	4.2	53.5	79
8.10 Pay and productivity 1–7 (best)	3.8	47.1	78
8.11 Ratio of wage and salaried female workers to male workers %	0.39	23.4	117
8.12 Labour tax rate %	14.3	91.2	62

Source: *The Global Competitiveness Report, 2019 (8th pillar: Labour Market Efficiency)*

F. Observations on Labour Legislation

Despite the existence of an extensive labour legislation in Guatemala, some observations have been made by the international bodies like ILO Committee of Experts on Application of Conventions and Recommendations, International Trade Union Congress and United States' Department of State Country Reports on Human Rights Practices. The comments are mainly relevant to the right to organise, the right to collective bargaining, and the right to strike.

According to ITUC's Global Rights Index 2022¹⁷⁰, Guatemala is one of the ten worst countries in the world for working people. The major problems are violence against trade unionists, climate of fear and impunity, and anti-union dismissals. Guatemala has long been plagued by endemic violence against workers. Engaging in trade union activities remained extremely dangerous and often resulted in death threats and murder. Impunity prevailed as the government failed to provide timely and adequate protection to trade unionists who received death threats and failed to investigate and prosecute anti-union crimes. Guatemala is a new entry in the ten worst countries for working people as workers faced endemic violence for union activities.

ITUC gives it a rating of 5, meaning there is no guarantee of workers' rights in the country. ITUC explains that "Countries with the rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices".

¹⁷⁰ <https://www.globalrightsindex.org/en/2022/countries/gtm>

Issued highlighted by ITUC¹⁷¹

1. Unions must represent 50 per cent plus one of the workers in a sector in order to establish industry unions (Art. 215 (c) of the Labour Code)).
2. Under the terms of section 3 of the Act concerning unionization and strike regulation for state workers and section 215 of the Labour Code, it is impossible for the same union to group together public servants and private-sector workers.
3. To be elected as a union leader a person must be of Guatemalan origin and be employed by the company. (Arts. 220 and 223 of the Labour Code).
4. There is provision for imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel.
5. In the public sector, there is no regulation of collective bargaining, leading to numerous disputes. The ILO Committee of Experts has repeatedly requested the Government to adopt, in consultation with the trade unions concerned collective bargaining procedures in the public sector.
6. Workers are allowed to strike provided they have the support of 50 per cent plus one of the workers in the company (Art. 241 of the Labour Code).
7. There is provision for imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel.
8. Labour, civil or criminal sanctions can be imposed for strikes in the civil service or by workers in specific enterprises.

Issues highlighted by CEACR¹⁷²

1. The Committee has emphasized on the significance of initiatives outlined by the Subcommittee on the Implementation of the Road Map and once again ask the Government to take immediate and intensive action to:
 - i. Conduct thorough investigations into all incidents of violence against trade union leaders and members, taking into account their union activities, in order to hold those responsible accountable and prevent future acts of violence.
 - ii. Ensure prompt and effective protection for all trade union leaders and members who are at risk of violence. The Committee cites the recommendations made by the Committee on Freedom of Association in Case No. 2609 as relevant to the actions required.¹⁷³
2. Furthermore, the Committee has urged the Government to promptly take the necessary steps to align national legislation with the Convention.
3. Additionally, the Committee also referred to the rejected applications of the registration of trade unions in the past two years and many others are still being processed after multiple months. The Committee has encouraged the Government to make progress in streamlining the trade union registration process with the help of the Office and through dialogue with national representative organizations.
4. Regarding the awareness -raising campaign on Freedom of Association and Collective Bargaining (FoA & CB), the Committee asked the Government to take initiatives to effectively spread awareness about freedom of association and collective bargaining through national

¹⁷¹ <https://www.globalrightsindex.org/en/2022/countries/gtm>

¹⁷² https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4120543,102667:NO

¹⁷³ <https://www.ilo.org/dyn/normlex/en/f?p=1000:50001::NO::>

media outlets. Despite the existence of the National Tripartite Committee and assistance from the Office, there has been a lack of progress over the past three years. The Committee has urged the Government to promptly take all necessary measures to address the long-standing serious violations of the Convention.

5. The Committee asked the Government to strengthen their efforts in ensuring that the General Labor Inspectorate prioritizes addressing violations of trade union and collective bargaining rights. The Committee also urged the government to create an efficient information system to monitor inspection activities in this field.
6. To address the cases of anti-union discrimination the Committee has advised the Government to effectively take actions to provide an effective judicial response. In this regard, the Committee urged the Government to: (i) take measures as soon as possible, to overcome the obstacles to effective compliance with the reinstatement orders handed down by the courts; and (ii) take the necessary steps to ensure that, in consultation with the social partners, new procedural rules are adopted so that all cases of anti-union discrimination are examined by the courts in summary proceedings and the respective court rulings are implemented rapidly.
7. Similarly, the Committee requested the Government to provide information on: (i) the timelines for approving public sector collective agreements and the grounds for the decisions not to approve certain agreements; and (ii) the development of cases in which the validity of certain clauses of public sector collective agreements has been legally challenged.

Issues raised in USDOS Country Report¹⁷⁴

1. The legislation places restrictions on some of the rights. For example, legal recognition of an industrywide union requires that the membership constitute a majority of the workers in an industry and restricts union leadership to citizens. Ministries and businesses are required to negotiate only with the largest union, as determined by the annual membership.
2. The President and Cabinet may suspend any strike deemed gravely prejudicial to the country's essential activities and public services. The government defined essential services more broadly than international standards, thus denying the right to strike to many public workers, such as those working in education, postal services, transport, and the production, transportation, and distribution of energy.
3. The law prohibits employer retaliation against the workers engaged in legal strikes. If authorities do not recognize a strike as legal, employers may suspend or terminate workers for absence without leave. A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in the factory or business are union members and request negotiations.
4. Furthermore, Government institutions, such as the Ministry of Labor and the labor courts, did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws. Penalties were not commensurate with those for other laws involving denials of civil rights, such as discrimination.
5. Labor courts also failed to compel compliance with reinstatement orders, including payment of back wages, for workers illegally dismissed for engaging in union activities, especially in the rural areas. There was a substantial backlog of cases in the labor courts that caused delays of up to three years per case. The Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders. In the labor inspection system and the labor courts, employers routinely influenced authorities to favor their interests or simply refused to comply. According to the Special Prosecutor's Office for Crimes Against Unionists, 70 percent of complaints in 2020 involved persistent employer refusal to comply with judicial orders.

¹⁷⁴ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/guatemala/>

6. Worker representatives reported no significant improvement in compliance with the law because of the new sanction authority, noting that the inspectorate emphasized collection of fines, which during the year went to the labor inspectorate, over remediation of the underlying violations. Lack of information about the law's implementation made it difficult to assess its impact on improving labor law enforcement.
7. The Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks and threats against union members as well as for noncompliance with judicial orders in labor cases. Staffing for the unit remained stagnant, and successful prosecutions remained a challenge exacerbated by the pandemic.
8. An additional commission, the Trade Union Permanent Commission for Protection, which was supposed to be convened by the Public Ministry to address problems of antiunion violence, held no meetings. As of November, this commission had not held regular meetings since 2018.
9. According to NGOs, the General Inspectorate of Labor failed to ensure that workers who formed new unions were protected from termination mentioned in the legislation¹⁷⁵, frequently failing to notify the companies of the formation of the union and the prohibition against firing the founders or failing to do so in the timeframe required by law. The General Directorate of Labor also failed to emit resolutions of requests for union registration in the prescribed timeframe, per Article 218 (e) of the legislation that requires the directorate to respond to the request for certification within 20 days of receiving the request.

¹⁷⁵ Art.39 of the Guatemalan Labour Code

UNIONS AND THEIR MEMBERSHIP

<p>Major trade union federations in different sectors</p>	<p>Classification of unions and members by economic activity divides them into ten groups.</p> <ol style="list-style-type: none"> 1. Central General de Trabajadores de Guatemala The Central General de Trabajadores de Guatemala (CGTG) is a national trade union center in Guatemala. It is descended from the Central Nacional de Trabajadores, which operated secretly after the disappearance of 21 of its leaders arrested on June 21, 1980. The CGTG is affiliated with the International Trade Union Confederation. 2. Confederación de Unidad Sindical de Guatemala: The Confederación de Unidad Sindical de Guatemala (CUSG) is a national trade union center in Guatemala. It is affiliated with the International Trade Union Confederation. 3. Sitracima: Sitracima is the first union to form in the maquila sector in Guatemala. The union was organized in 2001 by women working at the CimaTextiles factory and concluded negotiations for a collective bargaining agreement with management in 2003. 4. Trama Textiles: TRAMA is a collective of 400 backstrap loom weavers, mainly women, in Guatemala. TRAMA works with 17 weaving cooperatives, representing five regions in the Western Highlands of Guatemala (Sololá, Huehuetenango, Sacatepéquez, Quetzaltenango, and Quiché). 5. Unión Sindical de Trabajadores de Guatemala: 3,000 members from 40 private-sector unions¹⁷⁶ The Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA) is a national trade union center in Guatemala. UNSITRAGUA - is an umbrella organization with a nationwide presence that integrates unions of workers of the branches of Industry, Services, Agricultural, self-employment, and Independents.¹⁷⁷ <p>The largest are the Union of Education Workers of Guatemala (STEG by its spanish acronym - Sindicato de Trabajadores de la Educacion de Guatemala) with more than 80,000 members and the National Union of Health Workers of Guatemala (SNTSG by its spanish acronym - Sindicato Nacional de Trabajadores de Salud de Guatemala), with more than 25,000 members.</p> <p>In Guatemala there are about 800 unions. After 8 years of management, the Guatemalan Women's Union Federation was created (Federación Sindical de Mujeres de Guatemala). It currently has approximately 3,400 affiliates. It is the first women's union (without being exclusive of men) in Latin America. On the other hand, there are the "Paritarias" that participate in the national, agricultural and maquila salary commission.</p> <p>The largest unions that exist are the STEG (Sindicato de Trabajadores de la Educacion de Guatemala) and the SNTSG (Sindicato Nacional de Trabajadores de la Salud de Guatemala) There are other federations that have approximately 40-50 unions; however, the largest are Education and Health.</p>
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¹⁷⁶ Canada: Immigration and Refugee Board of Canada, Guatemala: Information on UNSITRAGUA, 1 January 1991, GTM7416, available at: <https://www.refworld.org/docid/3ae6ad0544.html>

¹⁷⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_165192.pdf
https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/documents/publication/wcms_216075.pdf
https://en.wikipedia.org/wiki/Central_General_de_Trabajadores_de_Guatemala
https://en.wikipedia.org/wiki/Confederaci%C3%B3n_de_Unidad_Sindical_de_Guatemala
<https://en.wikipedia.org/wiki/Sitracima> https://en.wikipedia.org/wiki/Trama_Textiles
https://en.wikipedia.org/wiki/Uni%C3%B3n_Sindical_de_Trabajadores_de_Guatemala

<p>Membership from different trade union federations</p>	<p>The density of trade union membership in Guatemala is 3.1% as of 2019.¹⁷⁸ In Guatemala there are 2 representative blocks, known nationally and internationally (recognized by the ILO). The blocks are called Autonomous and Global, and each one of them have Unions, Federations, Confederations and Centrals.</p> <p>The Federations have different unions as their members while the Confederations have Federations as their members. In Guatemala, there are also Unions of Municipal Workers, Unions of Ministerial Workers, Union of Education Workers, Union of Health Workers, and Unions of Self-employed Workers that refers to informal commerce.</p>
<p>Trade union density</p>	<p>There is no data accessible that indicates organizing rates in different sectors including any data on gender percentages of union memberships. However, according to the World Bank, the labour force participation rate for women in Guatemala was 37% in 2021,179 compared to 81.3% for men. This suggests that women may be less likely to join trade unions in Guatemala due to lower labor force participation rates and other factors that impact their ability to access and participate in the workforce. As indicated above, the trade union density is 3.1% in Guatemala which indicates that 3.1% of its salaried workers (referred to as employees in labour statistics) are trade union members.</p> <p>During our interviews with the trade union leaders in Guatemala, the following information was shared with us: The composition of union members is mostly men, 28% women. There is less participation of women in union activity. On the other hand, companies have been decreasing the hiring of women simply for the periods related to pregnancy, pre, post and lactation (the labor legislation grants a special pre and post partum period, as well as a period of one hour for lactation); who do not want to invest and or consider it as an expense that is unproductive.</p> <p>In the companies that do have women affiliation to unions are the maquilas. However, there are very few unions in this industry, but 80% of their affiliates they are women. There are about 6 unions in the maquila industry.</p> <p>In another interview, it was informed that trade union membership is mainly men (90%) and the remaining 10% are women and children (14 years and older)</p> <p>With the proposal of the Guatemalan Women's Union Federation, a greater female participation in unionization processes is sought. Although there is no union as such, there is a "limited" opening to the incorporation of members of the LGBTQ+ community in the different unions that exist in Guatemala.</p>
<p>Significant changes since the year 2000</p>	<p>Various institutions have been established to address the questions of violence against trade unionists and impunity in human rights cases. These include the International Commission Against Impunity in Guatemala (CICIG) founded in 2006, the Tripartite Committee on International Labour Affairs, which was reconstituted in 2004, and the Multi-Institutional Commission on Labour Relations in Guatemala, founded in 2003.</p> <p>In 2013 collaboration agreements were signed by the Public Prosecutor's Office with CICIG and local trade union coordinating groups. The agreements were aimed at improving engagement, analysis and investigation capacities in cases of anti-union violence</p> <p>The Guatemalan government has been working hard to ensure trade union movements have a safe and secure environment to exercise their rights. Since 2007, convictions have been achieved for many murders of union officials and members. Furthermore, the Office of Special Prosecutors for Crimes Against Judicial Officials and Trade Unionists (FDCOJYS) is doing its utmost to investigate these cases properly.¹⁸⁰</p> <p>The Trade Union Technical Committee of the Office of Public Prosecutor has been holding high-level meetings since October 2021, following recommendations from the ILO Committee of</p>

¹⁷⁸ <https://ilostat.ilo.org/topics/union-membership/>

<https://www.statista.com/statistics/994059/labor-force-participation-rate-in-guatemala/>

¹⁷⁹ https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=GT&name_desc=true

¹⁸⁰ https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4122937

	<p>Experts (CEACR) and Committee on Freedom of Association. Weekly meetings have also been organized with the Prosecutor-General to identify cases of anti-union violence. The prosecuting unit has received increased resources for criminal investigation capacity building, with a budget of US\$605,885.31 (4,645,359 quetzals) allocated from 2021-2022. Out of 35 reported murder cases, 7 convictions were achieved.</p> <p>The Guatemalan government has been working on a legislative initiative since 2018, which was discussed by the three parties in 2021. However, despite the government's calls for collective agreement on a proposal to submit to Congress, it has not yet been received. The government hopes to submit a legislative proposal with the help of social dialog, tripartism, and ILO technical assistance, taking into account national circumstances and CEACR observations for Congressional approval.</p> <p>The Government of Guatemala has taken note of the CEACR's recommendations concerning technical cooperation from the ILO and the Governing Body's decision at its 334th Session for the Ministry of Labor and Social Welfare to redesign procedures and develop an electronic tool for internal access to information on trade union registration, reports, and file management. In this vein, 17 new trade unions have been established between September 2021 and May 2022. Furthermore, under the responsibility of the Subcommittee on Mediation and Dispute Resolution (which includes the Government as a member), 64 round table dialogue events were arranged in 2021-2022 (until April 2022).</p> <p>In terms of dispute resolution, 15 cases have been addressed with successful outcomes. Moreover, regarding Convention No. 87 - there has been a considerable increase in court orders that are being implemented in practice for those affected by anti-union dismissals. The judiciary's Instruction No. 052-2022/DGL/Orza (March 30th 2022) has seen 255 cases of reinstatement between September 2021 and March 2022.</p> <p>Regressions: the Labour Code establishes that in 10 days the General Directorate of Labor, (under the Ministry of Labour) must authorize the creation of a union; however this process can last up to 2 years in the Ministry of Labour.</p> <p>The employer, the Ministry of Labour itself, provides the names of the workers who intend to create a union (privileged information) through the lists of people that make up the executive committee and provisional advisory committee to the employer for confirmation purposes and, with this information and without any justification (usually downsizing due to costs), these workers are fired from employment.</p> <p>One interviewee informed the following: "The main changes that have been made are to restrict the right and to make the private sector less tolerant of union organization. The average that the ILO manages and the government speaks of 2% unionization of the working population, but we believe that this percentage is lower, since the record they keep are not updated, and hence not credible statistics".</p>
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<p>Limitations on the right to organize in the public sector</p>	<p>The ability to establish trade unions and organizations is hindered by various mechanisms such as those involving the removal of union leaders who oppose companies and sending them to other operating units, as well as recent cases of corruption within unions. Additionally, labor rights are violated with impunity and contractual regulations allow continued labor and human rights violations. Human rights advocates and indigenous peasant rights groups in particular face high levels of intimidation and violence. Indigenous peasants, human rights advocates, and social activists are targets of violence and judicial abuses.</p> <p>Guatemala is home to a vigorous labor movement, but workers are frequently denied the right to organize and face mass firings and blacklisting. Trade union members are also subject to intimidation, violence, and murder, particularly in rural areas. Labor laws obstruct union membership and impede strikes.¹⁸¹</p> <p>It was informed during the interviews that “the processes for the formation of unions are limited by government officials. The Ministry of Labour has delegations in the interior (referring to the interior of the republic) and they are in charge of receiving the documentation for new unions; However, the trade union formation fails during their gestation period because the officials either lose their paperwork or the papers never arrive at the central Ministry of Labour for completion of registration. In some cases, this documentation is shared with employers to fire employees who want to organize”.</p>
<p>Limitations on the right to negotiate in the public sector</p>	<p>There are certain provisions in the Labour Code that obscure the right pertaining to negotiations in Guatemala. For example, procedures for the recognition of bargaining agents were not found in the Labour Law.¹⁸²</p> <p>Workers have the right to bargain collectively, provided the union represents more than 25% of workers in an enterprise. The Labour Code requires that union members must approve a collective bargaining agreement by a simple majority.¹⁸³</p> <p>It was informed during the interviews that recently in the Ministry of Labour, the Minister Rafael Rodriguez Pellecer himself has limited the members of the union for wanting to negotiate the collective agreement and not being willing. The Minister began with the dismissal of the executive committee because the comrades began their strike demonstrations due to the refusal to negotiate.</p> <p>It should be noted that if this happens within the Ministry of Labour, what can be expected for the other national unions. In short, there are limitations to the right to negotiate.</p> <p>The state through the Ministry of Labor (MinTrab) in the Technical Council have applied policies, arguing that collective agreements have limited state resources and that is why it does not provide an adequate service to the population, they have campaigned through media against the collective agreements, and they have used the collective agreement of the education and health sector to "demonize" collective bargaining.</p> <p>The State itself, through the MinTrab, hinders collective bargaining. Their job is to verify whether the collective agreement contravenes a legal rule and not to be determining whether the economic amounts are harmful to the country.</p>
<p>Limitations on the right to strike in the public sector</p>	<p>In Guatemala, the action taken by a government to obtain a court injunction to put a temporary end to a strike in the public sector does not constitute an infringement of trade union rights.¹⁸⁴</p> <p>Under section 241 of the Labour Code, strikes cannot be declared by a majority of those voting as required by the Convention, but by a majority of the workers. In addition, the requirement for compulsory arbitration without the possibility of recourse to strike action in listed public services is inconsistent with the Convention. The list goes beyond the ILO’s accepted definition of essential services in which restriction of the right to strike can be justified. As a result, all education, postal, transport, transport generation and energy workers are denied the right to strike. Likewise, the prohibition of solidarity strikes is a problem</p>

¹⁸¹ <https://bti-project.org/en/reports/country-report/GTM>

<https://freedomhouse.org/country/guatemala/freedom-world/2022>

<https://www.industrial-union.org/guatemala-must-respect-freedom-of-association>

¹⁸² https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:GTM,,2019:NO

¹⁸³ https://www.ituc-csi.org/IMG/pdf/WTO_Guatemala.final.pdf

¹⁸⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID,P70002_HIER_LEVEL:3945663,2

	The Law on Unionization and Right to Strike for State Workers that restricts trade union activity and freedom is referred to as anti-union law by the trade union leaders.
Particular Occupations with limitations	<p>In Guatemala, the action taken by a government to obtain a court injunction to put a temporary end to a strike in the public sector does not constitute an infringement of trade union rights. Strikes can be stopped for public service or essential services when they are detrimental to the national community. This right can also be denied to public servants exercising authority in the name of the State, officials working in judicial services, and judges..</p> <p>Restriction on the formation of organisations in full freedom: according to Section 215(c) of the Labour Code as reformed in 2001, the creation of industry-wide unions requires that the membership constitute “50% plus one” of the workers in the industry in question. This is a clear barrier to the formation of new industry-wide unions. In practice there are delays in the registration of trade unions or even refusal to register them.</p> <p>It was informed during the interviews that an attempt has been made to make reforms but it has not been achieved, despite the tripartite meetings with the support of the ILO, but a good agreement has not been reached.</p> <p>The ILO Committee of Experts have recommended to the State of Guatemala to update its ordinary legislation in order to facilitate union organization ensuring respect of these rights.</p> <p>On the contrary, there are bills that are very harmful to workers and trade unionism, e.g. the procedural labour and social security code, when approved, will go a long way against the rights of workers, e.g. the law issued on the regulation of part-time work, which affects job stability, economic / social situation and social security.</p> <p>The law regulating unionization and the right to strike for state workers, as it is, is a very harmful limitation on workers’ right to exercise union freedom and collective bargaining.</p>
ILO CONVENTIONS AND LEGISLATION	
Ratification information about major conventions	<p>C087: Freedom of Association and Protection of the Right to Organise Convention: Ratified. C098: Right to Organise and Collective Bargaining Convention: Ratified. C149: Nursing Personnel Convention: Ratified. C151: Labour relations (Public Service) Convention: Not ratified.¹⁸⁵</p>
Enactment of legislation in compliance with the convention	<p>Please see detailed provisions on legislation at the start of this country chapter.</p> <p>It was highlighted during the interviews that the conventions since they are ratified are part of the national legislation, but they are not complied with. The problem lies in who applies the law because it has a bias towards impunity and does not adhere to the spirit of the laws and the resolutions are of a political nature.</p> <p>The trade union leaders were of the view that “despite the ratification of the conventions by the Government of Guatemala, they have become a dead letter because they are not applied by the authorities. This is the case not only with the conventions but also with the Constitution itself and other ordinary laws of country”.</p>
COLLECTIVE AGREEMENTS	
Number of collective bargaining agreements per sector	<p>Collective agreements in Guatemala can be executed by enterprise or production centre, by industry or economic activity, and by region. To date, the only type of collective agreement used in practice in Guatemala is by enterprise, which is binding on the employer and all of the employees within the respective enterprise or company. There are currently no sector-specific collective agreements in place in the country.¹⁸⁶</p>

¹⁸⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C149

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312296:NO

¹⁸⁶ [https://uk.practicallaw.thomsonreuters.com/w-012-](https://uk.practicallaw.thomsonreuters.com/w-012-9888?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Collective%20Agreements&text=To%20date%2C%20the%20only%20type,in%20place%20in%20the%20country.)

[9888?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#:~:text=Collective%20Agreements&text=To%20date%2C%20the%20only%20type,in%20place%20in%20the%20country.](https://uk.practicallaw.thomsonreuters.com/w-012-9888?transitionType=Default&contextData=(sc.Default)&firstPage=true#:~:text=Collective%20Agreements&text=To%20date%2C%20the%20only%20type,in%20place%20in%20the%20country.)

	<p>In the civil aviation sector, an Agreement between the Ministry of Labor and the Mesón Buen Samaritano Civil Association is present. These and other agreements between the government and workers from different sectors.¹⁸⁷</p> <p>Collective bargaining is still very limited in Guatemala. According to a report by the Ministry of Labour, only 14 collective agreements were approved in 2018, and only four in March 2019.¹⁸⁸</p> <p>It was informed during the interviews from 2008 to 2019, 88 collective agreements have been signed, according to the records provided by the Ministry of Labor (Mintrab), in which municipal unions stand out, but there are other public institutions such as the Ministries of Economy in 2011; Public and INDE in 2012; IGSS in 2013; Health, Empornac and Property Registry in 2014; Migration, Intecap and MAGA in 2015. Some are national agreements, others are at the sector level.</p>
Scope of collective bargaining (national, sectoral, company or workplace)	In Guatemala, the collective bargaining happens at enterprise level. Hence, generally there are limited sectoral collective agreements. Collective agreements are applicable to all workers of the enterprise regardless of whether they are members of the trade union negotiating the agreement.
Statutory requirements for forming a trade union and to start CBA negotiations	Art. 216 of the Labour Code specifies that to establish a workers' organization, the written consent of at least twenty workers is required. ¹⁸⁹ Unions must represent 50 per cent plus one of the workers in a sector in order to establish industry unions (Art. 215 (c) of the Labour Code).
NEGOTIATION SYSTEM IN GENERAL	
General information on the negotiation system	Article 207 of the Labour Code: Unions must always be governed by the democratic principles of respect for the will of the majorities, secret ballot, and one vote per person. However, when the secret ballot is not practicable due to illiteracy or other very qualified circumstances, decisions can be made by nominal vote and, in the exceptional cases in which it is a question of matters of mere processing, it is lawful to adopt any other fast and efficient voting systems that are compatible with democratic principles. In the event that a member of the union occupied any paid political position, the employment relationship is suspended. ¹⁹⁰
Major hindrances to the right to organize	<p>The employees face the following problems in workplaces inside Guatemala:</p> <ol style="list-style-type: none"> Trade union rights and civil liberties Legislative aspects Trade union rights and public freedoms Unimpeded registration of trade union organizations in the Trade Union Register of the Ministry of Labour and Social Welfare. Trends in the number of applications for registration of collective agreements on working conditions, with an indication of the industry concerned.¹⁹¹ <p>It was highlighted during the interviews that the employers dismiss workers from employment once trade union registration is happening through the MinTrab. Employers act with impunity, knowing that they shall not be punished for violations.</p> <p>Another challenge is the corruption that the trade union leaders highlighted. A major challenge is about how to provide economic support to a worker who are fired for trade union activity to the time they are reinstated. Another challenge is how to deal with leaders who become part of a blacklist and who later cannot find work.</p>
Challenges in the right to organize (state)	The working of trade unions is impeded in Guatemala by various factions, including the government. The law is gradually trying to cope with these issues, with limited success. The Government continues to impede the registration of trade union organizations, the enforcement of anti-union dismissal rulings, the development of collective bargaining, and the

¹⁸⁷ <https://www.mintrabajo.gob.gt/index.php/documentacion/convenios#2022>

¹⁸⁸ <https://survey.ituc-csi.org/Guatemala.html?lang=en#tabs-3>

¹⁸⁹ https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=29402

https://www.ilo.org/dyn/irllex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:GTM,,2019

¹⁹⁰ https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=29402&p_country=GTM&p_count=230&p_classification=01.02&p_clascount=4

¹⁹¹ https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4122937

	exercise of the right to strike. Likewise, it continues to do little to put an end to the serious situation of violence and harassment suffered by union members and their families. ¹⁹²
Challenges in the right to organize (employer)	In the private sector, employers have the tendency to fire workers who attempt to form unions. Despite a law prohibiting such reprisals and calling for the reinstatement of illegally fired workers within 24 hours, it was seldom, if ever, carried out. Instead, workers had to wait many months or even years of court appeals before any action was taken to reinstate them in their jobs. ¹⁹³ Workers are often intimidated, threatened, blacklisted and even fired, and fear that employers will retaliate if they join a union. ¹⁹⁴
Other limitations on the right to organize	It is clear that for most of the private sector there are still too many barriers to work, such as freely joining or forming trade unions, and a culture of low pay, long hours, and abuse is thus perpetuated. ¹⁹⁵ There is still, as in the 80s, the isolated murder of trade unionists, which is a very strong trauma. The other is the media campaign that continues in stages of black campaigns against trade unionists pointing out these trade union leaders are part of corruption. The pocket or yellow unions are used to spread this kind of misinformation. There is a general policy of economic and psychological violence against the working class and also of terror so that they cannot organize themselves into unions. And the employers have their anti-union strategy, there is a plan called Sacapa (after the union lawyer Samuel Cabrera Padilla describes the plan), it details the entire strategy that a company designs to avoid the formation of a union, and, when a union manages to form in an enterprise, how to weaken or eliminate it. The companies have a very fine selection process for the selection and/or hiring, they have personnel recruitment offices and they ask the candidates if they know, if they know anything about unions, if a relative is in a union, what they think of the unions, etc. Another aspect is that the Government is part of this anti-union policy is the fact that the General Labour Inspectorate and its inspectors do not work ethically and transparently and fulfill the functions established by the Labour Code, they generally in favour of employers. Hence, there is a general sense of impunity as employers are aware that there will not be a sanction. The general ignorance of what it is and what it means to be a member of a union. It was informed during the interviews that “workers do not want to belong to a union because they say they won't get jobs if they are unionized. In Guatemala, a black list of union members is managed, which is provided to employers..
Major topics covered under collective bargaining	Under the law and collective agreements of Guatemala, issues like Pay, employment benefits, curbing long hours of work, tripartism, health and safety issues, etc. ¹⁹⁶
LIMITATIONS ON THE RIGHT TO ORGANISE	
Right to organize and negotiate in public and private healthcare	Article 51 of the constitution states: The State will protect the physical, mental, and moral health of the minors of age and of the elderly. It will guarantee to them their right to food, health, education, and security and social prevision. ¹⁹⁷ Under Art. 102 of the Constitution of Guatemala, the right to free unionization of the workers may be exercised without any discrimination and without being subject to prior authorization, only having to comply with the requirements established by law. Workers may not be dismissed for participating in the formation of a union and must enjoy this right from the moment they notify the General Labor Inspectorate. Only Guatemalans by birth may intervene in the organization, direction and advice of union entities. The cases of governmental technical assistance and the provisions of international treaties or inter-union agreements authorized by the Government are excepted.

¹⁹² https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4122937

¹⁹³ https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4122937

¹⁹⁴ <https://www.industrial-union.org/guatemala-must-respect-freedom-of-association>

¹⁹⁵ https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:4122937

¹⁹⁶ https://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:41229377

¹⁹⁷ https://www.constituteproject.org/constitution/Guatemala_1993.pdf

	Law of Unionization and Regulation of State Workers' Strike (LURSWS) states that the State's and its decentralized and autonomous entities' workers can exercise their right to free unionization and strike under the statements of this law, with the exception of the armed forces and the police. ¹⁹⁸
If the rights are limited in the public health care, how are they limited and in which occupations in particular?	In private health services there is no right to organize during a 3-month trial or probation. According to the expert interviews, there are limitations in the public sector while in the private sector, there is no opportunity for organization..
HEALTH CARE SYSTEM	
Information about the healthcare system in the country	Guatemala's healthcare system consists of three divisions: public healthcare, private healthcare institutions, and the non-profit sector. Public healthcare institutions are largely underfunded. Hence, there is a low supply of basic medical equipment, pharmaceuticals, and medical professionals. In the towns and cities, the services of the doctors and medical professionals are easily available. However, most of the healthcare services are limited in rural areas. In villages with no doctor or nurses, the community health workers usually take up the responsibility of treating patients. On the contrary, the private healthcare sector is more reliable. Advanced medical facilities, equipment, availability of medicines, and trained doctors make private healthcare the preferred choice for expats. The medical staff in most private hospitals are usually bilingual. They can conveniently speak in English and Spanish. ¹⁹⁹
General description of how the health care is provided	<p>Despite positive projections, as of today, Guatemala remains one of the poorest countries in Central America, and that translates to health outcomes and healthcare in the country. Guatemala's Constitution states that every citizen has the right to universal healthcare (Art. 94), but in reality, few have access to comprehensive healthcare, and it is especially hard to receive any kind of medical care in rural areas of Guatemala. The current healthcare system, developed during the Civil War (1960-1996), despite a few reforms, still faces significant problems.</p> <p>The healthcare system in Guatemala is divided into three divisions:</p> <ol style="list-style-type: none"> 1. the public sector 2. the private for-profit sector 3. the private non-profit sector <p>The public healthcare sector is said to cover approximately 87% of the country's population. However, hospitals and clinics in Guatemala under the public system are highly underfunded and often lack basic medicine and equipment. This is because the Guatemalan Government allocates very little spending on healthcare (6.21% of GDP), in fact, healthcare spending in Guatemala is one of the lowest in Latin America (average healthcare spending as a percentage of GDP is 7.95).²⁰⁰</p> <p>The public sector is focused more on treating diseases rather than prevention, thus primary care is very basic, and focus is put on hospitals. While Guatemala City's public hospitals provide a good level of medical care, the same cannot be said about other cities and especially rural areas. In some villages, there is no doctor or nurse but an NGO-trained health worker who can provide very basic health services.²⁰¹</p> <p>Public health services are free to all Guatemalan citizens. However, many secondary services, like blood work and radiology services, have been outsourced to private companies. With limited public resources, private services are often the only option for people to turn to. Unfortunately, these services are often too expensive for many people to afford.²⁰²</p> <p>In Guatemala, it is estimated that 70% attend the health system offered by the Government through the Ministry of Public Health and Social Assistance. In second place is the Guatemalan Social Security Institute (IGSS), which offers coverage to 17% of the population. The remaining 13% of Guatemalans use the private sector.</p>

¹⁹⁸ https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO:1100:P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:GTM,,2019:NO

¹⁹⁹ <https://expatfinancial.com/healthcare-information-by-region/central-america-healthcare-system/guatemala-healthcare-system/#:~:text=Guatemala's%20healthcare%20system%20consists%20of,%2C%20pharmaceuticals%2C%20and%20medical%20professionals.>

²⁰⁰ <https://data.worldbank.org/indicator/SH.XPD.CHEX.GD.ZS?locations=GT>

²⁰¹ <https://www.internationalinsurance.com/health/systems/guatemala/>

²⁰² <https://www.internationalinsurance.com/health/north-america/guatemala.php#:~:text=Public%20health%20services%20are%20free%20to%20all%20Guatemalan%20citizens.>

Information on healthcare services in the public and private sectors and work-related health insurance	Today, the Guatemalan health care system is split into three separate divisions: the public, private nonprofit, and private for-profit sectors. Within the public sector, there is the Ministry of Health and Social Security (MOH), the Guatemalan Social Security Institute (IGSS), and the Military Health Service. This sector of the health care system formally covers about 87% of the population. The private sector, which accounts for about 13% of the population, includes many for-profit providers, non-profit entities, and traditional local providers. The public sector works to provide care through hospitals, health facilities, and various health centers, whereas the private sector allocates resources within private offices, clinics, and hospitals. ²⁰³
Share of public and private health care	<p>Guatemala has high levels of poverty and many people require assistance by the public sector for their health care needs. Many other inhabitants do not use public services because they can afford a private hospital or clinic. The market for medical services is divided between the private and public sectors.</p> <p>1. The private sector, as a common rule, purchases only well-known brands of medical equipment because of their appreciation for high quality products and total customer support from the distributor in any emergency. Investments in new medical equipment within the private healthcare sector are expected to continue, as new clinics and current hospitals buy periodically to meet their equipment needs and continue to invest strongly in new technology, such as diagnostic and treatment equipment.</p> <p>2. Public sector provided care, on the other hand, is price-driven and will purchase from the lowest bidder via public tenders. All medical services in public hospitals and clinics are free of charge to any patient. This means major hospitals are replacing older equipment and buying new equipment that can meet the demand of free medical services for the population. The public sector consists of hospitals and clinics operated by the Ministry of Health through the Social Security Institute and the armed forces.²⁰⁴</p> <p>According to the interviews with experts, the respective shares of public and private healthcare are as following: 87% Government, 13% private.</p> <p>The public health system in Guatemala is bad, medical care programming can last up to 3 months; that of surgery, 6 months or a year. Currently, there is a problem for public employees in health care who do not want to attend to them, and the reason is that the Government has a high unpaid debt with the Guatemalan Institute of Social Security.</p>
Structure of nursing personnel	<p>Since 1999 the functional structure of the Ministry of Health has included the General Bureau of Human Resources with departments in Training, Education, and Administration. One of the Ministry's 2004-2008 policies includes strengthening human resource development and management.²⁰⁵</p> <p>The following structure was informed during the interviews</p> <ul style="list-style-type: none"> • Skilled Nurse • General nurse • Specialized Technical Nurse • Technical nurse • Non-Professional Nurse
Education required for each professional group (nurses, assistant nurses, etc.)	<p>Nursing personnel graduate at three academic levels: advanced degree, professional nurse or technician, and nursing auxiliary. Advanced-degree education is relatively recent (2002). Professional nurse technicians are trained at three state schools located in Guatemala City, in the north, and in western Guatemala, and at a private university in three departmental headquarters. Six official schools, study programs, and private schools endorsed by the Ministry of Health and Social Assistance (MSPAS) and the IGSS offer courses to train nursing auxiliaries.²⁰⁶</p>

²⁰³ https://en.wikipedia.org/wiki/Health_in_Guatemala#:~:text=Today%2C%20the%20Guatemalan%20health%20care,and%20the%20Military%20Health%20Service

²⁰⁴ <https://www.trade.gov/market-intelligence/guatemala-health-sector>

²⁰⁵ https://www.paho.org/hq/dmdocuments/2010/Health_System_Profile-Guatemala_2007.pdf

²⁰⁶ [Ibid](#)

	According to the local experts, the following educational requirements must be met by those looking for a career in nursing: Graduates in Nursing, Technical Nurses (students of the nursing degree) and Nursing Assistants (technical career at the high school level).
SALARY	
Salary of healthcare professionals	<p>Remuneration of nursing personnel. In its previous comments, the ILO Committee of Experts (CEACR) requested the Government to indicate the current status of the process of reclassification of wages for nursing personnel and to provide information on the outcome thereof. The Government indicates that in April 2019, the first phase of the process of reclassification of posts for permanent hiring of nursing graduates was initiated. The Government adds that the total number of nursing graduates working in MSPAS could not benefit from the first phase of reclassification of wages owing to budgetary constraints. Therefore, in the first phase, 410 nursing graduates benefited, while it is expected that the remaining nursing graduates, including nursing graduates hired in technical services (approximately 800), will benefit from the subsequent phases of the reclassification process. The Government also reports that 132 community, hospital and teaching members of nursing staff hired on temporary contracts were reclassified as permanent staff. In addition, the Government indicates that measures are envisaged to provide those working in the paramedic category with the opportunity to be promoted to other categories and to carry out nursing functions, which would improve the working conditions of such personnel.²⁰⁷</p> <p>A person working in Health and Medical in Guatemala typically earns around 15,600 GTQ per month. Salaries range from 3,270 GTQ (lowest average) to 46,800 GTQ (highest average, actual maximum salary is higher).²⁰⁸</p> <p>The interviews with local experts indicated that "the difference between salaries in the public sector vs. the private sector is wide. The difference ranges between 50% and 60%. Private employers generally pay more".</p>
Wage gap between the public and private sector workers	Total healthcare spending, both public and private, has remained constant at between 6.4% and 7.3% of the GDP. Per-capita average annual healthcare spending was only \$271 in 2019. ²⁰⁹ Guatemalan patients choose between indigenous treatments or Western medicine when they engage with the health system.
MORE ON HEALTH	
Required education for a nurse	Nursing personnel graduate at three academic levels: advanced degree, professional nurse or technician, and nursing auxiliary. Advanced-degree education is relatively recent (2002). Professional nurse technicians are trained at three state schools located in Guatemala City, in the north, and in western Guatemala, and at a private university in three departmental headquarters. Six official schools, study programs, and private schools endorsed by the MSPAS and the IGSS offer courses to train nursing auxiliaries. ²¹⁰
Required education for a practical nurse	Nursing personnel graduate at three academic levels: advanced degree, professional nurse or technician, and nursing auxiliary. Advanced-degree education is relatively recent (2002). Professional nurse technicians are trained at three state schools located in Guatemala City, in the north, and in western Guatemala, and at a private university in three departmental headquarters. Six official schools, study programs, and private schools endorsed by the MSPAS and the IGSS offer courses to train nursing auxiliaries. ²¹¹
Required education for a healthcare assistant	<p>These are the nursing positions you can qualify for with each type of degree:</p> <ul style="list-style-type: none"> • CNA diploma or certificate → Certified Nursing Assistant (CNA) • LPN/LVN diploma or certificate → Licensed Practical Nurse (LPN)/Licensed Vocational Nurse (LVN)

²⁰⁷ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13202:0::NO::P13202_COUNTRY_ID:102667
<https://en.wikipedia.org/wiki/Guatemala#Health>
<https://web.archive.org/web/20140714113118/http://www.who.int/countries/gtm/en/>

²⁰⁸ <http://www.salaryexplorer.com/salary-survey.php?loc=89&loctype=1&job=2&jobtype=1>

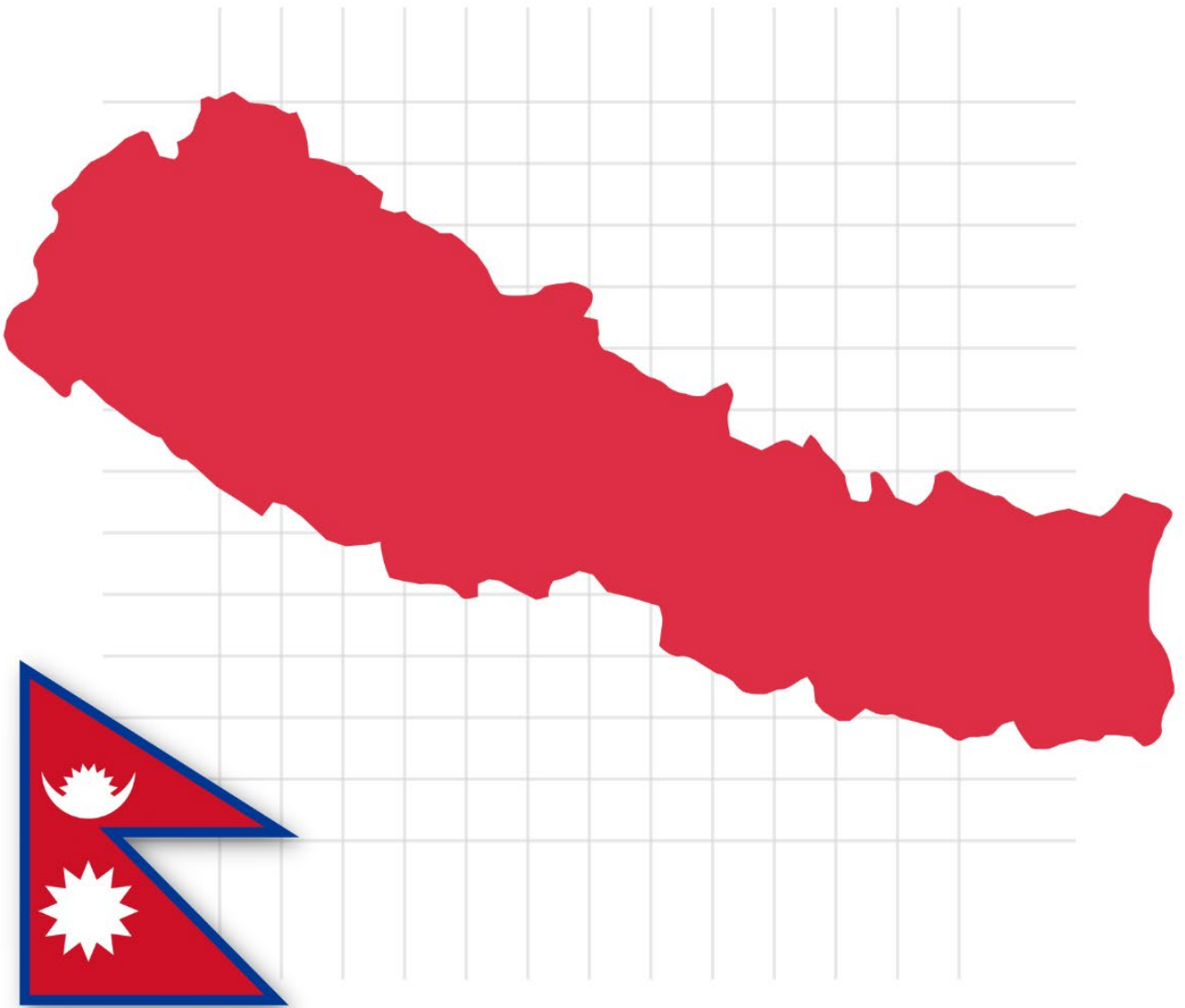
²⁰⁹ <https://knoema.com/atlas/Guatemala/Health-expenditure-per-capita#:~:text=Guatemala%20%2D%20Current%20health%20expenditure%20per%20capita&text=In%202019%2C%20health%20expenditure%20per,average%20annual%20rate%20of%206.48%25>

²¹⁰ https://www.paho.org/hq/dmdocuments/2010/Health_System_Profile-Guatemala_2007.pdf

²¹¹ https://www.paho.org/hq/dmdocuments/2010/Health_System_Profile-Guatemala_2007.pdf

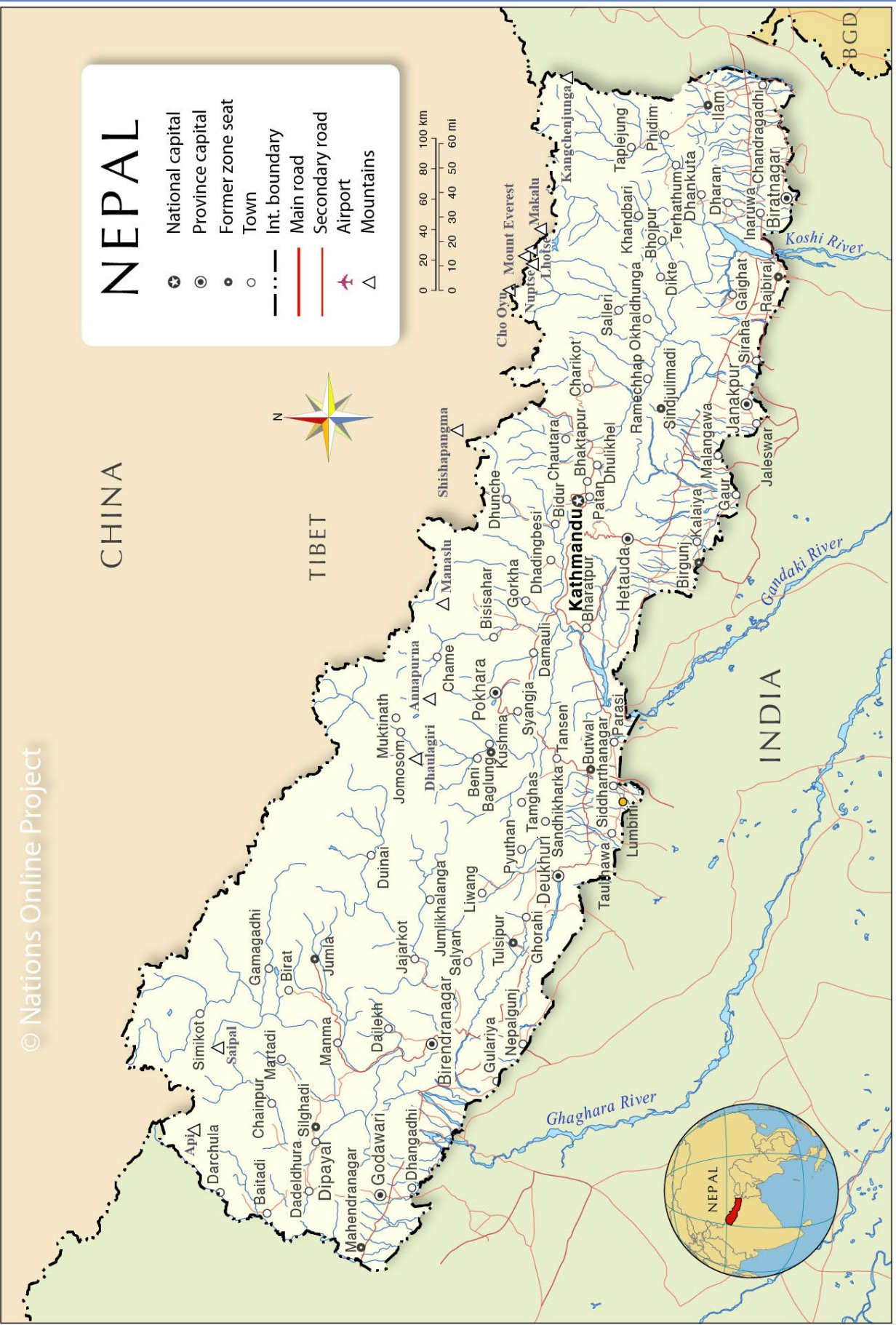
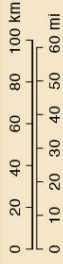
	<ul style="list-style-type: none"> • Associate Degree in Nursing (ADN) → Registered Nurse (RN) • Bachelor of Science in Nursing (BSN) → Registered Nurse (RN) • Master of Science in Nursing (MSN) → Nurse educator; Advanced Practice Registered Nurse (APRN) • Doctor of Nursing Practice (DNP) → Advanced leadership and research roles. <p>To get licensed:</p> <p>Certified nursing assistant (CNA): Pass a state competency exam; earn a state license</p> <p>Licensed practical nurse (LPN): Complete a state-approved certificate program; pass the National Council Licensure Examination (NCLEX-PN), earn a state license</p> <p>Registered nurse (RN): Complete a nursing diploma, ADN, or BSN; pass the NCLEX-RN; earn a state license</p> <p>Nurse practitioner (NP): Complete an MSN; pass the NCLEX-RN and a national certification exam administered by a professional organization such as the American Nurses Credentialing Center, or the American Academy of Nurse Practitioners; earn a state license</p> <p>Nurse midwife (CNM): Complete an MSN; pass the NCLEX-RN and pass the national certification exam administered by the American Midwifery Certification Board (AMCB) if required for licensure in your state; earn a state license</p> <p>Nurse anesthetist (CNA): Complete an MSN, but DNP if matriculating after 1/1/2022; pass the NCLEX-RN and the certification exam administered by the National Board of Certification and Recertification for Nurse Anesthetists; earn a state license.</p>
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NEPAL



NEPAL

- National capital
- Province capital
- Former zone seat
- Town
- Int. boundary
- Main road
- Secondary road
- Airport
- Mountains



Status of Labour Market related Sustainable Development Goals in Nepal			
Indicators	Nepal	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US\$1.9 PPP)	5.09	2022	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than US\$1.9 a day.
1.3.1: The population effectively covered by a social protection system, including social protection floors	17	2020	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.
5.5.2: Proportion of women in senior and middle management positions	13.9	2017	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
5.5.2: Proportion of women in managerial positions	13.2	2017	
8.2.1: Annual growth rate of output per worker (GDP constant 2011 international \$ in PPP)	-0.48	2022	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.
8.3.1: Proportion of informal employment in non-agriculture employment Total	77.4	2017	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services.
8.3.1: Proportion of informal employment in non-agriculture employment Men	75.2	2017	
8.3.1: Proportion of informal employment in non-agriculture employment Women	82.1	2017	
8.5.1: Average hourly earnings of women and men employees	111.43	2017	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value.
8.5.2: Unemployment rate (Total, 15+)	10.66	2017	
8.5.2: Unemployment rate (Women, 15+)	12.02	2017	
8.5.2: Unemployment rate (Women, 15-24 years)	22.48	2017	
8.5.2: Unemployment rate (Men, 15+)	9.79	2017	
8.5.2: Unemployment rate (Men, 15-24)	19.23	2017	
8.6.1: Proportion of youth (15-24 years) not in education, employment, or training)	34.76	2017	By 2030, substantially reduce the proportion of youth not in employment, education, or training
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Total)	19	2014	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms.
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Girls)	19	2014	
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Boys)	19	2014	
8.8.1: Non-fatal occupational injuries per 100,000 workers	N/A	N/A	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
8.8.1: Fatal occupational injuries per 100,000 workers	N/A	N/A	
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	N/A	N/A	The exact measurement method and scoring for this indicator needs to be developed.
SDG indicator 9.2.2 - Manufacturing employment as a proportion of total employment (%) -- Annual	14.49	2017	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries.
SDG indicator 10.4.1 - Labour income share as a percent of GDP (%) -- Annual	41.77	2019	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.
Source; ILO Data (https://ilostat ilo.org/)			

Legal Framework for the Right to Organize and Negotiate

A. Introduction

Labour rights in Nepal, including the right to organize and negotiate, are set forth in its Constitution²¹², Labour Act 2017, Labour Rules 2018, any sector-specific legislation, and ratified international conventions²¹³, that are incorporated into national legislation. Nepal's Constitution guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities.

The Labour Act 2017²¹⁴ of Nepal lays out the framework for labour relations and working conditions in Nepal, applying to all industries, establishments, and workplaces in the country. The Act defines a worker as anyone employed for wages (Section 3) and affirms their right to form and join trade unions (Section 5), as well as engage in collective bargaining. The maximum number of working hours per week is set at 48 hours, with a limit of 8 hours per day (Section 11). The Act also establishes provisions regarding overtime (Section 12), annual leave (Section 13), weekly off days (Section 14), and other benefits for workers (various sections). The Labour Act 2017 of Nepal serves as a crucial tool for protecting the rights and interests of workers in Nepal and promoting fair and equitable labour practices.

Nepal has ratified seven of the ten fundamental ILO conventions.²¹⁵ Table 1 indicates the convention ratified by Nepal and other countries in the study.

Table 1: Ratification of ILO Conventions, CFA Cases, and State of Workers' Rights

	C87	C98	C149	C151	C154	CFA cases (active, follow-up, closed)	LRI rating	ITUC rating	SDG Indicator 8.8.2
Brazil	Not Ratified	Ratified (18 Nov 1952)	Not Ratified	Ratified (15 Jun 2010)	Ratified (10 July 1992)	(0,1,71)	81.5 (Trade Union:50)	5 (No guarantee of rights)	N/A
Colombia	Ratified (16 Nov 1976)	Ratified (16 Nov 1976)	Not Ratified	Ratified (8 Dec 2000)	Ratified (8 Dec 2000)	(17,21,179)	73 (Trade Union:50)	5 (No guarantee of rights)	4.84 (2020)
Guatemala	Ratified (13 Feb 1952)	Ratified (13 Feb 1952)	Ratified (09 May 1995)	Not Ratified	Ratified (29 Oct 1996)	(5,10,96)	54 (Trade Union:0)	5 (No guarantee of rights)	5.38 (2020)
Nepal	Not Ratified	Ratified (11 Nov 1996)	Not Ratified	Not Ratified	Not Ratified	(0,0,4)	72 (Trade Union:50)	3 (Regular violations of rights)	N/A

²¹² <https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>

²¹³ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103197

²¹⁴ <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf>

²¹⁵ ILO, *Ratifications by Country*, in ILO Normlex,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103197. The seven fundamental conventions of the ILO that have been ratified by Nepal are Convention No. 29 on Forced Labor, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, Convention No. 182 on the Worst Forms of The Conventions that has yet not been ratified by Nepal are C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948, C155 - Occupational Safety and Health Convention, 1981 C187 - Promotional Framework for Occupational Safety and Health Convention, 2006.

Philippines	Ratified (29 Dec 1953)	Ratified (29 Dec 1953)	Ratified (18 June 1979)	Ratified (10 Oct 2017)	Not Ratified	(1,4,27)	70.5 (Trade Union:25)	5 (No guarantee of rights)	3.97 (2020)
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C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948

C098 - Right to Organise and Collective Bargaining Convention, 1949

C149 - Nursing Personnel Convention, 1977

C151 - Labour Relations (Public Service) Convention, 1978

C154 - Collective Bargaining Convention, 1981

Sources: ILO NORMLEX Country Profiles <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> (ratifications and Committee on Freedom of Association cases); <https://labourrightsindex.org/heatmap-2022> (Labour Rights Index 2022); <https://www.globalrightsindex.org/en/2022> (ITUC Global Rights Index 2022); https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=SDG_0882_NOC_RT_A (ILOSTAT, SDG Indicator 8.8.2)

B. Freedom of Association

Article 17 of the Constitution of Nepal 2015 pertains to the right to freedom and is a cornerstone of the Constitution, guaranteeing the rights and freedoms of citizens. Within this article, the freedom of association is recognized as a fundamental right of citizens. Specifically, Article 17(2)(d) states that every citizen has the right to form an association or join an association of his/her choice for the protection and promotion of his/her economic, social, cultural, and professional rights and interests. This right to freedom of association is a crucial aspect of democratic societies, allowing citizens to come together to advocate for their rights and interests and participate in collective action. The right to freedom of association, as recognized in Article 17 of the Constitution of Nepal 2015, plays an important role in ensuring that citizens are able to participate fully in their communities and society as a whole. Article 34 of the Constitution of Nepal 2015 pertains to the right to social security and outlines the obligation of the state to provide social security to its citizens. This article specifically recognizes the right of workers to form trade unions and engage in collective bargaining. It states that workers have the right to form or join a trade union of their own choice for the protection and promotion of their rights and interests. The article also recognizes the right of workers to engage in collective bargaining with their employers to negotiate working conditions, including wages and benefits. The right to form trade unions and engage in collective bargaining is an important aspect of workers' rights, allowing them to come together to advocate for their interests and negotiate fair and equitable working conditions.

Section 8 of the Labour Act 2017 of Nepal pertains to the formation of trade unions. This section outlines the process by which workers can form trade unions and become recognized as a legitimate bargaining unit. The section requires that trade unions be registered with the concerned authority and provides guidelines for the registration process. It also sets out the requirements for the formation of a trade union, including the minimum number of workers required for a trade union to be established, the procedures for election of office-bearers, and the conditions for membership. Additionally, Section 8 sets out provisions for the dissolution of trade unions and the procedures for disputes between trade unions.

The workers of a concerned enterprise can form an Enterprise Level Trade Union to protect their occupational rights. To register a trade union, an application with the constitution of the trade union, fee, and other required particulars must be submitted to the Registrar by at least ten members of the trade union. The Registrar will register the trade union within 15 days if it complies with the Act. However, the trade union will not be registered if at least 25% of the workers of the enterprise are not members. No worker can be a member of more than one trade union.²¹⁶

²¹⁶ Section 3 of the Trade Union Act of Nepal:

[https://lawcommission.gov.np/en/?cat=540#:~:text=\(1\)%20This%20Act%20may%20be,in%20the%20Nepal%20Gazette%2C%20specify.&text=\(a\)%20%E2%80%9D%20Enterprise%E2%80%9D%20means,Act%2C%202048%20\(1991\).](https://lawcommission.gov.np/en/?cat=540#:~:text=(1)%20This%20Act%20may%20be,in%20the%20Nepal%20Gazette%2C%20specify.&text=(a)%20%E2%80%9D%20Enterprise%E2%80%9D%20means,Act%2C%202048%20(1991).)

C. Right to Organize

Nepal ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in 1996²¹⁷.

The Labour Act of 2017 prohibits individuals (employers and others) from interfering with workers' trade union rights and expressly bars employers from limiting or pressuring workers in the exercise of their rights of association. The employer shall be considered to have committed an unfair labour practice if they engage in any of the following actions: not complying with labour laws or causing non-compliance, restricting the exercise of rights under labour laws, creating false evidence against a worker, committing acts with the intention to harass or trouble a worker, interfering with the formation, operation or administration of a trade union, continuing an unlawful lock-out, assaulting or manhandling a worker, or inciting or provoking a worker with the intention of creating animosity among workers.²¹⁸

The Labour Act 2017 of Nepal describes the right to make a complaint and the power of the Department or Office to decide on such complaints. Any person who feels that their rights under the Act have been violated or a trade union with the written consent of the aggrieved party may file a complaint with the authority competent to make a decision within 6 months of the violation. The Department or Office may conduct an inquiry into the complaint and issue necessary orders, impose fines, and take departmental action as required by the act. Matters that can be addressed through complaints include the supply of labour without a license, the employment of foreign workers without a labour permit, discrimination in the workplace, failure to provide an employment contract, unfair labour practices, and failure to deposit gratuity and provident funds. The complaint must be settled as prescribed by law.²¹⁹

D. Right to Bargain Collectively

The Constitution guarantees the right of all workers to conduct collective bargaining and negotiations²²⁰.

The right to collective bargaining is provided under the Constitution of Nepal. Article 3 provides the right to collective bargaining to employees. The right is regulated under section 116 of the Labour Act 2017. An enterprise employing ten or more workers must have a collective bargaining committee team consisting of negotiating representatives designated on behalf of the elected authorised trade union of the enterprise, a team of negotiating representatives nominated through mutual agreement of all the unions in the enterprise (if elections of a trade union are not being held timely) and in case of absence of both, a team of representatives supported with the signatures of more than sixty per cent of the labourers working in the enterprise. The collective bargaining committee is obliged to submit collective claims or demands in writing to the employer on issues relating to the interest of the labours, except the issues mentioned under the subsection 3 of section 116 of the Labour Act (e.g., a matter which is contrary to the Constitution of Nepal and a matter which is not related to the enterprise). The Committee should consist of three to eleven members. It has the power to submit collective claims, enter into the agreement, file a case against any person or defend a case.

²¹⁷ ILO, *Ratifications by Country*, in ILO Normlex, please see footnote 11

²¹⁸ Section 92 of the Labour Act of 2017

²¹⁹ Section 162 and 163 of the Labour Act of 2017

²²⁰ Section 34 of the Constitution of Nepal 2015

E. Right to Strike

The Labour Act recognizes workers' right to strike for the settlement of any collective dispute if the arbitrator fails to perform the arbitral functions, if the arbitration panel could not be formed within twenty-one days, or if the employer refuses to enforce the arbitral award or challenges it on the legal ground or any party disagrees with the arbitral award. The right to strike for the settlement of collective disputes is discussed in the Labour Act of 2017. The collective bargaining committee can organize a strike if certain circumstances exist, such as failure of the arbitrator, inability to form an arbitration panel, refusal to enforce the arbitral award, etc. A written notice with the claims and demands and the date of the strike must be submitted to the employer 30 days in advance and must be informed to the local administration and the concerned Labour Office²²¹. However, if the Ministry orders for settlement through arbitration after the notice for strike is given, the strike must be postponed.²²² Additionally, workers assigned as sentries and guards for the security of the enterprise cannot participate in the strike while on duty.

During a strike or lock-out, workers may picket or assemble peacefully at the main entrance of the workplace to demand fulfillment of their demands. Outside of a strike or lock-out, workers may picket or assemble before or after work hours or during rest time without disrupting work. However, they must not prevent others from entering or leaving the workplace or cause any damage to the workplace, even during picketing or assembly during a strike or lock-out.²²³

The law protects employees from dismissal on the grounds of commencing a strike. Participation in the strike is not considered an act in violation of the employment contract. During strikes or lockouts, no employer is allowed to terminate the employment contract.²²⁴ Employees are entitled to full remuneration during the period of a lockout initiated by the employer²²⁵. The workers deputed as sentries and guards for the enterprise's security are not allowed to participate in the strike under law. Furthermore, workers are prohibited from causing any loss or damage to the workplace. If any person or group makes destruction in the workplace or destruction of any property and causes physical damage, the amount equivalent to the loss or damage may be recovered from such a person or group.

The Sustainable Development Goal indicator 8.8.2 measures the level of national compliance with fundamental labour rights (freedom of association and collective bargaining (FACB)) and gives a score of 0 to 10 to a country (0 is best; 10 is worst). However, Nepal is not covered under SDG Indicator 8.8.2. Under the Trade Union indicator of the Labour Rights Index, Nepal scored 50 (0 is worst, 100 is best) and has a higher score when compared with countries from the region.

Table 2: SDG Indicator 8.8.2 and LRI-TU Indicator

Level of national compliance with labour rights among Nepal and neighbouring countries, 2023		
	SDG Indicator 8.8.2	Labour Rights Index (Trade Union Indicator)
Bangladesh	7.46 (2020)	25 (2022)
Pakistan	4.64 (2020)	0 (2022)
Cambodia	4.54 (2020)	25 (2022)
Indonesia	1.7 (2020)	0 (2022)

²²¹ Section 121 of the Labour Act of 2017

²²² Section 121(3) of the Labour Act of 2017

²²³ Section 125 of the Labour Act

²²⁴ Section 126 of the Labour Act of 2017

²²⁵ Section 127 of the Labour Act of 2017

Philippines	3.97 (2020)	0 (2022)
Nepal	Not covered	50 (2022)

The value of SDG Indicator 8.8.2 can range between 0 to 10, with 0 being the best possible score (indicating higher levels of compliance with the freedom of association and collective bargaining (FACB) rights) and 10 the worst (indicating lower levels of compliance with FACB rights based on ILO textual sources and national legislation). The Trade Union indicator under the Labour Rights Index has a range from 0 to 100, with 100 being the best possible score and 0 the worst.

Sources: ILO Data; Labour Rights Index

The Global Competitiveness Index, based on 12 pillars, gives an overview about the Nepal's economy. The Labour Market Pillar, 8th Pillar, measures labour market efficiency through statistical data and executive opinion surveys among employers provides Nepal's view on various aspects, including the labour market efficiency pillar elaborated upon by surveys among employers and other statistical data.

Nepal ranks 128th out of 141 countries (1st is the best) at the pillar. Out of twelve indicators, the best rankings are Internal labour mobility (45), Workers' rights (49), and Active labour market policies (86). The worst rankings are Ratio of wage and salaried female workers to male workers % (122), Flexibility of wage determination (117), Ease of hiring foreign labour (117) and Reliance on professional management (117) (see more details in the Table below).

Table 3: Labour Market Efficiency in Nepal, 2019

Index Component	Value	Score *	Rank
8th pillar: Labour market	-	49.1	128
Flexibility 0-100	-	51.6	116
8.01 Redundancy costs weeks of salary	27.2	51.7	114
8.02 Hiring and firing practices 1-7 (best)	3.4	40.3	108
8.03 Cooperation in labour-employer relations 1-7 (best)	3.9	49.0	116
8.04 Flexibility of wage determination 1-7 (best)	4.4	56.0	117
8.05 Active labour market policies 1-7 (best)	3.0	33.2	86
8.06 Workers' rights 0-100 (best)	77.0	77.0	49
8.07 Ease of hiring foreign labour 1-7 (best)	3.5	42.5	117
8.08 Internal labour mobility 1-7 (best)	4.8	63.6	45
Meritocracy and incentivization 0-100	-	46.6	125
8.09 Reliance on professional management 1-7 (best)	3.6	44.2	117
8.10 Pay and productivity 1-7 (best)	3.7	44.5	91
8.11 Ratio of wage and salaried female workers to male workers %	0.32	14.4	122
8.12 Labour tax rate %	19.9	83.5	89

Source: The Global Competitiveness Report, 2019 (8th pillar: Labour Market Efficiency)

F. Observations on Labour Legislation

Despite the existence of extensive labour legislation in Nepal, some observations have been made by the international bodies like the ILO Committee of Experts on Application of Conventions and

Recommendations (CEACR), the International Trade Union Congress and the United States' Department of State Country Reports on Human Rights Practices. The comments are mainly relevant to the right to organise, the right to collective bargaining, and the right to strike.

ITUC gives Nepal a rating of 3, meaning there is a regular violation of workers' rights in the country. In a Rating 3 country, "Governments and/or companies are regularly interfering in collective labour rights or are failing to fully guarantee important aspects of these rights. There are deficiencies in laws and/or certain practices which make frequent violations possible".

Issued highlighted by ITUC²²⁶

1. At the enterprise level, the creation of a union requires a minimum of ten employees and the support of at least 25% of the workforce. If these requirements are not met, the Registrar may decline to register the union, as stated in Article 3 (4) and Article 7 (b) of the Trade Unions Act of 2049 (1992). During interviews in Kathmandu, this requirement was mentioned as one of the barriers to collective action in non-formal employment. The general argument is that small groups of workers are not able to adequately represent themselves because they do not have a registered union. The registration process requires a threshold of 25% support. Workers' representatives interviewed report that the registrar's office often uses the rule to decline registration.
2. Trade union federations can be established either through the alliance of 50 company unions or through the association of 5,000 individuals who work in enterprises of a similar nature. To form a confederation, ten federations must come together, with at least six of them being from the formal economy. In the informal economy, a minimum of 500 people who engage in similar work must come together to form a federation. In agriculture, a minimum of 5,000 workers from at least 20 different districts, each with at least 100 workers, are required to establish a federation, as outlined in Articles 4 to 7A of the Trade Unions Act of 2049 (1992).
3. According to Article 3 (5) of the Trade Union Act of 2049 (1992), as amended by the Trade Union (First Amendment) Act of 2055 (1999), "Registration of Enterprise-Level Trade Union": (...) (5) A worker is not permitted to be a member of more than one enterprise-level trade union at the same time.
4. According to Article 30 of the Trade Unions Act of 2049 (1992), as amended by the Trade Union (First Amendment) Act of 2055 (1999), the Government of Nepal has the authority to issue necessary orders or directives to restrict the activities of a trade union, trade union association, or trade union federation if their actions are deemed to cause extraordinary circumstances that disturb peace and order or hinder the economic development of the country.
5. According to Article 25(1)(c) of the Trade Unions Act of 2049 (1992), the Registrar has the power to dissolve unions if "any actions are taken in violation of this Act, or the regulations established under this Act." In addition, according to Article 7A, enterprise-level unions must be re-registered every two years, while trade unions at higher levels and federations must be re-registered every four years.
6. Civil servants at the gazetted level who are involved in the management of state affairs, as well as senior-level employees of public enterprises, are not allowed to exercise their right to freedom of association (as outlined in Article 53 of the Civil Service Act of 2049 (1993)).
7. Individuals who are not Nepalese can be members of a trade union. However, only Nepalese citizens are eligible to be elected as officials of the union (as specified in Article 10 (1) (e) of the Trade Unions Act of 2049 (1992)).

²²⁶ <https://www.globalrightsindex.org/en/2022>

8. Individuals who hold management positions in private or public enterprises are prohibited from participating in union activities (as outlined in Article 2 (b) of the Trade Union Act of 2049 (1992), as amended by the Trade Union (First Amendment) Act of 2055 (1999)).
9. According to Article 116.1 of the Labour Act, direct negotiations between an enterprise and its employees can be held to avoid the need for representative organizations. Enterprises employing 10 or more workers must have a collective bargaining committee. This committee can submit written claims or demands to the employer on behalf of the workers. The committee may be composed of representatives elected by an authorized trade union, representatives chosen through mutual agreement between all unions in the enterprise, or representatives supported by more than 60% of the workers.
10. The Labour Act contains specific provisions for collective bargaining in certain industries, such as the tea estate, carpet sector, construction business, labour provider, transportation sector, and others with similar activities. These provisions limit the autonomy and ability of the parties to determine the level of negotiations. Trade union associations in these industries can form a collective bargaining committee and submit collective bargaining claims or demands to the employers' association. However, it is prohibited to submit collective claims or demands and reach agreements under the Chapter on Settlement of Collective Disputes of the Labour Act. The Ministry may also issue an order to submit claims or demands and negotiate within a specified time frame.
11. According to section 117 of the Labour Act, the Collective Bargaining Committee must negotiate any submitted claims, and if an agreement is reached it is binding for both parties. If the parties cannot reach an agreement, the dispute can be settled through arbitration (section 118 and 119(1)) if: (i) both parties agree to arbitration; (ii) it involves an essential services enterprise; (iii) it involves an enterprise in a special economic zone; or (iv) there is a state of emergency declared by the Constitution and a strike is prohibited. Section 119(2) also states that if the Ministry believes that a financial crisis may occur or the dispute needs to be resolved through arbitration, the Ministry may issue an order for the dispute to be settled through arbitration, regardless of the state of the collective dispute.
12. A strike can be held, but only following a secret ballot of 60% of the union's membership and a union must give at least 30 days' notice before going on strike.
13. The government may stop a strike or suspend a trade union's activities if it disturbs the peace or is deemed to adversely affect the economic interests of the nation.
14. According to Articles 4 of the Essential Services Mobilization Act, 2014 (1957), participating in, organizing, or holding a strike is punishable by a six-month prison sentence and/or a fine of Rs 200. Additionally, inducing or inciting employees to participate in a strike during a prohibited period is punishable by a one-year prison sentence and/or a fine of Rs 1000. Providing financial assistance to a banned strike is also punishable by a one-year prison sentence and/or a fine of Rs 1000. This Act takes precedence over any other conflicting Nepalese laws.
15. Employees who provide essential services do not have the right to go on strike according to the laws. In recent years, the government has used this legislation to prevent strikes in many industries, such as banking, telecommunications, electricity and water supply, transportation (road, air, and sea), printing, government and press, as well as hotels and restaurants. Additionally, workers responsible for security or monitoring within a company are prohibited from initiating a strike.

Issues highlighted by CEACR²²⁷

1. The Labour Act of 2017 does not explicitly prohibit discrimination against workers based on their trade union membership or participation in union activities. The government has stated that workers who experience discrimination can file a complaint with the relevant authorities under sections 9 and 162 of the Labour Act. However, the Committee believes that this is not enough and has requested the government to take the necessary measures to include an explicit prohibition against all discriminatory acts towards workers due to their trade union involvement. This includes acts such as transfer, demotion, refusal of training, and dismissal. The Committee also requests the government to enforce effective sanctions for violating this prohibition.
2. The Committee has requested the government to take action to modify Section 123 of the Labour Act to ensure respect for the principle of party autonomy and allow for collective bargaining at any level, including the establishment, industry, regional or national levels. The Committee hopes that the necessary changes to align Section 123 with the provisions of the Convention will be implemented soon.
3. The Committee has asked the government to align the provisions in Section 119 of the Labour Act regarding compulsory arbitration with the Convention, reminding the government that compulsory arbitration to resolve a collective labour dispute is only acceptable in three instances: 1) for public servants in the administration of the State, 2) in essential services where interruption could harm the safety or health of the population, and 3) during an acute national crisis.
4. The Committee has requested the government to furnish comprehensive information regarding the composition of the arbitration panel (specified in Section 119(3) of the Labour Act) and tribunal (Section 120), including the process used to select worker and employer representatives in order to guarantee their independence. It has also requested the government to clarify the distinction between the arbitration panel and tribunal.

Issues raised in USDOS Country Report²²⁸

1. The right of workers to form and join unions of their choice is protected by law, with some exceptions. This right extends to workers in both the formal and informal sectors, and while noncitizens cannot lead or be elected as union officials, they still have the right to join unions. The law also provides for the right to strike and bargain collectively, although this is not allowed for employees in certain essential services such as public transportation, banking, security, and health care, as well as members of the armed forces, police, and high-level government officials.
2. To be considered representative, a union must represent at least 25% of the workers in a particular workplace. This requirement does not prevent the formation of unofficial union groups, which under certain circumstances may call for strikes and negotiate with the government. Informal sector workers also have the right to form unions, but due to the

²²⁷ The text is based on the following sources:

[Observation \(CEACR\) - adopted 2021, published 110th ILC session \(2022\)](#)

[Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

[Direct Request \(CEACR\) - adopted 2020, published 109th ILC session \(2021\) on Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

[Direct Request \(CEACR\) - adopted 2018, published 108th ILC session \(2019\) Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

²²⁸ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/nepal/>

political affiliations of many unions, nonaffiliated individuals are often excluded or unaware of this right.

3. The government enforces labour laws effectively and penalties for violations are consistent with those for other civil rights denials like discrimination. However, enforcement remains a challenge in the private and informal sectors. Labour court addresses violations of labour laws and related issues, and the Department of Labour has semi-judicial and mediation authority to settle complaints. Union representatives are protected from legal action arising from their official union duties, and anti-union discrimination is prohibited. Six respondents out of 10 interviewed have reported enforcement of labour laws as a major challenge in safeguarding workers' rights and entitlements. The labour department also suffers from a lack of capacity. This contributes to delayed action on labour violations and dispute resolution.
4. For a legal strike to occur, 51% of the union's members must vote in favour in a secret ballot, and the union must give 30 days' notice before striking. If the union is unregistered, does not have majority support, or calls a strike without giving notice, the strike is considered illegal. In general, freedom of association and the right to collective bargaining are respected in the country. Although strikes in essential services are restricted by law, workers in hospitals, education, and transportation sometimes call strikes without facing legal consequences. Many unions have political affiliations, but they still effectively advocate for workers' rights without government interference.

UNIONS AND THEIR MEMBERSHIP	
Major trade union federations in different sectors	<p>Nepal has a trade union density of 30.2% (2018).²²⁹ The trade union density rate is the share of employees who are union members, expressed as a percentage. This excludes union members who are not in paid employment (self-employed, unemployed, retired, etc.).</p> <p>Joint Trade Union Coordination Centre, Nepal has been organizing almost all the existing trade unions in Nepal. Currently the following federations are the part of the JTUCC:²³⁰</p> <ul style="list-style-type: none"> - GEFONT (General Federation Of Nepalese Trade Unions) - NTUC-I (Nepal Trade Union Congress-Independent) - ANTUF (All Nepal Trade Union Federation) - CONEP (Confederation Of Nepalese Professionals) - NDECONT (National Democratic Confederation Of Nepalese Trade Unions) - NTUF (Nepal Trade Union Federation) - FENEPT (Federation Of Nepali Progressive Trade Unions) - INTUC (Nepal Inclusive Trade Union Confederation) - NDCONT-1 (National Democratic Confederation Of Nepalese Trade Unions-Independent) - NDFONT (Nepal Democratic Federation Of Nepalese Trade Unions) - INDCONT (Nepal Independent Democratic Confederation Of Nepalese Trade Unions)
All memberships from the different trade unions	<p>Joint Trade Union Coordination Centre covers 1,779,814 workers.²³¹</p> <p>GEFONT (General Federation Of Nepalese Trade Unions) : 387,418 members²³²</p> <p>Affiliates of GEFONT:</p> <p>Nepal Health Volunteers Association (NEVA): 5,657 members</p> <p>Nepal Health Employees Union (NHWEU) :3,521 members²³³</p> <p>ANTUF (All Nepal Trade Union Federation) : 415,000 members</p> <p>Nepal Trade Union Congress (NTUC) :490,000 members</p> <p>Affiliates of NTUC:</p> <p>Health professional union of Nepal (HEPON) :12,282 members</p> <p>Nepal Commercial and Allied Workers Union (NCAWU) :8,309²³⁴</p>
Gender division of the different trade unions	<ul style="list-style-type: none"> - ANPWU- 97-98% male members - ANSSWU- 70% female member and 30% male members; workers in nepal-15,900 - ANSSWU-members are basically from supermarkets, small shops workers are not involved in the union, estimated number of workers in shops and sales: - 200,000 including formal and informal sector (formal and informal was divided in the previous law; as per previous law if the number of workers are more than 10 and regular they are formal and if the workers are not regular in nature they are informal)²³⁵
Organizing rate in the sector (including the information on sex, if possible)	
Significant changes since the year 2000	<p>A new Constitution was adopted in 2015 and a new Labour Act (Labour Act 2074), adopted in 2017.²³⁶ Articles 17(2)(d) and 34(3) of the new Constitution provide that the rights to form a trade union, to participate in it, and to organize collective bargaining are fundamental rights.</p> <p>Section 8 of the new Labour Act recognizes the right to form a trade union, to participate in its activities and to acquire its membership or get affiliated with or involved in other union activities.</p>
Limitations on the right to organize in the public sector	<p>There are no such limitations and Article 53(1) of the Civil Service Act, civil employees have the right to form a trade union at the national level. No limitations but in private shops, the employers wish that their workers do not get engaged in union²³⁷</p>

²²⁹ <https://ilostat.ilo.org/topics/union-membership/>

²³⁰ <https://jtucc.org.np/affiliates/>

²³¹ <https://jtucc.org.np/introduction/>

²³² <https://www.gefont.org/TG4880206.html>

²³³ ibid

²³⁴ <http://ntuc.org.np/affiliates/>

²³⁵ Information sourced through an interviewee at All Nepal Petroleum Workers Union (ANPWU) and All Nepal Shop and Sales Workers Union (ANSSWU)

²³⁶ <https://www.lawcommission.gov.np/en/wp-content/uploads/2021/03/The-Labor-Act-2017-2074.pdf>

²³⁷ <https://www.ilo.org/dyn/travail/docs/580/Civil%20Service%20Act.pdf>

Limitations on the right to negotiate in the public sector	There are no such limitations and pursuant to article 53(3), the “authentic trade union of civil employees shall have the right to submit own professional demands and conduct social dialogue and collective bargaining at the concerned institution at the district, departmental and national levels”.
Limitations on the right to strike in the public sector	<p>Article 50 and 51 of the Civil Service Act restrict the right of civil employees from participating in a strike or pen-down action and exert any pressure inflicting physical or mental suffering or entice other persons to commit such acts in a manner to cause hindrance or obstruction to any office or officer in the performance of the duties required by law.</p> <p>Section 3 of the Essential Services Operation Act,1957²³⁸ states that the Government of Nepal, if it is deemed necessary and appropriate for public welfare, can impose restriction on strike in any essential service prescribed in an order published in the Nepal Gazette by publishing a notice. This notice can include Hospital, health centres and manufacturing establishment of Medicines and distributive services, Hospital, Import, Export, Storage and Distribution of daily consumer goods "Food stuff, Lintel, Rice, Salt, Eatable oil etc."</p> <p>Section 49(6) of the Industrial Enterprises Act, 2076 (2020)²³⁹ states that no labour engaged in an industry may carry out any kind of activity causing an obstruction or hindrance in the operation or production of the industry. The workers engaged in the industry shall put their demands before the management peacefully in fulfilment of the procedures determined by the prevailing labour law and shall resolve through mutual understanding.</p>
Public sector occupations with limitations on the right to strike	<ul style="list-style-type: none"> • Postal Service • All types of broadcasting, print media • Tele Communication and Mass Media Service • Transportation including road, air and marine • Work related to civil aviation and maintenance of aircraft and security • Service on railway station and government storages • Mint and government Print service • Manufacturing equipments of defence • Electricity Supply Service • Drinking Water Supply Service • Hotel, Motel, Restaurant, Resort and tourism related other similar kinds of services • Import and distribution of petroleum goods • Hospital, health centres and manufacturing establishment of Medicines and distributive services • Banking Services • Garbage collection, transfer and recycling service • Insurance Service • Import, Export, Storage and Distribution of daily consumer goods " Food stuff, Lintel, Rice, Salt, Eatable oil"²⁴⁰
ILO CONVENTIONS AND LEGISLATION	
Ratification information about major conventions	<p>Nepal has only ratified C098: Right to Organise and Collective Bargaining Convention on 11 Nov 1996. The following three conventions have not been ratified by Nepal:</p> <ul style="list-style-type: none"> • C087: Freedom of Association and Protection of the Right to Organise Convention; • C149: Nursing Personnel Convention; • C151: Labour relations (Public Service) Convention)

²³⁸ <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/essential-services-operation-act-2014-1957.pdf>
<https://www.lawcommission.gov.np/en/wp-content/uploads/2018/10/essential-services-operation-act-2014-1957.pdf>

²³⁹ <https://moics.gov.np/uploads/shares/laws/Industrial%20Enterprises%20Act%20%202020.pdf>

²⁴⁰ Essential Services Operation Act,1957

Enactment of legislation in compliance with the convention	<p>The convention articles have been adopted in both Labour Act (Labour Act 2074) and the 2015 Constitution. This has also been observed in CAECR observations.</p> <p>Nepal's Constitution guarantees the right to form associations or unions. Under article 34 of the Constitution, every citizen has the right to form associations or unions, participate in them, and organise collective bargaining. The Labour Act 2017 provides every employee with the right to form, acquire membership or involve in activities related to trade unions.</p> <p>The right to collective bargaining is provided under the Constitution of Nepal. Article 3 provides the right to collective bargaining to employees. The right is regulated under article 116 of the Labour Act 2017.</p> <p>The Labour Act recognises workers' right to strike for the settlement of any collective dispute if the arbitrator fails to perform the arbitral functions, if the arbitration panel could not be formed within twenty-one days, or if the employer refuses to enforce the arbitral award or challenges it on the legal ground or any party disagrees with the arbitral award.</p>
COLLECTIVE AGREEMENTS	
Number of collective bargaining agreements per sector	<p>No information was accessible regarding the number of collective bargaining agreements in Nepal. Healthcare sector respondents reported that there are 'some' CBAs in place in this sector, however, they seemed uncertain about the actual status and nature of the CBAs. Commerce sector respondents were clear that there are no CBAs that they know of in the sector.</p> <p>Information on a workplace CBA at Tilganga Hospital which was under process was provided by Umesh Giri of NHWEU. The material can be shared on request.</p>
Scope of collective bargaining (national, sectoral, company or workplace)	No information was accessible regarding the number of collective bargaining agreements in Nepal. Respondents did not have information. Will need a thorough survey/follow-up with the labour department.
Statutory requirements for forming a trade union and to start CBA negotiations	As per section 116 of the Labour Act of 2017 any enterprise employing ten or more than ten labourers shall have a collective bargaining committee.
NEGOTIATION SYSTEM IN GENERAL	
General information on negotiation system	<p>Trade Union Act, 2049 (1992)²⁴¹ (section 3) describes the requirements of a basic enterprise level trade union. Section 3(2) states that in order to register an Enterprise Level Trade Union an application in the prescribed form signed by at least ten members of the Trade Union as designated by the working committee along with the Constitution of the Trade Union, prescribed fee and other prescribed particulars shall submit to the Registrar.</p> <p>Section 3(4) states that the Enterprise Level Trade Union shall not be registered if at least twenty five percent workers of the concerned Enterprise are not its members.</p> <p>Section 3(5) states that no workers shall be eligible to be member of more than one 4 Enterprise Level Trade Union at the same time.</p> <p>There are three levels of Government present in Nepal: Central level, provincial level and local level government (municipality level). During negotiating with government body if the negotiation is for the Female Community Health Volunteers (FCHV) of a particular municipality then a demand letter is submitted to the leader (Mayor) of the municipality which is discussed with the health section and other representatives of the municipality.²⁴²</p>

²⁴¹[https://lawcommission.gov.np/en/?cat=540#:~:text=\(1\)%20This%20Act%20may%20be,in%20the%20Nepal%20Gazette%2C%20specify.&text=\(a\)%20%E2%80%9D%20Enterprise%E2%80%9D%20means,Act%2C%202048%20\(1991\)](https://lawcommission.gov.np/en/?cat=540#:~:text=(1)%20This%20Act%20may%20be,in%20the%20Nepal%20Gazette%2C%20specify.&text=(a)%20%E2%80%9D%20Enterprise%E2%80%9D%20means,Act%2C%202048%20(1991))

²⁴² Information sourced through an interviewee at Nepal Health Volunteer Association (NEVA)

Challenges in terms of organizing and defending workers' rights	The primary challenge that the workers face in terms of organizing and defending their rights is that the state actively legislates to curb their rights as can be seen below. The employers are notorious for threatening to terminate workers if they chose to unionise and the state has not passed any laws to guarantee from protection against discrimination in this regard. The need to include protection against anti-union discrimination has been voiced in every CAECCR observations till date. ²⁴³
State actions to impede workers from organizing	In the public sector, the state has passed legislative measures that impede the right to strike of government employees. For example, Article 50 and 51 of the Civil Service Act and Essential Services Operation Act, 1957 at section 3 restrict the right to strike. In the private sector, the Industrial Enterprises Act, 2076 (2020) at section 49(6) states that "no labour engaged in an industry may carry out any kind of activity causing an obstruction or hindrance in the operation or production of the industry. The workers engaged in the industry shall put their demands before the management peacefully in fulfilment of the procedures determined by the prevailing labour law and shall resolve through mutual understanding. The states also carries out arrests of union leaders. It has been reported in ITUC 2020 Global Rights Index ²⁴⁴ that, union leaders from the Nepal Press Union (NPU) and the Federation of Nepali Journalists (FNJ) were among nine journalists arrested on 16 September 2019 as they protested against job losses in Kathmandu.
Employers action to impede workers from organizing	Employers have negative attitude towards involvement of the employees in the union, they wish that their employees do not get involved in the union. ²⁴⁵
Major hindrances to the right to organize	There is no hindrance in organizing but the unions have been divided lately according to parties such as congress have separate health volunteer association, same goes for other parties which has led the government body to neglect the demands from workers while negotiating.
Important topics covered under collective bargaining	According to the Labour Act, an enterprise employing ten or more than ten workers must have a collective bargaining committee. The collective bargaining committee may submit collective claims or demands in writing to the employer on issues relating to the workers' interests. (Section 116) A collective bargaining agreement may include provisions on various matters, including wages, working hours, leave, working conditions, dispute resolution, and social security benefits. Issuing of appointment letters by employers (healthcare sector respondents reported this to be a highly charged and important issue for workers) and regularization of contracts (especially for 'Health Volunteers').
LIMITATIONS ON THE RIGHT TO ORGANISE	
Right to organize and negotiate in public and private healthcare	There is no indication of there being a difference in the labour law. Yet, the right to organize and negotiate remains the same in both private and public healthcare. However, public healthcare employees have had a non-significant rate of unionization. This has limited their participation in trade union activities. Besides, they are better paid and have a wider portfolio of benefits available to them and therefore have relatively lower incentive to associate themselves with unions. However, there have been protests for better salaries, as reported by respondents from the private healthcare sector. Private healthcare unions do intent to collaborate and initiate joint action with public sector healthcare workers.

²⁴³ Observation (CEACR) - adopted 2022, published 111th ILC session (2023) (Nepal)

²⁴⁴ https://www.ituc-csi.org/IMG/pdf/ituc_globalrightsindex_2020_en.pdf

²⁴⁵ Information sourced through an interviewee at All Nepal Petroleum Workers Union (ANPWU) and All Nepal Shop and Sales Workers Union (ANSSWU)

If the rights are limited in the public health care, how are they limited and in which occupations in particular?	Rights are the same for the private and public sector workers. Collaborations between private and public sector healthcare unions is being considered, as reported during interviews.
HEALTH CARE SYSTEM	
Information about the healthcare system in the country	Nepal's public health system is decentralized. The country has a mixed health service delivery system, comprised of the public sector, private for-profit sector, and nongovernmental organizations (NGOs). The Ministry of Health (MOH) serves rural, underserved populations; private providers, including NGOs and faith-based organizations (FBOs), predominantly serve urban populations.
General description on how the health care is provided	In the public health sector, services are delivered at the five lower levels, from the regional to the community level. The central and regional level provides tertiary care. Whereas the district and constituency levels provide primary and secondary level of care respectively. The community level includes two political levels, the village development committee and the ward. Services at the Village Development Committees (VDC) are delivered through health posts, which are staffed by auxiliary health workers (AHW) and auxiliary nurse midwives (ANMs), paid health workers who are employed by the Ministry of Health. At the ward level, services are provided in the community by female community health volunteers (FCHVs). ²⁴⁶
Who is in charge for the health care services, public, private, work-related health insurances?	Health policy is developed, standardized, and governed at the central level by the MOH.
What is the share of public and private health care?	The latest data is available here ²⁴⁷ Number of public hospitals: 201 PHCCs: 189 HPs: 3794 Non-public facilities: 2082 Data gathered from NHWEU (Ref Umesh Giri): Private Hospitals in Kathmandu: 377 Total number of Healthcare Facilities (public + private) in Nepal: 6934
Structure of nursing personnel	Nursing personnel will have to be interviewed for this specifically to understand this better. From what is reported in the interviews with union representatives, nurses are recruited for the public sector from a public service recruitment board. Most of the graduating nurses enter the private sector as jobs in public sector are limited. Nepal's nursing and midwifery density per 10,000 population is 27.8 (2019). Other health workers density is 22.7 (2019). The figure is 6.8 for physicians. Nursing sector in Nepal is likely to undergo a significant change given the demand for trained nurses in high income countries ²⁴⁸ .
Education required for each professional group (nurses, assistant nurses, etc.)	Nurses are required to complete a 4-year BSc. in Nursing. Proficiency Certificate Level in Nursing (PCL Nursing) is a 3-year programme and is requirement of middle level technical nursing workforce.
SALARY	
Salary of health care professionals	FCHV's are regarded as volunteers, not health workers so they are not provided with salary. They are provided with Rs 10,000 as a uniform incentive and Rs.1200 transportation cost per year. In addition to that they are provided with Rs 400 per day as tea and transportation cost if they are involved in any program (health, meetings) organized. After retirement at the age of 60, they are provided with Rs. 10,000. ²⁴⁹ ; Rs. 228,000/ year for Nurses in public sector. ²⁵⁰

²⁴⁶ <https://www.advancingpartners.org/resources/technical-briefs/nepal-community-based-health-system-model>

²⁴⁷ https://dohs.gov.np/wp-content/uploads/2022/07/DoHS-Annual-Report-FY-2077-78-date-5-July-2022-2022_FINAL.pdf

²⁴⁸ <https://www.theguardian.com/global-development/2023/mar/14/if-we-leave-nepal-will-suffer-embattled-hospitals-fear-impact-of-uk-nhs-job-offers>

²⁴⁹ Information sourced through an interviewee at Nepal Health Volunteer Association (NEVA)

²⁵⁰ https://www.payscale.com/research/NP/Job=Staff_Nurse/Salary

Wage gap between the public and private sector workers	Public sector employees in Nepal earn 10% more than their private sector counterparts on average across all sectors. ²⁵¹ In the healthcare sector, the gap is wider for nursing and other healthcare workers category. Public sector workers earn 30-40% higher. In the commerce sector, the public sector does not have equivalent roles as the private sector.
MORE ON HEALTH	
Required education in nursing profession	Nurses are required to complete a 4-year BSc. in Nursing.
Required education for a health care assistant?	Proficiency Certificate Level in Nursing (PCL Nursing) is a 3-year program and is requirement of middle level technical nursing workforce.

Additional information about Female Community Health Volunteers in Nepal

According to the Ministry of Health and Population, while recognizing the importance of women's participation in promoting health of the people, the Government of Nepal initiated the Female Community Health Volunteer (FCHV) Program in 1988 in 27 districts which was later on expanded to all 75 districts of the country in a phased manner. Currently, there are 51,416 FCHVs in the country (46,088 FCHVs at rural/VDC level and 5,328 at urban/municipality level).²⁵² The number of FCHVs in a locality is determined by the population density.

The FCHVs are recruited from each Village Development Committee, and are trained to provide community health services. The volunteers are selected by pre-established village Mothers' Groups, and they serve the wards (within each village) in which they live. Each FCHV serves one ward, or approximately 50 households. They serve as links between individual families/communities and health workers/healthcare facilities.

It is reported that more than half of the FCHVs have been working for over 10 years and the annual turn-over rate is only 4%. The FCHV program faces many challenges: community health services are inconsistent and of variable quality between districts across the country [8-10]. Research has indicated the influences of social respect and moral duty on the low FCHV turn-over rate. The lack of financial compensation can also impact FCHV effectiveness.²⁵³

The FCHVs receive the following types of training on starting their work:

- 19-day training given by municipality health staff before volunteering as FCHVs. The training is mainly focused on safe motherhood and child care;
- In the past, skill development/health information training was also given quarterly. However, this has not been for the last 6-7 years. Trainings are provided as per needs of the health institutions e.g.: Blood pressure measurement/blood sugar check, as many of the FCHVs are illiterate/not well educated the technical activities such as blood pressure measurement has been suggested to be performed by the health workers in the health facilities).

The FCHVs are engaged in the following activities:

1. Distribution of family planning requirements (pills and condoms) either through home visit or to people visiting the FCHVs;
2. Distribution of medicines such as paracetamol, ORS to people who request either through home visit or people visiting the FCHVs;

²⁵¹ <http://www.salaryexplorer.com/salary-survey.php?loc=151&loctype=1&job=12&jobtype=2>

²⁵² <https://mohp.gov.np/program/female-community-health-programme/en>

²⁵³ <https://bmchealthservres.biomedcentral.com/articles/10.1186/1472-6963-14-473>

3. Assist in the immunization program (besides the technical part of administering injections) for the children when the program is being organized at the health post or outreach clinic;
4. Provide information about child immunization during monthly meeting of mothers group in the respective locality;
5. FCHVs are utilized by the health facilities/health post in information dissemination of the health programs and activities; and
6. Provide information regarding child care, immunization, health care seeking and nutrition through home visits.

As argued in an article in the Lancet, “The volunteers, who never receive a regular salary, are the busiest workers in the community. Every day, they are either making house calls for the health programmes or are attending meetings or training, all while maintaining their daily lives of managing their households, children, family, and farms or businesses.”²⁵⁴

The compensation information for FCHVs is as follows:

- Rs 10,000 yearly as uniform cost;
- Rs. 12,000 yearly as transportation cost;
- Rs. 2,500 yearly as communication expenses;
- Rs. 400 per involvement in health program/activity (immunization for children/outreach clinic, etc.); and
- Rs. 20,000 on retirement at the age of 60 years from federal government.
Some amount determined by particular local government (municipality level) and varies across municipalities. For the sampled municipality, it is Rs. 20,000

²⁵⁴ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)30207-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)30207-7/fulltext)

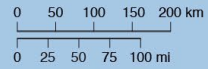
PHILIPPINES





PHILIPPINES

- National capital
- City
- Town
- Major airport
- International boundary
- Expressway
- Main road
- Railroad



Status of Labour Market related Sustainable Development Goals in Philippines			
Indicators	Philippines	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US\$1.9 PPP)	2.22	2022	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than US\$1.9 a day.
1.3.1: The population effectively covered by a social protection system, including social protection floors	36.7	2020	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.
5.5.2: Proportion of women in senior and middle management positions	38	2021	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
5.5.2: Proportion of women in managerial positions	53.4	2021	
8.2.1: Annual growth rate of output per worker (GDP constant 2011 international \$ in PPP)	1.23	2022	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries.
8.3.1: Proportion of informal employment in non-agriculture employment Total	N/A	N/A	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services.
8.3.1: Proportion of informal employment in non-agriculture employment Men	N/A	N/A	
8.3.1: Proportion of informal employment in non-agriculture employment Women	N/A	N/A	
8.5.1: Average hourly earnings of women and men employees	101.95	2021	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value.
8.5.2: Unemployment rate (Total, 15+)	3.4	2021	
8.5.2: Unemployment rate (Women, 15+)	3.83	2021	
8.5.2: Unemployment rate (Women, 15-24 years)	10.28	2021	
8.5.2: Unemployment rate (Men, 15+)	3.13	2021	
8.5.2: Unemployment rate (Men, 15-24)	7.44	2021	
8.6.1: Proportion of youth (15-24 years) not in education, employment, or training)	17.47	2021	By 2030, substantially reduce the proportion of youth not in employment, education, or training
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Total)	N/A	N/A	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms.
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Girls)	N/A	N/A	
8.7.1: Proportion and number of children aged 5-17 years engaged in economic activity (Boys)	N/A	N/A	
8.8.1: Non-fatal occupational injuries per 100,000 workers	417	2017	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.
8.8.1: Fatal occupational injuries per 100,000 workers	9.6	2017	
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	3.97	2020	The exact measurement method and scoring for this indicator needs to be developed.
SDG indicator 9.2.2 - Manufacturing employment as a proportion of total employment (%) -- Annual	7.92	2021	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries.
SDG indicator 10.4.1 - Labour income share as a percent of GDP (%) -- Annual	42.54	2019	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.
Source; ILO Data (https://ilostat.ilo.org/)			

Legal Framework for the Right to Organize and Negotiate

A. Introduction

Labour rights in the Philippines, including the right to organize and negotiate, are set forth in its Constitution²⁵⁵, Labour Code (Presidential decree No. 442 of 1974)²⁵⁶, any sector-specific legislation, and ratified international conventions²⁵⁷, that are incorporated into national legislation. The Philippines's Constitution guarantees the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. It provides workers with security of tenure, humane conditions of work, and a living wage as well as the ability to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.²⁵⁸

For the private sector, the Labour Code of the Philippines (Presidential Decree No. 442 of 1974) is a comprehensive set of laws that regulate the rights and duties of workers and employers in the Philippines. It covers a wide range of topics, including the minimum wage and working hours²⁵⁹, labour standards and employment contracts²⁶⁰, safety and health in the workplace²⁶¹, social security and welfare benefits²⁶², and labour relations including collective bargaining and strikes.²⁶³ The Code aims to promote and protect the rights of workers, ensure decent and just working conditions, and promote industrial peace. It also provides a framework for resolving labour disputes and protecting the rights of workers and employers²⁶⁴. But the Labor Code does not cover public sector employees. The exercise of government employees' right to organize unions and bargain collectively is governed by the Administrative Code of 1987, Executive Order 180 and issuances of the Civil Service Commission (CSC) and the Public Sector Labor Management Council (PSLMC) as well as existing jurisprudence. Executive Order 180 provides the guidelines for the exercise of government employees' right to organize. Similarly, labour standards set forth by the Labor Code does not apply to government employees. For example, government employees are not automatically compensated for overtime.

The Philippines has ratified nine of the ten fundamental ILO conventions.²⁶⁵ Table 1 indicates the conventions ratified by the Philippines and other countries in the study.

²⁵⁵ <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>

²⁵⁶ https://bwc.dole.gov.ph/images/Downloads/20220406_LaborCode_ofthe_Philippines_2022_DOLE_edition.pdf

The Labour Code was last amended in 2019.

²⁵⁷ https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970

²⁵⁸ ARTICLE XIII, Section 3 of the Constitution of Philippines

²⁵⁹ Articles 83 to 99 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶⁰ Articles 106-109 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶¹ Articles 130-139 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶² Title VII, Articles 170-192 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶³ Title VIII, Articles 218-263 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶⁴ Articles 217, 264-281 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶⁵ ILO, *Ratifications by Country*, in ILO Normlex,

https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970 The nine fundamental conventions of the ILO that have been ratified by the Philippines are Convention No. 29 on Forced Labor, Convention No. 87 on Freedom of Association and Protection of the Right to Organize, Convention No. 98 on the Right to Organize and Collective Bargaining, Convention No. 100 on Equal Remuneration, Convention No. 105 on Abolition of Forced Labor, Convention No. 111 on Discrimination in Employment and Occupation, Convention No. 138 on Minimum Age, Convention No. 182 on the Worst Forms of Child Labor and Convention No. 187 on Promotional Framework for Occupational Safety and Health. The Convention that has yet not been ratified by the Philippines is Convention No. 155 on the Occupational Safety and Health.

Table 1: Ratification of ILO Conventions, CFA Cases, and State of Workers' Rights

	C87	C98	C149	C151	C154	CFA cases (active, follow-up, closed)	LRI rating	ITUC rating	SDG Indicator 8.8.2
Brazil	Not Ratified	Ratified (18 Nov 1952)	Not Ratified	Ratified (15 Jun 2010)	Ratified (10 July 1992)	(0,1,71)	81.5 (Trade Union:50)	5 (No guarantee of rights)	N/A
Colombia	Ratified (16 Nov 1976)	Ratified (16 Nov 1976)	Not Ratified	Ratified (8 Dec 2000)	Ratified (8 Dec 2000)	(17,21,179)	73 (Trade Union:50)	5 (No guarantee of rights)	4.84 (2020)
Guatemala	Ratified (13 Feb 1952)	Ratified (13 Feb 1952)	Ratified (09 May 1995)	Not Ratified	Ratified (29 Oct 1996)	(5,10,96)	54 (Trade Union:0)	5 (No guarantee of rights)	5.38 (2020)
Nepal	Not Ratified	Ratified (11 Nov 1996)	Not Ratified	Not Ratified	Not Ratified	(0,0,4)	72 (Trade Union:50)	3 (Regular violations of rights)	N/A
Philippines	Ratified (29 Dec 1953)	Ratified (29 Dec 1953)	Ratified (18 June 1979)	Ratified (10 Oct 2017)	Not Ratified	(1,4,27)	70.5 (Trade Union:25)	5 (No guarantee of rights)	3.97 (2020)

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

C149 - Nursing Personnel Convention, 1977 (No. 149)

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

C154 - Collective Bargaining Convention, 1981 (No. 154)

Sources: ILO NORMLEX Country Profiles <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0> (ratifications and Committee on Freedom of Association cases)

<https://labourrightsindex.org/heatmap-2022> (Labour Rights Index 2022)

<https://www.globalrightsindex.org/en/2022> (ITUC Global Rights Index 2022)

https://www.ilo.org/shinyapps/bulkexplorer12/?lang=en&segment=indicator&id=SDG_0882_NOC_RT_A (ILOSTAT, SDG Indicator 8.8.2)

B. Freedom of Association

The Philippines ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize in 1953. The Philippines has also ratified Convention 151 on Labour Relations in Public Services in the year 2017.²⁶⁶

The Constitution and the Labour Code of the Philippines (Presidential Decree No. 442 of 1974) guarantee the right of freedom of association and the right to organize through trade unions. Under the Constitution, the right of all workers to self-organization is guaranteed. Furthermore, the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law is not restrained.²⁶⁷ The Labour Code stipulates that the state as a matter of policy must promote free trade unionism as an instrument for the enhancement of democracy and the promotion of social justice and development; foster the free and voluntary organization of a strong and united labour movement and promote the enlightenment of workers concerning their rights and obligations as union members and as

²⁶⁶ ILO, *Ratifications by Country*, in ILO Normlex, please see footnote above.

²⁶⁷ Section 8 of the Article III of the Constitution of the Republic of the Philippines, 1987

employees²⁶⁸. All persons employed in commercial, industrial, and agricultural enterprises and in religious, charitable, medical, or educational institutions, whether operating for profit or not, have the right to self-organization and to form, join, or assist labour organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent, and itinerant workers, self-employed people, rural workers and those without any definite employers may form labour organizations for their mutual aid and protection.²⁶⁹

In the public sector, Executive Order 180 guarantees the government employees' right to organize and join unions.

C. Right to Organize

The Philippines ratified ILO Convention No. 98 on the Right to Organize and Collective Bargaining in 1953.²⁷⁰

The Labour Code prohibits individuals (employers and others) from interfering with workers' trade union rights and expressly bars employers from limiting or pressuring workers in the exercise of their right of association.²⁷¹ The Labour Code highlights different actions that are unfair labour practices and provides remedies for workers who are subjected to such practices:

- Interference with the formation of a labour organization;
- Restraining or coercing employees in the exercise of their rights to self-organization;
- Discriminating acts against employees who have joined or are about to join a labour organization; and
- Dismissing, terminating, or otherwise prejudice an employee for having given or being about to give testimony under this Code.

It also outlines the process for filing a complaint and the role of the Department of Labour and Employment in investigating and resolving complaints of unfair labour practices. The purpose of this is to ensure that workers are protected from actions that interfere with their rights to form and join labour organizations and to engage in collective bargaining activities.

Furthermore, the right of workers to form, join or support labour organizations for the purpose of collective bargaining and to engage in lawful concerted activities for mutual aid and protection is protected by law. It is illegal for any person to restrict, force, discriminate against or unduly interfere with these rights of employees and workers.²⁷²

In the public sector, only rank and file employees are eligible to form or join a public sector union. Management employees, high level officials, highly confidential employees and coterminous employees are barred from joining or forming a union. Per PSLMC²⁷³ Resolution No. 1 s. 1991, Chiefs of Divisions or Sections are not considered managerial employees and are therefore eligible to form or join unions.

Certain categories of government workers cannot form or join unions. These are the uniformed personnel of the Armed Forces of the Philippines (AFP), the Philippine National Police (PNP), firefighters and jail guards. Moreover, Job Order (JO) or Contract of Service (COS) workers are also not eligible to form or join unions because they are not recognized as government employees under existing rules. There are more than 200,000 Barangay Health Workers in the

²⁶⁸ Article 218 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁶⁹ Article 253 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷⁰ ILO, *Ratifications by Country*, in ILO Normlex, please see footnote 11

²⁷¹ Article 259 of the Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷² Article 257 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷³ Public Sector Labour-Management Council

country that are considered volunteers by law (RA 7883 or the Barangay Health Workers' Benefits and Incentives Act of 1995). Consequently, BHWs cannot form or join unions. They can form only associations, which cannot engage in collective bargaining.

D. Right to Bargain Collectively

The Constitution guarantees the right of all workers to conduct collective bargaining and negotiations.²⁷⁴ Under the Labour Code, a legitimate labour organization has the following rights with respect to collective bargaining:

- To act as the representative of its members for the purpose of collective bargaining;
- To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining.

Before a union can negotiate a collective bargaining agreement, it must be accredited as the sole and exclusive bargaining agent (SEBA) of workers in the collective bargaining unit. Only one union can represent the workers and bargain collectively with the management. There are two main modes of determining the SEBA of a given bargaining unit:

1. If the company does not have an already existing trade union, a union or its federation may file a Request for SEBA Certification which the Department of Labour and Employment can grant or deny in accordance to existing rules and procedures.
2. If the company has an existing union with SEBA status, a rival union can challenge the majority status of the existing bargaining agent by filing a Petition for Certification Election during the 60-day "freedom period" before the expiry of the CBA. The Petition for Certification Election must be supported by the signatures of at least 25% of all employees of the bargaining unit. If the company is unorganized, the only requirement for the petitioning union is that it should be a registered union. The union that garners the majority of the votes cast is certified as the SEBA provided that the majority of the bargaining unit cast their votes.

When a party desires to negotiate an agreement, it must serve a written notice upon the other party with a statement of its proposals. The other party must reply within 10 calendar days from receipt of such notice.²⁷⁵ If the dispute is not settled, the relevant government department intervenes upon request of either or both parties or at its own initiative and immediately calls the parties to conciliation meetings.²⁷⁶

In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, the employer and the employee representatives must bargain collectively in accordance with the provisions of the Labour Code.²⁷⁷

When there is a collective bargaining agreement, the duty to bargain collectively also includes an understanding that neither party is to terminate nor modify such agreement during its term. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date.²⁷⁸ Any Collective Bargaining Agreement that the parties may enter is valid for a term of five (5) years. All other provisions of the Collective Bargaining Agreement

²⁷⁴ Section 3 of the Article XIII of the Constitution of the Republic of the Philippines

²⁷⁵ Article 261 (a) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷⁶ Article 261 (c) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷⁷ Article 262 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁷⁸ Article 264 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

can be renegotiated not later than three (3) years after its execution. Lastly, there are no legal provisions and restrictions on the issues that are to be discussed when engaging in collective bargaining. It is considered an unfair labour practice on the part of the employer to violate the duty to bargain collectively or violate an existing collective bargaining agreement.

Similarly, in the public sector, a registered union gains the status of the sole and exclusive collective negotiating agent through accreditation by the CSC. Within one year from the issuance of its Certificate of Accreditation, the accredited employees' organization/union must submit to management its Collective Negotiation Agreement (CNA) proposal which has been approved by the majority of its general membership. The status of an accredited public sector union can be challenged through a Petition to Challenge Accreditation filed with the Human Resource Relations Office (HRRO) of the Civil Service Commission or through a Petition for Certification Election filed with the Bureau of Labor Relations (BLR) of the Department of Labour and Employment (DOLE). If the challenge is meritorious, the BLR shall conduct a Certificate Election to determine which organization shall be accredited.

E. Right to Strike

The Constitution guarantees the rights of all workers to perform peaceful concerted activities, including the right to strike in accordance with law.²⁷⁹ According to the Labour Code, workers have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labour organizations to strike and picket, consistent with the national interest, is recognized and respected. The Labour Code recognizes only two grounds for the valid exercise of the right to strike or lockout, namely: Collective Bargaining Deadlock and/or Unfair Labour Practice (ULP). However, no labour union may strike on grounds involving inter-union and intra-union disputes.²⁸⁰ In case of bargaining deadlocks, the duly certified or recognized bargaining agent must file a notice of strike with the Ministry at least 30 days before the intended date. In cases of unfair labour practice, the period of notice is 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike can be filed by any legitimate labour organization on behalf of its members.²⁸¹ The Ministry must exert all efforts at mediation and conciliation to affect between the aggrieved parties.²⁸²

A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. The union must furnish to the Ministry the results of the voting at least seven days before the intended strike.²⁸³

If a labour dispute causes or is likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labour and Employment can assume jurisdiction over the dispute and decide it or refer it for compulsory arbitration. Such an assumption or certification will automatically end the intended or impending strike. If a strike is already in progress, all striking employees will immediately return to work and the employer will immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike. The Secretary of Labour and Employment can seek the assistance of law enforcement agencies to

²⁷⁹ Section 3 of the Article XIII of the Constitution of the Republic of the Philippines

²⁸⁰ Article 278 (b) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸¹ Article 278 (c) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸² Article 278 (e) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸³ Article 278 (f) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

ensure compliance with this provision. In labour disputes adversely affecting the continued operation of hospitals, clinics or medical institutions, the striking union must provide and maintain an effective skeletal or minimum workforce of medical and other health personnel, whose movement and services will be unhampered and unrestricted, so as to ensure the proper and adequate protection of the life and health of its patients. The contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labour and Employment, under pain of immediate disciplinary action, including dismissal or loss of employment status, and even criminal prosecution against either or both of the parties. The President of the Philippines can determine the industries that, in his opinion, are indispensable to the national interest, and are subject to intervention at any time and assumption of jurisdiction over any such labour dispute in order to settle or terminate the same.²⁸⁴

Any strike declared in violation of the provisions of the Labour Code (without first having filed the required notice or without the necessary strike vote obtained and reported to the Department of Labour and Employment) is considered illegal.²⁸⁵ No person can stop a peaceful strike by force, violence, coercion, threats or intimidation and no person involved in a peaceful strike can commit any act of violence, coercion or intimidation, obstruct or block the workplace and any public thoroughfares.²⁸⁶ In an effort to settle a strike or a lockout, the Department of Labour and Employment can conduct a referendum by secret ballot on the improved offer of the employer on or before the 30th day of the strike.²⁸⁷ When at least a majority of the union members vote to accept the improved offer, the striking workers must immediately return to work and the employer has to readmit them upon the signing of the agreement²⁸⁸. Except on grounds of national security and public peace or in case of commission of a crime, no union members or union organizers may be arrested or detained for union activities without previous consultations with the Secretary of Labor.²⁸⁹

In the public sector, the Civil Service Act of 1959 expressly prohibits government employees from exercising their right to strike. The law says that "... it is declared to be the policy of the government that the employees therein shall not strike for the purpose of securing changes in their terms and conditions of employment..." The strike ban applies only to workers employed in governmental functions and not to those employed "in proprietary functions of the Government including, but not limited to, government corporations." This strike ban imposed upon government employees is invoked in Executive Order 180 and, thus, remains in place.²⁹⁰ A later issuance by the Civil Service Commission, CSC Resolution 021316 of 2002, reiterated the strike ban and included as prohibited acts the concerted actions such as mass leaves, walkouts, pickets and similar acts that result in work stoppage or disruption of service. Concerted action by government employees is thus limited to those conducted outside of working hours (such as pickets and assemblies during lunch time or before or after working hours) or manifestations such as wearing black armbands or protest shirts.

The Sustainable Development Goal indicator 8.8.2 measures the level of national compliance with fundamental labour rights (freedom of association and collective bargaining (FACB)). Based on ILO textual sources and national legislation, the Philippines received a score of 3.97 in 2020 (0 is best;

²⁸⁴ Article 278 (g) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸⁵ Article 279 (a) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸⁶ Article 279 (b) of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸⁷ DOLE can only conduct a referendum if the strike stems from a bargaining deadlock, not if the strike is declared because of unfair labour practice

²⁸⁸ Article 280 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁸⁹ Article 281 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

²⁹⁰ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/98925/117871/F-576569000/PHL3709.pdf>

10 is worst). Compared to neighbouring countries, the Philippine's score is worse. The Philippines is worse than its neighboring countries when the Trade Union indicator from the Labour Rights Index is considered.

Level of national compliance with labour rights among Philippines and neighbouring countries, 2023		
	SDG Indicator 8.8.2	Labour Rights Index (Trade Union Indicator)
Indonesia	1.7 (2020)	0 (2022)
Cambodia	4.54 (2020)	25 (2022)
Philippines	3.97 (2020)	25 (2022)
Japan	1.1 (2020)	50 (2022)
Mongolia	0.15 (2020)	50 (2022)

The value of SDG Indicator 8.8.2 can range between 0 to 10, with 0 being the best possible score (indicating higher levels of compliance with the freedom of association and collective bargaining (FACB) rights) and 10 the worst (indicating lower levels of compliance with FACB rights based on ILO textual sources and national legislation).

The Trade Union indicator under the Labour Rights Index has a range from 0 to 100, with 100 being the best possible score and 0 the worst.

Sources: ILO Data; Labour Rights Index

The Global Competitiveness Index, based on 12 pillars, gives an overview about the Philippines' economy. The Labour Market Pillar, 8th Pillar, measures labour market efficiency through statistical data and executive opinion surveys among employers provides on the Philippines' view on various aspects, including the labour market efficiency pillar elaborated upon by surveys among employers and other statistical data.

The Philippines ranks 39th out of 141 countries (1st is the best) at the pillar. Out of twelve indicators, the best rankings are internal labour mobility (7th), pay and productivity (13th), and cooperation in labour-employer relations (15th). The worst rankings are redundancy costs in weeks of salary (116th) and workers' rights (104th) (see more details in the Table below).

Table 3: Labour Market Efficiency in Philippines, 2019

Index Component	Value	Score *	Rank
8th pillar: Labour market	-	64.9	39
Flexibility 0–100	-	59.8	56
8.01 Redundancy costs weeks of salary	27.4	51.3	116
8.02 Hiring and firing practices 1–7 (best)	4.0	50.3	54
8.03 Cooperation in labour-employer relations 1–7 (best)	5.4	72.6	15
8.04 Flexibility of wage determination 1–7 (best)	5.2	69.9	51
8.05 Active labour market policies 1–7 (best)	3.8	46.9	50
8.06 Workers' rights 0-100 (best)	62.0	62.0	104
8.07 Ease of hiring foreign labour 1–7 (best)	4.1	51.7	76
8.08 Internal labour mobility 1–7 (best)	5.4	73.7	7
Meritocracy and incentivization 0–100	-	70.1	35

8.09 Reliance on professional management 1-7 (best)	5.1	68.5	28
8.10 Pay and productivity 1-7 (best)	4.9	64.9	13
8.11 Ratio of wage and salaried female workers to male workers %	0.58	47.9	87
8.12 Labour tax rate %	8.7	99.0	26

Source: The Global Competitiveness Report, 2019 (8th pillar: Labour Market Efficiency)

F. Observations on Labour Legislation

Despite the existence of an extensive labour legislation in the Philippines, some observations have been made by the international bodies like ILO Committee of Experts on Application of Conventions and Recommendations, International Trade Union Congress and United States' Department of State Country Reports on Human Rights Practices. The comments are mainly relevant to the right to organise, the right to collective bargaining, and the right to strike.

According to ITUC's Global Rights Index, the Philippines is one of the ten worst countries in the world for working people. Workers and their representatives in the Philippines remained particularly vulnerable to violent attacks, intimidation and arbitrary arrests. Trade unionists, maliciously red-tagged by security forces under both the Duterte and Marcos Administrations remained under immediate threat from the police and the army, which conducted targeted raids against them. Over 50 trade unionists have been killed since President Duterte came to power in 2016.²⁹¹ ITUC gives it a rating of 5, meaning there is no guarantee of workers' rights in the country. ITUC explains that "Countries with the rating of 5 are the worst countries in the world to work in. While the legislation may spell out certain rights, workers have effectively no access to these rights and are therefore exposed to autocratic regimes and unfair labour practices".

Issues highlighted by ITUC²⁹²

1. The law prohibits anti-union discrimination but does not provide adequate means of protection against it.
2. Prior authorization or approval by authorities is required for the establishment of a union.
3. Registration is necessary to acquire legal personality (Article 234, Labour Code).
4. The union needs to demonstrate the support of more than 20 per cent of the bargaining unit in order to register (Article 234, Labour Code). This is 30 per cent in sectors regulated by the Government Employees Regulations, and the names of all members must be sent to the labour bureau.
5. Federations must have at least ten local chapters each of which must have achieved a collective bargaining agreement (Article 237 Labour Code). A list of all members must be submitted with an application for registration.

²⁹¹ The latest count reported by the Philippine affiliates of the Council of Global Unions (CGU Pilipinas) to the High Level Tripartite Mission on 23 January 2023 is 68 labor-related extra-judicial killings from 2016-2021.

²⁹² ITUC Global Rights Index 2022 - <https://www.globalrightsindex.org/en/2022>

6. The Regulations governing Government Employees' right to organise is excessively prescriptive in terms of how an organisation conducts its affairs. For example, electoral processes, subjects for collective agreements, and fee regimes are detailed in the Regulations.
7. The receipt of foreign assistance to trade unions is subject to prior permission of the Secretary of Labour.
8. Administrative authorities' power to unilaterally dissolve, suspend or de-register trade union organisations
9. Any amendment to the rules must be communicated to the labour bureau within 30 days or the union's registration can be cancelled (Article 239, Labour Code).
10. There are excessive requirements for the collection and processing of financial data, such as signed statements accompanying every receipt of members' dues (Article 241, Labour Code).
11. Several types of public servants, including prison guards and firefighters, do not have the right to form and join unions. Non-nationals or migrants can only join unions if their home country permits migrants from the Philippines to join unions (Article 269, Labour Code). Additionally, managerial staff are not eligible to join unions and supervisors may only join their own organizations, but not those for general workers (Art 245, Labour Code).
12. The Anti-Terrorism Act of 2020 was signed into law by President Duterte and replaces the Human Security Act of 2007.²⁹³ The Act is a threat to workers' rights and civil liberties, as it defines terrorism in broad terms that could target peaceful trade union activity (Section 4). Expressing opinions in favor of alleged terrorists is also criminalized (Section 9). The Act authorizes the government to transfer alleged terrorists or supporters to a foreign nation for imprisonment and interrogation (Section 3(c)), and denies suspects the protection of warrant-based arrest (Section 29), which places trade unionists in danger. These provisions undermine civil liberties and expose workers to the risk of arbitrary arrests, indiscriminate attacks, and harassment.
13. Previous authorisation or approval by authorities required to bargain collectively and a union must demonstrate support of a majority of members of the bargaining unit (Article 231, Labour Code).
14. Collective agreements are limited to five years, though certain terms must be renegotiated after just three years (Article 253A, Labour Code) and must be registered for fee from the employer (Labour Code Article 231).
15. Only unions that have previously negotiated a collective agreement with their employer may strike (Article 264, Labour Code). A quorum and majority vote from all workers is required to call a strike, with a 30-day notice period in case of bargaining deadlock (Article 263, Labour Code). Inter-union disputes are banned from striking (Article 263, Labour Code). The Secretary of Labor may ban strikes if they impact an industry deemed essential to the national interest and impose compulsory arbitration, with civil and criminal penalties (Article 263.7, Labour Code). Illegal strikes carry severe consequences, including prison terms for union leaders, and organizing or directing picketing during a strike for the purpose of spreading anti-government propaganda may result in life imprisonment (Labour Code). Strikes by government employees

²⁹³ https://lawphil.net/statutes/repacts/ra2020/pdf/ra_11479_2020.pdf

are handled through mediation and arbitration (Rule XVII, Amended Rules and Regulations Governing the Exercise of Government Employees to Organize).

16. Order No. 40-H-13 lists extensive industries of national interest, beyond the essential services defined by ILO standards.²⁹⁴ There are issues with contracts, such as workers' cooperatives, service contracts, and commercial contracts, that hinder the formation of trade unions.
17. The pension system is not subject to collective bargaining under Law 100 of 1993. Law 1453 of 2011 prohibits employers from offering better conditions to non-unionized workers than those in a collective agreement for unionized workers in the same company. Those found guilty face 1-2 years in prison and a fine of 100-300 times the minimum wage. The Labour Code (Art. 417) restricts federations and confederations from striking, and allows for the firing of workers who participated in an illegal strike, even if the illegality is due to restriction on freedom of association (Art. 450).

Issues highlighted by CEACR²⁹⁵

1. The Committee requested the Government to provide information on the progress made in the adoption of Senate Bill No. 2121 seeking to fix legal gaps and institutionalize a system of accountability by criminalizing red-tagging and providing penalties as deterrence thereto. It expects that the grave allegations of violence and intimidation are duly investigated and perpetrators punished to effectively prevent and combat impunity and requests the Government to provide updated information in this respect.
2. The Committee expects the Government to ensure that all measures are being taken to address these specific incidents, in particular that they are properly investigated, so as to establish the facts, determine culpability and punish the perpetrators. The Committee requested the Government to provide information on the measures taken in this respect and on the progress in investigations.
3. The Committee urged the Government to take all necessary measures to address the issues of violence and intimidation raised and, in particular, to conduct prompt and effective investigations into all allegations of extra-judicial killings of and assaults against trade unionists, so as to determine the circumstances of the incidents, including any links to trade union activities, determine culpability and punish the perpetrators.
4. Furthermore, noting the call of the trade unions for full operationalization and strengthening of the existing monitoring and investigative mechanisms, the Committee requested the Government to continue to take all necessary measures to this effect, including allocating sufficient resources and staff and providing all necessary security to these personnel, in order to ensure effective and timely monitoring and investigation of all pending labour-related cases of extra-judicial killings and other violations against trade union leaders and members.
5. The Committee requested statistics on cases dealt with by the Single Entry Approach (SEnA) program, designed to resolve labour disputes efficiently. The government provided information

²⁹⁴ www.dole9portal.com/qms/references/QP-002-19/DO%2040-H-13.pdf

²⁹⁵ The text is based on the following sources.

Observation (CEACR) - adopted 2021, published 110th ILC session (2022)

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

Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019) Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

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

showing that SEnA led to a decline in jurisdiction and arbitration cases. The program, which mandates a 30-day conciliation-mediation process, has helped resolve labor and employment issues and reduce the workload at the Department of Labour and Employment. Statistics show that as SEnA requests for assistance increased, referrals to arbitration decreased. SEnA dealt with issues such as wage violations, money claims, illegal dismissal, contract violations, and unfair labour practices.

6. The Committee urged the Government to take the necessary measures to ensure that all workers (including teachers, health-care workers, etc.) are able to negotiate their terms and conditions of employment, including with respect to wages, benefits and allowances, and working time and requests it to keep it informed of developments in this respect.

Issues raised in USDOS Country Report²⁹⁶

1. The law prohibits union organizing by foreign workers unless a reciprocity agreement is in place. Temporary or outsourced workers and those without employment contracts also cannot join a union. The law requires 20% of employees in the bargaining unit to participate, which the ILO deemed excessive.
2. The law subjects all labour and employment disputes to mandatory mediation-conciliation for one month.
3. A strike notice can be issued if mediation fails. Strikes or lockouts must be related to acts of unfair labor practice, a violation of collective bargaining laws, or a deadlock. The law carries a max sentence of 3 years for illegal strike participation, but there's no record of a conviction. Employers can dismiss union officers who participate in an illegal strike.
4. For a legal private-sector strike, unions must provide notice (30 days for collective bargaining, 15 days for labor practice), follow cooling-off periods, and receive approval from a majority of members. The National Conciliation and Mediation Board reported 271 preventive mediation and 80 strike/lockout cases from Jan-July. The 76% increase in cases was due to relaxed COVID-19 protocols and increased workforce activity.
5. Government workers are prohibited from striking under threat of dismissal. They can file complaints with the Civil Service Commission for disputes, and express grievances during nonworking hours.
6. The Secretary of Labor and President may intervene in disputes by assuming jurisdiction and mandating a settlement if the company is deemed essential to national interest (e.g. hospitals, power, water, air traffic control). Critics say the definition of essential services is too broad compared to international standards.
7. The government generally respects freedom of association and collective bargaining and makes efforts to enforce laws protecting these rights. The Department of Labour and National Labour Relations Commission enforce these laws and can issue orders for reinstatement. Allegations of discrimination and intimidation related to union activities can be reviewed by the commission as possible unfair labor practices. The Labour Secretary may suspend terminations if they could cause serious labor disputes.
8. The penalties for violating freedom of association or collective bargaining laws are usually not proportional to the crime. Anti-union discrimination, particularly in hiring, is a violation of labor laws and may incur civil or criminal penalties, but civil penalties are more common.
9. Unions claim that local leaders and officials in Special Economic Zones hinder union organizing through anti-union policies, security force intimidation, frivolous lawsuits, and labour center control. These factors, along with restricted access and reliance on short-term contracts, limit union success in the zones. The Department of Labour lacks data on compliance with labour standards in the zones.

²⁹⁶ <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/philippines/>

UNIONS AND THEIR MEMBERSHIP	
Number of unions in the health sector and their membership	Number of Registered Unions in Private Hospitals - 131 ²⁹⁷
	Number of Public Hospitals with Unions - 40 ²⁹⁸
Number of unions in the commerce sector and their membership	Number of Unions in Private Commerce Companies - 688 ²⁹⁹
	Number of Unions in Public Commerce Companies - 1 ³⁰⁰
Memberships from the different trade unions	<p>Health worker membership of selected labor federation in the private sector:</p> <ul style="list-style-type: none"> - Alliance of Filipino Workers (AFW) - 11,000 members, 11 unions - Unified Filipino Service Workers (UFSW) - 2,000 members, 3 unions - Federation of Free Workers (FFW) - 4,000 members, 5 unions - PACIWU/CIO - 1,590 members, 3 unions - National Federation of Labor (NFL) - 300 members. 2 unions - Major private hospitals with unaffiliated/independent unions: St. Lukes Hospital, Quezon City (1,500 union members); St. Luke's Hospital BGC (1,600 union members); UST Hospital (1,000 union members) - Health worker membership of selected labor federations in the public sector - Alliance of Health Workers - 37,000 members, 14 public hospitals unions
Organizing rate in the private health sector	Percent of Women Members in Unions in Establishments (with 20 or more workers) engaged in Human Health and Social Work Activities (except Public Health Activities) - 65.9% ³⁰¹
	Percent of Women Members in Unions in Establishments (with 20 or more workers) engaged Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles - 53.9% ³⁰²
	Percent share of establishments (with 20 or more workers) engaged in Human Health and Social Work Activities (Except Public Health) with Unions - 4.5% ³⁰³
	Percent share of establishments (with 20 or more workers) engaged in Human Health and Social Work Activities (Except Public Health) with CBA - 4.5% ³⁰⁴
	Percent of Union Membership to Total Paid Employees in Establishments Engaged in Human Health and Social Work Activities (Except Public Health) with 20 or more Workers - 12.8% ³⁰⁵
	Percent of Workers Covered by CBAs to Total Paid Employees in Establishments Engaged in Human Health and Social Work Activities (Except Public Health) with 20 or more Workers - 12.8% ³⁰⁶
	Number of Private Hospitals - 1,071 ³⁰⁷ Number of Private Hospitals with Unions - 89 Percent of Private Hospitals with Unions - 9.43%
Organizing rate in the public health sector	Number of Public Hospitals - 141 ³⁰⁸
	Number of Public Hospitals with Unions – 40
	Percent of Public Hospitals with Unions - 28.4%

²⁹⁷ Scraped from Bureau of Labor Relations-DOLE Online Union Verification Portal as of Feb, 2022.

There may be more than only union in a private hospital but only one is the sole and exclusive bargaining agent. During a certification election, one or more unions may register itself and challenge the incumbency of the current bargaining agent. Also, there may be a rank-and-file union and a supervisors' union in a hospital. Thus, the difference between the number of registered unions and the number of hospitals with unions.

²⁹⁸ Civil Service Commission (CSC): List of Accredited (Public Sector) Unions as of December 31, 2015

In public hospitals, the number of unions is the same as the number of hospitals with unions because the Civil Service Commission does not list unions that are not the sole and exclusive negotiating agent.

²⁹⁹ Bureau of Labor Relations-DOLE Online Union Verification Portal

³⁰⁰ Civil Service Commission (CSC): List of Accredited (Public Sector) Unions as of December 31, 2015

³⁰¹ Philippine Statistics Authority: 2017/2018 Integrated Survey of Labor and Employment

³⁰² Ibid

³⁰³ Ibid

³⁰⁴ Ibid

³⁰⁵ Ibid

³⁰⁶ Ibid

³⁰⁷ Private Hospitals Association of the Philippines (PHAP)

³⁰⁸ Philippine Health Insurance Corporation (PhilHealth); Dept of Health, 2021

Organizing rate in the private commerce sector	Percent share of establishments (with 20 workers of more) engaged in Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles with Unions - 4.3% ³⁰⁹
	Percent share of establishments (with 20 workers of more) engaged in Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles with CBAs - 4.2% ³¹⁰
	Percent of Union Membership to Total Paid Employees in Establishments Engaged in Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles with 20 or more Workers - 4.6% ³¹¹
	Percent of Workers Covered by CBAs to Total Paid Employees in Establishments Engaged in Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles with 20 or more Workers - 4.7% ³¹²
	Number of Private Enterprises Engaged in Wholesale and Retail Trade - 105,568 / 116,220 as of 17 Jan 2023 ASPBI Prelim Result. ³¹³
	Number of Private Enterprises Engaged in Wholesale and Retail Trade with Unions – 641
	Number of Unions in Private Enterprises Engaged in Wholesale and Retail Trade – 688
	Percent of Private Enterprises Engaged in Wholesale and Retail Trade with Unions - 0.61%
Organizing rate in the public health sector	Number of Public Commerce Company - 1
	Number of Public Commerce Companies with Unions - 1
	Percent of Public Commerce Companies with Unions - 100%
Significant changes since 2000 in the health sector	<p>R.A. 11223 or the Universal Health Care Act was passed February 20, 2019. The law expands access to health services by automatically enrolling all Filipinos in PhilHealth’s National Health Insurance Program (NHIP). It seeks to ensure that all Filipino citizens have access to a comprehensive set of health services without financial hardship.</p> <p>The Philippine Nursing Act (RA 9173) was passed on October 2002. Sec. 20 of the law prescribed that the minimum base pay of nurses in public health facilities to be not lower than Salary Grade 15. For several years, this provision remained unimplemented until a suit was filed by the ANG NARS Party List and the PSLINK before the Supreme Court. In October 2020, the Supreme Court ruled the validity of Sec. 32.</p> <p>The interviewees noted 6 types of hospital ownership/management: 1) non-stock, non-profit, 2) foreign-owned, 3) family-owned, 4) those run by religious organizations, 5) those run/owned by doctors, and most recently 6) those owned by conglomerates that formed hospital chains. Of the six, they observed that hospitals that are non-stock and non-profit have better salaries and benefits.</p> <p>There is a recent push by government and business to position the Philippines as a medical tourism destination. Major hospitals are upgrading facilities necessitating fresh capital infusion. Some business conglomerates are acquiring hospitals, especially family-owned hospitals that are losing money or are cash-strapped. There are three so far:</p> <ol style="list-style-type: none"> 1. Metro Pacific Hospital Holdings: A chain of 19 hospitals, 2 allied health colleges and a network of primary care clinics and cancer care center. This hospital chain is part of the Metro Pacific Investment Corp. (MPIC) which has investments in power and water utilities, road construction, rail transport, logistics, food, real estate, and schools. MPIC is in turn a subsidiary of the First Pacific, an Asia-Pacific holding company which in the Philippines is also into telecommunications, oil and gas and sugar/bioethanol. 2. Mount Grace Hospital Inc., a chain of 20 hospitals. Mount Grace is part of the United Laboratories Group which is the largest pharmaceutical company in the Philippines. 3. Ayala Health Care Holdings (AC Health) acquired the majority stake of Mercado General Hospital, a chain of four hospitals and several clinics. AC Health’s portfolio includes a chain of generic drugstores, two pharmaceuticals companies, and online and physical consultation clinics. AC Health is part of the Ayala Corporation which has interests in real estate, banking, telecommunications, power, water, industrial technologies, infrastructure, health, and education.

³⁰⁹ Philippine Statistics Authority: 2017/2018 Integrated Survey of Labor and Employment

³¹⁰ Ibid

³¹¹ Ibid

³¹² Ibid

³¹³ <https://psa.gov.ph/content/2019-annual-survey-philippine-business-and-industry-aspbi-wholesale-and-retail-trade-repair>

	<p>So far, the experience is mixed. In one of the chains, the salary and benefits of health workers have improved. In the other, the experience in one of the hospitals is not favorable to the workers: The management fired regularly employed nurses on account of redundancy only to be replaced by Certified Nursing Assistants (CNAs), nursing graduates who have not yet passed government nursing exam.³¹⁴</p> <p>During the last quarter of the 20th Century, many of the larger private hospitals in Metro Manila were unionized; hence, the goal of the federations is to form unions outside of Metro Manila and other key cities. Of those unionized in Metro Manila, many are independent (not part of federations).³¹⁵</p>
Significant changes since 2000 in the commerce sector	<p>In 2000, retail trade was liberalized through Republic Act 8762 or the Retail Trade Liberalization Act of 2000. Prior to the enactment of this law, non-Filipino nationals were effectively banned from engaging or investing in the retail trading activities. RA 8762 allowed foreigners to engage or invest in the retail trade business if the retail enterprise has a paid-up capital of the peso equivalent of USD 2.5 million or higher and subject to certain conditions.</p> <p>Retail trade was further liberalized at the end of 2021 with the passage of Republic Act 11595 which amended RA 8762. The law reduced the minimum paid up capital requirement for foreign retail enterprises, removed the requirement for a certificate of pre-qualification to the Philippine Board of Investments (BOI), and lowered the investment requirements for each store owned by a foreign enterprise.</p> <p>The last twenty years saw the massive expansion of the shopping mall empires of SM Prime (82 malls), Ayala Land (33 malls) and Robinson's Land (53 malls) and the rise of the supermalls. These three also expanded their operations outside Metro Manila establishing malls in many of the large cities outside Metro Manila.</p> <p>Online retailing gained foothold in the Philippines in the late 2000s. The growth of the e-commerce was boosted tremendously by the COVID 19 pandemic. The long strict lockdowns made online shopping not only attractive but also necessary. Moreover, the growing efficiency and widespread acceptance of digital payment platforms made online shopping easier. 54% of Filipino consumers started shopping online during the pandemic and 73% of new online shoppers intend to shop online even when the COVID 19 restrictions have eased. Online retail customers prefer local vendors with 77% of purchases from local merchants. However, the two most widely used online shopping platforms, Lazada which is owned by China's Alibaba Group and Shopee which is a Singapore-based.</p>
Limitations on the right to organize in the public sector	<p>All government employees can form, join or assist employees' organizations of their own choosing for the furtherance and protection of their interests. They can also form, in conjunction with appropriate government authorities, labor-management committees, work councils and other forms of workers' participation schemes to achieve the same objectives. (S 2). Section 3 limits high-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature from joining the organization of rank-and-file government employees. And section 4 limits members of the Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards from the scope of this Executive Order.³¹⁶</p> <p>Moreover, more than 640,000 job orders and contract of service workers (i.e., contractual workers) cannot join or form unions because they are not recognized as government workers.³¹⁷</p>
Limitations on the right to negotiate in the public sector	<p>Government employees except the ones prohibited in S 4 (Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards) can freely negotiate.³¹⁸</p>

³¹⁴ Focus group discussion with key officials of the Alliance of Filipino Workers (AFW) and United Filipino Service Workers (UFSW)

³¹⁵ Ibid

³¹⁶ EXECUTIVE ORDER NO. 180

³¹⁷ Joint Report of Trade Unions to the ILO High Level Tripartite Mission to the Philippines, January 23-26, 2023

³¹⁸ EXECUTIVE ORDER NO. 180

	However, Executive Order (EO) 180 excludes wages and monetary benefits from the scope of collective negotiation ³¹⁹ . Unions can negotiate only those items that does not require appropriation and does not impinge upon the agencies' management prerogatives.
Limitations on the right to strike in public sector	It is the Philippines' Government policy that the employees therein shall not strike for the purpose of securing changes in their terms and conditions of employment. This applies only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including, but not limited to, governmental corporations. ³²⁰ This was affirmed in EO 180, Section 14 and Civil Service Commission Resolution No. 021316.
If so, for which occupations in particular?	No particular occupation has more limitation than is already prohibited. However, the scope of the limitation to the right to strike had been expanded to include any concerted action that disrupts government service. An issuance by the Civil Service Commission, CSC Resolution 021316 of 2002, reiterated the strike ban and included as prohibited acts concerted actions such as mass leaves, walkouts, pickets and similar acts that result in work stoppage or disruption of service. Concerted action by government employees is thus limited to those conducted outside of working hours (such as pickets and assemblies during lunch time or before or after working hours) or manifestations such as wearing of black armband or protest shirts.
ILO CONVENTIONS AND LEGISLATION	
Ratification information about major conventions	C087 - Ratified 29 Dec 1953
	C098 - Ratified 29 Dec 1953
	C149 - Ratified 18 Jun 1979
	C151 - Ratified 10 Oct 2017
Enactment of legislation in compliance with the convention	Please refer to the start of country report
COLLECTIVE AGREEMENTS	
Number of collective bargaining agreements per sector	Data from Department of Labor and Employment-Bureau of Labor Relations (Sep-2022) Collective Bargaining Agreements: 1,013 (249,484 covered workers) ³²¹ Establishments Employing 20 or More Workers With Collective Bargaining Agreement (CBA) Integrated Survey on Labor and Employment (ISLE) 2020³²² ALL INDUSTRIES: 1,451 Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles: 162 (1.9%) Human Health and Social Work Activities Except Public Health Activities:38 (2.7%)
Scope of collective bargaining (national, sectoral, company or workplace)	Data from Department of Labour and Employment-Bureau of Labour Relations (Sep-2022) Collective Bargaining Agreements: ³²³ <ul style="list-style-type: none"> • Federated Unions: 594 • Independent Unions: 419 All collective bargaining agreements are enterprise-based. However, the scope/coverage varies. Some cover the main office and all branches nationwide. Others are limited to a single area (region, province) or workplace. Data from ILSE on coverage of CBAs: ³²⁴ <ul style="list-style-type: none"> • Single Establishment – 629 • Branch only – 355 • Establishment and Main Office – 296 • Main Office only – 147 • Ancillary Unit other than Main Office – 24

³¹⁹ Ibid

³²⁰ Civil Service Act of 1959 S 28 (c)

³²¹ <https://blr.dole.gov.ph/2014/12/11/statistical-reports/>

³²² <https://psa.gov.ph/isle/statistical-tables/2019-2020/Unionism%20and%20Collective%20Bargaining>

³²³ <https://blr.dole.gov.ph/2014/12/11/statistical-reports/>

³²⁴ <https://psa.gov.ph/isle/statistical-tables/2019-2020/Unionism%20and%20Collective%20Bargaining>

<p>Statutory requirements for forming a trade union and to start CBA negotiations</p>	<p>To register an independent union, the trade union must have at least 20% of workers in the bargaining unit as its members. To register a local union chapter of a federation, only the charter certificate and a list of local union officers are required. For the union to be certified as the sole and exclusive bargaining agent, it must either (a) garner a majority of the votes cast in a certification election or (b) obtain the signature of a majority of the bargaining unit in the sole and exclusive bargaining agent (SEBA) certification process. (Art. 240 of the Labour Code)</p> <p>In the public sector, the application for registration must be signed by the members of the employees' organization comprising at least 30% percent of the rank-and-file employees in the organizational unit</p>
<p>NEGOTIATION SYSTEM IN GENERAL</p>	
<p>General information on the negotiation system</p>	<p>The Philippines Labour Code has necessary provisions on prerequisites on forming a union and negotiation system.</p> <p>Art. 240. Requirements of registration. Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements.</p> <p>a) Fifty pesos (P50.00) registration fee;</p> <p>b) The names of its officers, their addresses, the principal address of the labor organization, the minutes of the organizational meetings and the list of the workers who participated in such meetings;</p> <p>c) The names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate</p> <p>d) If the applicant union has been in existence for one or more years, copies of its annual financial reports; and</p> <p>e) Four (4) copies of the constitution and by-laws of the applicant union, minutes of its adoption or ratification, and the list of the members who participated in it.³²⁵</p> <p>Art. 251 further elaborates on the rights and conditions of membership in a labor organization, violation of any of these may lead to cancellation of union registration or expulsion of officers.³²⁶</p>
<p>Major hindrances to the right to organize³²⁷</p>	<p>Increased repression of the independent trade union movement, extreme violence against and persecution of unionists, including extrajudicial killings, physical assaults, red-tagging, threats, intimidation, harassment, stigmatisation, illegal arrests, arbitrary detention, and raids on homes and union offices, as well as the government's institutional failure to address these issues, have all contributed to the situation in the country drastically deteriorating since 2019. Concerns regarding this situation have been raised in ITUC AND CAECR 2021 observations.</p> <p>As per the ITUC 2022 observations, the main challenges faced by union workers are:</p> <ul style="list-style-type: none"> •Violence and murders (the extrajudicial killings of nine labour and NGO activists on 7 March, also called Bloody Sunday, in Calabarzon. The Bloody Sunday killings happened after President Duterte openly called on security forces to gun down communists if they carried guns, thirty-five-year-old trade union leader Dandy Miguel, chairman of the PAMANTI-Kilusang Mayo Uno (KMU), was killed 28 March 2021) <p>In its Joint Report to the ILO High Level Tripartite Mission (Jan. 23-26, 2023), the trade unions reported 68 extra-judicial killings of trade unionists since 2016, of which 26 were killed from 2019-2021. Also, since 2019, trade unions reported two (2) cases of forced disappearances, 68 cases of arrests and detention, 90 cases of forced disaffiliation, state interference with the right to self-organization, through threats, harassment and intimidation, 58 cases of red-tagging/terrorist-tagging, 127 cases of intimidation/ threats/harassment of union leaders and members and 19 cases of other anti-union activities.</p>

³²⁵ Article 240 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

³²⁶ Article 251 of Labour Code of the Philippines (Presidential Decree No. 442 of 1974)

³²⁷ Information sourced from:

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4124386,102970,Philippines,2021

<https://www.globalrightsindex.org/en/2022/countries/phl>

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4058020,102970,Philippines,2020

<p>How does the state try to impede the workers from organizing? If so, in what way(s)?³²⁸</p>	<p>Trade unions have become a victim of the government’s anti-insurgency campaign. In the words of the trade unions in their joint report to the ILO HLTM to the Philippines, “The government’s anti-insurgency campaign has spilled over labor relation”. Certain trade union organizations have become targets of the anti-insurgency campaign.</p> <p>There are several reported cases of government security forces and operatives of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) visiting houses and workplaces of workers to either discourage them from joining/organizing a union or convince them to disaffiliate from their federations. There are also reported cases of NTF-ELCAC interference in certification elections or elections of union officers. Security forces would also routinely red-tag union leaders and union organizers.</p> <p>The enactment of the Anti-Terrorism Law has resulted in increased violations of trade union and human rights.</p> <p>State intervention in union matters ranges from criminalization and penalizing strikes to adoption of legislation that gives arbitrary power to the state to crack down on unions. Examples include, the Forty-four employees of a pasta-making company, Soft Touch Development Corp., were arrested on 15 December 2021 for going on strike (ITUC 2022); adoption of the Anti-Terrorism Act, 2020, which is aimed at silencing dissenting voices and further entrenched State repression and hostility against workers and trade unionists, the Committee requested the Government to provide information on any aspects of implementation of the Act that affect trade unionists or trade union activities.</p>
<p>Do employers try to impede the workers from organizing? If so, in what way(s)?</p>	<p>Union-busting/union-avoidance techniques utilized by employers include the following³²⁹:</p> <ul style="list-style-type: none"> • In the commerce sector, it is the common practice to hire only a relatively few core employees: <ul style="list-style-type: none"> ○ Job outsourcing is widespread; most employees are either contractual workers, temporary workers or agency hires. ○ Many of the sales personnel are employees of the various brands on sale at the mall/department store, not of the mall/department store itself. • Some commerce enterprises hire only of workers recommended by local politicians/patrons who ensure that the workers they recommended do not join or form a union • Refusing access to organizers/prohibiting workers from talking to workers. In certain Fresenius clinics, for example, employees were prohibited from taking lunch outside company premises when Management learned of efforts to unionize their workers. Special Economic Zones prohibit or severely limit access of union organizers inside the Zone. • Applying social and economic pressure on employees to discourage unionism • Outright intimidation and threats and, in some instances, even violence
<p>Other hindrances to organizing workers</p>	<ul style="list-style-type: none"> • Lack of information/disinformation regarding unionism and its roles. • Mass media only covers union activities during protest actions or when there are strikes or picket line violence. There is very little media coverage for union successes in collective bargaining or successful union campaigns that resulted in better living and working conditions for workers. This reinforces popular perception of union activities as disruptive and result in conflict and violence. • Some religious sects discourage their members from joining unions. • Continuous red-tagging making workers wary of joining/organizing unions lest they, too, will be labeled as rebels/terrorist supporters. • In companies where wages are relatively high and working conditions are relatively good, workers do not feel the need to organize unions. • Many are indifferent to unions especially the younger workers. • Double burden experienced by women workers prevent many from active participation in union organizing

³²⁸ Information sourced from:

<https://www.globalrightsindex.org/en/2022/countries/ph/>
https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NA,ME,P11110_COMMENT_YEAR:4124386,102970,Philippines,2021

³²⁹ Key informant interviews and documentation from workshop of union organizers in the FES-sponsored Joint Organizers’ Training Program of the Philippine affiliates of BWI, PSI and UNI (14-16 July 2022 and 25-27 August 2022)

Topics of collective bargaining	<p>In the public sector, the subject matters of the collective negotiations (collective bargaining) are limited. Wages and monetary benefits that require appropriation cannot be negotiated between the union and the government entity concerned.</p> <p>Salaries of government employees are fixed by law. The latest salary increases for civilian personnel of government were fixed by the Salary Standardization Law of 2019. Salaries of employees in Government-Owned and Controlled Corporations are governed by the Compensation and Classification System determined by the Governance Commission for GOCCs. The base pay schedule for military and uniformed personnel was fixed Congress JR No. 1, s. 2018.</p> <p>Sec. 13 of the Executive Order 180 states the following: “Terms and conditions of employment and improvement thereof, except those that are fixed by law, may be the subject of negotiations between duly recognized employees’ organizations and appropriate government authorities.” Not all terms and conditions of employment of public sector employees can be negotiated under the collective negotiations agreement. Increases in salary, allowances, travel expenses, and other benefits that are specifically provided by law are not negotiable.</p> <p>The following concerns may be the subject of negotiations between the management and the accredited employees’ organization:</p> <ul style="list-style-type: none"> (a) schedule of vacation and other leaves; (b) personnel growth and development; (c) communication system – internal (lateral and vertical), external; (d) work assignment/ reassignment/ detail/ transfer; (e) distribution of workload; (f) provision for protection and safety; (g) provision for facilities for handicapped personnel; (h) provision for first aid medical services and supplies; (i) physical fitness program; (j) provision for family planning services for married women; (k) annual medical/physical examination; (l) recreational, social, athletic and cultural activities and facilities; <p>In the private sector, there are no limitations imposed on the subjects of collective bargaining. According to the Labour Code (art. 218), the State policy is primacy of free collective bargaining and negotiations, and to encourage a truly democratic method of regulating the relations between the employers and employees by mean of agreements freely entered into through collective bargaining. The contracting parties may establish such stipulations, clauses, terms, and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy (Art.1306 Civil Code). Nevertheless, there are minimum standards provided by law:</p> <ol style="list-style-type: none"> 1. Minimum wage is fixed by Regional Wage and Productivity Boards which are tripartite in nature. 2. Occupational health and safety standards are fixed by law (RA 11058) 3. Minimum statutory benefits are also fixed by the Labor Code and other laws including: <ol style="list-style-type: none"> a. Working hours, overtime premium, night differential b. Holiday and premium pay, overtime pay, night differential c. Maternity, paternity and parental (for solo parents) leaves; special leave for women subjected to violence d. 13th month pay, separation pay, retirement pay e. Social insurance (Social security, health insurance, housing benefits, workers’ compensation)
LIMITATIONS ON THE RIGHT TO ORGANISE	
Right to organize and negotiate in public and private health care	Yes, both private and public health care employees have the same right to organize as per the Labor Code of the Philippines and EO 180 s. 1987.
Limits on the rights to organize	Relevant legislation does not bar public health care workers from their right of form or join unions. However, Section 3 limits high-level employees whose functions are normally considered as policy-making or managerial or whose duties are of a highly confidential nature from joining the organization of rank-and-file government employees. Thus, nurses, medical technicians, orderlies and other hospital personnel can freely join or organize unions. But they

	<p>must be regular workers. Contractual, temporary, job order health employees cannot join or organize unions.</p> <p>Moreover, the more than 200,000 Barangay Health Workers (BHWs) are by law, considered as “volunteers” and therefore cannot organize or join unions.³³⁰ (They can organize associations for mutual benefit but not for collective negotiation).</p>
HEALTH CARE SYSTEM	
Information about the healthcare system in the country	<p>The Philippines has a mixed private-public health system. Government caters for 100% of the primary care and first-line facilities. All of the more than 23,000 Barangay Health Stations are public. So are the 2,600 Rural Health Units. Of the 2,411 birthing homes, 54% are private. Around 48% of the 659 infirmaries are private. With regards to hospitals, government owns 30.3% (466) while 69.7% (1,071) are privately owned.</p> <p>Philippine health governance is decentralized health governance since 1991 when health care was devolved to local government units. Services are mostly under the jurisdiction of the local governments, with supplementary services such as major national programs, (e.g., immunization, tuberculosis, nutrition, etc.). The public health sector is comprised of hospitals, health offices, birthing homes, infirmaries and "barangay health centers". Barangay Health Workers are the frontline health workers, providing communities with basic health education and selected primary health care services such as first aid, as well as supervising the maternal and child health, family planning and nutrition.</p> <p>Private treatment has several additional benefits to patients, providing newer, cleaner and more comfortable facilities than those available in public health facilities. But there is no effective mechanism to regulate private for-profit health-care providers. More than 50% of the total health spending is out of pocket. Coverage by the Philippine Health Insurance Corporation (PhilHealth) has increased over the years, and R.A. 11223 or the Universal Health Care Act of 2019 expanded access to health services by automatically enrolling all Filipinos in PhilHealth's National Health Insurance Program (NHIP).</p>
General description on how the health care is provided ³³¹	<p>Health care is bifurcated between public and private hospitals. The former focus on preventive and primary care and leading the efforts in educating the public on health issues. Private hospitals focus on specialized care: cardiovascular diseases, cancer, pulmonology, and orthopedics.</p> <p>The Department of Health (DOH) holds the over-all technical authority on health as it is a national health policy-maker and regulatory institution.</p> <p>The Philippine Health Insurance Corporation (PhilHealth) was created in 1995 through the “National Health Insurance Act of 1995 to implement universal health coverage in the Philippines. It is a tax-exempt, government-owned and controlled corporation (GOCC) of the Philippines, and is attached to the Department of Health. Its stated goal is to "ensure a sustainable national health insurance program for all", according to the company.</p>
Who is in charge for the health care services, public, private, work-related health insurances	<p>Philhealth, a government-owned company, oversees public healthcare in the Philippines. Although Philhealth covers some medical treatments and expenses, such as inpatient care and non-emergency procedures, it does not cover all medical treatments and costs.</p>
Share of public and private health care	<p>Government caters for 100% of the primary care and first-line facilities. With regard to hospitals, government owns 33% (454) of the share and 67% (933) are privately owned.³³²</p>
Structure of nursing personnel	<p>Nurses Barangay Health Workers Nursing Attendant Nursing Aide Hospital Assistant Health Aide³³³</p>

³³⁰ Republic Act 7883 or the Barangay Health Workers' Benefits and Incentives Act of 1995.

³³¹ Information sourced from: <https://www.trade.gov/country-commercial-guides/philippines-healthcare>;
https://web.archive.org/web/20110904135731/http://www.philhealth.gov.ph/about_us/others/ra7875.pdf
https://doh.gov.ph/sites/default/files/health_magazine/UHC-IRR-signed.pdf

³³² <https://www.rvo.nl/sites/default/files/2021/06/Healthcare-in-The-Philippines.pdf>

³³³ Expert/Interviews

Required education for each professional group (nurses, assistant nurses etc.) ³³⁴	<p>To become a professional nurse a person needs to complete Bachelor of Science in Nursing (BS). The degree is conferred upon completion of at least four-year BS program offered by a college, professional institution or university duly recognized by the Commission on Higher Education (Philippines).</p> <p>Philippines also have health care workers known as “barangay health worker”, which refers to a person who has undergone training programs under any accredited government and non-government organization and who voluntarily renders primary health care services in the community after having been accredited to function as such by the local health board in accordance with the guidelines promulgated by the Department of Health (DOH) (section 3 of Republic Act No. 7883)</p> <p>To work as either a Nursing Attendant, Nursing Aide, Hospital Assistant or Health Aide, one must complete HEALTH CARE SERVICES NC II Training by the Technical Education and Skills Development Authority (TESDA) .</p>
SALARY	
Salary of healthcare professionals	<p>"An entry-level nurse working in a public hospital starts with a monthly salary of about PHP33575 (about US\$670), while those working in private hospitals may start with as little as PHP8000 (about US\$160)"³³⁵</p> <p>Entry-Level monthly salary of nurses in selected private hospitals:</p> <ul style="list-style-type: none"> f. Delos Santos Hospital – Php 21,000 g. Chinese General Hospital – Php 17,300 plus Php 11,000 allowance h. St. Luke’s Hospital – Php 19,000 i. Capitol Medical Center – Php 32,000 – Php 35,000 j. FEU Hospital – Php 14,000 – Php 16,000 <p>The minimum salary of Registered Nurses working in government centers in the Philippines cannot be lower than SG 15 (Section 32 of THE PHILIPPINE NURSING ACT OF 1991)³³⁶ According to the latest circular of the Department of Budget and Management wages of Salary Grade 15 ranges from Php 36,619 (Step 1/Entry Level) to Php 39,367 effective January 1, 2023.</p>
Wage gap between the public and private sector workers	Yes. Nurses in the public sector are paid higher than nurses in the private sector (see above)
MORE ON HEALTH	
Required education for nurse	<p>To become a professional nurse a person needs to complete Bachelor of Science in Nursing (BS). The degree is conferred upon completion of at least four-year BS program offered by a college, professional institution or university duly recognized by the Commission on Higher Education (Philippines).</p> <p>To become a Registered Nurse in the Philippines, a graduate of BS in Nursing needs to pass the Nurse Licensure Exam. The examination is conducted by the Board of Nursing under the supervision of the Professional Regulations Commission (PRC).</p>
Required education for practical nurse	Individuals require a 2-year TESDA course that is offered by a number of universities and colleges in the Philippines.
Required education for a health care assistant	The Philippines equivalent of a health care assistant is either Nursing Attendant, Nursing Aide, Hospital Assistant or Health Aide, for which one must complete HEALTH CARE SERVICES NC II training by the Technical Education and Skills Development Authority (TESDA).
Specifics for the Philippines:	
Information on pay raise for nurses	Key informants noted that, in general, the pandemic resulted in higher wage rates and allowances. Before the pandemic and during the height of the glut of nursing graduates, nurses received minimum wage in some private hospitals.

³³⁴ Information sourced from: <https://www.officialgazette.gov.ph/1995/02/20/republic-act-no-7883/>
<https://tesda.gov.ph/Downloadables/TR%20Health%20Care%20Services%20NC%20II.pdf>
<https://tesda.gov.ph/Downloadables/Barangay%20Health%20Services%20NC%20II.pdf>

³³⁵ Agence France-Presse. ‘Burned out:’ Philippine nurses battle Covid-19, resignations. Available: <https://www.manilatimes.net/2021/09/21/opinion/burned-out-philippine-nurses-battle-covid-19-resignations/1815452> (cited by Alibudbud 2022: <https://jogh.org/wp-content/uploads/2022/05/jogh-12-03011.pdf>)

³³⁶ https://lawphil.net/statutes/repacts/ra2002/ra_9173_2002.html

	<p>In the Philippines, the entry salary grade for nurses in the public sector was a few years ago raised to grade 15, after a court case. Currently, the Monthly Salary Rate of Salary Grade 15 is from PhP 36,619 – PhP 39,367.</p> <p>In the private sector, collective bargaining agreements and the need to stem the outflow of nurses from private hospital to public or foreign hospitals have force private hospitals to increase wages and benefits.</p>
Information on pay raise for other health care professionals	<p>Entry level monthly salary of radiologic technologists and medical technologists in Chinese General Hospital – Php 17,300 plus Php 6,000 allowance</p> <p>According to Glassdoor, the median salary of Medical and Clinical Laboratory Technologist is Php16,000. The median pay of a Laboratory Technician is Php19,000 while that of a Medical Technologist Php 15,750.</p> <p>In the public sector, starting April 1, 2018, entry level wage rates of radiologic technologist (Radiologic Technologist I) is Salary Grade 11 (currently, Php 27,000 - 29,075). Radiologic Technologist II is Salary Grade 15 while Radiologic Technologist III is Salary Grade 18 (currently Php 46,7254 - 50,382).</p>

Additional information on the Barangay Health Workers in the Philippines

Barangay Health Workers

The *barangay* is the smallest local government unit in the Philippines. Barangay health workers are the Philippines' community/village health workers through which government provides basic health services and primary health care to communities. BHWs play a vital role in the healthcare system of the Philippines, especially in rural areas where access to healthcare is limited. They are often the first point of contact for community members seeking health services and are therefore essential in improving the health outcomes of their communities.

A barangay health worker is a person who has undergone training programs under any accredited government and non-government organization and who *voluntarily* renders primary health care services in the community after having been accredited to function as such by the local health board in accordance with the guidelines promulgated by the Department of Health (DOH)³³⁷

As of April 2023, there are 264,191 registered BHWs.³³⁸

Demographic data

Sex	Number/ Percent
Male	3,3711.37%
Female	243,45698.63%
Age	
15-19 yrs.	74 0.03%
20-29 yrs.	7,7003.12%
30-39 yrs	37,28115.10%
40-49 yrs	63,47325.72%
50-59 yrs	68,88327.91%
60 above	69,41628.12%
Educational Attainment	
Elementary Level	9,7413.95%
Elementary Graduate	25,516 10.34%

³³⁷ Section 3 of Republic Act 7883 <https://www.officialgazette.gov.ph/1995/02/20/republic-act-no-7883/>

³³⁸ National BHW Registry System. <https://bhw.doh.gov.ph/report.php>

High School Level	41,80616.94%
High School Graduate	102,31841.45%
College Level	37,13415/04%
College Graduate	23,0029.32%
No Formal Education	2,9801.21%
Vocational Degree	4,3301.75%

Employment status:

BHWs are classified as volunteers by definition and are not considered as employees of government.

Compensation

Being a “volunteer”, a BHW does not receive salary. Instead, a BHW is given an “honorarium” by the local government. The honorarium received by BHWs varies depending on the local government unit concerned. This may be as low as Php 1,000 per month (Eur 16.22 at current exchange rate of Eur 1 = Php 61.66) or as high as Php 9,700 per month in one of the richer cities in Metro Manila. (For comparison, the minimum wage in Metro Manila is around Php12,500 per month).

Incentives and benefits provided by law

Incentives and benefits of BHWs are provided by Republic Act 7883 or the Barangay Health Workers’ Benefits and Incentives Act of 1995. These are as follows:

- a) Hazard Allowance – for BHWs exposed to hazards or dangerous situations, conditions, or factors. Hazard allowance is determined by the local health board and the local peace and order council of the local government unit concerned.
- b) Subsistence Allowance – equivalent to meals in the course of duty for BHWs who render service in isolated barangay health stations.
- c) Training, Education and Career Enrichment Programs to be provided by the Department of Health (DOH) and other concerned agencies:
 - educational programs which shall recognize years of primary health care service as credits to higher education in institutions with stepladder curricula that will entitle BHWs to upgrade their skills and knowledge for community work or to pursue further training as midwives, pharmacists, nurses or doctors;
 - continuing education, study and exposure tours training, grants, field immersion, scholarships, etc.;
 - scholarship benefits in the form of tuition fees in state colleges, to be granted to one child of every barangay health worker who will not be able to take advantage of the above programs; and
 - special training programs such as those on traditional medicine, disaster preparedness and other programs that address emergent community health problems and issues.
- d) Civil Service Eligibility. – A second grade eligibility shall be granted to barangay health workers who have rendered five (5) years continuous service as such: Provided, that should the BHW become a regular employee of the government, the total number of years served as barangay health worker shall be credited to his/her service in computing retirement benefits.
- e) Free Legal Services – for BHWs in cases of coercion, interference, and in other civil and criminal cases filed by or against barangay health workers arising out of or in connection with the performance of their duties to be provided by Public Attorney’s Office.
- f) Preferential Access to Loans – Government agencies providing loan services will set aside one percent (1%) of their loanable funds for organized barangay health worker groups that have community-based income generating projects in support of health programs or activities.

Role

BHWs function as community organizers, health educators, and primary health care service providers.

- BHWs organize and mobilize the community to achieve desired health outcomes. They maintain regular communication and links between community members and local leaders and the health professionals. They also assist the community in identifying health problems, in developing health plans and in taking action to promote their health and well-being.
- As health educators, BHWs provide updated and timely knowledge and skills to community members in the prevention and management of simple illnesses and in relevant health issues. They are also designated as barangay-level health promotion officers in accordance with the Health Promotion Framework Strategy and in support of the Universal Health Care Act.

As a health care service provider, BHWs assist health professionals in rendering primary care services in the community. BHWs also assist health professionals by monitoring the health status of community members, keeping records of health activities, and ensuring maintenance of barangay health centers/ stations including safe custody of equipment, supplies and health records. Oftentimes, they go on house-to-house visits for vaccination and immunization drives or for follow-up consultations and, during the height of the pandemic, for contact tracing.³³⁹

Required training

To be registered as a Barangay Health Worker, an individual must undergo the Department of Health Basic Training Course for BHWs conducted by an accredited government agency or NGO. The basic training program for BHWs includes modules on:

- Health promotion and disease prevention
- Maternal and child health
- Communicable and non-communicable diseases
- Basic first aid and emergency care
- Nutrition
- Family planning
- Environmental health

Supplementary trainings are also available.

Problems/issues:

A newspaper article had an apt title for its feature on BHWs” “Barangay health workers: Unsung, underpaid, undaunted.”

Some of the problems facing BHWs include:

- Most BHWs receive very low compensation for all their hard work (as little as Php1,000 monthly in some cases).
- They have very heavy workload. They provide a wide range of health services often to a large population.
- Their work involves risks and vulnerabilities. This is especially true for those assigned in far-flung barangay and those that provide health assistance during disasters. During the height of the pandemic, they visited COVID-infected community members for to arrange quarantine, deliver medical or food supplies or for contact-tracing.

³³⁹ R.A. 7883 IRR, Rule II, Section 8; R.A. 11223 IRR, Section 4.25; and AO 2021-0063 or Health Promotion Framework Strategy 2030

- BHWs often have limited access to medical supplies, equipment, and training, which can make it challenging to provide adequate healthcare services to their communities.
- BHWs are sometimes undervalued and unrecognized for the critical role they play in the healthcare system. During the pandemic, many experience discrimination ironically because they are exposed to COVID-infected community members that they are trying to help.

Their employment status is precarious. Despite their valuable work, they are not even considered as government employees because of the fiction that they are “volunteers”