



## SECOND ITEM ON THE AGENDA

**Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plans regarding freedom of association and the effective recognition of the right to collective bargaining****I. Introduction**

1. The Office has given effect to the 1998 Declaration on Fundamental Principles and Rights at Work through general promotional efforts, Annual Reviews, Global Reports and by the Governing Body drawing conclusions regarding “priorities and plans of action for technical cooperation to be implemented for the following four-year period” (Declaration, Annex III(B)(2)).<sup>1</sup> At its current session, the Governing Body is called upon to consider technical cooperation priorities and an action plan regarding freedom of association and the effective recognition of the right to collective bargaining, following the International Labour Conference discussion of the first report of the second cycle of global reports under the follow-up to the Declaration.
2. In addition to this paper, other documents inform constituents of activities related to the Declaration: the note circulated each June at the International Labour Conference on major activities in pursuit of the action plans adopted since November 2000;<sup>2</sup> Global Reports detail the outcomes and impacts of the various activities carried out under each action plan,

<sup>1</sup> See GB.279/TC/3 regarding freedom of association and the effective recognition of the right to collective bargaining, GB.282/TC/5 regarding the elimination of all forms of forced labour or compulsory labour, GB.285/TC/5 (reissued as GB.286/TC/2) regarding the effective abolition of child labour and GB.288/TC/4 regarding the elimination of discrimination in respect of employment and occupation.

<sup>2</sup> See ILO: *Provisional Record* No. 2, International Labour Conference, 89th Session, Geneva, 2001; ILO: *Provisional Record* No. 6, International Labour Conference, 90th Session, Geneva, 2002; ILO: *Provisional Record* No. 2, International Labour Conference, 91st Session Geneva, 2003, and ILO: *Provisional Record* No. 7, International Labour Conference, 92nd Session, Geneva, 2004.

as in the 2004 Global Report: “Organizing for social justice”<sup>3</sup> (henceforth referred to as “the Report”); and the general paper on the technical cooperation programme that is submitted to this Committee, the first item on the agenda this November.

## II. The first action plan and lessons learnt

3. The first action plan on freedom of association and collective bargaining was adopted by the Governing Body in its November 2000 session.<sup>4</sup> It described a multidisciplinary approach to promoting freedom of association and collective bargaining, reflecting the extent to which expertise and activities related to this fundamental principle are interrelated and spread throughout the ILO. The ILO has been working with governments, employers and workers (through policy development, supervisory mechanisms and technical cooperation) to improve legislation, foster political will and reinforce the institutions needed for freedom of association and collective bargaining. Governments, including many that have not ratified the two relevant Conventions, have sought advice and technical cooperation programmes on implementing the right to freedom of association and collective bargaining. During the past four years, many of the 50 countries listed in the Report have negotiated projects with the Office. About half of the external support to the Declaration follow-up has gone into projects concerned with the promotion of this principle and right.<sup>5</sup>

### (A) Main activities developed

4. Labour law reform is often the most immediate action that must be taken by governments to transform general principles and rights into enforceable statutes. Due to its constitutional mandate, the ILO has long and successful experience in this area. The Report shows that labour law reform has several positive effects on the status of freedom of association and collective bargaining at national level: (a) the process of drafting, discussing, and revising reinforces tripartism and social dialogue, as the ILO requires that the social partners be involved at all stages; (b) it introduces a framework for statutory coverage for special categories of workers (EPZs, agriculture, domestic, etc.); (c) it modernizes dispute settlement mechanisms and procedures; (d) it modernizes labour administration and enforcement procedures to help effectively realize these rights; and (e) it introduces gender equality provisions.
5. The Report notes that spending on labour administrations has regrettably tended to stagnate or decline, and that in most parts of the world, the political influence of ministries of labour is on the wane. Since 2000, a number of Declaration projects (e.g. in East Africa, Central America, etc.) have included efforts to strengthen the capacity of labour administration and inspection services, to improve enforcement and application of the laws, to encourage effective dispute prevention and resolution through training, logistical support and awareness raising. Employers’ organizations have received training and support aimed at attracting and retaining members, through, for example, increased capacity to provide services on collective bargaining and negotiating techniques, and links

<sup>3</sup> See ILO: *Organizing for social justice*, Report I(B) International Labour Conference, 92nd Session, Geneva 2004.

<sup>4</sup> See GB.279/TC/3, Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Priorities and action plans for technical cooperation.

<sup>5</sup> See ILO: *Organizing for social justice*, Report I(B), Ch. 4, International Labour Conference, 92nd Session, Geneva 2004.

to productivity improvements. For workers' organizations, the ability to organize, attract and retain members, represent their interests and protect their rights have been strengthened in countries where Declaration projects have been active.

6. One of the main purposes of strengthening capacity and mutual trust among governments, employers' and workers' organizations is to encourage tripartite and bipartite action on different subjects such as minimum wages, productivity, safety and health. Several technical cooperation projects (Colombia, Caribbean, Indonesia, etc.) helped constituents to set up or to strengthen tripartite and bipartite institutions, and train social partners in good practices on collective bargaining, negotiation skills and settlement of disputes.
7. Information and awareness raising were an important part of the first action plan. Partnerships with radio and television broadcasters at international and national levels have been one means by which the ILO's work has been disseminated.
8. The ILO has attempted to work in the informal economy through the social partners to organize the unorganized employers and workers. While some success stories on both sides are available (see the Report, pages 102-110) much remains to be done in this area that was already identified by the Conference discussion on the informal economy.<sup>6</sup>

## **(B) Lessons learnt**

9. Lessons learnt from implementing the last action plan were confirmed by the debate at the 92nd International Labour Conference.<sup>7</sup> Even if there has been progress in ratification and improvements in national legislation, governments must address the remaining legal and practical obstacles that make the realization of these rights more difficult.
10. A precondition of success of any effort is the political will of the actors involved to achieve change, as well as their consensus. Prior and ongoing consultation with governments and social partners is critical. It must also be recognized that changing attitudes, laws, institutions and practices require a sustained national effort over several years. While individual targeted seminars and workshops may succeed in addressing particular issues, a long-term undertaking is required to achieve systemic and nationwide reforms.
11. Sound efforts to modify or overhaul labour legislation (Ukraine, Zambia, Kenya, Indonesia) have all involved intense tripartite participation and public comments. These exercises reinforce and strengthen tripartism and democratic decision-making. ILO cooperation ensures that the drafters are aware of the jurisprudence of ratified Conventions and the content of other international labour standards. Working with parliamentarians, where appropriate, can help to ensure that the content and background of draft bills are explained to those who must turn them into law. Implementing regulations that accompany legislation should be developed in a tripartite setting.
12. Efforts to assist labour courts and judges have included training on international labour standards and ratified Conventions, assistance with establishing management systems to manage case load effectively and deliver speedy decisions, and in compiling case histories and jurisprudence to allow for greater consistency in decisions. Ministries of labour have

<sup>6</sup> See ILO: *Provisional Record* No. 25, International Labour Conference, 90th Session, Geneva, 2002, especially paras. 17, 31-34 of the Conclusions.

<sup>7</sup> See ILO: *Provisional Record* No. 14, International Labour Conference, 92nd Session, Geneva, 2004.

been able to improve internal management, the conduct of inspections, and the speedy resolution of disputes through conciliation and mediation as a result of ILO training. Skills training for ministry officials on how to lobby government for increased funding has also proven successful.

13. Training on collective bargaining and negotiation skills often has the most impact when delivered to trade unions and employers separately, as well as in bipartite settings. A train-the-trainer approach can be successful once the trainers reach the appropriate skill level and both the ILO and the social partners commit to using them. In most cases the audience should be composed of a mix of employers' and workers' organizations and their members at enterprise level. Successful training covers not only the legal frameworks of bargaining, but also negotiation skills, dispute prevention and settlement, and linkages to enterprise performance and productivity.
14. Disseminating successful practices through national networks of employers' and workers' organizations, and central and provincial ministries of labour, creates a multiplier effect. The ILO can support this through the provision of training materials, resource persons, lists of experts and trainers, databases, etc.

### **III. Second action plan regarding freedom of association and the effective recognition of the right to collective bargaining**

15. As shown in the Report, regular technical assistance activities and technical cooperation projects implemented by the Office to promote the Declaration, ranging from advocacy to technical activities, are having a real impact, although it is too early to make a comprehensive evaluation. Several units in different sectors (in particular LIBSYND, IFP/DIALOGUE, ACTRAV and ACTEMP) are involved both on their own and through Declaration projects and actions. This action plan does not in any way modify regular supervisory activities, including the special procedures of the Committee on Freedom of Association. It should, however, contribute to successful follow-up to the recommendations of the standards supervisory system on questions of freedom of association and collective bargaining.
16. The 92nd Conference discussion supported the four objectives proposed in the Report: (1) universal ratification of Conventions Nos. 87 and 98 has to be pursued and the application of the principles should be made a reality; (2) the future actions and programmes must reinforce activities to support organizing and bargaining for the vulnerable groups mentioned above; (3) there is a need to examine more closely the means by which freedom of association and collective bargaining can be used to build an institutional framework for the labour market that promotes sustainable social and economic development; (4) the ILO should deepen its knowledge base, including statistics relating to freedom of association and collective bargaining, and thus strengthen its advisory services and its advocacy. All this has to be based on empirical lessons from related work on freedom of association and collective bargaining in the Office and from constituents.
17. There is a need to build on and expand existing technical cooperation and policy work, with a special focus on extending these fundamental rights to those not traditionally covered, as listed in the Report – public sector, agriculture, EPZs, migrants and domestics, and workers in the informal economy. Too often, women are disproportionately represented in these groups. Employers' and workers' organizations should increase their representation and coverage by encouraging diversity within their organizations, offering new services and/or creating alliances with other groups or associations. Employers' and

workers' organizations and their members will benefit from determined efforts at developing collective bargaining systems and techniques adapted to the new structural, economic and productivity realities, and with attention to promoting equal opportunity policies and practices.

18. Global economic integration has resulted in labour relations and social dialogue being the subject of more initiatives at regional and international level. It is important to ensure that these moves strengthen the principles/rights of freedom of association and collective bargaining.
19. Building on the lessons learnt in the past and on the priorities for the future, interested countries from each region could be assisted in undertaking tripartite diagnosis of the obstacles relating to ratification and/or implementation issues. Implementation issues include: drafting, updating and reforming relevant labour law; the capacity of judges, lawyers and labour administrators to enforce the principle; the empowerment of the social partners (both workers and employers and their organizations) to organize their constituents and to undertake collective bargaining; practical administrative issues of recognition and registration processes; developing and disseminating information on good practices in freedom of association and collective bargaining (including the effect of this principle on productivity and good governance at enterprise, sector and economy-wide levels).
20. On the basis of these preliminary diagnoses, national tripartite action plans would identify possibilities and procedures for overcoming obstacles, as well as the different levels at which action is required – enterprise, sectoral, national and international levels. The national plans would include:
  - (i) the ways and means of inclusion and coverage of vulnerable workers;
  - (ii) the promotion of good productivity practices through collective bargaining in selected enterprises and sectors;
  - (iii) the elaboration of codes, guides and manuals on sound labour relations in order to give effect to the diagnoses and exercises.
21. These programmes will include the dissemination of lessons to other countries, as well as training and capacity building. In the formal economy, the work will be concentrated on the preparation of a good practices programme at the enterprise/sector level with the aim of promoting better labour relations, effective settlement of disputes systems, improvement of productivity through collective bargaining and in general a better relationship through consultation. In the informal economy and SMEs, the main activities will relate to: increasing affiliation to employers' and workers' organizations, and supporting trade unions in organizing the unorganized; better oriented and more appropriate services of these organizations for constituents; studying specific means of information sharing and consultation; and identifying measures (as alternatives to immediate collective negotiations where these are not readily possible) to guarantee the collective right to organize and negotiate.
22. The Office will learn from good practices acquired through the technical cooperation projects in this area, including those carried out by other multilateral and bilateral agencies. The result will be a compendium on good practice in freedom of association and collective bargaining for different groups and sectors. Another element will be that of expanding the group of specialists on freedom of association that was started by the freedom of association project based in Turin during 2000-03. This would help to create bridges between selected Committee on Freedom of Association cases and national

implementation issues, with a view to expanding the Office's capacity in dealing with issues raised by the supervisory system. Finally, the development and dissemination of statistics relating to freedom of association and collective bargaining will be another area of concern.

23. Various ILO technical programmes and field offices deal with these objectives. For the implementation of this action plan, there is thus no need to set up a new organizational unit. However, it will be necessary to reinforce cooperation among all the relevant units, under the umbrella of the Declaration Follow-up, by strengthening the existing linkages and including other relevant ILO units. The national tripartite action plans will also form part of the ILO's Decent Work Country Programmes, thus facilitating synergies with related activities by the ILO and other agencies.
24. The proposed action plan requires considerable extra-budgetary support. It is essential that this proposed action plan is appropriately funded, because, as the Report notes, freedom of association and collective bargaining are principles and rights which are of primary importance for the three other categories of fundamental principles and rights at work, and because the context of globalization requires ever stronger representative and employers' and workers' organizations to negotiate and play a determining role in the fight for decent work.
25. ***The Governing Body may wish to endorse the approach outlined in this paper, and request that it be kept informed, through the Committee on Technical Cooperation, of the implementation of the activities proposed.***

Geneva, 28 September 2004.

*Point for decision:* Paragraph 25.