



## FIFTH 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 Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998 through general promotional efforts, annual reviews,<sup>1</sup> global reports,<sup>2</sup> and by the Governing Body drawing conclusions regarding “priorities and plans

<sup>1</sup> Each annual review consists of two parts. Part I is the introduction by the ILO Declaration expert-advisers to the compilation of annual reports by governments that have not ratified all core Conventions. Part II is the actual compilation of annual reports by the Office, as well as of comments thereon by national or international workers’ and employers’ organizations. For the first five introductions, see GB.277/3/1, GB.280/3/1, GB.283/3/1, GB.286/4 and GB.289/4. The first three compilations were printed as Governing Body documents (GB.277/3/2, GB.280/3/2, GB.283/3/2), the fourth and the fifth were made public on the Declaration web site (<http://www.ilo.org/public/english/standards/decl/database/index.htm>).

<sup>2</sup> The first Global Report covered the subject of freedom of association and the effective recognition of the right to collective bargaining. See ILO: *Your voice at work*, Report I(B), International Labour Conference, 88th Session, Geneva, 2000; the relevant discussion can be found in ILO: *Provisional Record* No. 11, International Labour Conference, 88th Session, Geneva, 2000. The second Global Report covered the subject of the elimination of all forms of forced or compulsory labour. See ILO: *Stopping forced labour*, Report I(B), International Labour Conference, 89th Session, Geneva, 2001; and for the discussion, see ILO: *Provisional Record* No. 12, International Labour Conference, 89th Session, Geneva, 2001. The third Global Report was concerned with the abolition of child labour. See ILO: *A future without child labour*, Report I(B), International Labour Conference, 90th Session, Geneva, 2002; and for the discussion, see ILO: *Provisional Records* Nos. 13 and 14, International Labour Conference, 90th Session, Geneva, 2002. The fourth Global Report was concerned with discrimination at the workplace: see ILO: *Time for equality at work*, Report I(B), International Labour Conference, 91st Session, Geneva, 2003; and for the discussion, see ILO: *Provisional Records* Nos. 14 and 15, International Labour Conference, 91st Session, Geneva, 2003. The fifth Global Report was the second report on freedom of

of action for technical cooperation to be implemented for the following four-year period” (Declaration, Annex III(B)(2)).<sup>3</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 the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

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>4</sup> Global Reports detail the outcomes and impacts of the various activities realized under the auspices of each action plan, as done in the 2004 Global Report: “Organizing for social justice”<sup>5</sup> (henceforth referred to as “the Report”); and the general paper on the ILO’s technical cooperation programme that was submitted in November 2004.<sup>6</sup>

## II. The action plan and lessons learned

3. The action plan on freedom of association and collective bargaining was adopted by the Governing Body in its November 2000 session.<sup>7</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 necessary institutions needed for freedom of association and collective bargaining. Governments, including countries that have not ratified the two relevant Conventions, sought advice and technical cooperation programmes from the ILO 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

association and the effective recognition of the right to collective bargaining. See ILO: *Organizing for social justice*, Report I(B) International Labour Conference, 92nd Session, Geneva, 2004; and for the discussion: see ILO: *Provisional Record* No. 14, International Labour Conference, 92nd Session, Geneva, 2004.

<sup>3</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/4 (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>4</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.

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

<sup>6</sup> GB.291/TC/1.

<sup>7</sup> GB.279/TC/3.

support to the follow-up to the Declaration has gone into projects concerned with the promotion of this principle and right.<sup>8</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 a 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 (export processing zones (EPZs), agriculture, domestic, etc.); (c) modernizes dispute settlement machineries and procedures; (d) 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 and Central America) have included efforts to strengthen the capacity of labour administration and inspection services, to improve enforcement and application of the laws, and 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, an increased capacity to provide services on collective bargaining and negotiating techniques and links 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 as a result of training through Declaration projects.
6. One of the main purposes of strengthening the capacity of and mutual trust among governments, employers' and workers' organizations is to encourage tripartite and bipartite action on different subjects such as minimum wages, productivity and safety and health. Several technical cooperation projects (e.g. Colombia, the Caribbean, Indonesia) helped constituents to set up or to strengthen tripartite and bipartite institutions and train social partners on 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 programmes 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, on organizing the unorganized workers and employers. While some success stories on both sides are available (see the Report, paras. 334-357), much remains to be done in this area that was already identified by the Conference discussion on the informal economy.<sup>9</sup>

<sup>8</sup> See ILO: *Organizing for social justice*, Report I(B), Chapter 4, International Labour Conference, 92nd Session, Geneva, 2004.

<sup>9</sup> See ILO: *Provisional Record* No. 25, International Labour Conference, 90th Session, Geneva, 2002, especially paras. 17, 31-34 of the conclusions.

**B. Lessons learned**

9. Lessons learned from implementing the action plan described in the Report, have been confirmed by the debate at the 92nd Session of the International Labour Conference.<sup>10</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 government and social partners is critical. It must also be recognized that changing attitudes, laws, institutions and practices takes a sustained national effort over several years. While individual targeted seminars and workshops may succeed in addressing particular issues, to achieve systemic and nationwide reforms, a long-term engagement is required.
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 (ILS). 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 also be developed in a tripartite setting.
12. Efforts to assist labour courts and judges have included training on ILS and ratified Conventions, assistance with establishing case management systems to manage caseload effectively and deliver speedy decisions, and in compiling case histories and jurisprudence to allow for greater consistency in decisions. Ministries of labour have 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 for ministry officials on how to lobby government for increased funding for the ministry have 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.
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

<sup>10</sup> See ILO: *Provisional Record* No. 14, International Labour Conference, 92nd Session, Geneva, 2004.

comprehensive evaluation. Several units in different sectors (in particular, LIBSYND, IFP/DIALOGUE, ACTRAV and ACT/EMP) 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 Freedom of Association Committee. It should, however, contribute to a successful follow-up to the recommendations of the standards supervisory system on questions of freedom of association and collective bargaining.

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

16. The action plan adopted by the Governing Body in 2000 remains essentially valid. It identified a number of areas for work, some of which have been accomplished. The 92nd ILC 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 in the Report; (3) there is a need to examine more closely the means by which freedom of association and collective bargaining can be used to build a framework of labour market institutions that promotes sustainable social and economic development; and (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 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 amongst constituents.
17. The Office will continue its discussions with member States which have not yet ratified Conventions Nos. 87 and 98 with a view to universal ratification. At the same time, the Office will help concerned member States to realize the corresponding fundamental principles and rights.
18. There is a need to build on and expand existing technical cooperation and policy work, with a special focus on extending freedom of association rights to those not traditionally covered, as identified and illustrated in the Global Report – public sector, agriculture, EPZs, migrants and domestics, and workers in the informal economy. Too often, the share of women is disproportionately high in these groups. Workers' and employers' 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. Workers' and employers' organizations and their members will benefit from determined efforts at developing collective bargaining systems and techniques adapted to the new structural, economic and productivity demands, and with attention to promoting equal opportunity policies and practices.
19. Building on the lessons learned in the past and on the priorities for the future, interested countries from each region could be assisted in undertaking **tripartite analyses** of the legal and practical obstacles to ratification and/or implementation challenges. Examples of implementation issues to date include: drafting, updating and reforming relevant labour law; the capacity of judges, lawyers and labour administrators to enforce the principle of freedom of association and collective bargaining; 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; and developing and disseminating information on good practices in

freedom of association and collective bargaining (including their effect on productivity and good governance at enterprise and higher 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 level. The **implementation** of these programmes will include training and capacity building, as well as the dissemination of lessons to countries. 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 disputes prevention and settlement systems, improvement of productivity and working conditions through collective bargaining and in general a better relationship through consultation. In the informal economy and small and medium-sized enterprises (SMEs), the main activities will relate to: increasing affiliation to employers' and workers' organizations, and supporting trade unions in organizing the unorganized; the services of these organizations being better oriented and more appropriate for these constituents; study specific means of information and consultation, and identify measures (as alternatives to immediate collective negotiations where these are not readily possible) to guarantee the collective right to organize and negotiate.
21. The Office will make full use of wide **information diffusion of good practices** identified by the various technical cooperation projects in this area. This will include a process of learning from technical cooperation projects 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. The third 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 Freedom of Association Committee cases and national implementation issues, with a view to expanding the Office's capacity to deal with issues emanating from the supervisory system. Finally, the development and dissemination of statistics relating to freedom of association and collective bargaining will be another concern.
22. 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 the 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, especially those listed in paragraph 15 above.
23. The proposed action plan requires considerable extra-budgetary support. It is essential that this proposed action plan is appropriately funded, because the Report notes that freedom of association and collective bargaining are principles and rights which are essential for the three other categories of fundamental principles and rights, and because globalization requires more than ever stronger representative employers' and workers' organizations able to negotiate and play a determining role in the fight for decent work.

***24. The Governing Body may wish to endorse the above priorities for the continuation of the action plan on freedom of association and the effective recognition of the right to collective bargaining, as 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, 20 January 2005.

*Point for decision:* Paragraph 24.