



International  
Labour  
Office  
Geneva

**Employment Sector  
Employment Working Paper No. 101**

**2011**

**Rights at work in times of crisis:  
Trends at the country level in terms  
of compliance with international  
labour standards**

David Tajgman, Catherine Saget, Natan Elkin and Eric Gravel

Economic and  
Labour Market  
Analysis  
Department

International  
Labour  
Standards  
Department

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First published 2011

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### *ILO Cataloguing in Publication Data*

Tajgman, David; Saget, Catherine; Elkin, Natan; Gravel, Eric

Rights at work in times of crisis : trends at the country-level in terms of compliance with international labour standards / David Tajgman, Catherine Saget, Natan Elkin and Eric Gravel ; International Labour Office, Employment Sector, Economic and Labour Market Analysis Department. - Geneva: ILO, 2011  
1 v. (Employment working paper)

ISBN: 9789221255604;9789221255611 (web pdf)

International Labour Office; Economic and Labour Market Analysis Dept

workers rights / economic recession / international labour standards / role of ILO

04.02.5

### **Abstract**

This paper seeks to identify trends in rights at work during the global financial and economic crisis that began in 2008, in terms of international labour standards. Its primary sources of information use recent observations of the International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations (CEACR) relating to the crisis, as well as data collected in the ILO/World Bank inventory standardized questionnaire of policy responses to the crisis on a sample of 50 countries covering the period mid-2008 - mid-2010.

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Printed in Switzerland

document2

## Preface

Following the G20 leaders' statement at the London Summit in April 2009 inviting the ILO, "working with other relevant organizations, to assess the actions taken and those required for the future [in the areas of employment and social protection policies]", a joint ILO/World Bank inventory of policy responses to the 2008 financial and economic crisis was one of the initiatives adopted by the ILO. The inventory follows the framework of policies provided by the ILO's Global Jobs Pact and contains information of policy responses in four major areas (macroeconomics and employment, social protection, international labour standards and social dialogue) for 77 countries. For all recorded measures, the inventory database gives, whenever possible, information on costs, time frame, target population, number of beneficiaries, impact and whether the measures resulted from social dialogue.

The inventory project has been managed in the Economic and Labour Market Analysis Department of the ILO by Catherine Saget (Senior Economist, and manager of the project) and Moazam Mahmood (Director) under the responsibility of Jose Manuel Salazar (Executive Director, Employment Sector). On the World Bank side, the project was managed by Friederike Rother (Operations Officer), David Newhouse (Labour Economist) and David Robalino (Director) of the Labour Markets Team, under the supervision of Arup Banerji (Director, Social Protection and Labour). On the International Labour Standards Department side of the ILO, Cleopatra Doumbia-Henry (Director), Natan Elkin (Coordinator, Employment and Social Policies and Tripartite Consultation Team, International Labour Standards Department) and Eric Gravel (Senior Legal Officer, International Labour Standards Department) provided guidance and support on data collection and analysis.

The Swiss Secretariat of the Economy (SECO) provided financial support to the Inventory project to the ILO and to the WB through the Multi Donor Trust Fund. This support is gratefully acknowledged.

We would like to thank the members of the respective teams for their excellent collaboration on this project.

Jose Manuel Salazar  
Executive Director  
Employment Sector

Guy Ryder  
Executive Director  
Standards Sector

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# I. Introduction<sup>1</sup>

The global financial crisis continues to shape global economic trends and developments in the second decade of the millennium. Its effects on the real economy, jobs, working and living conditions in the context of the ILO's body of international labour standards (ILS) is the subject of this study. Many measures taken in response to the crisis can be directly related to rights and work. These include, for example, measures related to conditions of work such as wages and hours of work, access to social security benefits, public employment services, etc. These are the subject of this paper.

## A. The Global Jobs Pact and rights at work

The Global Jobs Pact (GJP) was adopted by ILO at the 2009 International Labour Conference (ILC). The GJP is a resolution of the Conference and a global policy instrument. It sets a benchmark for the behaviour of governments and the social partners in responding to the financial crisis and the crisis in the real economy. In particular, it moves the Decent Work Agenda forward in framing responses to the crisis.

The GJP sees the employment effects of the crisis through the 4-pillar lens of the ILO's Decent Work framework, and proposes a similarly oriented framework of "decent work responses". Accordingly it suggests "strengthen[ing] respect for international labour standards", noting that they ...

"... create a basis for and support rights at work and contribute to building a culture of social dialogue particularly useful in times of crisis. In order to prevent a downward spiral in labour conditions and build the recovery, it is especially important to recognize that:

(1) Respect for fundamental principles and rights at work is critical for human dignity. It is also critical for recovery and development. Consequently, it is necessary to increase:

(i) vigilance to achieve the elimination and prevention of an increase in forms of forced labour, child labour and discrimination at work; and

(ii) respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.

(2) A number of international labour Conventions and Recommendations, in addition to the fundamental Conventions, are relevant. These include ILO instruments concerning employment policy, wages, social security, the employment relationship, the termination of employment, labour administration and inspection, migrant workers, labour conditions on public contracts, occupational safety and health, working hours and social dialogue mechanisms. ..."

<sup>1</sup> David Tajgman is a former ILO official and external lecturer at Aarhus University School of Law, Denmark. He prepared the preliminary draft of this paper and supported the work of the national correspondents, upon which much of it is based. Catherine Saget is a Senior Economist with the Employment and Labour Market Analysis Department of the ILO. Natan Elkin and Eric Gravel are respectively Coordinator of the Employment and Social Policies and Tripartite Consultation Team, and Senior Legal Officer with the International Labour Standards Department of the ILO. Any remaining errors are ours.

Indeed, the GJP acknowledges that the crisis means “the world faces the prospect of a prolonged increase in unemployment, deepening poverty and inequality” – the antithesis of decent work. Although we might like to think that workers’ rights are absolute, the crisis clearly has the potential to challenge them. The hope – as suggested by the GJP – is that the ILS system and mechanisms such as the GJP will inspire the pertinent actors to “prevent a downward spiral in labour conditions” by keeping workers’ rights out of the fray. In part, this paper will look to see how successful these instruments and mechanisms have been in doing this.

At the outset, a word needs to be said about the flexibility intrinsic to ILS, as well their substantive and procedural aspects, in the context of this study and its review of workers’ “rights”. Their implications will be taken up later.

The intended universality of ILS to all countries, regardless of level of economic development, social and political system means that measures adequate to the national conditions should be taken to ensure that effect is given to ILS. The Employment Policy Convention, 1964 (No. 122), which has been ratified by 104 countries, is the quintessential example. By obliging the “declaration and pursuit, as a major goal, of an active policy designed to promote full, productive and freely chosen employment”, the instrument really does have important implications for economic policy if seriously taken to heart. The obligation – those words, just there – is, at the same time, broad enough for every country to ratify and pursue.<sup>2</sup> To give another example, one that targets intermediation in the labour market, the Employment Service Convention, 1948 (No. 88) gives a concrete framework for action, but remains flexible through the use of terms like “where appropriate”, “suitable arrangements”, “general policy”, “appropriate measures”, “adequate”, etc.

In recent years the “process” or “enabling” aspect of ILS has been brought into the limelight.<sup>3</sup> Here too, we have to observe that some important standards aim to establish the framework by which the social partners can negotiate substantive conditions and rights. In the area of wages, for example, no ILS guarantees their perpetual rise. The Minimum Wage Fixing Convention, 1970 (No. 131) guarantees the constant monitoring of wage levels, the fixing of minimums where their fixing is seen to be appropriate by national authorities, the involvement of the social partners, and their fixing at levels take into consideration “(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;” and “(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.” The downward pressure on wages from economic crisis-caused unemployment, and any actual reduction in wages or earnings, is seen in this paper to be erosion of working *conditions*, but not of the individual *rights* in terms of ILS. On the other hand, the crisis-prompted dismantling of tripartite

<sup>2</sup> The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted, for example, “that an explicit formal declaration of a country’s employment policy can be expressed in a number of ways” and that “a country’s employment policy may take a variety of forms.” General Survey on employment instruments, at para. 28; “that, while [the Convention], does not require States to achieve such goals within any given length of time, States are required to pursue an active policy designed to promote them. This is in recognition of the possibility that the economic and social conditions and the level of development in a given country may be such that the attainment of the goal set by the Convention is impossible in the near future and can only be aimed at in the long run” at para. 33;

<sup>3</sup> Verma, 2003.

minimum wage fixing machineries, or intentional weakening of collective bargaining mechanisms, or ad hoc state intervention in collective bargaining outcomes – may be examined and reviewed as a diminution of workers’ rights in the light of ILS.

## **B. The ILO/World Bank inventory of policy responses to the crisis**

Following a request made by the G20 – Group of Twenty Finance Ministers and Central Bank Governors – at their London Summit in April 2009 to “prepare an analysis of the policy measures adopted ...to address the crisis and their impacts to date”, an ILO project started an inventory of employment and social protection policy responses to the crisis. Sixty-four countries were invited to participate in the inventory.<sup>4</sup> National correspondents in these countries took an inventory of responsive policy measures related to four areas: (A) macroeconomic tools, labour market and employment policies, (B) social protection policies, (C) rights at work and international labour standards, and (D) social dialogue.

National correspondents were asked in completing the ILS section of the inventory to first consider measures they had inventoried for the other three areas in terms of international standards. If they had observed, for example, that a policy debate had opened on the level of unemployment insurance benefits as they related to incentives to take up work, this is the key policy message of the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and reference would be needed to it in the ILO section of the inventory. They were asked then to inventory more generally how workers’ rights had been affected by the crisis, particularly in respect of the core labour standards areas of freedom of association, forced and child labour, and equality. The inventory was designed this way to focus assessment of developments and assure consideration of the full range of international labour standards subjects which would inevitably be linked substantively with labour market policy responses. The GJP identifies these “instruments concerning employment policy, wages, social security, the employment relationship, the termination of employment, labour administration and inspection, migrant workers, labour conditions on public contracts, occupational safety and health, working hours and social dialogue mechanisms.” The inventory questions were open ended; they appear in Appendix III.

A website was quickly set up designed to support the national correspondents, most of whom were economists and social scientists by training, with limited experience working with ILS as such. In a few cases persons other than those who had made an inventory of areas (A) and (B) completed inventories of (C) rights at work and (D) social dialogue. In addition to pointing out other resources, the main supportive message was to be aware of the broad range of ILS implicated by the crisis and GJP, and to see the implications of the other inventories for workers’ rights and ILS. Beyond this, it was suggested that the national correspondents have knowledge of the conventions ratified by the country and the comments made by the ILO supervisory bodies on their applications.

<sup>4</sup> Fifty are used in this document, including Argentina, Australia, Bangladesh, Barbados, Cambodia, Cameroon, Chile, Colombia, Costa Rica, Czech Republic, Egypt, Germany, Ghana, Hungary, India, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Korea, Latvia, Malaysia, Mali, Mexico, Mozambique, Nepal, Netherlands, Nigeria, Pakistan, Peru, Philippines, Poland, Romania, Russia, Rwanda, Serbia, Spain, Sweden, Tanzania, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom, United States, Uruguay, Vietnam.

Lastly, national correspondents were asked to look for evidence that ILS *per se* were responsible for measures being taken in response to the crisis.

National correspondents seemed to face an important challenge in separating reporting on compliance from reporting on a situation changed as a result of the crisis. Thus many inventories reported on perceived compliance (or not) with the standards; these had to be followed up with the question of whether the situation described was a result of the crisis. In most cases it was not.<sup>5</sup> For example, measures to increase equality of opportunity or treatment in employment, that are reported in the inventory are almost all related to long-term strategy to reduce discrimination rather than short-term crisis responses.

The World of Work Report 2010 speaks of unemployment related to the crisis in terms of three groupings of countries: Countries still suffering from the loss of jobs relative to their peak in late 2007; upper-middle income countries with moderate job losses and signs of employment rebounding to pre-crisis levels; and lower-middle income countries experiencing positive economic and job growth. Even where jobs growth has rebounded, some concern was expressed about the deterioration of the quality of employment. Involuntary part-time work, reduced wages, and increased work in the informal sector are indicators pointing to the potential for growing labour market duality and readjustment as a result of deepening of globalization.<sup>6</sup>

Despite the widely acknowledged general similarities in the effect of the crisis within these groups of countries and regions, to the extent they correspond, it has not been possible to find similarities *in responses to the ILS section of the inventory*. For example, the inventories from countries still suffering from job losses have in no way spoken uniformly about the undermining of working conditions, or increases of children working, or determination to weaken the power of workers' organizations in collective bargaining through reorganization of industrial relations' practices, or the undertaking of industry-wide consultations to reduce employment terminations, etc. While there may be similarities in the impact of the crisis on employment and the labour markets in these three groups of countries *in fact*, with knock-on effects for working conditions and workers' rights, the responses to these have not been uniform and/or they have not been recognized by our national correspondents as within the scope of the ILS section of the inventory.

## II. Risks and opportunities realized

In terms of ILS, what happens to workers' conditions and rights as a result of an economic crisis can be seen in terms of *risks* and *opportunity*. The risk easiest to imagine is that *actual working conditions* and benefits are worsened and that *enforceable rights and standards* are set lower than before the crisis. The opportunities are that actual working conditions are maintained, and that rights and standards are respected, that the institutions underpinned by these rights and standards are strengthened, and that the relationship between these conditions and the function and institution of international labour standards is acknowledged. A risk/opportunity approach makes it possible to appreciate the broad scope of potential impacts, positive and negative, for the individual worker, national and even international institutions. This approach makes it possible to go beyond the binary question of whether workers' rights have been respected or not, to treat nuanced aspects of

<sup>5</sup> Egypt – Generally no change, but some actions unrelated to the crisis; India; etc.

<sup>6</sup> ILO, 2010.

workers' rights, in the context of substantive and process ILS. We look at how these risks have been encountered and opportunities realized below.

## A. Risks

In this part some of the naturally expected risks arising from the crisis, as reported by the national correspondents, are considered.

### ***Conditions reduced, de facto***

- **Unemployment.** The loss of a job or occupation as a result of the crisis is a risk of the crisis realized, a kind of ultimate reduction in conditions of work. Most of the national correspondents noted crisis-related unemployment. Yet there is no international standard *guaranteeing a job or an income to every person*.<sup>7</sup> The individual right to a job, though argued to be and promoted as a human right,<sup>8</sup> is not so widely accepted as such, and certainly not given full effect in practice. The consideration given to an obligation to pursue an employment policy that prioritizes full, freely chosen and productive employment – Convention No. 122 – could be raised, however, in the light of fiscal tightening by governments. Where such tightening has occurred, has consideration actually been given to saving jobs? How much consideration? Can the strategies used to actually try to save jobs be articulated? Although our correspondents were in a position to recognize employment losses, and measures taken to *reduce* or *prevent* them, they did not register those measures *as being taken in pursuit of an employment policy as such*.
- **Wages.** The influence of downward moving wages in the public sector is reported to have an important influence on wages elsewhere in the economy in countries like Latvia, where wages and terms of employment for relatively few are set through collective bargaining. Wage negotiations were reported suspended in Poland.
- **Working hours.** In Malaysia's main cities, business hours were extended in the evenings and weekends to boost domestic consumption. Workers servicing the change might have worked additional overtime hours to a legislated maximum of 104 per month, at the legislated overtime rate of time and a half.

<sup>7</sup> The CEACR has spoken most recently about “realizing the right to work”, in its General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization. Report of the CEACR III (1B), 2010, paras. 10-18.

<sup>8</sup> Economic And Social Council, 2006. The CEACR was able to note a declaration signed on 17 June 2009 by the Ministers of Labour of the MERCOSUR countries on the protection of employment against the crisis, which asserts “the right to work as a fundamental human right generating both social and economic wealth in harmony with productive capital”. CEACR observation, Employment Policy Convention, 1964 (No. 122), Paraguay (2010), [Report of the CEACR III (1A), 2010]. See also CEACR comments in its 2010 General Survey, *ibid*: “The Committee on Economic, Social and Cultural Rights has underlined that the right to work “should not be understood as an absolute and unconditional right to obtain employment”. It has nonetheless stated that the right to work includes “the right of every human being to decide freely to accept or choose work”, including “not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment”. Nevertheless the CEACR has been able to note “that a number of countries have identified the link between the design and pursuit of an employment policy with the implementation of the right to work” and that “many countries have incorporated a policy toward full employment or the right to work in their constitutional and legislative texts.”

- **Child and forced labour.** Several national correspondents reported no increase in child or forced labour,<sup>9</sup> although deeper research might indeed find that their prevalence has risen. A few countries have taken action in respect of feared increases in child and/or forced labour. The national correspondent in Ireland reported that the Health and Safety Authority “produced a guide to child safety on farms ... in November 2008, in direct response to the number of children killed on farms and a concern that in the crisis more children would be working in the sector...”
- **Social security costs.** Social security contributions have been reduced to help reduce costs for factories to enable them to weather the crisis.<sup>10</sup> The impact of these reductions on the right to benefits of a particular level are, of course, the other side of the development.
- **Employment contracting.** Several country correspondents noted the vulnerability of temporary contract and temporary agency workers to unemployment. This was the case in Sweden, for example. In some others, existing restrictions on different types of non-permanent employment contracts were suspended or lifted in a bid to permit the offering of additional jobs and taking up of work.

### ***Rights reduced, de jure***

- Countries may have actually reduced workers rights in an effort to stave off the effects of the crisis, particularly in respect of employment. The logic is clear: Cheapen or reduce rights at work in the hope of saving or creating jobs.
- **Termination of employment protection.** A few countries have moved or looked to move to loosen restrictions on termination of employment at the initiative of the employer.<sup>11</sup> The Czech Republic is one; Australia is another. In the case of Australia, although its Labour Party government substantially improved coverage compared with the preceding government, provisions applicable to small business employers reduce the ability of an independent tribunal to review afresh the grounds for termination, including termination on operational/economic grounds.<sup>12</sup>
- **Working hours.** The Anti-Crisis legislation in Poland provided additional flexibility in working time, achieved through various measures. The reference period for calculating working time has been increased from four to 12 months, and a 24-hour work cycle of flexible working hours has been introduced. Moreover, companies have the possibility to reduce the contractual working time by up to 50 per cent over a period of up to six months. It is not so clear that this is a reduction in workers rights as it is a change.
- **Social security benefits.** There has been a reduction in unemployment and social assistance benefits to the long term unemployed in the Czech Republic,<sup>13</sup> Sweden,

<sup>9</sup> In respect of child labour: Malaysia, Czech Republic; in respect of forced labour: Malaysia

<sup>10</sup> Cambodia.

<sup>11</sup> A review of the regulation of collective dismissals for economic reasons in 125 countries, including changes in the obligations of enterprises showed that 8 countries adopted more flexible regulations, while six countries introduced new obligations for enterprises (Muller, 2011).

<sup>12</sup> It is not clear that changes have occurred as a result of the crisis. A recent decision has upheld the lower standard under Small Business Fair Dismissal Code. A dismissal will be justified if the small business employer had reasonable grounds for conclusions reached; the belief of the employer not the conduct of the employee is the subject of review. *Narong Khammaneechan v. Nanakhon Pty Ltd ATF Nanakhon Trading Trust T/A Banana Tree Café* (U2010/8180) 14 October 2010.

<sup>13</sup> Czech Republic.

Ireland,<sup>14</sup> Serbia, etc. There has been a reduction in the amount and/or duration of unemployment benefits with the stated purpose of activating the unemployed<sup>15</sup> or on grounds of fiscal responsibility. In Germany, the national correspondent reports that a reduction of benefits is scheduled to take place after initial expansions in social protections. For example, a parenting benefit for recipients of unemployment benefits has been eliminated as a cost-savings measure.

- In Germany, an extended pension guarantee was put in place to counter the effects of applying the established formula for annual adjustment to state pension payouts. That formula would have resulted in 2009 in a decline of between 2.09 and .54 per cent depending on location. The effects of the guarantee will be recouped by a reduction in the formula in coming years. Another planned contraction in the field of social protection is a decrease in parenting benefit levels starting 2011. Benefit levels are to be reduced from the current 67 per cent of the net income (above €1250) to 65 per cent. The maximum benefit level of €1800 is retained. Indexation of social benefits has been cancelled in the Czech Republic.
- In some cases, mostly involving social security matters, the risk presented by the crisis is that conditions and benefits in the long term may well be undermined as a result of responsive measures taken. For example, in the pursuit of the strategy of reducing non-wage costs, particularly in the social protection area, longer-term funding of benefits seems potentially to have suffered at the price of support to employment. In Germany contributions of 3 per cent to the employment fund were reduced temporarily to 2.8 per cent. In Cambodia, the employers' contribution to the National Social Security Fund was reduced to .5 per cent from .8 per cent to help reduce the cost to garment factories so that they could continue to keep employing workers.<sup>16</sup> In Ireland, the Employer Job Incentive Promotion Scheme exempts employers from liability to pay their share of social insurance contributions for certain employees for 12 months. The scheme is open to employers who create new and additional jobs in 2010.<sup>17</sup>
- Moving from social protection to human resource development, in Malaysia, the Government exempted levy payments to the Human Resource Development Fund (HRDF) for a period of 6 months for employers in the textile, electrical, and electronics industries, and reduced the levy payment rate from 1 per cent to 0.5 per cent for all employers for 2 years. The national correspondent reports that the "purpose of the measure was to assist the private sector to reduce operational cost by reducing labour cost. It did not create additional job but reduced cost of doing business during the crisis."<sup>18</sup>
- **Employment contracting.** In Poland, new regulations have been introduced regarding fixed-term employment contracts, which are now allowed to last for a period of up to 24 months. The legislation also suspended until the end of 2011 a Labour Code clause stipulating that only two consecutive fixed-term employments contracts are allowed and that any subsequent contract is by law a permanent employment contract; no limit is now placed on the number of consecutive fixed-term contracts.

<sup>14</sup> There has been a change both in the period of employment needed to qualify for benefits as well as a reduction in the duration of benefits.

<sup>15</sup> Serbia.

<sup>16</sup> National correspondent Chandararot Kang reports "No evaluation has been done on the effectiveness of this measure."

<sup>17</sup> <http://www.citizensinformation.ie/categories/social-welfare/irish-social-welfare-system/social-insurance-prsi/employer-job-prsi-incentive-scheme>.

<sup>18</sup> Malaysia.

- **Other fiscal reductions.** Governmental budget cuts in rights enforcement have been reported. The large reduction in financing for equality promotion in Ireland led to the resignation of its chief executive and other criticism.<sup>19</sup>
- **Wages.** Legislative proposals have been made in Ireland to permit employers to seek a 12-month exemption from minimum wages set in Registered Employment Agreements on account of inability to pay. The measure is aimed at saving jobs; applications for exemption would be granted by labour courts upon a showing of “financial difficulties” and subject to the consent of a majority of workers.<sup>20</sup>
- **Fundamental Rights.** There are other indications in Ireland that measures to strengthen workers’ rights promised just before the crisis hit may be being reconsidered or reprioritized.<sup>21</sup> Our national correspondent reports on delays in adopting into legislation the pledged enforcement-strengthening Employment Law Compliance Act, pointing amongst other things to a 12 May 2010 Parliamentary question and answer forum exchange between a Member of the lower (but principle) house of the Irish Parliament and the responsible Minister:<sup>22</sup>

Jan O’Sullivan (Limerick East, Labour): Question 67: To ask the Minister for Enterprise, Trade and Innovation when he plans to publish anti-victimisation legislation designed to protect those workers who choose to join a trade union and which was promised by March 2009 under the Review of Towards 2016; and if he will make a statement on the matter.

Dara Calleary (Minister of State with special responsibility for Public Service Transformation and Labour Affairs, Department of Enterprise, Trade and Employment):

The *Towards 2016* [ed. national partnership agreement] *Review and Transitional Agreement 2008 – 2009* (paras 9.1 – 9.3) provides for the establishment of a review process to consider the legal and other steps necessary to enable the employee representation mechanisms that had been established under previous agreements – and in legislation – to operate as they had been intended. The Agreement (para 9.4) also commits the Government to bringing forward legislative proposals to prohibit the victimisation of trade union members and to prohibit the incentivisation of persons not to be members of a trade union.

In furtherance to these commitments, two informal meetings took place late last year, chaired by the Department of the Taoiseach and at which my Department; the Department of Finance; trade unions; and employers were represented. Position papers were prepared by the employer and trade union representatives on the issues which they saw as requiring to be addressed by any new legislation in this area. While consideration will continue within Government on proposals to address the issues involved, progress in bringing the work to a conclusion will have to take account of other priority legislative commitments to be delivered in the employment area, resource constraints within Departments, and the extent of agreement between the trade union and employer sides in this area.

<sup>19</sup> *Equality authority chief resigns* [Online]. Available: <http://www.rte.ie/news/2008/12/12/equality.html>, [Accessed 15 September 2010]. It was reported that “former President [and UN High Commissioner for Human Rights] Mary Robinson has called on the Government to review what she called ‘it’ very savage’ cut in the Equality Authority’s budget.”

<sup>20</sup> <http://www.independent.ie/national-news/government-to-allow-bosses-to-undercut-minimum-wage-2030126.html>.

<sup>21</sup> The European Industrial Relations Observatory has reported that Ireland’s 22-year-old system of social partnership has effectively fallen apart on account of disagreement on methods for securing reduction of the public pay bill. <http://www.eurofound.europa.eu/eiro/2009/12/articles/ie0912019i.htm>.

<sup>22</sup> <http://www.kildarestreet.com/wrans/?id=2010-05-12.847.0>.

- Provisions for an inability to pay clause in the Irish Industrial Relations Bill 2009 have been complained to be contrary to freedom of association standards by the Irish Congress of Trade Unions.
- **Unemployment benefits.** In some countries, social welfare benefits have been reduced as a measure to get workers back into employment by making work more attractive relative to social benefits.<sup>23</sup> This assumes, of course, that there is work on offer. In some cases, benefits are reduced only where job offers have actually been refused.<sup>24</sup> Unemployment insurance savings accounts have become more widespread, promoted by international financial institutions not the least upon the idea of internalizing to job seekers the costs of holding out for the “right” job by reducing or eliminating the sharing of risk inherent in traditional unemployment insurance schemes.<sup>25</sup>

### ***Non-conformity with international labour standards***

In a few cases it is possible to see that measures taken are actually not in conformity with international labour standards. In judging this it is most appropriate to rely on comments actually made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in regard to a situation, and this is done in the course of regular supervision of international standards – ILO conventions – that have been ratified by the country concerned.

The CEACR’s report published in February 2011 mentions the global financial crisis and/or the GJP in 41 out of some 1025 observations concerning particular countries on ratified Conventions. There may be other references made in direct requests to governments, which are not published in the report. The observations involved 13 conventions ratified by 32 countries.<sup>26</sup> More than half of the observations – twenty-one of the 41 (51 per cent) – involved the Employment Policy Convention, 1964 (No. 122); three observations (7 per cent) involved each of the Labour Inspection Convention, 1947 (No. 81), the Protection of Wages Convention, 1949 (No. 95), and the Labour Administration Convention, 1978 (No. 159); two observations (2.5 per cent) involved each of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). The table below gives remaining details.

The dialogic character of the CEACR observations is seen in their content. Most ask for information to monitor the situation of, for example, employment promotion policies’ effectiveness, or ask a question related to a particular aspect of application of these Conventions.

<sup>23</sup> Ireland.

<sup>24</sup> Ireland.

<sup>25</sup> Ferrer and Riddell, 2009. While the supervisory bodies have not yet directly considered these types of income protections for the unemployed, the principle of pooled risk is ignored in unemployment insurance savings accounts, likely contrary to international standards. See Social Security (Minimum Standards) Convention, 1952 (No. 102), article 71.

<sup>26</sup> Aruba, Austria, Belarus, Bolivia, Cambodia, Chile, China, Costa Rica, Democratic Republic of the Congo, Dominican Republic, France, Germany, Greece, Guatemala, Honduras, India, Iran, Italy, Japan, Kenya, Latvia, New Zealand, Portugal, Romania, Russian Federation, Spain, Thailand, Turkey, Ukraine, Venezuela, and Zambia.

Convention	Number of observations (%)
Employment Policy Convention, 1964 (No. 122)	21 (51%)
Labour Inspection Convention, 1947 (No. 81)	3 (7%)
Protection of Wages Convention, 1949 (No. 95)	3 (7%)
Labour Administration Convention, 1978 (No. 159)	3 (7%)
Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)	2 (5%)
Labour Inspection (Agriculture) Convention, 1969 (No. 129).	2 (5%)
Hours of Work (Industry) Convention, 1919 (No. 1)	1 (2%)
Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	1 (2%)
Labour Clauses in Public Contract Convention, 1949 (No. 94)	1 (2%)
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	1 (2%)
Equal Remuneration Convention, 1951 (No. 100)	1 (2%)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	1 (2%)
Human Resources Development Convention, 1975 (No. 142)	1 (2%)

As has been noted elsewhere, the CEACR took a rather innovative approach to its supervisory work in the case of Greece – a country not included in this study – where significant austerity measures had been taken. The measures undertaken included wage cuts in the public sector, retrenchment in the public sector, weakening employment protection clauses in the private sector which would facilitate retrenchment, reducing contract duration in the private sector, and increasing the duration of lower wage contracts in the private sector. In that case,

“the Greek trade unions submitted to the CEACR urgent observations alleging violations of no less than 10 Conventions. Faced with this challenge, the CEACR had a choice between pursuing its traditional approach of making comments on the conformity of national law and practice with ratified Conventions, or taking a more innovative path which would consist, for instance, in engaging in a constructive dialogue aimed at assisting the country to honour its international commitments while facing the challenge of fiscal consolidation. In its 2011 report, the CEACR invited the Government to avail itself of ILO technical assistance, in the form of a High Level Mission, so as to facilitate a comprehensive understanding of the issues before examining the impact of the austerity measures on the application of the ratified Conventions.”<sup>27</sup>

As of June 2011, the Greek Government accepted the mission, which took place in September 2011.

An interesting case example for which national correspondents were able to provide further details involved a matter on which the CEACR had the occasion to comment upon in 2010, concerning the provisions of a response to the crisis in Costa Rica. The response – Directive No. 004-009 issued by the National Directorate of the General Labour Inspectorate – would have made it possible for an employer to apply to the labour inspectorate for authorization to accumulate or reduce a working day, modify the wages of workers or take other measures deemed necessary to minimize the effects of the crisis. In 2010, the CEACR noted...

... with concern that the provisions of Directive No. 004-009 are contrary to the objectives of the Convention [No. 81], which are to ensure the enforcement of the legislation relating to the conditions of work and the protection of workers while engaged

<sup>27</sup> Gravel, Kohiyama and Tsotroudi, 2011.

in their work. The measures allowed by the Directive appear to be part of a strategy intended to help diminish the risk of unemployment in the context of the current global financial crisis. However, the Committee observes that these measures do not appear to have been negotiated with the social partners, and particularly with the representative organizations of workers, even though the workers are the ones whose rights are the most directly and immediately threatened. It also notes that one of the criteria to be taken into account in the treatment of the request submitted by employers in the context of Directive No. 004-009, namely whether or not the measures requested are supported by all workers, is not clear as to its impact on the decision to be taken.

The CEACR in 2011 noted relative to the same Convention No. 81, that comments by national trade unions on the application of the convention said to have been included in the Government's report had not been received. The CEACR asked the Government to send them and send a report with a reply to those comments. The case is discussed further below at paragraph 0.

## **B. Opportunities**

In this part we briefly survey reports of the opportunities for actual conditions at work and rights and standards presented by the crisis, including observed intended or effective respect of the rights and/or vindication of their usefulness.

### ***Conditions improved/maintaining***

- **Employment created.** In a case that has both positive and negative aspects, the national correspondent reported that nineteen new export processing zones were created in Colombia as part of a policy to entice foreign direct investment. But specific legislation is applicable to EPZ. In Poland, employment subsidies were provided for in the anti-crisis act aimed at maintaining the incomes of workers whose working time had been reduced. Public works of various types were mentioned as a method for income supports through formal work. Additional support for improvement or maintenance of public infrastructure was noted in several countries.
- **Social security and benefits.** In Malaysia, the lowering of a household income threshold made more civil servants eligible for a monthly pre-school fee subsidy. In Barbados, the Ministry of Finance decided to waive half of interest and penalties due to the National Insurance Department in respect of outstanding national insurance contributions. The measure will help bring contributions in from employers and the self-employed suffering liquidity problems. In Barbados, the rules for determining eligibility for unemployment benefits have not been changed.
- There were a number of reports of situations that were improved but the improvement had not been related to or caused by the crisis. In Argentina, out of 324 employment service offices, 115 were opened during the period 2008-2010, although the national correspondent reported that their opening was not in response to the current crisis. The minimum wage in Argentina was increased by about 20 per cent in three stages since 2009, in spite of the crisis.

### ***Rights expanded***

- Even if there was no expansion of rights resulting from the crisis, there have been reports of its effects promoting consideration of expansion. In Malaysia, for example, the national correspondent reports that "..., after the crisis, the Government is currently looking at possibility of introducing new policies such as unemployment benefits, minimum wage and part-time workers regulations."

- **Social security.** In Germany, KuAG benefits previously not permitted to part time or temporary workers have been granted. Arrangements were made in Australia to quicken disbursements of unemployment benefits to retrenched workers.
- **Human resource development.** In Germany, training opportunities were offered for temporary agency workers whose employers offered re-skilling or retraining; the employer pays wages, while the state fully finances the training. Similarly in Poland, part of the anti-crisis law contains provisions for financing the training of employees in enterprises under financial distress. Training may be of a maximum duration of either 6 month, or 12 months for post-graduate training, and provisions for competency training are included. In Latvia, changes were made to existing rules for training subsidies to assure that subsidized training only be given to newly hired workers and that they be employed within a minimum period after training, or else the employer is obliged to reimburse Government.
- **Unemployment benefits.** Unemployment benefits have been expanded in some countries. In Sweden, the minimum period of time worked required for membership in an unemployment insurance fund has been abolished and the minimum period of membership required for benefits has eased. Other expansions are reported in Czech Republic, where eligibility requirements have been broadened to include alternative forms of employment, such as child care. In Latvia, qualifying contribution requirements were eased; the basis for benefit calculation was also liberalized. In Argentina a youth employment programme has had the effect of extending social benefits in the context of a programme with the goal of labour market inclusion.
- **Migrant workers.** In respect of migrant workers, the Czech Republic offered supports to voluntary repatriation of legal and illegal migrants who had lost jobs. The Irish Government has moved to give undocumented migrants the opportunity to regularize themselves and thereby reduce their crisis-increased vulnerability to situations of forced labour.
- **Equality.** Although approval of broader anti-discrimination protections was reported not to be connected with the economic crisis, the Minister for Human Rights and Minorities in the Czech Republic acknowledged that adoption of the 2009 Anti-Discrimination Law is vital precisely because employers prefer dismissing older employment. See discussion below.

### ***Standards validated***

A number of measures are of a type that neither has the effect of expanding or contracting working conditions, nor directly impacts on rights as such. These measures tend to focus on labour market institutions. Having been judged by the relevant crisis-affected actors to be an appropriate crisis response, the taking of measures in these cases can be seen as a validation of the ILS involved.

A review of virtually all the inventories confirms Recommendation No. 122 on Employment Policy as a valid list of measures available to promote productive and freely chosen employment in the context of the crisis. One inventory after another names as taken one or another of the measures listed in the Recommendation.

In one country, special efforts are being made to get labour market information to migrant workers who have been newly repatriated because they have lost jobs in the migrant receiving country.

As noted above, several countries are working to maintain jobs by reducing individual workers' hours of work.<sup>28</sup> This permits a reduction in output to meet the downturn in demand for product without forcing employment terminations. Several actions are needed to enable this measure, including meeting any existing requirements of minimum incomes or working hours (although some rich governments are topping up earnings lost to reduced hours). The approach of the Part Time Work Convention (No. 175) and Recommendation, 1994 (No. 182) to pro rata adjustment of wages and benefits is validated by what has been done in this measure. Job subsidies were reported in a few countries, the intended effect of which was to save jobs.<sup>29</sup> In Latvia, job reductions appear to have been the result of consultations to achieve fiscal responsibility in the public sector.

Infrastructure programmes have been used to create employment and, where used, maximize labour conditions through labour clauses in public contracts, i.e. in Barbados, for example. This is consistent with the Labour Clauses (Public contracts) Convention, 1949 (No. 94).

In the area of training, numerous countries have supported the training of person in reduced employment, made redundant by economic downturn, as well as persons who are still in employment. The Human Resources Development Convention, 1975 (No. 142) and Recommendation, 2004 (No. 195), speak in terms that resonate with measures taken by countries. Vocational advice and guidance given by employment services was particularly mentioned in one country.

In the area of SME and promotion of self-employment, there are numerous examples where actions listed in ILS prescriptions, in particular the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), having been followed. The WeGebAu in Germany provides start-up funding for low-skilled and elderly workers especially in small and medium enterprises, and expanded to a new target group of unskilled unemployed above 25 years of age and without vocational training. Financing for SME and self-employment has been enhanced in many countries. In Barbados, training programmes, financing assistance and other efforts to create a favourable environment for self-employment have been set into play in 2002 and have not been enhanced as a result of the crisis, reports the national correspondent.

### C. Missed opportunities

- In a number of cases, national correspondents reported developments that could have drawn on rather direct ILS prescriptions, but did not.
- **Labour clauses in public contracts.** Preferences have been given in public procurement to domestic firms, but in most cases nothing has been said about working conditions. This is the case in Serbia, and likely in most of those countries that have set public works contracts in motion as a means of creating employment. Exceptionally, in the United States the idea of the payment of best local conditions has been reasserted and placed in the relevant crisis-related public procurement law.
- **Child labour.** Supports to schooling in Ghana were given in the name of support to the poor. No links were formally made on the positive impact of this measure to reduce child labour.

<sup>28</sup> Germany, Hungary, Poland

<sup>29</sup> Argentina, Hungary, Sweden, Poland

- **Equality.** In Serbia, preferences are given in access to employment subsidies for the employment of disabled persons and Roma and young persons with disabilities who open their own business. This is a possibility laid out in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- **Employment agencies.** Private employment agencies can play useful intermediation role in the labour market, regardless of a crisis. Their acceptance with safeguards is promoted in ILO Convention No. 181, contrary to part of the earlier Convention No. 96. Although Ghana pledged to progressively abolish these agencies when it ratified Convention No. 96 in 1973, the Labour Act, 2003 permits their existence. In 2007, the Government acknowledged that it had modernized its policy by accepting to promote private agencies, and pledged to ratify the private-agency-friendly Convention No. 181. The crisis is perhaps an ideal moment to adjust the international obligations, considering the need to promote employment in its wake. The ILO is providing technical assistance to Ghana to ratify Conventions No. 122 and 181.
- **Sectoral support.** In Cambodia, a public-private partnership to promote tourism was started in 2008. The Barbados Hotel and Tourism Association launched a promotional programme to counteract the negative impact on the tourism sector due to a contraction in visitor arrivals. The campaign was seen as a viable means of retaining jobs and encouraging spending in the sector. There is no information in either of these cases that international standards – specifically the Working Conditions (Hotels and Restaurants) Convention, (No. 172) and Recommendation (No. 179) 1991 – have helped guide its work.<sup>30</sup>
- **Migration for employment.** Migration has been promoted in some countries as a response to the crisis.<sup>31</sup> The rights of migrants may take a back seat in these cases. But some countries do consider this point, have legislated on it, and are considering ratification as a result.
- **Unemployment insurance.** Income supports in the form of unemployment benefits reflected in the relevant conventions do not exist everywhere. In fact, they exist in only 76 countries. In some cases countries have ratified the relevant standards and the shock of the crisis have now promoted a debate.

### III. Observations and tentative conclusions

The parameters of this study do not permit the capture of all developments in working conditions and workers' rights under the crisis in terms of ILS. It has been possible to take a snapshot of the situation, and in particular from the viewpoint of our national correspondents.

#### A. Measures coincide with international standards but are not caused by them

It is difficult to say that ILS are the cause of developments in labour and social policies followed as a result of the crisis; this much can be taken from the responses from the national correspondents. In the face of a shock with global consequences, although there is evidence that measures taken were consistent with ILS, there is scant evidence that

<sup>30</sup> Inspiration from these standards could help, for example, in consideration of the role of the quality of human resources in attracting tourism to the country.

<sup>31</sup> Cambodia.

measures were taken because they were suggested or required by ILS. The national correspondent in Germany reported for example, that “compliance with neither national nor international labour standards was of concern for crisis response.” By the same token, considering the magnitude of crisis, there are only limited indications that measures taken have been inconsistent with workers’ rights as expressed in ILS, although there is a good amount of evidence that there has been a downgrading of the quality of working conditions. And yet, as seen above, there are many instances where measures coinciding with ILS have been taken. A few particular examples can be given.

Our national correspondent reports that a “free education” measure is gaining momentum in Nigeria as a result of the crisis. Its objective is the reduction of poverty and provision of basic education up to secondary level; the Federal Government is expected to implement it through the Nigeria Social Insurance Trust Fund. The CEACR commented in 2009 about access to education in connection with the Worst Forms of Child Labour Convention, 1999 (No. 182), but our national correspondent was unable to find evidence that this has been a motivating factor in the measure.

The adoption of a new law on discrimination in the Czech Republic in 2009 is an excellent example of “coincidence, not cause.” Our national correspondent recalled the process of legislative adoption, executive veto, and final adoption via ministerial override that took place between 2007 and 2009, noting that the timing of the act had nothing to do with crisis. The relevance of the legislation during the crisis was nevertheless noted during the process. “According to the then Minister for Human Rights and Minorities Michael Kocáb, who promoted adoption of the law heavily, the anti-discrimination law is vital precisely at the time of the economic crisis, as employers prefer dismissing older employees also for the fact that because of a long time spent working they usually achieve higher salaries, and therefore companies can save more.”<sup>32</sup>

In Costa Rica, even where proposals on matters that are the subject of international obligations were made in response to the crisis, those obligations were apparently not an important consideration. The proposed law had provisions designed to save jobs – hence its title, “Protection of Jobs in Times of Crisis” – by permitting reductions and adjustments in work time and allowing the obligatory taking of accrued vacation and annual leave and decreases in salaries and benefits for workers with higher incomes.<sup>33</sup> Records of the 9 June 2010 meeting of the Economic Affairs Standing Committee of the Legislative Assembly show that in rejecting the proposal, none of those involved – including organizations of employers and workers, industry groups, NGOs, various ministries and national financial institutions – mentioned ILO standards. In this case, Costa Rica is bound by several that could have been relevant to discussions, including some on weekly rest, hours of work, and holidays. Granted, the law proposal did not go to the heart of one particular ILO instrument, nor was the proposal a vitally significant one politically for any of the national actors, according to our national correspondent. It could also be that international standards were raised in discussions but not noted; at least one labour rights NGO had produced a

<sup>32</sup> www.novinky.cz. Michael Kocab: The crisis threatens the particular employee over 50 years [Online]. Available: <http://www.novinky.cz/kariera/163826-michael-kocab-krize-ohrozuje-zejmena-zamestnanec-starsi-50-let.html> [Accessed 15 December 2010].

<sup>33</sup> The proposal contained safeguards including the requirement of that government formally declare a crisis based on objective economic criteria, assurance that actions not undermine accumulation of social security benefits, and penalties against employers who used the granted liberties inappropriately.

position statement protesting the proposed measure, citing ILO conventions.<sup>34</sup> Looking at this same cases from the perspective of international supervision, the CEACR in its report published in *February 2011* noted that a “bill on employment protection in times of crisis has been brought before the Legislative Assembly” and asked the Government “to provide information on the progress made with regard to the adoption of this bill and on its potential impact on the limits applicable to hours of work” under the Hours of Work (Industry) Convention, 1919 (No. 1) ratified by Costa Rica in 1982.<sup>35</sup>

Another example can be taken from Australia. Here the idea is that international standards tend to become a driver and guider of developments only when they are breached. It was possible to confirm through the study that although the Australian Government had reported to the CEACR developments involving employment services and similar intermediation institutions the developments themselves had not, in fact, hatched as a result of international standards.<sup>36</sup> Government policy documents intended for domestic consumption have broadly referred to compliance with international obligations; indeed, the CEACR had not suggested non-compliance.

Despite these examples, the fact remains that many responsive measures are consistent with ILS. This is a heartening confirmation of the standards as a good method for capturing global practices. We must be satisfied with this in the absence of evidence that they actually drive policy making.

## **B. ILS seen with a view towards compliance**

As mentioned above, the ILO’s CEACR and tripartite supervisory bodies are best able to observe and say what direction working conditions and workers’ rights are taking as measured by ILS. They will most likely be doing more of this, at least in the short to medium term as the implications and effects of the global financial crisis continue to unfold.

A few examples of cases can be given of information on worsened working conditions attributed to the crisis coming to the attention of supervisory bodies. From Bahrain – a country that did not have a national correspondent – the Government reported to the CEACR that a majority of the 915 complaints received from migrant workers in 2008 involved non-payment of entitlements upon cessation of activity, were linked to the financial crisis.<sup>37</sup> The workers’ member of the ILC Committee on the Application of Standards from Cambodia insinuated that the crisis had been used as a basis for hiring workers on short-term contracts in Cambodia, making it possible for employers to dismiss trade union leaders and adherents with impunity.<sup>38</sup> The workers’ members of the ILC

<sup>34</sup> Asociación Servicios de Promoción Laboral cited ILO Conventions in its public statement (<http://www.aseprola.org/leer.php/219>), but not in a statement of position submitted to the Standing Committee (<http://www.aseprola.org/leer.php/226>).

<sup>35</sup> CEACR observation, Hours of Work (Industry) Convention, 1919 (No. 1), Costa Rica (2011). [Report of the CEACR III (1A), 2011].

<sup>36</sup> CEACR observation, Employment Policy Convention, 1964 (No. 122), Australia (2010). *ibid.*

<sup>37</sup> CEACR observation, Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Bahrain (2010). *ibid.*

<sup>38</sup> “...he indicated that since the global financial crisis of 2007, there had been numerous cases of violence against trade unionists and of dismissals of trade union leaders. He claimed that many

Committee on the Application of Standards reported that between 30 and 40 per cent of the total of individual accounts administered by Chile's private pension scheme AFP, had been lost as a result of the crisis, impliedly by risky investments made by the AFP.<sup>39</sup> The Chinese workers' member to the ILC Committee on the Application of Standards noted the loss of jobs to the crisis.<sup>40</sup>

In other cases, information of risks averted was received in supervisory bodies. The Chinese Government reported to the 98<sup>th</sup> (2009) Session of the ILC that a range of measures had been taken to respond to the crisis. They were designed to stimulate domestic demand, and safeguard enterprises and jobs by easing the burden on enterprises by, for example, reducing payments on social insurance contributions and the granting of various subsidies to enterprises that experienced difficulties but managed to retain workers through in-service training, work sharing or flexible wage arrangements.<sup>41</sup> The CEACR noted the Russian Federation's Anti-Crisis Programme of 2009 in an observation published in 2010 on Convention No. 122, although the Government itself did not report on the development to the Committee.<sup>42</sup> The above discussion gives a further indication of how the CEACR has reviewed compliance with ratified conventions during the crisis.

How are these supervisory bodies positioned for this kind of monitoring, in the context of the current crisis? The ILC Committee on the Application of Standards is composed of the ILO's tripartite constituents who are intimately aware of the situation in their own countries. During the five day sessions of that Committee, it is possible to discuss in depth about the situation in only about 25 individual cases selected for consideration each year. The CEACR has the possibility of reviewing the situation as reported by all governments – with the possibility of workers' and employers' organizations making written observations – on application of the relevant *ratified* conventions.

So, for example, the ILO in February 2007 published a comment to Germany about application of the Employment Service Convention, 1948 (No. 88). The Committee of Experts asked about the organization and functions of the employment service, the status of employment service staff, and cooperation between the public employment service and private employment agencies. Following the regular reporting schedule, the Government was asked to give current information on application of the Convention and to respond to the 2007 Observation, latest in September 2010, and it did. The CEACR made a follow-up comment published in March 2011. The comment did mention results achieved by the

employers, approximately 60 per cent, used subcontractors and short-term contracts to avoid unions in their company, thereby destroying freedom of association. Under short-term contracts, the rights of the staff were curtailed, especially the freedom to join a union and the right to maternity leave, years of service and annual leave." ILCCR: Examination of individual case concerning Convention No. 87, Cambodia (99<sup>th</sup> Session, 2010). [Conference Committee on the Applications of Standards, Extract from the Record of proceedings, 2010.]

<sup>39</sup> ILCCR: Examination of individual case concerning Convention No. 35, Chile (98<sup>th</sup> Session, 2009). *ibid.*

<sup>40</sup> ILCCR: Examination of individual case concerning Convention No. 122, China (98<sup>th</sup> Session, 2009). *ibid.*

<sup>41</sup> ILCCR: Examination of individual case concerning Convention No. 122, China (98<sup>th</sup> Session, 2009). *ibid.* The workers' members in the Committee noted the lacks application of domestic labour law and called for the government to say how it would remedy these deficiencies.

<sup>42</sup> CEACR observation, Convention No. 122 - Russian Federation (2010) [Report of the CEACR III (1A)]. The government's report was received only in October 2008, prior to the 2009 enactment.

employment agency.<sup>43</sup> The CEACR made a reference to the global finance and economic crisis, "...express[ing] its appreciation of the efforts in implementing measures to achieve the best possible organization of the employment market through the public employment service in an extremely difficult period.... [And] invite[ing] the Government to continue to provide, in its next reports on the application of Convention No. 88, relevant information concerning the results of measures implemented to enhance the capacity of the BA to promote full and productive employment....".<sup>44</sup>

A situation can arise where a relevant convention has been ratified, a real economy (or other) shock is felt, but there is no currently active CEACR supervision addressed to the country. An example is Malaysia, which has not received a comment on the Employment Services Convention, 1948 (No. 88) since 1994. Nevertheless it is known, that an electronic labour exchange system was launched in 2002 and has been in use since, or that during the crisis however brick and mortar jobs centres were established and used until the economy began to recover.<sup>45</sup>

The arrangements for its operation are, in fact, the result of the interests of ILO constituents who are responsible overall for setting it up. And there is, after all the possibility for acceleration in reporting and dialogue if nudged by a comment from a workers' or employers' organizations seeking *compliance*.<sup>46</sup> Outside of the regular system of reporting on ratified conventions, there are some indications of Malaysian policy and practice in respect of some of the ILO's standards on employment given in the 2010 General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization.

<sup>43</sup> The CEACR noted: "...among the results achieved: a reduction of unemployment duration (down from approximately 168 days in 2006 to approximately 125 days in 2007); an increase in the number of persons integrated into the labour market (up from 37.3 per cent in 2006 to 42.2 per cent in 2009); an increase of the public institutions' share in successful placements (up from 9.3 per cent in 2006 to 10.6 per cent in 2009); an increase of successfully filled vacancies (up from 203,725 in 2006 to 293,042 in 2009). The Government indicates that the BA's efforts were focused on its core activities, namely advisory services and placement. Specific action programmes for employers were introduced in all employment offices at the end of 2006 as a central element of the reform. Cases of good practice were selected, systematized and publicized. The Committee also notes that in 2006, the BA placement, advisory and information system (VerBIS) was put into operation to complement the Job Exchange database. Since August 2009, jobseekers can register online. Approximately 820,000 jobs are currently offered on the Job Exchange, 3.7 million candidates' profiles are published, an average of 665,000 persons visit Job Exchange every day and ten million persons view the site, which is one of the largest e-Government applications. The Committee refers to its observation on the application of the Employment Policy Convention, 1964 (No. 122) ...

<sup>44</sup> CEACR: Individual Observation concerning Employment Service Convention, 1948 (No. 88) Germany (ratification: 1954) Published: 2011 [Report of the CEACR III (1A), 2011].

<sup>45</sup> Report of the CEACR III (1B), 2011. The references are at p. 10, para. 44 (concerning introduction of the National Labour Policy in 1992); p. 11, para. 47 (noting that the strategy of the National Labour Policy is that "jobs created must be of quality and explicitly aim to upgrade workers to meet their need[s]"); p. 92, para. 382 (concerning entry into a memorandum of understanding concerning worker migration with Indonesia); p. 130, figure 1 (inclusion in a graphic representation of relation between average unemployment rate and average per capita GDP); p. 131 & 134, tables 2 & 4 (inclusion in a table showing distribution of developing countries by average unemployment rate); p. 171, para. 713 (noting Malaysia's report that their national legislation complies, at least in part, with the requirements of Convention No. 122); and p. 173, para. 722 (noting Malaysia's report that there are prospects for ratifying Convention No. 142).

<sup>46</sup> ILO, 2006, para. 35(c)(iii).

Indeed, the inventories of the national correspondents uniformly reflect an understanding of ILS in terms of *compliance*. That is to say that virtually all of the inventories reported in the vein of “here is how we have *complied* with ILS” rather than “here is how we have *used* ILS”. When it comes to ILS, this compliance mentality is of some importance in the relations between the Organization and its member states, since it is said that those standards are meant to guide national actions even where there is no issue of compliance, either because there has been no ratification, or there has been no issue raised by the ILO's supervisory bodies.<sup>47</sup>

### C. Supervision always available

In circumstances where the reality is that compliance motivates actors to act specifically *in terms of international standards*, established supervisory mechanisms stand ready for use by the aggrieved. Have they been used to steer national responses to the crisis? There are few interesting examples.

The employers' and workers' organizations in Turkey actively engage with the CEACR's supervision of ratified Conventions, recently involving the effects of the crisis. The coverage and determination of the minimum wage has been the subject of comments by both national employers' and workers' organizations. Following standard procedure, the CEACR repeats the content of the parties' positions in their comment to the Government – including the employers' organizations' sentiment that “other economic factors apart from the inflation rate should be taken into consideration [in determining the minimum], such as for instance the economic crisis, market slowdown, decline in productivity, and increased unemployment.” The CEACR asked the Government to send a comment in reply to the observations.<sup>48</sup> The same parties have commented for many years on problems concerning the non-payment or delayed payment of wages affecting, according to the public employee union involved, “considerable numbers of workers in the private sector but also municipal workers”. The employers argue that “that excessive financial obligations, such as high tax and social insurance contributions imposed on registered workers and employers, increase the difference between gross and net wages, and diminish the country's competitiveness” but give no explanation on the matter of actual wage payments. The CEACR noted the Government's position that the delays in the payment of wages were “caused mainly by the economic crisis affecting all enterprises or organizations, private or public”, and concluded:

The Committee recalls in this connection paragraphs 358 and 366 of its General Survey of 2003 on the protection of wages, in which it pointed out that whatever the intricate causes of the problem of wage arrears, the deferred payment of wages is part of a vicious circle that inexorably affects the entire national economy. The Committee hopes that the Government will continue its efforts for devising appropriate solutions to the problem of delayed or non-payment of wages through social dialogue and better implementation of the labour legislation. The Committee accordingly requests the Government to closely monitor the situation and continue to provide up to date information on the number of workers and types of enterprises affected by accumulated wage arrears and any progress made in settling outstanding payments in both the public and private sector. Finally, the Committee requests the Government to transmit any

<sup>47</sup> As proposed, for example, in ILO-IMF, 2010, p. 75, concerning recovery from the crisis: “Increasingly, national choices about labour market institutional arrangements are informed by experience from other countries and can draw on international labour standards for guidance.”

<sup>48</sup> CEACR observation, Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) - Turkey (2009). [Report of the CEACR III (1A)].

comments it may wish to make in reply to the latest observations of TISK and TÜRK-  
IS.<sup>49</sup>

The CEACR uses a “general observation” to communicate and dialogue with all countries that have ratified a particular convention where there are important developments affecting the application of that convention. Three general observations have been made (reproduced in annex), in 2009 and 2010, referring to the impact of the crisis. They have been in respect of wages, termination of employment, and social security and give an insight into the means available to the supervisory bodies to engage to protect working conditions and workers’ rights in the context of a crisis.

The general observation on wages best captures the relationship between the relevant standards, response to the crisis and the desired function of the system of standards. It identified the relevant standards, synergizes with the Global Jobs Pact, and concludes by saying (*emphasis added*):

*To enable the Committee to discharge its functions in monitoring the application of ratified Conventions and also permit the Office to facilitate the exchange of good practices, tested policies and innovative solutions, the Committee would be grateful if the governments concerned would collect and transmit together with their regular reports detailed information on any wage policy measures taken or planned in connection with the current economic crisis which would have an impact on relevant Conventions, especially with reference to: (i) readjustment of minimum wage rates; (ii) prevention of large-scale phenomena of wage arrears; (iii) protection of workers’ claims in bankruptcy or insolvency proceedings; and (iv) inclusion of labour clauses in stimulus packages focusing on public works projects.*

It will be interesting to see the quality and quantity of information returned in response to the general observation in the coming years<sup>50</sup> as well as the means by which the Office is able to communicate practices, policies and solutions outward to constituents. It would also be interesting to know how this request and the resulting outward-bound information is received by policy actors who are not traditionally involved with ILS, whether they are aware of the ILS implications of the measures they promote and take, or acknowledge those implications.<sup>51</sup>

The CEACR’s supervision of international standards that are not ratified has also given the body an opportunity to prompt the social partners to avoid having the global economic crisis hasten a deterioration of respect for international standards and a “race to the bottom”. Two General Surveys relevant to the crisis have been made by the CEACR since 2008: the 2010 General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization<sup>52</sup> and the 2011 General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for

<sup>49</sup> CEACR: Individual Observation, Protection of Wages Convention, 1949 (No. 95) - Turkey (2009). *ibid.*

<sup>50</sup> Regular reports from requested from ratifying Member states according to schedule staggered over several years.

<sup>51</sup> As of the 2011 reporting cycle, the CEACR has had the occasion only to refer Governments to the 2009 General Observation, as can be seen in Annex V comments to Aruba, Islamic Republic of Iran and Zambia.

<sup>52</sup> Report of the CEACR III (1B), 2010.

a Fair Globalization.<sup>53</sup> The CEACR had the opportunity to repeatedly pronounce on the impact of the economic crisis on application of the international standards, both generally and in respect of individual countries. Members of the tripartite committee of the International Labour Conference had the opportunity also to present their views of the situation in the light of the CEACR's report.

The CEACR's dialogic and observatory character comes out clearly in the 2010 General Survey on employment instruments. For example, the CEACR

... observe[d] that, in the context of the economic crisis, governments have adopted recovery programmes which seek to address the employment situation of the most severely affected members of the population. ... Through the individual comments, the Committee intend[ed] to examine how the measures taken have contributed to alleviating the impact of the economic crisis in employment generation....<sup>54</sup>

... note[d] that, in the context of the global economic crisis, some replies to the questionnaire include information on the initiatives taken by countries to address employment issues in sectors or due to the closure of industries which have been significantly affected by an economic downturn....<sup>55</sup>

...[noted m]any examples show[ing] the involvement of tripartite forums in the design and promotion of employment measures [in particular in the context of the current crisis.]...<sup>56</sup>

... note[d] that in the context of the global economic crisis efficient employment services play a key role in maintaining full employment and securing the needs of the workers and enterprises affected....<sup>57</sup>

... note[d] that during the period of the current crisis many countries have launched recovery plans and adopted specific measures to help SMEs....<sup>58</sup>

... note[d] that, among those Latin American countries already mentioned in Part A (paragraphs 53 and 63), Argentina, Mexico and Peru have adopted measures to mitigate the negative impact of the crisis. These measures include public works programmes to create social infrastructure and community development, and employment generation and training schemes targeted at the vulnerable groups most affected by the crisis....<sup>59</sup>

The CEACR's view of the standards on employment subject of the General Survey is clear in its conclusions.

The employment Conventions and Recommendations taken together therefore provide a framework to: realize the human right to work and to education for all; confront and mitigate the effects of the global economic crisis; and ensure continuing and genuine tripartite consultations.<sup>60</sup> ... The importance of maintaining labour standards is

<sup>53</sup> Report of the CEACR III (1B), 2011.

<sup>54</sup> Para. 53, citing Argentina, Chile, Egypt, and Mexico.

<sup>55</sup> Para. 63, citing Mexico and Peru.

<sup>56</sup> Para. 84, citing Brazil and New Zealand.

<sup>57</sup> Para. 202, citing the Netherlands, in the context of the crisis, in para. 224.

<sup>58</sup> Para. 414.

<sup>59</sup> Para. 621.

<sup>60</sup> Para. 788.

emphasized in the Global Jobs Pact, adopted by the Conference in June 2009 in the midst of the present global economic crisis. In this regard, the employment instruments, together with the fundamental Conventions and other relevant ILO standards, provide governments with the essential tools to maintain labour standards as a basis for a sustainable recovery.<sup>61</sup>

The 2009 General Survey on social security instruments alights from a perspective somewhat different from that the 2010 document on employment instruments. The existence of social security protections are threatened by their costs in the context of economic crisis; their existence and by extension respect for workers' rights in this domain are at risk. It could be said that employment and labour market policies and institutions do not suffer such a notably immediate, widely felt, and direct threat. Furthermore, there may be somewhat wider agreement on the practical importance of such policies and institutions during economic crisis. In such a context, the CEACR was able to note ...

... [that p]olicy integration issues have gained particular prominence in the context of the global financial and economic crisis, which has adversely impacted many social security systems by drawing them into a negative synergy involving low growth, high unemployment and budget deficit. Uncertainty as to the effectiveness of various "crisis recovery" strategies and the gravity of the austerity measures taken in many countries amplified the Committee's concerns over the sustainability of social security finances and related administration.<sup>62</sup> ...

... [particular concern] as to the fact that the current global financial and economic crisis has produced an effect of "negative integration" of financial, economic and social policies, where financial problems lead to economic slowdown, public budget deficit results in cuts in social protection, austerity measures lead to a breakdown of social dialogue, which in turn threatens social cohesion and political stability. Social security is being increasingly drawn into the vicious circle of depleting resources, growing public debts, reduction of benefits and social protests. ....<sup>63</sup>

#### **D. Strengthening the ILS link by acknowledging it**

The measures taken in response to the crisis appear from the inventories to be tied to or understood in terms of international labour standards only within the bounds of the ILO's supervisory systems, as well as the community of social partners and civil society who are intimately engaged with them. If, as mentioned at the beginning of the paper, the hope is that international labour standards and global policy instruments such as the GJP will inspire the pertinent actors to "prevent a downward spiral in labour conditions" by keeping workers' rights out of the fray of responses to the crisis, one could argue that it is important that responsive measures are taken because ILS mandate them or with the knowledge that they are mandated by ILS. The interesting thing here is that so many – not all, but many – of the responsive measures are consistent with ILS. Perhaps the greatest effect of the kind of acknowledgement being suggested here is strengthening the legitimacy of ILS substance as a guide to action, and the ILO supervisory system to the extent it can prove itself to be a meaningful catalyst to influence those actors who would otherwise tread upon labour rights.

<sup>61</sup> Para. 791.

<sup>62</sup> Para. 4.

<sup>63</sup> Para. 439.

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# Appendix I

## Global Jobs Pact

August 2009

The General Conference of the International Labour Organization,

Having heard the Heads of State, Vice-Presidents, Prime Ministers and all other participants in the ILO Summit on the Global Jobs Crisis,

Having received the proposal made by the Conference Committee of the Whole on Crisis Responses,

Considering the important role that the Governing Body and the International Labour Office have in the implementation of resolutions adopted by the Conference,

Having in mind the Decent Work Agenda and the Declaration on Social Justice for a Fair Globalization as ways of dealing with the social dimension of globalization,

adopts, this nineteenth day of June of the year two thousand and nine, the following resolution.

### **RECOVERING FROM THE CRISIS: GLOBAL JOBS PACT**

#### **I. A DECENT WORK RESPONSE TO THE CRISIS**

1. The global economic crisis and its aftermath mean the world faces the prospect of a prolonged increase in unemployment, deepening poverty and inequality. Employment has usually only recovered several years after economic recovery. In some countries, the simple recovery of previous employment levels will not be enough to contribute effectively to strong economies, and to achieve decent work for women and men.

2. Enterprises and employment are being lost. Addressing this situation must be part of any comprehensive response.

3. The world must do better.

4. There is a need for coordinated global policy options in order to strengthen national and international efforts centred around jobs, sustainable enterprises, quality public services, protecting people whilst safeguarding rights and promoting voice and participation.

5. This will contribute to economic revitalization, fair globalization, prosperity and social justice.

6. The world should look different after the crisis.

7. Our response should contribute to a fair globalization, a greener economy and development that more effectively creates jobs and sustainable enterprises, respects workers' rights, promotes gender equality, protects vulnerable people, assists countries in the provision of quality public services and enables countries to achieve the Millennium Development Goals.

8. Governments and workers' and employers' organizations commit to work together to contribute to the success of the Global Jobs Pact. The International Labour Organization's (ILO's) Decent Work Agenda forms the framework for this response.

#### **II. PRINCIPLES FOR PROMOTING RECOVERY AND DEVELOPMENT**

9. Action must be guided by the Decent Work Agenda and commitments made by the ILO and its constituents in the 2008 Declaration on Social Justice for a Fair Globalization. We set out here a framework for the period ahead and a resource of practical policies for the multilateral system, governments, workers and employers. It ensures linkages between social progress and economic development and involves the following principles:

(1) devoting priority attention to protecting and growing employment through sustainable enterprises, quality public services and building adequate social protection for all as part of ongoing international

and national action to aid recovery and development. The measures should be implemented quickly in a coordinated manner;

- (2) enhancing support to vulnerable women and men hit hard by the crisis including youth at risk, low-wage, low-skilled, informal economy and migrant workers;
- (3) focusing on measures to maintain employment and facilitate transitions from one job to another as well as to support access to the labour market for those without a job;
- (4) establishing or strengthening effective public employment services and other labour market institutions;
- (5) increasing equal access and opportunities for skills development, quality training and education to prepare for recovery;
- (6) avoiding protectionist solutions as well as the damaging consequences of deflationary wage spirals and worsening working conditions;
- (7) promoting core labour standards and other international labour standards that support the economic and jobs recovery and reduce gender inequality;
- (8) engaging in social dialogue, such as tripartism and collective bargaining between employers and workers as constructive processes to maximize the impact of crisis responses to the needs of the real economy;
- (9) ensuring that short-term actions are coherent with economic, social and environmental sustainability;
- (10) ensuring synergies between the State and the market and effective and efficient regulation of market economies including a legal and regulatory environment which enables enterprise creation, sustainable enterprises and promotes employment generation across sectors; and
- (11) the ILO, engaging with other international agencies, international financial institutions and developed countries to strengthen policy coherence and to deepen development assistance and support for least developed, developing and transition countries with restricted fiscal and policy space to respond to the crisis.

### **III. DECENT WORK RESPONSES**

10. The above principles set the general framework within which each country can formulate a policy package specific to its situation and priorities. They equally should inform and support action by the multilateral institutions. Set out below are some specific policy options.

#### **ACCELERATING EMPLOYMENT CREATION, JOBS RECOVERY AND SUSTAINING ENTERPRISES**

11. To limit the risk of long-term unemployment and increased informality which are difficult to reverse, we need to support job creation and help people into work. To achieve this, we agree to put the aim of full and productive employment and decent work at the heart of the crisis responses. These responses may include:

- (1) boosting effective demand and helping maintain wage levels including via macroeconomic stimulus packages;
- (2) helping jobseekers by:
  - (i) implementing effective, properly targeted active labour market policies;
  - (ii) enhancing the competence and increasing resources available to public employment services so that job-seekers receive adequate support and, where they are working with private employment agencies, ensuring that quality services are provided and rights respected; and
  - (iii) implementing vocational and entrepreneurial skills programmes for paid and self-employment;
- (3) investing in workers' skills development, skills upgrading and re-skilling to improve employability, in particular for those having lost or at risk of losing their job and vulnerable groups;
- (4) limiting or avoiding job losses and supporting enterprises in retaining their workforce through well-designed schemes implemented through social dialogue and collective bargaining. These could include work-sharing and partial unemployment benefits;

- (5) supporting job creation across sectors of the economy, recognizing the multiplier effect of targeted efforts;
- (6) recognizing the contribution of small and medium-sized enterprises (SMEs) and micro-enterprises to job creation, and promoting measures, including access to affordable credit, that would ensure a favourable environment for their development;
- (7) recognizing that cooperatives provide jobs in our communities from very small businesses to large multinationals and tailoring support for them according to their needs;
- (8) using public employment guarantee schemes for temporary employment, emergency public works programmes and other direct job creation schemes which are well targeted, and include the informal economy;
- (9) implementing a supportive regulatory environment conducive to job creation through sustainable enterprise creation and development; and
- (10) increasing investment in infrastructure, research and development, public services and “green” production and services as important tools for creating jobs and stimulating sustained economic activity.

### BUILDING SOCIAL PROTECTION SYSTEMS AND PROTECTING PEOPLE

12. Sustainable social protection systems to assist the vulnerable can prevent increased poverty, address social hardship, while also helping to stabilize the economy and maintain and promote employability. In developing countries, social protection systems can also alleviate poverty and contribute to national economic and social development. In a crisis situation, short-term measures to assist the most vulnerable may be appropriate.

- (1) Countries should give consideration, as appropriate, to the following:
  - (i) introducing cash transfer schemes for the poor to meet their immediate needs and to alleviate poverty;
  - (ii) building adequate social protection for all, drawing on a basic social protection floor including: access to health care, income security for the elderly and persons with disabilities, child benefits and income security combined with public employment guarantee schemes for the unemployed and working poor;
  - (iii) extending the duration and coverage of unemployment benefits (hand in hand with relevant measures to create adequate work incentives recognizing the current realities of national labour markets);
  - (iv) ensuring that the long-term unemployed stay connected to the labour market through, for example, skills development for employability;
  - (v) providing minimum benefit guarantees in countries where pension or health funds may no longer be adequately funded to ensure workers are adequately protected and considering how to better protect workers’ savings in future scheme design; and
  - (vi) providing adequate coverage for temporary and non-regular workers.
- (2) All countries should, through a combination of income support, skills development and enforcement of rights to equality and non-discrimination, help vulnerable groups most hard hit by the crisis.
- (3) In order to avoid deflationary wage spirals, the following options should be a guide:
  - social dialogue;
  - collective bargaining;
  - statutory or negotiated minimum wages. Minimum wages should be regularly reviewed and adapted. Governments as employers and procurers should respect and promote negotiated wage rates. Narrowing the gender pay gap must be an integrated part of these efforts.

13. Countries that have strong and efficiently run social protection systems have a valuable inbuilt mechanism to stabilize their economies and address the social impact of the crisis. These countries may need to reinforce existing social protection systems. For other countries, the priority is to meet urgent needs, while building the foundation for stronger and more effective systems.

## STRENGTHENING RESPECT FOR INTERNATIONAL LABOUR STANDARDS

14. International labour standards create a basis for and support rights at work and contribute to building a culture of social dialogue particularly useful in times of crisis. In order to prevent a downward spiral in labour conditions and build the recovery, it is especially important to recognize that:

- (1) Respect for fundamental principles and rights at work is critical for human dignity. It is also critical for recovery and development. Consequently, it is necessary to increase:
  - (i) vigilance to achieve the elimination and prevention of an increase in forms of forced labour, child labour and discrimination at work; and
  - (ii) respect for freedom of association, the right to organize and the effective recognition of the right to collective bargaining as enabling mechanisms to productive social dialogue in times of increased social tension, in both the formal and informal economies.
- (2) A number of international labour Conventions and Recommendations, in addition to the fundamental Conventions, are relevant. These include ILO instruments concerning employment policy, wages, social security, the employment relationship, the termination of employment, labour administration and inspection, migrant workers, labour conditions on public contracts, occupational safety and health, working hours and social dialogue mechanisms.
- (3) The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is an important and useful tool for all enterprises, including those in supply chains, for responding to the crisis in a socially responsible manner.

## SOCIAL DIALOGUE: BARGAINING COLLECTIVELY, IDENTIFYING PRIORITIES, STIMULATING ACTION

15. Especially in times of heightened social tension, strengthened respect for, and use of, mechanisms of social dialogue, including collective bargaining, where appropriate at all levels, is vital.

16. Social dialogue is an invaluable mechanism for the design of policies to fit national priorities. Furthermore, it is a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for a sustainable recovery. Successfully concluded, it inspires confidence in the results achieved.

17. Strengthening capacities for labour administration and labour inspection is an important element in inclusive action on worker protection, social security, labour market policies and social dialogue.

## IV. THE WAY FORWARD: SHAPING A FAIR AND SUSTAINABLE GLOBALIZATION

18. The above agenda closely interacts with other dimensions of globalization and requires policy coherence and international coordination. The ILO should collaborate fully with the United Nations and all relevant international organizations.

19. The ILO welcomes the G20 invitation to the ILO, working with other relevant organizations, to assess the actions taken and those required for the future.

20. We affirm our support to the ILO's role within the UN Chief Executives Board (CEB), which can help to create a favourable international environment for the mitigation of the crisis. We encourage the ILO to play a facilitating role to ensure effective and coherent implementation of social and economic policies in this respect.

21. Cooperation is particularly important on the following issues:

- (1) building a stronger, more globally consistent, supervisory and regulatory framework for the financial sector, so that it serves the real economy, promotes sustainable enterprises and decent work and better protects savings and pensions of people;
- (2) promoting efficient and well-regulated trade and markets that benefit all and avoiding protectionism by countries.

Varying development levels of countries must be taken into account in lifting barriers to domestic and foreign markets; and

- (3) shifting to a low-carbon, environment-friendly economy that helps accelerate the jobs recovery, reduce social gaps and support development goals and realize decent work in the process.

22. For many developing countries, especially the least developed, the global recession exacerbates large-scale structural unemployment, underemployment and poverty.

We recognize the need to:

- (1) give much greater priority to the generation of decent work opportunities with systematic, well-resourced, multidimensional programmes to realize decent work and development in the least developed countries;
- (2) promote the creation of employment and create new decent work opportunities through the promotion and development of sustainable enterprises;
- (3) provide vocational and technical training and entrepreneurial skills development especially for unemployed youth;
- (4) address informality to achieve the transition to formal employment;
- (5) recognize the value of agriculture in developing economies and the need for rural infrastructure, industry and employment;
- (6) enhance economic diversity by building capacity for value-added production and services to stimulate both domestic and external demand;
- (7) encourage the international community, including international financial institutions, to make available resources for countercyclical action in countries facing fiscal and policy constraints;
- (8) keep commitments to increased aid to prevent a serious setback to the Millennium Development Goals; and
- (9) urge the international community to provide development assistance, including budgetary support, to build up a basic social protection floor on a national basis.

23. Governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability. The ILO's Minimum Wage Fixing Convention, 1970 (No. 131), can provide guidance in this respect.

24. This current crisis should be viewed as an opportunity to shape new gender equality policy responses. Recovery packages during economic crises need to take into account the impact on women and men and integrate gender concerns in all measures. In discussions on recovery packages, both regarding their design and assessing their success, women must have an equal voice with men.

25. Giving effect to the recommendations and policy options of the Global Jobs Pact requires consideration of financing. Developing countries that lack the fiscal space to adopt response and recovery policies require particular support. Donor countries and multilateral agencies are invited to consider providing funding, including existing crisis resources, for the implementation of these recommendations and policy options.

## V. ILO ACTION

26. The ILO has recognized authority in key areas of importance to respond to the crisis and to promote economic and social development. The ILO's capacity for research and economic and social data analysis is important in this context. Its expertise should be at the centre of its work with governments, social partners and the multilateral system. It includes, but is not limited to:

- employment generation;
- social protection design and financing models;
- active labour market programmes;
- minimum wage setting mechanisms;
- labour market institutions;
- labour administration and labour inspection;

- decent work programmes;
- enterprise creation and development;
- international labour standards – implementation and monitoring;
- social dialogue;
- data collection;
- gender equality in the labour market;
- workplace programmes on HIV/AIDS; and
- labour migration.

27. The following activities can only strengthen the practical work outlined above:

- improving countries' capacity to produce and use labour market information, including on wage trends, as a basis for informed policy decisions, and collect and analyse consistent data to help countries benchmark their progress;
- collecting and disseminating information on countries' crisis response and recovery packages;
- assessing the actions taken and those required for the future, working with other relevant organizations;
- strengthening partnerships with regional development banks and other international financial institutions;
- strengthening country-level diagnostic and policy advisory capacity; and
- prioritizing crisis response in Decent Work Country Programmes.

## Appendix II

### A note on the ILO's supervisory system

For more information see: [www.ilo.org/normes](http://www.ilo.org/normes).

1. International labour standards (Conventions and Recommendations) are backed up by a supervisory system which is unique at the international level and, in particular, helps to ensure that ILO Members properly implement the Conventions they ratify. The ILO regularly examines the application of standards in member States and points out areas where improvements could be made. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance. It has developed various means of monitoring the application of Conventions and Recommendations in law and practice following their adoption by the International Labour Conference and, in the case of Conventions, their ratification by States.

2. There are two kinds of supervisory mechanisms:

(a) *The regular system of supervision*, involving the examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of ratified Conventions; and

(b) *Special procedures*, comprising a representations procedure and a complaints procedure of general application, together with a special procedure for freedom of association.

### The regular system for supervising the application of standards

3. The regular system of supervision is based on the examination by two ILO bodies of reports on the application in law and practice sent by member States to the ILO Director-General in accordance with article 22 of the Constitution. This examination may take account of observations from the representative organizations of employers and workers to which the Member concerned is required (under article 23, paragraph 2, of the Constitution) to communicate a copy of the information and report sent to the Director-General. These two bodies are:

(1) the Committee of Experts on the Application of Conventions and Recommendations; and

(2) the tripartite Committee on the Application of Standards, a standing committee of the ILC.

### Special procedures

4. Unlike the regular system of supervision, the three procedures listed below are based on the submission of a representation<sup>64</sup> or a complaint:<sup>65</sup>

(1) procedure for representations on the application of ratified Conventions;

(2) procedure for complaints concerning the application of ratified Conventions;

(3) special procedure for complaints regarding freedom of association (Committee on Freedom of Association).

<sup>64</sup> The representation procedure is governed by articles 24 and 25 of the ILO Constitution. It grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any member State which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".

<sup>65</sup> The complaint procedure under the ILO Constitution is governed by articles 26-34. Under these provisions, a complaint may be filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, a delegate to the ILC or the Governing Body in its own capacity. Upon receipt of a complaint, the Governing Body may form a commission of inquiry to carry out a full investigation of the complaint. A commission of inquiry is the ILO's highest level investigative procedure; it is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. When a country refuses to fulfil the recommendations of a commission of inquiry, the Governing Body can take "such action as it may deem wise and expedient to secure compliance therewith" (article 33 of the ILO Constitution). In addition, in 1951, the ILO set up a Committee on Freedom of Association for the purpose of examining complaints about violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions.

## Appendix III

### Questions in the inventory related to strengthening respect for international labour standards

- 1) Please indicate relevant national labour standards (labour codes, labour relations, constitution, etc.) in actions referred to in response to this questionnaire;
- 2) Please indicate measures taken to ensure compliance with national labour standards (labour codes, labour relations, constitution, etc.) in actions referred to in response to this questionnaire;
- 3) Please indicate relevant international labour standards (Conventions, ratifications, with comments of the supervisory bodies) in actions referred to in response to this questionnaire;
- 4) Please indicate measures taken to ensure compliance with relevant international labour standards (especially in the light of supervisory comments) in actions referred to in response to this questionnaire;
- 5) Please indicate measures taken to implement international labour standards directly related to the crisis, including gender disaggregation,
- 6) Please indicate measures taken to prevent the worsening and achieve the elimination of
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  - child labour, including trafficking
  - discrimination at work
- 7) Please indicate measures taken to strengthen respect for freedom of association, the right to organize and collective bargaining
- 8) Please indicate legislative or practical measures to remedy problems of implementation of labour standards identified by international supervision or
- 9) Please indicate other measures/Remarks/Comments, particularly cases where international standards on employment or relating to rights in the workplace have been invoked.

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