



## **Strengthening the ILO's capacity: Continuation of the discussion and possible consideration of a draft authoritative document**

### **Supplementary report**

#### **Introduction: Arrangements for the continuation of the discussion on the Conference mandate (2007)**

1. It will be recalled that during the October 2007 consultations, by agreement with the Officers of the Governing Body, it was proposed that once the report for the Conference containing the draft authoritative text had been circulated in time to meet the deadline established by the Conference,<sup>1</sup> discussions should continue on the other outstanding governance and capacity matters covered in the conclusions and resolution on strengthening the ILO's capacity (ILC, 2007). For that purpose, it was suggested that a steering group of the Governing Body should be established.<sup>2</sup> During the February 2008 consultations, procedural arrangements were made for a meeting of this steering group in March. While it had already been envisaged<sup>3</sup> that the steering group would be composed of eight members of each group and that Officers of the interested Governing Body committees could participate ex officio, it was also agreed that the meeting of this group would not be closed, so as to enable interested members to participate. In addition, it was agreed that the full meeting would be preceded by an informal preparatory meeting.
2. For the purpose of these two meetings, the Office had made two documents available:
  - (1) An updated document on "The cyclical reviews scheme: Parameters relevant to its possible modalities", a provisional text of which had already been distributed during the February 2008 consultations. This updated document differed from the provisional version in two main respects. First, it contained a new annex (Annex 3)

<sup>1</sup> In order to allow sufficient time for the consideration of the draft authoritative text in advance of the discussion at the Conference.

<sup>2</sup> Oral report on the basis of the SILC consultations, Nov. 2007, para. 11.

<sup>3</sup> *ibid.*

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providing details of the possible cost savings that could arise from the implementation of the cyclical reviews scheme. Second, it contained a new section (section D) exploring possible links between the cyclical reviews scheme and the follow-up to the 1998 Declaration.<sup>4</sup>

- (2) The provisional text of a document on “Implementing a ‘programme of work’ to meet the other ‘capacity issues’ under the 2007 ILC mandate”. This document provided some provisional ideas on some of the questions related to what has been called “horizontal” governance: country studies/peer review schemes and streamlining of Decent Work Country Programmes (DWCPs). The question of external partnerships was not included in the document at this stage in view of a number of important ongoing developments that would need to be taken into account in the future.

## **Preparatory meeting on 7 March 2008**

3. As noted above, the purpose of the preparatory meeting, which was held on 7 March 2008 and moderated by Ambassador Elmiger of Switzerland, the former Chairperson of the SILC Committee during the 2007 session of the ILC, was to allow the Office to provide a briefing on the above documents in advance of the meeting of the steering group, to respond to any requests for clarification on these documents, and to settle some procedural matters.
4. In this latter connection, it was confirmed in particular that as envisaged in the decisions taken by the Governing Body relating to the 2008 agenda, the steering group would report to the Governing Body since its mandate covered issues relating to all the Governing Body committees. The view was widely expressed that the steering group or some similar device had an important function to perform even after the 2008 session of the Conference, and possibly up to the point at which the cyclical reviews system would start functioning.
5. A number of participants expressed preferences on the various options contained in the document on cyclical reviews, including as regards the structure and periodicity of the cycle. The point was also made by a number of governments that the objective of this exercise should be to rationalize the ILO’s work, particularly in terms of the various reports to the Conference. A number of participants also reiterated that this should not result in an increased reporting burden on Members, a point on which they were not yet fully reassured. In addition, a number of participants requested the Office to provide clarification on certain points:
  - the format and content of the decent work synthesis report and its relationship with the impact evaluation report envisaged under the draft authoritative text;
  - the links between the General Surveys and cyclical reports, and the pros and cons of having a General Survey either the year before or in the same year as the cyclical review; and
  - how the cyclical review reports would compare with the Global Reports and the *World Employment Report*.

<sup>4</sup> The updated version of this document is also contained in Appendix III of Report VI (ILC, 97th Session, 2008).

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6. The document on implementing a programme of work was briefly touched upon. Some participants were of the view that, with regard to horizontal governance, the mandate of the steering group should not be limited to the issues covered in that document, but should include the range of issues contained in the 2007 Conference conclusions. Interest and some doubts were expressed on the question of peer review schemes, and it was noted that this would require further discussion.
  7. In response to some of these concerns several participants, as well as the Office, emphasized that the best way to assess the most effective modalities for improved vertical and horizontal governance would be to subject them to the test of experience, and that any decisions in that regard could always be reviewed in the light of that experience.

## **Steering group consultations on 13 March 2008**

8. As noted above, the group, which met on 13 March 2008, was open to all governments interested in participating. Since the Chairperson of the Governing Body was not able to chair the meeting, it was moderated by Ambassador Elmiger. At the outset it was made clear that the group could only engage in a preliminary consideration of the options covered by the two documents because those options were designed to implement the framework to be provided by the draft authoritative text, and their discussion could thus not prejudice the future form and content of the authoritative text.
9. In response to the questions raised during the preparatory meeting as well as in various group meetings, the Office had prepared a list of “frequently asked questions and answers” which it presented briefly at the beginning of the meeting and made available to the meeting in written form. It seems useful to provide a revised and updated version of that document as background information (see appendix).
10. General support was expressed for a system of cyclical reviews which would serve inter alia as a tool – for the Office, the constituents and the general public – to enable them to acquire better knowledge of developments and trends relating to the ILO’s core objectives. Some questions, however, remained. Various speakers stressed again that such a scheme should not weaken the supervisory mechanism or affect the Organization’s standard-setting functions. It was argued that cyclical reviews should be promotional and empirically driven, and should serve to evaluate ILO performance. For this purpose the ILO needed to have the necessary analytical capacity.
11. The meeting had a preliminary exchange on the modalities of the cyclical reviews. Several governments noted considerations to be taken into account in making a choice about the cycle: that social protection was too broad a topic to be covered in one review; the contention that social dialogue should be treated as a cross-cutting objective; and the importance of efficient linkage with the Strategic Policy Framework recently set as a six-year cycle.<sup>5</sup> On the basis of these considerations the range of options for the cycle of cyclical reviews thus seemed to have been narrowed down to a three- or four-year cycle. The exchange on modalities for the cyclical reviews also discussed the decent work synthesis report and the impact evaluation report envisaged under the authoritative text, and some governments asked for further clarification on the linkage between them. One speaker favoured the option whereby the decent work synthesis report would be covered in a Director-General’s Report, rather than in a technical committee discussion.

<sup>5</sup> The question was also raised as to the strategic objective under which labour relations and labour dispute settlement would be included.

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12. Furthermore, many governments welcomed the synergies between the cyclical review scheme and other reports, but also called for synergies regarding reporting. As regards the latter, there were still some concerns about additional reporting, and about whether simplified questionnaires would be sufficiently detailed to extract the necessary information.
  13. In relation to the implications for the follow-up to the 1998 Declaration, it was agreed, first, that the nature, scope and integrity of the 1998 Declaration should be preserved. Secondly, some governments inquired specifically about the implications for the annual reviews and more generally about procedures to be followed if the follow-up to the 1998 Declaration were to be modified as envisaged in its annex. In addition, in view of the possible savings arising from the cyclical reviews scheme, the question was raised as to how these savings would be reallocated.
  14. A substantial part of the meeting was then dedicated to a discussion on the arrangements for consideration of the remaining issues and the role of the Governing Body in taking forward the process after the Conference in June 2008. It was generally held that the existence of the steering group should be confirmed and that it should operate after June 2008. Some participants even argued that it should carry on its work at least until the first cyclical review had taken place, that is, November 2010. Because of the interconnectedness of the issues involved in the cyclical reviews and the other governance and capacity issues, it was proposed that they should be dealt with first in the relevant committees of the Governing Body (including the Committee on Legal Issues and International Labour Standards (LILS) and the Programme, Financial and Administrative Committee (PFAC)) before coming to the steering group. Against this background, some governments requested more information from the Office regarding the texts (resolution or conclusions) that should be adopted at the Conference together with the authoritative text to ensure an efficient follow-up.

### **Consideration of the matter at the 301st Session of the Governing Body (March 2008)**

15. In accordance with the decision of the Governing Body at its November 2007 session to place the item on the agenda of the 2008 session of the ILC, the Director-General reported to its 301st Session (March 2008) on developments relevant to the preparation of the Conference discussion on strengthening the ILO's capacity.<sup>6</sup> The Governing Body took note of the report in question.
16. In addition, it should be noted that, in the context of its decision concerning the agenda of the 99th Session (2010) of the ILC, the Governing Body took into account the possibility that cyclical reviews could start in 2010.<sup>7</sup> It therefore decided to "defer the inclusion of a third item to a later session, in the light of the outcome of the forthcoming discussion by the Conference on strengthening the ILO's capacity".

<sup>6</sup> See GB.301/17/10(Rev.).

<sup>7</sup> See GB.301/2, paras 5–6.

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## Appendix

### Frequently asked questions

**1. Where are the issues relating to the strengthening of the Office's knowledge base and analytical capacity and other governance issues mentioned in the ILC 2007 conclusions going to be addressed?** (NB: They are not specifically addressed in the document on implementing the programme of work.)

#### Answer

- The capacity/governance issues are built into the authoritative text, which is designed to address and redress governance deficits, in particular:
  - (i) the fact that, in the absence of any mechanism to assess directly the needs of Members with respect to each strategic objective, the selection of ILO priorities relating to these objectives is biased towards a “supply logic” rather than a “demand logic”, in particular with respect to the selection of agenda items for the Conference; and
  - (ii) the “segregated” approach to the promotion of constitutional objectives, which overlooks the fact that these objectives are interdependent.
- As regards more specifically the capacity issue, the cyclical reviews will offer an objective way to detect and correct possible capacity deficits (see also answer to question 3 below).
- Last but not least, the authoritative text provides for a systematic review by the Conference of steps taken by the Governing Body and the Office to follow up on capacity/governance issues.

**2. What about the possible contradiction between the recognized need for a more integrated approach to the strategic objectives and the emphasis on cyclical reviews based on separate objectives?**

#### Answer

- There cannot be any question of *substituting* one approach for the other. The traditional “segregated approach” is built into the definition of the ILO's objectives and mandate in the Constitution. The aim is to *complement* this traditional approach with the new integrated approach.
- From a practical point of view it is envisaged that the cyclical report on each strategic objective could include a horizontal dimension, i.e. a chapter on decent work and the linkage/integration of the objective under consideration with the other objectives.

**3. What about the ILO's (analytical) capacity to cope with cyclical reviews?**

#### Answer

- A lack of such capacity, if it exists, is in no case a justification for not moving forward; that would call into question the very utility of the ILO. As pointed out by the Government of Mexico, the objective is to strengthen the capacity of the Organization to assist its Members, not to draw conclusions regarding a possible lack of capacity.
- The cyclical reviews are a key means of objectively assessing the capacity deficits, as well as any deficits in the knowledge base, and so on.
- The savings that would be made possible could go a long way towards correcting the situation and upgrading the analytical capacity where needed.

**4. What about the linkage with the supervisory mechanism and the fear of weakening it?**

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#### Answer

- The supervisory mechanisms and their possible improvement are not within the scope of SILC discussions. They are within the competence of the Governing Body and its LILS Committee. The LILS Committee has been engaged for some time in a review of these mechanisms and their improvement.
- The SILC discussion has the potential to strengthen one element which has been considered part of the supervisory machinery, namely the “General Surveys”.<sup>1</sup> To the extent that they provide objective information on legislative trends and practices, General Surveys are relevant to the proposed cyclical reviews of trends relating to strategic objectives. But the linkage is reciprocal: as discussed with the Committee of Experts, cyclical reviews could enhance the practical impact of General Surveys. The extent of this reciprocal contribution depends on the scope and timing of the General Surveys. Under article 19, paragraphs (5)(e), (6)(d) and (7)(b) of the Constitution, the setting of these modalities is within the competence of the Governing Body.
- Subject to the adoption of the authoritative text and its content, it will be for the Governing Body to review the possible modalities of cyclical reports and reviews. In addition, on the basis of any recommendation it may receive from the LILS Committee, the Governing Body may introduce such adjustments as may appear appropriate to the timing and scope of General Surveys. The LILS Committee has already envisaged considering, during its November 2008 session, the possible implications of SILC developments at the ILC on its normative strategy and the impact of the normative system.

**5. Is there a danger of an increased workload for Members as a result of new reporting modalities?** (NB: There has been a strong and repeatedly expressed feeling that there should be no additional reporting resulting from the cyclical reviews, especially because it is felt that reporting obligations under the ILO and other regimes have reached saturation point for all Members (including the most advanced ones)).

#### Answer

- There seems to be a misunderstanding about the question whether cyclical reports would require additional questionnaires. That is not the case. The collection of data necessary for cyclical reports will be based on information available to the Office, including through its field offices.
- It is true, however, that existing questionnaires under article 19 of the Constitution could be reformatted, as appropriate, to be less focused on individual instruments and their specific provisions and to be more general in nature in order to elicit information on the extent to which a given group of instruments has had any impact on legislative trends and practice and the reasons for this (see also question 6 below).

**6. How can one be sure, in the light of past practice, that these questionnaires can be reformatted without imposing a heavier burden?**

#### Answer

- Much flexibility is built into the constitutional provision and practice concerning article 19. The article has been used in different ways at different times and the questionnaires can be made extremely simple<sup>2</sup> to ensure a better rate of response – the involvement of the field structure is crucial in this respect. Concrete illustration could be provided by the Office upon request.

<sup>1</sup> See the *Guidance note on General Surveys and possible synergies between General Surveys and cyclical reviews*; in Annex 1 of the document, *The cyclical review scheme: Parameters relevant to its possible modalities*. This document is also reproduced in Appendix III of Report VI (ILC, 97th Session, 2008).

<sup>2</sup> *ibid.*

- The constituents have full control over the specific format and content of the questionnaires because questionnaires have to be approved by the Governing Body before they are sent out to Members.
- Room must be kept for experimental and transitional arrangements and adjustments can be made in the light of experience.
- In the light of the discussions on improvements to the standards-related activities of the ILO, the LILS Committee is currently reviewing ways to relieve the reporting burden on governments.

#### **7. What will be the linkage between cyclical reviews and the field structure?**

##### **Answer**

- The field structure will have a major role to play with respect to the cyclical reviews, and more generally in drawing conclusions regarding the consequences of the authoritative text with regard, for example, to DWCPs, in particular by:
  - providing relevant data and information on trends in the region to be fed into the relevant report;
  - following up and providing any assistance to Members that they may need with respect to the simplified questionnaires envisaged for the General Surveys (see questions 5 and 6 above); and
  - more generally, linking the review of the ILO field structure, which has been discussed in the PFAC during the March 2008 session of the Governing Body, to the SILC process.<sup>3</sup>

#### **8. What is the relationship between the Global Reports under the follow-up to the 1998 Declaration and cyclical reports?**

##### **Answer**

- There is no fundamental difference in the nature of these reports. They both have two dimensions, *informational* and *promotional*. The Global Reports under the 1998 Declaration follow-up are designed to establish a dynamic global picture of trends relating to the fundamental rights and principles in all countries irrespective of ratification. At the same time the Global Reports are promotional in that they are designed to serve as a basis for an action plan for technical cooperation to assist Members' efforts to attain these objectives.
- There is, however, a difference in the status of the outcome of the respective reports and their conclusions (in the form of a plan of action) vis-à-vis the Governing Body. Unlike the Global Reports, the cyclical review will be dealt with in the framework of a fully-fledged agenda item, thus making it possible for the action plan arising out of its discussion to have the status of formal conclusions and consequently directly instruct the Governing Body.
- There is also a difference in scope. The cyclical report/review would cover all four categories of fundamental principles and rights at work (FPRW) at the same time, whereas the present Global Reports cover each of them in succession on a yearly basis over a four-year cycle. The option of a cyclical review on FPRW is without prejudice to the possibility of keeping some form of short separate review in the Governing Body in the intervening years.
- Another outstanding question remains in relation to the 1998 Declaration follow-up, concerning the annual reviews. In the light of the above, one might envisage that the annual reviews be synchronized with the "consolidated" cyclical review of FPRW. As already noted, given that the "ceiling" of ratifications has almost been reached, it seems unrealistic to expect developments on a yearly basis, and one could consider the option of the reviews following the cycle of cyclical reviews.

<sup>3</sup> The proposal to increase technical expertise in the field is completely in line with the overarching objective of the SILC exercise, i.e. increasing the ILO's capacity to assist its Members. This proposal would also facilitate the role the field structure is to play in the cyclical reviews process, in terms of data collection, follow-up, etc.

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**9. How should General Surveys be “pegged” to the cyclical reviews? What are the respective pros and cons of synchronizing and staggering the two processes?**

**Answer**

- Having a General Survey in the same year may have an advantage in terms of making updated information available for the cyclical review.
- The key consideration, however, as a transitional measure is that it may be inevitable that these reports are initially discussed in the same year, in view of items already in the pipeline for General Surveys.
- But beyond this transition period the “staggered” solution may arguably be preferable, i.e. a General Survey discussion in the year before the cyclical review on that topic, in order:
  - (i) to dispel any possible confusion about the (non-supervisory) nature of cyclical reviews; and
  - (ii) for practical reasons, to give more time to “digest” the content of the General Survey as well as to incorporate any comments from the Committee on the Application of Standards and adapt it to the specific action-oriented purpose of the cyclical review.
- NB: Following a senior management meeting convened by the Director-General, there is growing awareness among all sectors of the Office of the need to anticipate the introduction of cyclical reviews and make contingency arrangements for the rapid implementation of the scheme. Arrangements for a smooth transition period, taking into account decisions that have already been taken or are in the pipeline as regards future session of the Conference, are being reviewed by NORMES.

**10. What is the relationship between the decent work synthesis report and the impact assessment report envisaged by the authoritative text?**

**Answer**

- Like other cyclical reviews, the decent work synthesis report would provide a global overview of trends (there is admittedly a certain risk of overlap with specific reports) and review actions undertaken by the ILO to promote an integrated approach with a view to establishing future priorities.
- The impact assessment report will include an assessment of the impact of the authoritative text as such *as well as of the various mechanisms put in place to implement it* (including as appropriate cyclical reviews, country studies, and so on) with a view to deciding whether they have proved adequate for the purpose.
- A possible solution to avoid or limit overlap would be to provide the global overview of trends in the form of a Director-General’s Report to the plenary.

**Final considerations**

- The authoritative text provides a framework that has to be filled in.
- The constituents will be in the “driver’s seat” for follow-up action to fill in this framework.
- The Office and the Governing Body will be accountable to the ILC for action taken under the impact evaluation provisions.
- There should be room for transitional arrangements and experimentation.
- The only issue requiring an urgent decision is the subject of the 2010 cyclical review. The bifurcation between the three-year and four-year cycle will not take place until 2012. There is thus reasonable time to weigh the pros and cons of the various options under consideration.





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