



International
Labour
Office

Geneva

Report VI

Social Dialogue

Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization



International
Labour
Conference

102nd Session, 2013

International Labour Conference, 102nd Session, 2013

Report VI

Social dialogue

*Recurrent discussion under the ILO Declaration
on Social Justice for a Fair Globalization*

Sixth item on the agenda

International Labour Office Geneva

ISBN 978-92-2-126869-7 (print)
ISBN 978-92-2-126870-3 (Web pdf)
ISSN 0074-6681

First edition 2013

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Abbreviations

ACT/EMP	Bureau for Employers' Activities
ACTRAV	Bureau for Workers' Activities
ASEAN	Association of Southeast Asian Nations
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CSO	civil society organization
CSR	corporate social responsibility
DIALOGUE	ILO Industrial and Employment Relations Department
DWCP	Decent Work Country Programme
EC	European Commission
ECB	European Central Bank
EFA	European framework agreement
EPZ	export processing zone
ESC	economic and social council
EU	European Union
GUF	Global Union federation
IFA	international framework agreement
IILS	International Institute for Labour Studies
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
IOE	International Organisation of Employers

ISO	International Organization for Standardization
ITC–ILO	ILO International Training Centre in Turin
ITUC	International Trade Union Confederation
MERCOSUR	Southern Common Market: Argentina, Brazil, Paraguay, Uruguay (<i>Mercado Común del Sur</i>)
MDGs	Millennium Development Goals
MNE	multinational enterprise
MNE Declaration	ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
OSH	occupational safety and health
PARDEV	Department of Partnerships and Development Cooperation
PRODIAF	<i>Programme régional de promotion du dialogue social en Afrique francophone</i>
SADC	Southern African Development Community
SME	small and medium-sized enterprise
SPF	Strategic Policy Framework
TCA	transnational company agreement
UN	United Nations
UNDAF	United Nations Development Assistance Framework
XBTC	extra-budgetary technical cooperation
WTO	World Trade Organization

Introduction

Background

1. At its 97th Session in 2008, the International Labour Conference (ILC) adopted the International Labour Organization's (ILO) Declaration on Social Justice for a Fair Globalization.¹ The Declaration lays out four strategic objectives that the Organization and its Members should pursue:
 - (i) promoting employment;
 - (ii) developing and enhancing measures of social protection;
 - (iii) promoting social dialogue and tripartism; and
 - (iv) respecting, promoting and realizing the fundamental principles and rights at work.
2. The Declaration emphasizes that social dialogue and tripartism should be promoted as the most appropriate methods for:
 - (i) adapting the implementation of each of the four strategic objectives to the needs and circumstances of each country;
 - (ii) translating economic development into social progress, and social progress into economic development;
 - (iii) facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and
 - (iv) making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems.²
3. The Declaration also expresses the universality of the Decent Work Agenda: all Members of the Organization must pursue policies based on the four strategic objectives. At the same time, it stresses a holistic and integrated approach by recognizing that these objectives are “inseparable, interrelated and mutually supportive”, ensuring the role of international labour standards as a useful means of achieving all of them.
4. In March 2009, the Governing Body set out a seven-year cycle for recurrent discussions of each of the four strategic objectives and decided that social dialogue would be covered once in this period. As with the previous recurrent discussions on employment in 2010, social protection in 2011 and fundamental principles and rights at work in 2012, the Office has prepared a report on the subject as the basis for discussion at the ILC.

¹ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 97th Session, Geneva, 2008.

² Part I(A)(iii) of the Declaration.

5. This report aims to disseminate better understanding of the diverse realities and needs of the ILO member States on the strategic objective of promoting social dialogue. It follows the specific guidance contained in the Annex to the Declaration with respect to the purpose of these reports, which are meant to help the constituents to:

- (i) ... understand better the diverse realities and needs of its Members with respect to each of the strategic objectives, respond more effectively to them, using all the means of action at its disposal, including standards-related action, technical cooperation, and the technical and research capacity of the Office, and adjust its priorities and programmes of action accordingly; and
- (ii) assess the results of the ILO's activities with a view to informing programme, budget and other governance decisions.³

6. In March 2011, the Governing Body adopted a proposal providing guidance for the recurrent discussion in 2013 on the strategic objective of social dialogue.⁴ It emphasized the timeliness of the discussion, given the importance that social dialogue has had in many countries in addressing the economic downturn and will need to have in order to ensure a job-rich recovery. The Governing Body recalled the Global Jobs Pact's identification of the importance of social dialogue especially in times of heightened social tension.⁵ It recognized that the 2013 discussion would allow the ILC to further analyse and define the role of social dialogue and its interrelations with the other three ILO strategic objectives.

Structure of the report

7. Chapter 1 explains that, from an ILO perspective, social dialogue and tripartism constitute the main ILO governance paradigm for promoting social justice, fair and peaceful workplace relations and decent work. Underlying this paradigm is a fundamental assumption that dialogue between actors with different interests, perspectives and views is the most effective way to find rules and policies that will work in practice for the broad benefit of society, in times of crisis and beyond. The chapter also points out the limits to the use of social dialogue by constituents in member States, given that over half the global population lives in countries that have ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).⁶ The chapter also notes that social dialogue gaps seem to have widened in some countries since the onset of the global financial crisis, even though in other parts of the world, important progress has been made in progressively establishing social dialogue in legal and institutional frameworks and processes.

8. Chapter 2 focuses on the trends, challenges and opportunities associated with actors and institutions of social dialogue through an assessment of their diverse realities and needs, in the context of a globalizing world economy as seen from different angles. It also looks at crisis-related developments and how these are affecting actors and

³ Part II(B) of the Annex to the Declaration; Part II(A)(i) of the Annex to the Declaration.

⁴ ILO: *Agenda of the International Labour Conference*, Governing Body, 310th Session, Geneva, Mar. 2011, GB.310/2, Appendix II.

⁵ ILO: *Recovering from the crisis: A Global Jobs Pact*, International Labour Conference, 98th Session, Geneva, 2009.

⁶ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, International Labour Conference, 101st Session, Geneva, 2012, para.34.

institutions of social dialogue. The chapter analyses these realities through the following lenses:

- (i) actors of social dialogue, with a focus on labour administrations, employers' organizations and workers' organizations;
- (ii) promotion of fair, productive and sound industrial relations, with an emphasis on collective bargaining, workplace cooperation, and dispute prevention and resolution;
- (iii) labour law reforms that shape the framework for social dialogue;
- (iv) national tripartite social dialogue;
- (v) cross-border and international social dialogue; and
- (vi) research on the links between social dialogue and economic performance.

9. Chapter 3 presents the Office's actions to realize the ILO's strategic objective of strengthening tripartism and social dialogue through its main tools: capacity building; training; policy advisory services; research and knowledge sharing; and design and implementation of Decent Work Country Programmes (DWCPs) and of technical cooperation projects. It also discusses the link between social dialogue and the other three ILO strategic objectives. Further, it describes the Office's actions in mainstreaming gender equality and strengthening women's engagement and voice in social dialogue mechanisms; and how the ILO works with other international organizations to include social dialogue and tripartism in their agendas.

10. Chapter 4 identifies the key observations and lessons that emerge from the analyses of the first three chapters and that offer a basis for the way forward.

11. Chapter 5 raises discussion points for adjusting the ILO's priorities and programmes of action in order to meet constituents' needs in social dialogue.

Preparation of the report

12. This recurrent report draws on a large body of ILO technical reports, desk reviews, published research and policy papers and Governing Body reports relevant to social dialogue produced over the last ten years, since the adoption of the 2002 ILO resolution on social dialogue and tripartism. It also draws on research and publications produced by other regional, international and national bodies and specialized agencies, as well as by academic and research institutions.

13. In 2012, the Governing Body also requested a working paper that would systematically synthesize results and lessons learnt from completed independent ILO evaluations, impact studies and other research related to social dialogue.⁷ Complementing this recurrent report, the working paper is presented at the current ILC to provide additional evidence of ILO social dialogue interventions, challenges and successes.

⁷ ILO: *Other questions: Office response to the suggestions and recommendations of the annual evaluation report 2010–11*, Governing Body, 313th Session, Geneva, Mar. 2012, GB.313/PFA/7/1.

Chapter 1

Social dialogue: Definitions and ILO mandate

1.1. What is social dialogue?

14. Where the interests of different segments of society do not coincide, it is generally accepted that people affected by decisions should be able to express their needs, participate in decision-making processes and influence the final decisions so that a proper balance of interests is struck by governments and other decision-makers. This basic social principle applies both to the broad political institutions of democracy and to the world of work.

15. *Social dialogue* is the term that describes the involvement of workers, employers and governments in decision-making on employment and workplace issues. It includes all types of negotiation, consultation and exchange of information among representatives of these groups on common interests in economic, labour and social policy. Social dialogue is both a means to achieve social and economic progress and an objective in itself, as it gives people a voice and stake in their societies and workplaces.

16. Social dialogue can be bipartite, between workers and employers (which the ILO refers to as the social partners) or tripartite, including government. Bipartite social dialogue may take the form of collective bargaining or other forms of negotiation, cooperation and dispute prevention and resolution. Tripartite social dialogue brings together workers, employers and government to discuss public policies, laws and other decision-making that affect the workplace or interests of workers and employers.

1.2. The role of the ILO

17. Since the ILO's creation in 1919, social dialogue has been one of the founding principles of the Organization. Its basic structure and functions are built on social dialogue and include the participation of governments, workers and employers in fulfilling its mandates.¹ Indeed, social dialogue constitutes the ILO's governance paradigm for promoting social justice, fair workplace relations, sustainable development, and social and political stability.

18. This tripartite approach is a distinctive feature of the ILO, one that permeates its main organs – the ILC, the Governing Body and the International Labour Office (its secretariat). For the Office, social dialogue, tripartism and bipartism are common means

¹ The ILO has “the solemn obligation ... to further ... programmes which will achieve ... the collaboration of workers and employers in the preparation and application of social and economic measures” (para. III). The Declaration of Philadelphia, adopted in 1944, is part of the ILO Constitution.

of action and constitute one of the four strategic objectives of the ILO's Decent Work Agenda – a globally accepted goal and tool for improving people's lives.²

19. The ILO's social dialogue governance paradigm has been reaffirmed on a number of occasions,³ most recently in the Declaration on Social Justice for a Fair Globalization, adopted by the ILC in 2008,⁴ which reaffirms the role of tripartism and social dialogue between governments and workers' and employers' organizations as vital to social cohesion and to translating economic development into social progress. In 2009, in response to the continued social impact of the crisis, the ILO constituents adopted the Global Jobs Pact, which underlines that "social dialogue is a strong basis for building the commitment of employers and workers to the joint action which governments need to overcome the crisis and for a sustainable recovery".⁵ The Pact stresses that the search for concerted policies and solutions in a tripartite context could help to prevent a "race to the bottom" in social protection.⁶

20. As will be explained in Chapter 3, social dialogue contributes to achieving the other three strategic objectives of the ILO. These objectives are interrelated and mutually reinforcing. Social dialogue constitutes a central element – process- and content-wise – for DWCPs,⁷ technical cooperation, ILO research, and knowledge-sharing activities, which often involve the social partners in their design and implementation.

21. Some of the international labour standards are particularly important to social dialogue as they lay down its core elements and conditions, notably the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), as well as the Workers' Representatives Convention, 1971 (No. 135). According to the Declaration on Fundamental Principles and Rights at Work adopted by the ILC in 1998, all ILO Members have an obligation arising from the very fact of membership in the Organization to respect, promote and realize the principles of freedom of association and effective recognition of the right to collective bargaining embodied in the first two Conventions above, independent of ratification status.

22. These standards also underline that the social partners should be independent of any interference from governments and from each other in their functioning and activities, and that they should be able to develop their programmes and carry out their activities in full freedom, including representing the interests of their members through collective bargaining in free and voluntary negotiations.

² The other three are: promoting and realizing standards and fundamental principles and rights at work; creating greater opportunities for women and men to secure decent employment and income; and enhancing the coverage and effectiveness of social protection for all.

³ ILO: *Resolutions (and conclusions) concerning tripartite consultation at the national level on economic and social policy*, Governing Body, 267th Session, Geneva, Nov. 1996, GB.267/ESP/3/1; ILO: *Effect to be given to resolution adopted by the International Labour Conference at its 90th Session (2002)*, Governing Body, 285th Session, Geneva, Nov. 2002, GB.285/7/1; World Commission on the Social Dimension of Globalization: *A fair globalization: Creating opportunities for all* (Geneva, ILO, 2004), p. 55, para. 240.

⁴ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 97th Session, Geneva, 2008.

⁵ ILO: *Recovering from the crisis: A Global Jobs Pact*, International Labour Conference, 98th Session, Geneva, 2009.

⁶ ILO: *Plan of action (2010–16): Towards widespread ratification and effective implementation of the governance Conventions* (Geneva, 2011), p. 7.

⁷ The main tool for delivering ILO services (see Chapter 3).

23. From a governance perspective, the Labour Inspection Convention, 1947 (No. 81), Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Employment Policy Convention, 1964 (No. 122), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), were designated as most significant in the Declaration on Social Justice for a Fair Globalization. These standards, along with Labour Administration Convention, 1978 (No. 150),⁸ and other ILO instruments such as the ILO resolution concerning tripartism and social dialogue, adopted by the ILC in 2002,⁹ highlight the key role that labour administrations have to play in promoting social dialogue and creating an enabling environment for sound social dialogue at bipartite and tripartite levels.

24. Social dialogue is embedded in practically all ILO Conventions and Recommendations and in the Decent Work Agenda. Such instruments cannot become fully operational without effective social dialogue, as many provisions in the Conventions explicitly require consultations with the social partners to ensure their implementation. Detailed guidelines on how governments should proceed in regulating rights and practices fundamental to social dialogue, as well as on how to develop social dialogue in policy areas such as employment, social protection and human resources, are provided in many ILO Conventions and Recommendations.

25. On the basis of these instruments, consultations between governments and the social partners are essential to ensure the fundamental principles and rights at work, including freedom of association and collective bargaining, equal pay between men and women for work of equal value and equality of opportunity and treatment in respect of employment and occupation, and efforts to combat child labour and forced labour. Such consultations – social dialogue – are also considered the best mechanism for a host of other activities (box 1.1).

Box 1.1

Social dialogue and international labour standards

International labour standards promote tripartite consultations as an appropriate mechanism to address a wide array of issues, including those to:

- ☐ pursue and periodically revise policies to promote full, productive and freely chosen employment;
- ☐ decide on all matters concerning the adoption, ratification, supervision and denunciation of international labour standards;
- ☐ strengthen labour inspection systems;
- ☐ adopt and periodically review occupational safety and health (OSH) policies at enterprise and national levels;
- ☐ ensure a sustainable and just social security system and promote national social security extension strategies;
- ☐ establish a minimum wage setting machinery and ensure effective wage payment; and
- ☐ ensure that migrant workers have a voice through the exercise of their freedom of association rights and that appropriate rights-based policies on migration are devised and implemented in full respect of the principles of equal treatment and equal opportunity.

⁸ According to Convention No. 150, labour administration is responsible for the preparation, coordination and review of national labour policy, making services available to employers' and workers' organizations, securing an effective framework for consultation, cooperation and negotiation with the most representative employers' and workers' organizations, and progressively expanding its coverage to the informal economy.

⁹ ILO: *Resolution concerning tripartism and social dialogue*, International Labour Conference, 90th Session, Geneva, 2002.

26. Social dialogue is linked in yet another way with the international labour standards, because the implementation of various “flexibility clauses” in ratified Conventions and Recommendations is almost always envisaged in these instruments in consultation with the employers’ and workers’ organizations concerned. Social dialogue thereby plays a fundamental role in advising governments during the formulation of national laws and policies that give effect to international labour standards in a way that corresponds to national situations and the real needs of employers and workers. Supervising the application of international labour standards is also organized through social dialogue processes, as reflected in the provisions of articles 19, 22 and 23 of the ILO Constitution.

27. Despite social dialogue’s pivotal role in the international labour standards, difficulties persist in practice. Challenges include inadequate fundamental conditions of freedom of association and collective bargaining rights; inefficient labour administrations; gaps in the implementation and enforcement of labour laws; lack of trust among governments, employers and workers; absence of political will; and weak social partners.

28. For example, the conclusions of the ILC discussion on fundamental principles and rights at work in 2012 draw attention to the relatively low ratification rates of Conventions Nos 87 and 98, which are crucial for developing sound and effective social dialogue.¹⁰

29. Such gaps seem to have widened since the onset of the global financial crisis, even though some governments, especially in Asia and Latin America, used the crisis as an opportunity to strengthen social dialogue and tripartite decision-making. Other governments, however, enacted important reforms without social dialogue, including reforms with negative impacts on freedom of association, employment policies, social security, wages and equality.

30. The ILO supervisory bodies have emphasized that “social dialogue is essential in normal times and becomes even more so in times of crisis”.¹¹ They have also expressed concern in certain cases under Convention No. 98, over a tendency to subordinate collective bargaining to the government’s economic policy in a number of countries and have emphasized the need to preserve the bargaining partners’ autonomy (box 1.2). On social security, they have noted that international labour and social security rights contribute to building a culture of social dialogue that is particularly useful in a crisis context. Finally, they have observed that changes in social security systems (of the size envisaged as crisis response) require a carefully balanced approach drawing on a clear, long-term vision made after consultation with all the major social and political forces in the countries concerned.¹²

¹⁰ As reaffirmed in the June 2012 recurrent discussion on fundamental principles and rights at work under the ILO Declaration on Social Justice for a Fair Globalization and the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_182951.pdf [accessed 7 Nov. 2012].

¹¹ Notably the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on Application of Standards.

¹² ILO: *General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, para. 165; similar evidence has been found through ILO research (e.g. *World of Work Report 2012*).

Box 1.2
Social dialogue and tripartism during the global financial crisis

The ILO has consistently promoted a social dialogue approach to crisis response, arguing that it is both efficient and equitable for sharing the burden of the crisis and for fashioning fair responses, including protection of the weakest segments of society.

Social dialogue and collective bargaining are powerful tools to cope with the immediate challenges of a crisis, such as preventing social unrest, avoiding a pernicious deflationary spiral and maintaining social cohesion. The *World of Work Report 2012* illustrates that successful measures to mitigate the impact of crises on economies and people have been designed with the social partners and are often seen as part of the solution to such crises.

Source: ILO and International Institute for Labour Studies (IILS): *The financial and economic crisis: A decent work response*, Geneva, 2009, pp. 56–57; IILS, 2012: *World of Work Report 2012: Better jobs for a better economy*, Geneva, 2012.

Chapter 2

Social dialogue in a changing world

31. Social dialogue has played an important role in the evolution of the modern workplace and of the political and economic decisions that lifted the standards of living of millions of workers, particularly since the Second World War. However, concerns have grown about the ability of social dialogue institutions to shape outcomes in a globalized world economy.

32. Several factors are weakening the bargaining power of labour and collective bargaining mechanisms. These factors include: the increased competition in the context of globalization; labour market reforms; less redistributive tax and social systems; increased unemployment, especially during the crisis; and a declining labour share in gross domestic product (GDP), alongside declining unionization and collective bargaining coverage in some countries.

33. Progress towards the Millennium Development Goals (MDGs) has been set back by the global financial, economic and jobs crises¹ with risks for socio-political stability and wasted human potential. A lost decade for jobs, especially for young people, has been predicted in recent ILO reports, with major implications for social dialogue, not least because of the impact on domestic consumption, the proportion of wage earners who can exercise their trade union rights and the consequent bargaining power of the social partners. The Eurozone crisis and slowing growth in other parts of the world suggest that challenges in the workplace and in achieving win-win outcomes nationally and globally will continue for workers, employers and governments.

34. The increasing division of labour markets into separate segments – with different characteristics and rules – is laying more challenges on social dialogue institutions. This segmentation implies increasing complexities in contractual arrangements (such as “regular” versus “non-standard” employment), their enforcement (in case of informality), and types of worker concerned (such as migrant, domestic or temporary agency workers).

35. However, social dialogue itself is undergoing changes in its scope, content and actors. Some of the changes may be appropriate to an evolving context, while others may challenge the very existence of social dialogue at a time it is particularly needed. At bipartite level, sectoral and national collective bargaining appears to be losing ground to bargaining at enterprise level.

36. At cross-border level, bipartite initiatives have emerged in voluntary transnational company agreements (TCAs) with Global Union federations (GUFs), in a context of competitive pressures of globalization and global supply chains. These initiatives include

¹ United Nations (UN): *Resolution adopted by the General Assembly: Keeping the promise: United to achieve the Millennium Development Goals*, General Assembly on the Millennium Development Goals, 65th session, New York, 2010, A/RES/65/1, para. 6, http://www.un.org/en/mdg/summit2010/pdf/outcome_documentN1051260.pdf [accessed 6 Nov. 2012].

international framework agreements (IFAs) that aim to create “space” for social dialogue and to promote fundamental labour rights and other international labour standards across the supply chains of the multinational enterprises (MNEs) that sign them.

37. Social dialogue’s expansion across borders stems from a multitude of voluntary initiatives by regional and global economic actors aimed at addressing the disconnection between the scope of their actions, which is increasingly international, and that of labour regulation, which remains national.

38. Many States have delegated aspects of their economic and political sovereignty to multilateral organizations and to regional integration entities. Often this delegation has not been accompanied by new institutions and processes for social dialogue, leading to a vacuum in terms of democratic debate on policy issues. Increasingly, however, free trade agreements (FTAs) and regional integration initiatives such as the European Union (EU), Economic Community of West African States, West African Economic and Monetary Union, *Mercado Común del Sur* (MERCOSUR), Southern African Development Community (SADC) and preferential trading agreements include provisions for cross-border social dialogue.

39. Social dialogue has also evolved to embrace new actors. “Tripartite-plus” social dialogue may include other civil society organizations (CSOs) such as non-governmental organizations (NGOs). The 2002 ILO resolution on social dialogue and tripartism addresses this possibility, while calling attention to the need for representativeness of such organizations. Employers’ and workers’ organizations are distinct from other civil society groups in that they represent clearly identifiable actors of the real economy and draw their legitimacy from the members they represent. Despite the proliferation of CSOs in recent decades and a regression in trade union membership, workers’ organizations remain the largest social movement in most countries and globally, representing more than 200 million affiliated workers. Business and employer organizations continue to see workers’ organizations as their preferred civil society counterpart.

40. The increasing use of the term “social dialogue” by other entities, including CSOs, MNEs, and multilateral organizations such as the EU represents both an opportunity and a challenge for the ILO. Such use has generated multiple interpretations and some confusion on, for example, “tripartism-plus”, “civil dialogue”, “stakeholders’ consultations” and “participatory governance”.

41. While all these terms cover mechanisms that arise from a desire for participation and input by constituents, unrepresentative mechanisms represent a challenge. Still, other bodies’ acknowledgement of social dialogue as an appropriate and effective governance model creates opportunities for the ILO to promote its objectives and values.

42. Although some evidence suggests social dialogue’s regression in certain countries under the pressure of financial markets, some emerging economies have strengthened collective bargaining in recent years. These trends may point towards a “race to the middle”, with some industrialized countries weakening well-developed systems of social dialogue and developing countries gradually building up the structures.

43. Thus the social dialogue actors – labour administrations and employers’ and workers’ organizations² – are increasingly faced with a need to better tackle challenges.

² This report uses the terms “trade unions” and “workers’ organizations” interchangeably. The term “workers’ representatives” – in line with the ILO Workers’ Representatives Convention, 1971 (No. 135) – refers to representatives “recognized as such under national law or practice, whether they are trade union representatives, namely, designated or elected by trade unions or by members of such unions”; or “elected representatives,

Labour administrations require better governance to improve efficiency of their core function, such as dispute prevention and resolution, labour law enforcement and labour inspection. Employers' organizations constantly need to adjust their services and strategies to an increasingly fast-changing environment, on the economic and the political fronts. And workers' organizations need to continue seeking strategies that serve to reinvigorate collective bargaining – including that for vulnerable categories of workers³ – and to open new spaces for social dialogue.

2.1. The actors of social dialogue: Changing realities, agendas and strategies

2.1.1. Labour administrations⁴

44. Strong labour administrations are crucial for effective social dialogue, yet they are often encumbered by governance issues, mainly due to underfunding (especially in developing countries, but recently also in crisis-struck European countries). Although some regions may hold out greater hope for the future, governments generally need to stem the tide of weakening mandates for labour ministries, to improve management of national labour administration institutions and to tighten coordination with public agencies under their purview and among geographical or hierarchical entities.

45. Promoting social dialogue is a core responsibility of ministries of labour (or of specialized agencies in some countries). Social dialogue's effectiveness and the soundness of industrial relations depend on the capacity of the government to act as policy-maker, administrator and, in the case of tripartism, participant.

46. ILO Conventions and Recommendations provide detailed rules and guidelines on how governments should proceed in regulating areas most often associated with labour relations (such as freedom of association and the right to bargain collectively) and on how to develop social dialogue in key policy areas (such as employment, social protection and human resources).⁵

47. In practice, labour ministries and inspectorates frequently suffer from governance problems that prevent them from performing the above functions effectively. ILO labour inspection and administration assessments in 2006–12 found the most prominent bottlenecks are in management of labour ministries; their policy-making, planning and evaluation capacities; and their insufficient funding and inefficient management of

namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned”.

³ Vulnerable categories of workers may include: migrant workers, workers with disabilities, ethnic minorities, tribal and indigenous peoples, rural and agricultural workers, domestic workers, workers in export processing zones (EPZs), workers in the informal economy and workers in non-standard forms of employment.

⁴ In line with the Labour Administration Convention, 1978 (No. 150), and the Labour Administration Recommendation, 1978 (No. 158), labour administration covers all activities undertaken by public administration bodies to assist governments in the elaboration, implementation, control and evaluation of labour policy. It includes ministerial departments and public agencies set up by national laws and regulations to deal with labour matters, and institutional frameworks for the coordination of their respective activities, and for consultations with employers and workers and their respective organizations in the development of labour policy.

⁵ Labour Inspection Convention, 1947 (No. 81); Labour Inspection Recommendation, 1947 (No. 81); Protocol of 1995 to the Labour Inspection Convention, 1947; Labour Inspection (Agriculture) Convention, 1969 (No. 129); Labour Inspection (Agriculture) Recommendation, 1969 (No. 133); Labour Administration Convention, 1978 (No. 150); Labour Administration Recommendation, 1978 (No. 158).

human resources. These problems often relate to the weakness of labour ministries vis-à-vis other ministries such as finance, economy or trade, which may in turn reflect a lack of importance attributed to labour and social issues.

48. The general discussion on labour administration and labour inspection at the 100th Session of the ILC in 2011 noted that the role of labour ministries remains marginal in many countries and that they rarely have appropriate budgets, especially in Africa and Central America. Even though how labour administrations are organized in many parts of the world is often modelled on well-functioning ministries of labour elsewhere, their capacity may be largely “on paper” and the quality of their public services poor.

49. With austerity policies in crisis-affected countries, particularly in Europe, labour ministries and agencies were often targeted for budget cuts, resulting in reductions to employment programmes and labour administration staff.

50. Yet, as witnessed in many countries at the start of the financial crisis in 2008, sound labour administration can play a major role in cushioning the consequences of economic contraction. The 2011 general discussion on labour administration and labour inspection emphasized that labour administration is key for mitigating the employment impact of economic recessions and identified an “urgent need to build, foster and maintain sound labour administration and inspection systems notwithstanding the financial and economic crisis”.⁶

51. The above factors are having serious impacts on social dialogue-related services and policies that labour administrations are called on to ensure under the Labour Administration Convention, 1978 (No. 150). Countries with weak labour administrations and inefficient labour law enforcement are usually those where social dialogue actors and institutions suffer most drawbacks in their ability to organize their activities and perform their roles as social partners. It makes little sense, for example, for a government to adopt labour laws and promote collective bargaining if it fails to put in place mechanisms – including those related to labour justice and labour dispute resolution – to guarantee compliance with these laws and collective bargaining agreements, or to educate workers and employers on the means and benefits of adhering to them.

52. Weak labour inspection systems can allow non-compliance with labour laws that regulate relationships between labour and management to persist. This deprives the social partners of essential advisory services and a predictable and level playing field, and can lead to workplace conflicts.

53. Strong labour ministries can work with the social partners to address issues that have important impacts on workers and employers. For example, the Employment Relationship Recommendation, 2006 (No. 198),⁷ suggests that member States adopt a national policy on the employment relationship that includes measures to guide parties on the existence of such a relationship, to combat disguised employment relationships, and to develop and apply standards that indicate clearly who is responsible to ensure the protection these standards offer.

⁶ ILO: *Report of the Committee on Labour Administration*, International Labour Conference, 100th Session, Geneva, 2011, pp. 88–93.

⁷ ILO: *The scope of the employment relationship*, Report V, International Labour Conference, 91st Session, Geneva, 2003; ILO: *The employment relationship*, Report V(1), International Labour Conference, 95th Session, Geneva, 2006; G. Casale: “The employment relationship: A general introduction”, in G. Casale (ed.): *The employment relationship: A comparative overview* (Geneva/Oxford, ILO/Hart Publishing, 2011), pp. 1–33.

54. The labour inspectorate is often entrusted with a central role. Several countries especially in Europe, such as Czech Republic, Denmark, Estonia, Finland, France, Hungary, Ireland, Norway, Slovenia and United Kingdom, before the crisis improved coordination of labour inspection and labour law enforcement activities, particularly in sectors with the highest share of undeclared work, such as construction, hospitality and agriculture.⁸

2.1.2. Employers' organizations

55. Employers' organizations have faced a range of challenges in the current global economic environment, one characterized by rapidly evolving technologies; labour market transformations; a changing architecture of production systems organized in global value chains; pressures on companies to improve their competitiveness and productivity; and heightened competition to attract capital and investment. These attributes of the global economy have increased the complexity for employers' organizations to represent members and respond to their expectations, obliging the bodies to review their strategies, the services offered to their members as well as their own structures.

56. One of the core objectives of employers' organizations in countries with developed collective bargaining systems has been to represent employers' interests in collective bargaining arrangements. In the United States, for example, where negotiations are at enterprise level, employers' organizations are active in political and legislative arenas, but do not intervene in collective bargaining. In Japan, the Business Federation does not take part in negotiations, but provides employers with guidelines for bargaining. In Germany, where negotiations are at industry level, employers' organizations participate in tripartite bodies in the framework of consultations.

57. The role of employers' organizations has changed, even in countries where they have had a major role in collective bargaining. As global economic integration advances, time spent on industrial relations has decreased and the focus has shifted towards policy action and advisory services aimed at enhancing the competitiveness of members. This has led many organizations to revisit their traditional service mix, invest in new capabilities, and establish new partnerships and strategic alliances. Other organizations have had to consider expanding their mandates to trade and economic issues, or merging with others (box 2.1).

Box 2.1 **Employers' organizations: Expanding mandates and consolidating representation**

The Bahamas Employers Confederation and the Bahamas Chamber of Commerce, long-established in the private sector, merged in January 2011 to form the Bahamas Chamber of Commerce and Employers Confederation. It was established to combine labour and social functions with those of trade and the economy so as to better meet the demands of the country's employers.

The Federation of Swaziland Employers and Chamber of Commerce emerged from an amalgamation of the Swaziland Chamber of Commerce and Industry and the Federation of Swaziland Employers in 2003.

Similar mergers have been seen in Finland, Ireland, Nigeria, Norway, South Africa, Sweden and Uganda.

⁸ J. Heyes (ed.): *Tackling unregistered work through social dialogue: Final report of the 2005–07 EU–ILO project*, Dialogue Working Paper No. 14 (Geneva, ILO, 2007).

58. Two major structural trends are affecting employers' organizations. The first is regionalization, as illustrated by the pan-African, Asia-Pacific and EU employers' organizations. The second is mergers among business and economic organizations and chambers of commerce, which aim to give employers a stronger national voice. Recent examples come from Finland, Ireland, Norway and Sweden, where employers have joined industry federations. Similar mergers have been seen in the Bahamas, Nigeria, South Africa, Swaziland and Uganda.

59. Unlike workers' organizations, which have often organized themselves at global or regional level by sector of activities, such as GUFs or European industry federations, only a few employers' organizations are organized by sector – one being the maritime sector (the International Maritime Employers' Committee). An outcome of this paucity is that GUFs engage in cross-border industrial relations with MNEs rather than with employers' organizations.⁹ Where collective representation of employers by sector of activity exists it is usually found at European level, with a few cases elsewhere. As more decisions are taken supranationally, employers' organizations are faced with issues concerning their global representation.

60. Another difference between employers' organizations and workers' organizations relates to data collection (box 2.2). Unlike trade union density, data on global trends for density of employers' bodies (the ratio of actual to potential members) were not collected systematically as of mid-2005.

Box 2.2 **Representing employers**

Data on 20 industrialized countries in the Organisation for Economic Co-operation and Development (OECD) showed that density had remained fairly constant in 2000–05, and that as a result, employers had remained well-organized in these countries. At the same time there were substantial differences between small and medium-sized enterprises (SMEs) on the one hand and MNEs on the other, as well as between different sectors and industries.

In European countries (for which data are more systematically collected) there was no sign of a general trend towards weakening density. In most EU Member States, membership appeared fairly stable in the period, with density rising slightly in some States (notably new EU Member States), and falling in others.

Source: Based on data analysis from selected OECD countries provided by Bernd Brandl (unpublished desk research).

2.1.3. Workers' organizations

61. Pressures linked to the global economic environment and persistent violations of workers' rights have dramatically affected workers and their unions. Lack of respect for freedom of association and collective bargaining rights; the tendency towards negotiating working conditions at enterprise level (even in countries with long traditions of sectoral and inter-sectoral social dialogue) in a context of increasing labour market segmentation; limits to workers' effective access to trade union rights (in particular non-standard employment relationships such as temporary, contract or fixed-term workers); and rising unemployment in some countries, especially among youth, have hindered organizing efforts by workers' organizations to strengthen their base and their bargaining power.

⁹ Notably through signing IFAs with MNEs covering a wide range of labour-management relations issues or setting general principles of conduct across the firm's worldwide network of affiliates.

62. In industrialized countries, trade unions have protested against workers' declining rights and incomes. Some crisis-affected countries in Europe have adopted measures as part of austerity and structural adjustment policies that restrict collective bargaining or that have a disproportionate impact on workers and pensioners.

63. The global financial crisis has had a strong negative impact on workers, with global unemployment reaching 197 million in 2012. Some countries, including those in the industrialized world (such as Greece and Spain) are struggling with unemployment exceeding 25 per cent and youth unemployment rates over 50 per cent.

64. As some countries are forced to address unsustainable fiscal deficits, workers have often shouldered the brunt of austerity measures.¹⁰ In many countries, policy reforms have weakened collective bargaining structures, minimum wages and pensions and employment protection laws, without improving growth or job creation.¹¹

65. At the request of workers' organizations, the impact of austerity measures on the application of ratified Conventions has drawn the attention of the ILO supervisory bodies (section 2.4.2).

66. In the developing world, trade unions are challenged to pay more attention to millions of unorganized workers in agriculture, the public sector and export processing zones (EPZs), as well as domestic, migrant and women workers.¹² Despite the important contribution that collective agreements can make to promote gender equality and non-discrimination at the workplace, workers' organizations are aware that collective bargaining and social dialogue processes themselves may suffer from gender stereotypes and bias, preventing them from addressing gender discrimination and from leading efforts to overcome such views.

67. Workers in the informal economy are usually excluded de facto from labour law protection and their fundamental rights are often severely violated. Workers' organizations have in some countries supported the self-employed in the informal economy by including them in their established organizations or by helping them to set up their own associations (box 2.3).

68. During the Arab Spring of late 2010–early 2011, independent trade unions emerged in some Arab States and workers' organizations played a key role during the protests in others, notably Bahrain, Egypt and Tunisia. In countries where workers' organizations suffer severe repression, social dialogue is greatly hampered, if not impossible: respect for basic civil liberties is a prerequisite.

¹⁰ ILS: *World of Work Report 2012: Better jobs for a better economy* (Geneva, ILS, 2012).

¹¹ Trade Union Advisory Committee (TUAC): *Stimulating sustainable growth, creating jobs and reducing inequality*, TUAC statement to the OECD Ministerial Council Meeting (Paris, 2012).

¹² The substantial contributions of trade unions globally to the preparatory work on the Domestic Workers Convention, 2011 (No. 189), is an illustration of this new trend.

Box 2.3
Workers' organizations and the informal economy

In India, over the last decade, trade unions have organized rural informal workers into rural workers' unions, which reached 172,270 members by 2011. These unions set up 14 workers' information centres, which helped more than 83,800 informal workers to access social security schemes.

In Indonesia, the Konfederasi Serikat Pekerja Seluruh Indonesia (KSPSI) formed the Building and Public Works Union (SPBPU) for construction and the Indonesian Transport Workers Union for transport. Most of their members are informal. The SPBPU members automatically become members of the SPBPU's cooperative and professional associations, giving them economic and occupational protection.

In Nicaragua, the Confederación de Trabajadores por Cuenta Propia (CTCP) developed in 2009 a strategy to help self-employed workers to enhance their businesses through social dialogue with certain employers and local governments. This strategy has been shared with similar organizations in other countries of the subregion (<http://www.csa-csi.org>).

In Ghana, where some 87 per cent of the labour force is informal, various sectoral unions have organized workers over several years and some of them have joined the Ghana Trades Union Congress. The Ghana Union of Traders' Associations was formed in 1989 as a federation of 15 national and regional associations of self-employed informal traders.

In Senegal, the Confédération National des Travailleurs du Sénégal (CNTS), with the MESCO bank, offers financial services to women who have been laid off and are operating small informal businesses, for example, in trading, food processing and catering (<http://www.cnts.sn/>).

In India, the Self Employed Women's Association (SEWA) protects poor women in informal self-employment and small businesses. The SEWA offers a range of services to its members, from savings and credit to health insurance and childcare (<http://www.sewa.org/>). Similar initiatives for the working poor, especially women in the informal economy, are being developed by the network Women in Informal Employment: Globalizing and Organizing (<http://wiego.org/>).

69. EPZs and similar areas subject to special regulations – notably those with fiscal incentives for businesses and streamlined administrative services to attract foreign direct investment and promote exports – are a concern for workers' organizations around the world. Although wages tend to be higher than outside EPZs, many EPZs are subject to serious limitations of freedom of association and collective bargaining rights.¹³ Labour inspectorates and the social partners sometimes have difficulty accessing these areas and thus face obstacles in ensuring labour law enforcement and effective exercise of trade union rights. The majority of EPZ workforces are composed of women,¹⁴ who are often likely to be migrant workers, unaware of their rights, in low-skilled jobs and thus more susceptible to exploitation.¹⁵ Some countries have taken steps to address the issue.

70. Social partners can play a key role in promoting and shaping international collaboration and dialogue on migration (box 2.4 and "Migrant workers" in section 2.4.4). Trade union cooperation between destination and origin countries has increased over the last few years with the signing of at least 20 bilateral trade union

¹³ ILO: *Giving globalization a human face* (General Survey on the fundamental Conventions), Report III (Part 1B), International Labour Conference, 101st Session, Geneva, 2012, para. 74.

¹⁴ T. Farole and A. Gokhan: *Special economic zones: Progress, emerging challenges and future directions* (Washington, DC, World Bank, 2011).

¹⁵ ILO: *Report and conclusions*, Committee on Gender Equality, International Labour Conference, 98th Session, Geneva, 2009, paras 24, 53.

agreements since 2009, enhancing the capacity of trade unions at both ends of migration corridors to protect migrant workers, as well as to engage in policy dialogue at national, regional and international levels.

Box 2.4
Social dialogue and migrant workers

International migration today, as throughout history, is largely about people crossing borders in search of better jobs and better lives for themselves and their families. However, debates about migration, at national and international levels, are too often disconnected from the social partners' views and concerns.

Cross-border cooperation that involves social partners can improve outcomes for the migrant workers, their households and society. This is exemplified by the Association of Southeast Asian Nations (ASEAN) Forum on Migrant Labour, which provides a platform for engagement between the workers' and employers' organizations and governments, and the development of a plan of action on migration in line with the Decent Work Programme in SADC. Social dialogue could also promote policy coherence across the UN, through increased recognition of the employment and labour-rights dimensions of migration. The second UN General Assembly High-Level Dialogue on International Migration and Development in 2013 is one such opportunity.

71. Recognizing that tripartism at national level is no longer sufficient, as many of the decisions affecting workers are now taken beyond national boundaries, workers' organizations have undertaken to develop new global dimensions to social dialogue. They advocate building and strengthening new spaces of social dialogue supranationally – and their right to participate in them – in order to be able to influence policies on workers' rights and interests. As a result some global unions are consolidating (box 2.5).

Box 2.5
Consolidation of Global Unions

In 2006, the International Confederation of Free Trade Unions and World Confederation of Labour merged, creating the International Trade Union Confederation (ITUC), the largest body of Global Unions.

In 2012, the sectoral confederation IndustriALL was set up as a result of the merger between the International Metalworkers' Federation, International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) and International Textile, Garment and Leather Workers' Federation (ITGLWF), representing workers at global level from three sectors. The new entity, by far the largest GUF, represents 50 million workers in 140 countries.

72. Other workers' organizations operating supranationally include regional unions (such as European industry federations), alliances between unions in different countries and unions in MNEs.

73. The international trade union movement has tried to advance workers' issues in global institutions such as the International Monetary Fund (IMF), the UN, the World Bank and the World Trade Organization (WTO), where they advocate for a new global development paradigm that would ensure universal respect for human and labour rights. Trade unions insist particularly that full respect for core labour standards must be a basic pillar of the WTO's trade regime.

74. The GUFs at global industry level are seeking to achieve international frameworks for social dialogue and collective bargaining. The TCAs for transport, chemicals, metals, services, wood, food, tourism and textiles aim to create a space for dialogue with the management of MNEs at various levels, by promoting ILO principles on sound labour

relations and conditions of work, including freedom of association and collective bargaining, and other international labour standards across the operations of MNEs (see also section 2.5).¹⁶

75. In contrast, international workers' organizations tend to treat with scepticism non-binding management-driven voluntary initiatives, generically classified under corporate social responsibility (CSR), such as codes of conduct. They do not see the impact of unilateral and non-binding codes in improving the capacity of workers to exercise their fundamental rights at work, especially freedom of association. On the contrary, they see a risk that such initiatives may be used to redefine or reinterpret already established labour rights. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration) and the *OECD Guidelines for multinational enterprises*, on the other hand, are instruments with the capacity to ensure a floor for labour rights across MNEs' global operations.

2.1.4. Other actors: Civil society organizations

76. "Civil society" has become a catch-all term that has facilitated the inclusion of multiple interest groups in policy-making.¹⁷ The increasing use of civil society discourses is associated with a shift in political identities from economic roles towards community identities.¹⁸

77. ILO and academic research on the involvement of the CSOs in policy processes has found that CSOs can be effective through awareness raising and information campaigns driven by human rights concerns.¹⁹ The research highlights that, within formal processes, CSOs risk being co-opted by more powerful actors as they do not enjoy the traditional safeguards of representativeness, legitimacy and clear mandates. They may be more easily intimidated, silenced or subsumed, with the risk that civil society provides apparent legitimacy for the agenda of an "elite". Usually single purpose organizations, they may lack the capacity to arbitrate between conflicting interests.

78. Employers' and workers' organizations often question dialogue processes open to civil society under "tripartite-plus", "multi-party" or "civil dialogue" formats. This position arises from their belief that genuine and effective social dialogue depends on the representativeness of the organizations engaging with government and with each other, which should be based on genuine constituencies of members.

79. Although most CSOs do not satisfy representativeness criteria that the traditional social partners enjoy, the CSOs can be valuable allies of employers' and workers' organizations, especially where trade union density and employer organization presence is low, in providing access to groups targeted by the social partners for organizing purposes (such as domestic and migrant workers or the unemployed), or in opening policy space in areas going beyond the traditional scope of labour-management and socio-economic policy (section 2.4.4).

¹⁶ I. Schömann: "The impact of transnational framework agreements on social dialogue in the European Union", in K. Papadakis (ed.): *Shaping global industrial relations: The impact of international framework agreements* (New York/Geneva, Palgrave Macmillan/ILO, 2011), pp. 21–37.

¹⁷ P. Nanz and S. Smismans: "Conceptualizing civil society and responsiveness in the EU", in C. Ruzza and V. della Sala (eds): *Governance and civil society: Theoretical and empirical perspectives* (Manchester, Manchester University Press, 2005).

¹⁸ M.J. Piore: *Second thoughts: On economics, sociology, neoliberalism, Polanyi's double movement and intellectual vacuums*, IPC Working Papers (Cambridge, MA, Industrial Performance Centre, 2008), pp. 8, 16.

¹⁹ K. Papadakis: "Bridging social dialogue and civil dialogue", in J. De Munck et al. (eds): *A new path toward democratic deliberation: Social and civil dialogue in Europe* (London/Brussels, Peter Lang, 2012), pp. 129–132.

80. From an ILO perspective, the debate over the role of CSOs and dialogue with civil society in the context of participatory governance and tripartism-plus processes was addressed in the 2002 resolution on social dialogue and tripartism. The resolution recognizes that the tripartite partners can choose to open social dialogue to other groups of civil society that share the same values and objectives – thus transforming such processes into tripartite-plus processes – in order to gain a wider perspective and consensus on specific issues beyond the agenda of the world of work. South Africa is one example where, following this rationale, civil society has been included as the fourth constituency with the tripartite social partners in the national institutionalized collective bargaining forum, the National Economic Development and Labour Council (NEDLAC).

2.2. Promoting fair, productive and sound industrial relations

81. Bipartite social dialogue and the voluntary negotiation of collective agreements between employers, workers and their organizations remain the most appropriate methods for governing working conditions, terms of employment and employment relations, even as they evolve and are adapted to new contexts. Other mechanisms that serve to balance workers' and employers' needs include workplace cooperation as well as dispute prevention and resolution.

2.2.1. Collective bargaining

Structure and coverage

82. Collective bargaining plays an important role in many countries in governing employment relations, determining wages and working conditions, balancing the needs of workers with that of employers and determining the distribution of productivity gains.²⁰

83. Collective bargaining occurs at several levels, namely national (inter-sectoral), sectoral and enterprise level. The most prevalent type is multilevel bargaining, which involves national, sectoral and enterprise level bargaining (with variations across countries). Table 2.1 offers a snapshot view of collective bargaining over wages at various levels, in countries for which information is available.

Table 2.1. Collective bargaining over wages

	Inter-sectoral level	Sectoral level	Firm level		Inter-sectoral level	Sectoral level	Firm level
Australia	–	XXX	X	Latvia	–	–	XXX
Austria	–	XXX	X	Lithuania	–	–	XXX
Belgium	XXX	X	X	Luxembourg	–	XX	XX
Brazil	–	XXX	X	Malaysia	–	–	XXX
Bulgaria	–	XXX	X	Malta	–	–	XXX
Canada	–	–	XXX	Mexico	XX	XX	XXX
Chile	–	–	XXX	Netherlands	–	XXX	X

²⁰ Other forms of governance include statutory regulation, the unilateral decisions of employers and regulation through individual contracts.

	Inter- sectoral level	Sectoral level	Firm level		Inter- sectoral level	Sectoral level	Firm level
China	–	X	XXX	New Zealand	–	–	XXX
Cyprus	–	XXX	X	Norway	XX	XX	X
Czech Republic	–	XXX	X	Philippines	–	–	XXX
Denmark	XX	XX	X	Poland	–	–	XXX
Estonia	–	–	XXX	Portugal	–	XXX	X
Finland	XX	XX	X	Romania	–	XXX	X
France	X	X	XXX	Russian Federation	X	XX	X
Germany	–	XXX	X	Singapore	–	–	XXX
Greece	X	XXX	X	Slovakia	–	–	XXX
Hungary	–	XXX	X	Slovenia	X	XXX	–
India	–	XX	XXX	South Africa	–	XXX	X
Indonesia	–	–	XXX	Spain	–	XXX	X
Ireland	XXX	X	X	Sweden	–	XXX	X
Israel	–	XXX	X	Switzerland	–	XXX	X
Italy	–	XXX	X	Turkey	–	–	XXX
Japan	–	–	XXX	United Kingdom	–	X	XXX
Republic of Korea	–	X	XXX	United States	–	–	XXX

X=existing level of wage bargaining; XX=important, but not dominant level of wage bargaining; XXX=dominant level of wage bargaining.

Source: S. Cazes et al.: *Employment protection and collective bargaining: Beyond the deregulation agenda*, Employment Working Paper No. 133 (Geneva, ILO, 2012), p. 6 (updated and adjusted for the present report).

84. Collective bargaining covers fewer than 20 per cent of workers in paid employment in about 60 per cent of ILO member States.²¹ Trends in coverage by collective agreements have diverged both geographically and over time. Over the last decade, coverage has remained relatively stable in some countries in Europe (for example, Austria, Belgium and France) and expanded in a few countries in Latin America (for instance, Argentina and Uruguay). In 2010, Argentina reached a historic peak of 2,038 collective agreements, taking the number of workers covered by such agreements in the private sector (excluding agriculture) from 3 million to 5 million from 2003.²² Collective bargaining appears to be on the increase in some developing economies in Asia (such as Cambodia, China and Indonesia). However, some countries are showing a decline in the proportion of wage earners covered by collective agreements. This sometimes follows deregulation of collective agreements, decentralization of bargaining structures and roll-back in policy support for collective bargaining. Declines can also occur in the context of restructured economies or the State's withdrawal from business activities, especially privatization of previously government-owned enterprises.

85. In countries with highly segmented labour markets, where large numbers of workers fall outside the purview of labour market regulation, collective bargaining may

²¹ *Trade union density and collective bargaining coverage*, ILO Industrial and Employment Relations Department (DIALOGUE) data, <http://www.ilo.org/ifpdial/information-resources/dialogue-data/lang--en/index.htm> [accessed 7 Nov. 2012].

²² http://www.oit.org.ar/WDMS/bib/publ/libros/notas_oit_negociacion_colectiva.pdf [accessed 6 Nov. 2012].

cover a significant number of formal wage earners but not workers in the informal economy (box 2.6). The weakness of collective bargaining and limited coverage of collective agreements in these countries place an onus on the State and on resource-constrained statutory institutions to extend coverage and monitor wages and working conditions in the informal economy.

Box 2.6
Prevalence of the informal economy

Data on the informal economy are usually scarce as not all member States collect and report data on employment in the informal economy.

Still, it would seem that in many countries in sub-Saharan Africa, the informal economy encompasses 60–80 per cent of non-agricultural workers and most sectors of the economy. (Public and high-skilled economic sectors, financial and health services are the exceptions.) A very small percentage of these workers are covered by collective agreements. In Malawi, for example, where more than 80 per cent of those employed in agriculture have informal jobs, only 20.8 per cent of wage earners are covered by collective agreements. They account for a mere 2.7 per cent of all the employed.

In Asia, many informal workers are at the bottom and lower end of production chains.

In Latin America, informality is primarily urban. Informal jobs exceed 70 per cent of total employment in non-agricultural sectors in the Plurinational State of Bolivia, Honduras, India, Lesotho, Madagascar, Mali, Paraguay, Peru, Philippines, United Republic of Tanzania, Uganda and Zambia.

Source: ILO: *Statistical update on employment in the informal economy* (Geneva, June 2012).

The impact of the global crisis

86. Countries adopting wide-ranging austerity measures included reforms on the grounds of facilitating wage adjustment and ensuring that wage bargaining takes account of regional and enterprise differences in productivity (Portugal, for instance).²³ In some countries, reforms were introduced that allow enterprise agreements to deviate from higher agreements and even statutory regulations – for example, Greece (Law 3899, 2010) and Spain (*Real Decreto ley de medidas urgentes para la reforma de la negociación colectiva*, of 10 June 2011). Others reformed extension provisions, such as Slovakia (Act No. 557, 2010 amending the consolidated Act No. 2, 1991 on collective bargaining, December 2010) and Italy (*Accordo interconfederale fra Confindustria e CGIL, CISL e UIL*, of 28 June 2011). Some governments took steps to review the representativeness criteria for social partners and a few raised thresholds in recognition procedures, such as Greece, Hungary, Italy, Portugal, Romania, Slovakia and Spain (section 2.3).

87. These measures stand in contrast to the recent experience of some countries with well-developed collective bargaining mechanisms, where labour and management developed solutions with benefits for both sides and helped to facilitate adjustment and mitigate the effects of the crisis on workers and firms. In these instances, social partners negotiated packages that responded to the economic uncertainty; met the interests of

²³ E. Allard and L. Everaert: *Lifting euro area growth: Priorities for structural reforms and governance*, International Monetary Fund Staff Discussion Note 19 (Washington, DC, 2010); K. Holm-Hadulla et al.: *Public wages in the euro area: Towards securing stability and competitiveness*, ECB Occasional Paper Series 112 (Frankfurt am Main, European Central Bank, 2010).

employers to reduce costs, and of workers to prevent layoffs and protect earnings; and reduced the impact of the crisis on work inequalities.²⁴

88. Employment security was at the top of the bargaining agenda when trade-offs were frequently made on wages (such as flexible/scaled implementation of increases or moderating, freezing or cutting wages) and working time (such as short-time work, greater use of flexible working time measures and/or voluntary or temporary layoffs). Some of the more innovative agreements also sought to use the down time to upgrade the skills of workers.²⁵ In some countries, including Argentina and Austria, collective bargaining played an important role in mitigating the effects of the crisis on employment and protecting real wages and purchasing power, which in turn sustained private consumption and helped to mitigate the contraction of GDP.²⁶

89. National tripartite processes were key in supporting these initiatives. Some agreements included contingency clauses for enterprises facing particular economic difficulties, allowing them to use exemption provisions (such as those in collective agreements in South Africa), and opening/safety clauses (such as those in Argentina, Austria and Germany).²⁷ Several agreements also included clawback provisions to ensure wage recovery once the economic outlook improved.²⁸

90. One crucial issue is whether collective bargaining will be used to distribute productivity gains when recovery comes, or to continue moderating wages. There is growing concern that stagnating wages, widening income inequality and a declining wage share in many countries' GDP is a result of, among other things, declining unionization and the erosion of collective bargaining.²⁹ The strengthening of collective bargaining is key to achieve an equitable recovery, but will require policy support by governments to promote and reinforce the role that collective bargaining plays in wage formation and in strengthening the link between wage and productivity growth (section 2.6).

Non-standard forms of employment

91. Non-standard forms of employment constitute an additional challenge for industrial relations.³⁰ These forms refer to employment relationships in which workers are not employed directly by the user company, but by a subcontractor or temporary work

²⁴ D. Vaughan-Whitehead: *Work inequalities in the crisis: Evidence from Europe* (Cheltenham/Geneva, Edward Elgar/ILO, 2012).

²⁵ V. Glassner and M. Keune: *Negotiating the crisis? Collective bargaining in Europe during the economic downturn*, DIALOGUE Working Paper No. 10 (Geneva, ILO, 2010); K. Papadakis: *Restructuring enterprises through social dialogue: Socially responsible practices in times of crisis*, DIALOGUE Working Paper No. 19 (Geneva, ILO, 2010).

²⁶ C. Hermann: *Collective bargaining and balanced recovery: The case of Austria*, DIALOGUE Working Paper No. 23 (Geneva, ILO, 2011).

²⁷ R. Grawitzky: *Collective bargaining in times of crisis: A case study of South Africa*, DIALOGUE Working Paper No. 32 (Geneva, ILO, 2011); C. Hermann: *Collective bargaining and balanced recovery: The case of Austria*, DIALOGUE Working Paper No. 23 (Geneva, ILO, 2011).

²⁸ W. Roche et al.: *Human resources in the recession: Managing and representing people at work in Ireland* (Dublin, Labour Relations Commission/Chartered Institute of Personnel and Development, 2011).

²⁹ ILO: *Global Wage Report 2012/13: "Wages and equitable growth"* (Geneva, 2013); S. Tilford: *Economic recovery requires a better deal for labour* (London, Centre for European Reform, 2012).

³⁰ "Non-standard" forms of employment differ from the "standard" model of full-time permanent employment with a single and clearly defined employer, recognizing that the latter is no longer "standard" in many countries. "Non-standard" employment is also variously referred to as "atypical", "non-regular" or "contingent" employment depending on the national context.

agency; employment relationships in which workers are directly employed, but under various types of short-term contracts; and part-time work and home work.³¹

92. Non-standard workers often face limitations on their ability to organize, engage in collective bargaining and access institutions and processes of social dialogue. Indirect or “triangular” employment relationships for workers recruited, for instance, through employment agencies can have the effect of excluding workers from bargaining units.³²

93. The proportion of workers engaged in non-standard employment continues to grow in many countries.³³ The number of part-time workers, for example, has grown significantly in the past few decades in developed economies. The proportion of the EU-27 workforce reporting that their main job was part-time increased from 16.2 per cent in 2001 to 19.5 per cent in 2011. In Japan, the share of workers in non-standard employment (part-time, temporary agency, fixed-term and other short-term contracts) rose from 23.6 per cent in 1998 to 34 per cent in 2008.³⁴ While non-standard forms may in some cases create greater choice and facilitate mutually agreed flexibility, they have also led to more insecurity and vulnerability for many of the growing number of workers who are in such relationships by necessity, not by choice.³⁵

94. The increase in non-standard forms of employment, when national laws do not adequately regulate them, raises questions over the full exercise of fundamental principles and rights at work. Young workers and women workers are particularly affected.³⁶

95. Collective bargaining has been used to achieve desired outcomes for non-standard workers in a number of countries. Negotiations have achieved parity in employment by requiring equal pay for work of equal value regardless of contract status (as in France and Germany); by facilitating the transition to secure employment (for example, France, Germany, India, Japan and South Africa); or by preventing further segmentation through, for instance, negotiating limits on the period during which a worker may be temporarily employed (for example, Belgium, France, South Africa and Sweden) or the limits on the number of temporary workers that can be hired (United States).

96. Collective bargaining has also produced agreements to address specific needs of non-standard workers including skills development opportunities (as in Indonesia, Italy, Japan and South Africa) and equal access to skills development.³⁷

97. Multi-employer bargaining arrangements, which extend the terms of collective agreements to all employees within a sector, appear to be particularly effective in protecting those in non-standard employment and facilitating parity in employment (as

³¹ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, International Labour Conference, 101st Session, Geneva, 2012, ILC.101/VI.

³² ILO: *Policies and regulation to combat precarious employment*, Background paper for the International Workers’ Symposium on Policies and Regulations to Combat Precarious Employment, Geneva, 4–7 Oct. 2011.

³³ OECD: StatExtracts: *Employment by permanency of the job*, <http://stats.oecd.org/> [accessed 11 Dec. 2012].

³⁴ K. Hamaguchi and N. Ogino: *Non-regular work: Trends, labour law policy and industrial relations development: The case of Japan*, DIALOGUE Working Paper No. 29 (Geneva, ILO, 2011), p. 2.

³⁵ ILO: *Policies and regulation to combat precarious employment*, Background paper for the International Workers’ Symposium on Policies and Regulations to Combat Precarious Employment, Geneva, 4–7 Oct. 2011.

³⁶ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, International Labour Conference, 101st Session, Geneva, 2012, ILC.101/VI.

³⁷ M. Ebisui: *Non-standard workers: Good practices of social dialogue and collective bargaining*, DIALOGUE Working Paper No. 36 (Geneva, ILO, 2012).

seen in Germany, Hungary, Luxembourg, Netherlands and South Africa). In South Africa, provisions are made in multi-employer bargaining arrangements to regulate working conditions for all workers.³⁸ These arrangements aim to create a level playing field and provide coverage to various categories of non-standard workers. They have also proved important in negotiating terms of work for temporary agency workers (box 2.7).

Box 2.7
Temporary agency negotiations

Employers' and workers' organizations increasingly negotiate agency workers' terms.

National collective agreements between workers' organizations and agency representatives have been signed in, for example, Austria, Belgium, Brazil, Finland, France, Germany, Italy, Luxembourg, Mexico, Netherlands, Norway, Portugal, Spain, Sweden and Switzerland.

The European Confederation of Private Employment Agencies and UNI Europa have engaged in European-wide sectoral social dialogue since 2000 in the framework of the EU Treaty, and have organized national round tables to promote social dialogue on temporary agency work in countries including Bulgaria, Hungary, Poland and Turkey.

Diversity across regions

98. How collective bargaining is evolving shows wide regional diversity. In Africa, despite some legislative progress, collective bargaining is still generally weak. Tripartite institutions have been set up in some countries, such as Ghana and Senegal, playing a role in providing minimum conditions and reinvigorating collective bargaining.

99. A slight shift has been observed in some French-speaking African countries from inter-professional to sectoral collective regulation of employment relations and conditions of employment. In Burkina Faso, for example, collective agreements in the transport and financial services sectors were transposed into collective Conventions in 2011. In Niger, collective agreements have been reached in the banking, transport and hospitality sectors.

100. In the United Republic of Tanzania, collective bargaining is centralized in the public sector but largely enterprise-based in the private sector. In Nigeria, employers' associations and one or more trade unions negotiate industry-wide agreements that are then either improved or supplemented by elements negotiated at enterprise level. South Africa has sectoral collective bargaining either through bargaining councils or non-statutory bargaining forums. This industry-level structure in some sectors works alongside a strong tradition of enterprise-level bargaining in other sectors such as retail.³⁹

101. Institutional frameworks for industrial relations are at very different stages across Asia and the Pacific. At one end of the spectrum are countries in which labour relations are well developed, such as Australia, Japan, New Zealand and Singapore. At the other,

³⁸ Subject to representativeness criteria, agreements reached by bargaining councils in South Africa can be extended to all employees in a sector, including in the informal sector. A number of bargaining councils now also require the registration of temporary employment services with the bargaining council (and application of the collective agreement).

³⁹ D. Bundlender: *Industrial relations and collective bargaining: Trends and developments in South Africa*, Working Paper No. 2 (Geneva, ILO, 2009); S. Hayter et al.: *The role of collective bargaining in the global economy* (Geneva, ILO, 2011).

in countries such as Cambodia, China, Mongolia, Nepal and Viet Nam, the legal framework for collective bargaining has evolved significantly and the practice of collective bargaining is developing.

102. Enterprise-level bargaining is the predominant structure in most countries in the region. Notable exceptions include sectoral agreements in clothing and textiles in Cambodia, banking, health and metals in the Republic of Korea and plantations in Sri Lanka.⁴⁰ In Japan, workers' organizations are revitalizing the mechanism of *Shunto*, or coordinated wage settlements, for the purpose of reducing wage disparity among those hired by large firms and SMEs as well as those who work under regular and non-regular employment arrangements.

103. China has seen many changes over the last decade. The Government and social partners have sought to promote collective bargaining as an objective in a broader socio-economic policy of boosting domestic consumption – hence workers' incomes – and ensuring industrial harmony. The quality of the process and the agreements appears to be improving.⁴¹ Regional and sectoral bargaining has also recorded a steady increase, moving from exclusively enterprise-based traditional labour relations.

104. Europe, too, has seen wide-ranging changes. Many countries in Central and Eastern Europe strengthened the legal foundations for collective bargaining in the 1990s, although the practice is still weak. Collective bargaining in some Western European countries has become much more decentralized – from national or sectoral multi-employer agreements to enterprise bargaining – following austerity-related measures and structural reforms in, for example, Greece, Ireland, Romania and Spain.⁴² (See also section 2.3.)

105. In countries with strong multi-employer collective bargaining structures (including Austria, Denmark, France, Germany, Italy, Netherlands and Sweden), the sectoral level still dominates collective bargaining. Exceptions are Belgium, where an inter-sectoral agreement establishes general developments on wages and working conditions, and Finland, where a landmark tripartite agreement in 2011 on wages and working conditions marked a return to a more centralized system. These higher level agreements often set the parameters or frameworks for subsequent enterprise negotiations.

106. Enterprise bargaining remains the dominant approach in the Americas, particularly in Central America and the Andean subregion. This is mainly due to legislative barriers that hinder collective bargaining processes at sectoral level. Exceptions are in Argentina and Uruguay, with sharply stronger collective bargaining at sectoral level. In Brazil, collective bargaining is mainly provincial or municipal, making it hard to coordinate efforts, perhaps weakening its impact.⁴³ In Colombia, the Government in 2011 took steps to regulate employer practices of using direct agreements with non-unionized workers, in order to forestall their use to undermine workers' organizations.⁴⁴ In many

⁴⁰ F. Amerasinghe: *The current status and evolution of industrial relations in Sri Lanka*, Asia-Pacific Working Paper (Geneva, 2009); Y. Yoon: *A comparative study on industrial relations and collective bargaining in East Asian countries*, Working Paper No. 8 (Geneva, ILO, 2009).

⁴¹ C.H. Lee: *Industrial relations and collective bargaining in China*, Working Paper No. 7 (Geneva, ILO, 2009).

⁴² M. Keune: *Derogation clauses on wages in sectoral collective agreements in seven European countries*, Eurofound, 2010, www.eurofound.europa.eu/pubdocs/2010/87/en/2/EF1087EN.pdf [accessed 1 Nov. 2012].

⁴³ A. Cardoso and J. Gindin: *Industrial relations and collective bargaining: Argentina, Brazil and Mexico compared*, DIALOGUE Working Paper No. 5 (Geneva, ILO, 2009).

⁴⁴ ILO: *Giving globalization a human face* (General Survey on the fundamental Conventions), Report III (Part 1B), International Labour Conference, 101st Session, Geneva, 2012.

Caribbean countries, collective bargaining is mandatory by law and remains at enterprise level, with Barbados an exception where collective bargaining also takes place inter-sectorally. In North America, most collective bargaining remains at enterprise level, although multi-employer bargaining has been traditional for some crafts, and city- or region-wide collective bargaining is carried out in some service industries.

Public sector collective bargaining

107. In the United States and Europe, the impact of the financial, economic and fiscal crises has weakened public sector collective bargaining, despite its earlier relative strength and density.⁴⁵ In the United States, where most such bargaining takes place at local, county and state levels, some jurisdictions have changed benefits or working conditions without bargaining. For instance, the states of Wisconsin and Ohio adopted legislation to restrict the scope of collective bargaining. The Wisconsin Budget Repair Bill restricted the scope of negotiations to wages, limited the length of an agreement to one year and required annual verification of union representativeness in the bargaining unit.⁴⁶ However, in September 2012, key parts of the Wisconsin law were struck down by a state circuit court on federal and Wisconsin constitutional grounds. The ruling restored collective bargaining rights for city, county and school-district employees but maintained the restrictions for state and University of Wisconsin employees.⁴⁷ The state has indicated that it will appeal the court's decision and requested that the law stay in force pending a final court decision on the matter. In the case of Ohio, the legislature's amendments were repealed by popular vote in November 2011.

108. In Europe, many countries have made significant cuts in employment, wages and expenditure in the public sector. The process has been most marked in those countries with high public debt (for example, Greece, Portugal, Romania and Spain) but has also been significant in the Baltic States, Hungary, United Kingdom and elsewhere. The cuts have led to a rapid deterioration of wages and working conditions in the public sector, especially in education, health and public administration. A new phenomenon of low pay in the public sector has emerged. Preliminary evidence also highlights the negative effects to be expected on the future quality of public services in these sectors.⁴⁸

109. The cuts have sometimes been decided with scarce social dialogue, as in Greece,⁴⁹ and initial tripartite agreements have not been respected in other countries. In Spain, an agreement not to cut wages for 2010 was broken by the Government, which then unilaterally imposed a 5 per cent reduction. In contrast, the Irish social partners reached an agreement on the public service in 2010 (the Croke Park Agreement, 2010–14), which aims at no more pay cuts for public servants in return for industrial peace, reform of bonus payments, a recruitment freeze in health and education, and new pay and

⁴⁵ ILO: *The sectoral dimension of the ILO's work: Update of sectoral aspects regarding the global economic downturn: Public administration*, Governing Body, 309th Session, Geneva, Nov. 2010, GB.309/STM/1/1.

⁴⁶ Also known as the 2011 Wisconsin Act 10, *Senate Bill 11*, State of Wisconsin, 2011–12 Legislature, Jan. 2011 Special Session, <http://legis.wisconsin.gov/2011/data/JR1SB-11.pdf> [accessed 1 Nov. 2012].

⁴⁷ M. Elk: "Wisconsin anti-union law struck down", in *Truth-out news*, 15 Sep. 2012, <http://truth-out.org/news/item/11558-wisconsin-anti-union-law-struck-down?tmpl=component&print=1> [accessed 6 Nov. 2012].

⁴⁸ D. Vaughan-Whitehead (ed.): *Public sector shock: The impact of policy retrenchment in Europe* (Cheltenham/Geneva, Edward Elgar/ILO, forthcoming).

⁴⁹ ILO: *Report of the Committee on Freedom of Association*, Governing Body, 316th Session, Nov. 2012, GB.316/INS/9/1, paras 784–1003.

conditions for new entrants to the public service. Importantly, the majority of cost reductions in the public sector, to reduce the pay bill, are via voluntary redundancies.⁵⁰

110. Some countries have also restricted existing collective bargaining mechanisms. In Latvia, the crisis led to a weakening of the rules on collective bargaining. In Croatia, attempts to reduce the scope of collective agreements generated trade union mobilization and thus withdrawal of proposed changes. In Romania, a new law on social dialogue abolished the collective agreement at national level and dismantled the automatic extension of collective agreements at sectoral level, effectively limiting the scope of collective bargaining. The law also tightened the representativeness requirements, making trade union action harder.

111. Some of the reductions in pay, benefits or scope of bargaining were part of larger packages of austerity measures negotiated with the European Central Bank (ECB), the European Commission (EC) and the IMF. Measures also included changes in the retirement age and pension entitlements. In some cases these moves were met with strikes and public opposition. Subsequent changes in government leadership in some countries were attributed at least in part to public and trade union opposition to these measures.

112. In other parts of the world, several countries have strengthened consultation and negotiation mechanisms. Since 2006, Brazil, El Salvador, Gabon, Slovakia and Slovenia have ratified the Labour Relations (Public Service) Convention, 1978 (No. 151). Since 2008, Botswana, Mozambique, South Africa, Turkey and Uruguay have adopted measures establishing collective bargaining structures for government workers. Costa Rica, Dominican Republic and Republic of Korea have adopted other consultation mechanisms. The DWCPs for Benin, Bosnia and Herzegovina, Lesotho, Madagascar and Namibia include ratification of Convention No. 151 as a priority, and those for Cambodia, Lao People's Democratic Republic, Republic of Moldova, Mozambique and Ukraine include support for collective bargaining in the public service. The Philippines' Labor and Employment Plan 2011–16 and the 2011 resolution of SADC labour ministers also include support for collective bargaining as a priority. Colombia issued a decree establishing public sector negotiations in May 2012.

SMEs

113. SMEs are the site of most employment worldwide, accounting for 67 per cent of total permanent jobs. Evidence is also fairly strong that SMEs generate most new jobs globally (86 per cent) and have the highest employment growth rates, although they also account for most job destruction. Small enterprises account for the bulk of employment in low- and middle-income countries.⁵¹

114. Yet formal social dialogue is uncommon among SMEs, where union membership and collective representation are very low.⁵² Some argue that this is due to the closeness of employer and workers, which could discourage formal processes of social dialogue. Many SMEs are family owned and do not have any tradition of employee representation.

⁵⁰ A. Regan: *The impact of the Eurozone crisis on Irish social partnership: A political economic analysis*, paper presented at the EU–ILO–ITC workshop on The governance of policy reforms in Europe: Social dialogue actors and institutions in times of economic downturn and austerity, Geneva, 28–29 May 2012.

⁵¹ A. Ayyagari et al.: *Small vs. young firms across the world: Contribution to employment, job creation, and growth*, World Bank Policy Research Working Paper 5631 (Washington, DC, World Bank, 2011); World Bank: *World Development Report 2013: Jobs* (Washington, DC, 2012).

⁵² *SMEs in the crisis: Employment, industrial relations and local partnership*, Eurofound, 2011, www.eurofound.europa.eu/docs/eiro/tn1010039s/tn1010039s.pdf [accessed 1 Nov. 2012].

In countries where the majority of SMEs are in the informal economy the situation is even less favourable for collective bargaining.

The expanding scope of collective agreements

115. The scope of the collective bargaining agenda has, however, expanded in many parts of the world. Beyond wages, themes that frequently appear on the agenda are work organization, vocational training, work–family balance, skills development and enterprise performance.

116. This expansion has enabled social partners to find trade-offs and negotiate integrative agreements that combine the interests of enterprises for enhanced flexibility with those of workers for income and employment security, contributing to a better work–family balance.⁵³ In countries with well-developed collective bargaining structures and high levels of coverage, for example, the focus has shifted from negotiating the length of the working week to negotiating flexible working time regimes. These may set out a broad framework sectorally with the details worked out at enterprise level. Innovative agreements manage to balance enterprise interests with workers' interests.⁵⁴

117. Related to control over time use is the bargaining agenda's widening scope to include gender concerns such as paid maternity leave and policies promoting gender equality. In some countries such as Australia and New Zealand, efforts to put gender issues on the agenda have led to steep increases in female trade union membership.⁵⁵

118. Women are still under-represented in most bargaining structures, however, and their issues still receive too little attention.⁵⁶ Although some countries, like Finland, have launched gender impact assessments of collective bargaining agreements, data on gender equality in collective bargaining are few. A forthcoming ILO study on how gender issues are incorporated in 210 collective bargaining agreements in Central America and the Dominican Republic concludes that most of the measures in the agreements to promote gender equality (84 per cent) are innovative and go beyond what is required by law. Some countries have made progress in using collective bargaining to close the gender pay gap and achieve pay rises in predominantly female branches of employment such as retail trade, hotels and restaurants, and cleaning enterprises (Sweden, for example) and at enterprise level. Social partners' agreements on minimum wages can be important for equal remuneration where women are over-represented in low-paid work. Such negotiations are often initiated by law, as in Australia, China and France.

119. Collective bargaining on youth employment is also rare and is mainly in Europe. A recent review of developments (for both single- and multi-employer collective bargaining) revealed some agreements on policies and measures to encourage the hiring of young workers, such as internships and apprentices (examples are France and Germany); stabilization of employment for disadvantaged workers, including youth

⁵³ S. Hayter et al.: "Collective bargaining for the twenty-first century", in *Journal of Industrial Relations* (2011, Vol. 53, No. 2, Apr.), pp. 225–247.

⁵⁴ S. Lee and D. McCann: "Negotiating working time in fragmented labour markets: Realizing the promise of 'regulated flexibility'", in S. Hayter (ed.): *The role of collective bargaining in the global economy* (Geneva, ILO, 2011), pp. 55–56.

⁵⁵ J. Parker et al.: *Comparative study on social dialogue and gender equality in New Zealand, Australia and Fiji*, DIALOGUE Working Paper No. 22 (Geneva, ILO, 2011).

⁵⁶ L. Briskin and A. Muller: *Promoting gender equality through social dialogue: Global trends and persistent obstacles*, Working Paper No. 34 (Geneva, ILO, 2012).

(Germany, Italy and Poland); improvements in employment terms for young workers, such as the abolition of a youth pay rate or sub-minimum wage and increased pay and benefits (Australia, Canada and Denmark); and training (Sweden).⁵⁷

120. A growing number of collective agreements in Europe include clauses on skills development (box 2.8).⁵⁸ Similarly, innovative labour–management partnerships are being concluded, which may transform adversarial labour relations into constructive efforts to address issues such as quality, production targets and sharing in productivity gains.⁵⁹

121. Studies indicate that changes in work organization negotiated with workers' representatives can help to improve a firm's performance.⁶⁰

Box 2.8 **Social dialogue for skills development**

The key to successful skills policies and systems is to connect education and training to the world of work by building bridges that improve the employability of workers, increase the productivity and competitiveness of enterprises, and expand the inclusiveness of economic growth. Social dialogue can help build such bridges.

In Germany, vocational education and training concerns all partners at enterprise level and is a subject for social dialogue. The dual system in Germany – combining school and workplace learning – involves extensive participation by companies, workers' organizations, government ministries and relevant bodies and assures social dialogue for skills development.

Consultative mechanisms on industry's skills needs in Australia help to identify needs and evaluate the skills system, as well as provide certification and accreditation. At the state or territory level, industry advisory boards work with training authorities to oversee the regulation, policy, delivery and funding of training, and are supported by industry training advisory boards composed of representatives of businesses and workers. Industry skill councils develop training packages based on skills requirements and occupational outcomes in 11 sectors.

In Costa Rica, social dialogue for workplace learning through collective bargaining agreements at company level have shown how upskilling can boost workers' productivity and be part of a compensation package to increase workers' earnings potential.

The success of Singapore's Workforce Skills Qualification system stems from well-coordinated tripartite consultations through social dialogue at the Industry, Skills and Training Councils.

2.2.2. Workplace cooperation

122. Practices and institutions for workplace cooperation between employers and workers facilitate information sharing, consultation and even joint decision-making.⁶¹ They aim to create stable industrial and employment relations and productive

⁵⁷ ILO: *The youth employment crisis: Time for action*, Report V, International Labour Conference, 101st Session, Geneva, 2012.

⁵⁸ J. Heyes and H. Rainbird: "Bargaining for training: Converging or diverging interests?", in S. Hayter (ed.): *The role of collective bargaining in the global economy* (Geneva, ILO, 2011), pp. 55–56.

⁵⁹ R. McKersie et al.: *Negotiating in partnership: A case study of the 2005 national negotiations at Kaiser Permanente* (Cambridge, MA, MIT Sloan School of Management, 2006).

⁶⁰ F. Fakhfakh et al.: "Workplace change and productivity: Does employee voice make a difference?", in S. Hayter (ed.): *The role of collective bargaining in the global economy* (Geneva, ILO, 2011), pp. 107–135.

⁶¹ G. Arrigo and G. Casale: *A comparative overview of terms and notions on employee participation* (Geneva, ILO, 2010).

workplaces through dialogue and cooperation, although the form shows wide diversity among companies and countries as well as over time. The subjects dealt with are also very diverse. In some countries, such cooperation is voluntary; in others, it is either mandated by law or promoted by the government through labour policies that may provide incentives or encourage good practices.

123. In line with relevant ILO standards, the forms of workplace cooperation need to be complementary to collective bargaining, with a clear distinction between collective bargaining on the one hand and cooperation and consultation on the other.⁶² Workplace cooperation should not undermine existing collective bargaining machineries and practices or weaken the position of workers' organizations' unions.

124. Good dialogue and cooperation in workplaces facilitate consultation with workers and their representatives, which can be important for resolving problems with work and production issues, preventing disputes and helping to carry out decisions.⁶³

125. Dialogue and cooperation have proved particularly important for enterprise restructuring in the global financial crisis. Some enterprises have established formal labour–management mechanisms for anticipating and managing enterprise restructuring through cooperation at certain plants and, in some cases, across all MNE operations for TCAs.⁶⁴ However, even with legally mandated frameworks for consultation before and during restructuring, wide gaps are evident between the frameworks and their implementation.⁶⁵

126. Workplace cooperation is an essential principle of OSH. Most ILO member States have set up OSH-related structures for cooperation between management, workers and their representatives, according to the 2009 ILO General Survey on OSH. Particularly in times of economic downturn and in countries where labour inspection services are weak on OSH, the social partners play a leading role in finding appropriate mechanisms for consultation and cooperation and, ultimately, in preserving labour protection.

127. Such cooperation is especially important for countries with less-developed OSH systems, as they spend a higher share of GDP on work-related injuries, accidents and diseases. Evidence suggests that the presence of trade unions and social dialogue on OSH matters at the workplace is associated with a decrease in work-related injuries and accidents.⁶⁶ Enterprises with good safety and health records improve their productivity and increase their competitiveness.⁶⁷ They also have fewer losses of qualified labour

⁶² Article 1 of the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94); Article 2 of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113); and Article 15(3) of the Communications within the Undertaking Recommendation, 1967 (No. 129); ILO: *Giving globalization a human face* (General Survey on the fundamental Conventions), Report III (Part 1B), International Labour Conference, 101st Session, Geneva, 2012.

⁶³ M. Weiss: "Re-inventing labour law?", in G. Davidow and B. Langille (eds): *The idea of labour law* (Oxford, Oxford University Press, 2011).

⁶⁴ K. Papadakis: *Restructuring enterprises through social dialogue: Socially responsible practices in times of crisis*, DIALOGUE Working Paper No. 19 (Geneva, ILO, 2010).

⁶⁵ A. Dornelas et al.: *Comparative overview analysis of the ways in which the restructuring phenomenon is dealt with worldwide* (Brussels, EU Commission/ILO, 2011).

⁶⁶ European Agency for Safety and Health at Work: *Worker representation and consultation on health and safety: An analysis of the findings of the European survey of enterprises on new and emerging risks* (Luxembourg, 2012).

⁶⁷ ILO: *Occupational safety and health: Synergies between security and productivity*, Governing Body, 295th Session, Geneva, Mar. 2006, GB.295/ESP/3.

from work-related injuries, accidents and diseases and save on insurance premiums and compensation costs.

Regional trends on cooperation

128. As with collective bargaining, regional arrangements for workplace cooperation are very diverse. Europe has seen significant institutional developments in the past decade, triggered by the adoption of the 2002 EU Information and Consultation of Employees Directive (2002/14/EC). The Directive is designed to create a general framework of information sharing and consultation for employees' involvement in decisions affecting them. Around one third of workplaces with ten or more employees in EU Member States and candidate countries had trade union or works council-type bodies for workplace social dialogue in 2009, ranging from above 55 per cent in Denmark, Finland and Sweden to below 20 per cent in Greece and Portugal.⁶⁸ Some countries ensure gender balance (Germany) and generational balance (Belgium and Luxembourg for young workers)⁶⁹ in employees' representation. Some 77 per cent of workers' representatives are provided with information at least once a year on the company's economic and employment situations. The prevalence of workplace representation is more likely to be higher in countries with dominant national or sectoral bargaining, with stronger legislative support and in larger enterprises.⁷⁰ The differences in implementation within the EU framework largely reflect national industrial relations systems and the dominant level of collective bargaining.⁷¹

129. In Asia, workplace cooperation varies by country. In Japan, voluntary joint labour-management consultation committees have long been integral to the industrial relations system, which aims to build workplaces showing mutual trust and high performance. The Republic of Korea has a similar – but mandatory – institution. In both countries, such committees are more likely in unionized and in larger enterprises,⁷² with their incidence much higher in the Republic of Korea than in Japan. National policy in Indonesia and the Philippines pursues workplace cooperation.

130. In China and Viet Nam, the Workers' Representative Congress system used to be important, but market liberalization has called into question its inadequate representational base and formalistic nature. Still, the Chinese Government is making efforts to extend this system beyond state-owned enterprises and to improve its functioning as a key pillar of workplace labour relations.⁷³ In India, successive governments have tried to introduce employee-participation schemes, but with scant

⁶⁸ A. Bryson et al.: *Workplace employee representation in Europe: An analysis of the European company survey 2009* (Dublin, Eurofound, 2012).

⁶⁹ *Workplace representation*, European Trade Union Institute, 2012, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Belgium/Workplace-Representation> [accessed 10 Dec. 2012]; G. Arrigo and G. Casale: *A comparative overview of terms and notions on employee participation* (Geneva, ILO, 2010).

⁷⁰ A. Bryson et al.: *Workplace employee representation in Europe: An analysis of the European company survey 2009* (Dublin, Eurofound, 2012).

⁷¹ *Workplace representation*, European Trade Union Institute, 2012, <http://www.worker-participation.eu/National-Industrial-Relations/Across-Europe/Workplace-Representation2> [accessed 10 Dec. 2012].

⁷² Ministry of Health, Labour and Welfare (MHLW): *Survey on labour-management communications* (Tokyo, MHLW, 2009); K.S. Bae: "Industrial democracy through the Labor-Management Council in non-union firms in South Korea", in R. Traub-Merz and K. Ngok (eds): *Industrial democracy in China: With additional studies on Germany, South Korea and Viet Nam* (Beijing, China Social Sciences Press, 2012).

⁷³ Q.C. Do: *Employee participation in Viet Nam*, DIALOGUE Working Paper No. 42 (Geneva, ILO, 2012).

success, largely because of union fragmentation and management reluctance to share decision-making.⁷⁴

131. Argentina has rules granting exclusively recognized workers' associations the right to be informed about certain aspects of the business related to the workers' vocational training and to all matters necessary to undertake appropriate collective negotiations. Brazil has "trial settlement commissions" (*comissões de conciliação prévia*), which can be voluntarily established at company level to offer an alternative settlement mechanism for individual conflicts and disputes between employers and workers, without judicial intervention.⁷⁵

2.2.3. Dispute prevention and resolution

132. Since disputes – individual or collective – are an inevitable aspect of industrial relations and the employment relationship, processes for preventing, addressing and resolving them are needed to promote peaceful, sound and productive industrial relations. Such mechanisms include facilitation, mediation, conciliation and voluntary arbitration. These processes can also have a positive effect in promoting collective bargaining.

133. Variations in measuring labour disputes between some member States mean that it is hard to conduct historical or geographical comparative analyses of the incidence or outcomes of these disputes. Some key variations include the types of disputes on which data is collected, the sectors for which data is collected, the regularity with which data is collected, the way in which different types of disputes are categorized when data is collected and the complete absence of data for certain countries and/or years.⁷⁶ The following is an attempt to discern trends along major axes, though many data are not fully comparable.

Individual disputes

134. There has been a widespread increase in the number of individual labour disputes, in Africa (including South Africa and United Republic of Tanzania), the Americas (Brazil and United States), Asia and the Pacific (China,⁷⁷ Japan, Indonesia, Malaysia and Philippines) and Europe (France, Spain and United Kingdom). Reasons include a decrease in trade union density, a deteriorating work environment and an increase in unemployment.⁷⁸ Box 2.9 describes some data.

⁷⁴ R. Sen: *Employee participation in India*, DIALOGUE Working Paper No. 40 (Geneva, ILO, 2012).

⁷⁵ Baker & McKenzie: *The global employer: Focus on trade unions and works councils* (2012); G. Arrigo and G. Casale: *A comparative overview of terms and notions on employee participation* (Geneva, ILO, 2010).

⁷⁶ L.J. Perry and P.J. Wilson: *Trends in work stoppages: A global perspective*, Working Paper No. 47 (Geneva, ILO, 2004); G. Gall: "Quiescence continued? Recent strike activity in nine Western European economies", in *Economic and Industrial Democracy*, published online at: <http://eid.sagepub.com/content/early/2012/08/30/0143831X12453956>, Aug. 2012, p. 15; A. Chan: "Strikes in China's export industries in comparative perspective", in *The China Journal* (2001, No. 65, Jan.), p. 30; T. Ackson: *Draft report of a study on preventing and resolving labour disputes in Tanzania*, Working Paper Series (Geneva, ILO, forthcoming).

⁷⁷ F. Cai and M. Wang: *Labour market changes, labour disputes and social cohesion in China*, Working Paper No. 307 (Paris, OECD, 2012), <http://www.oecd.org/china/Working%20Paper%20307.pdf> [accessed 10 Dec. 2012].

⁷⁸ S. Jefferys: "Collective and individual conflicts in five European countries", in *Employee Relations* (2011, Vol. 33, No. 6), pp. 670–687.

Box 2.9 Individual disputes

In Africa, South Africa has reported a steady increase in these disputes, with unfair dismissal claims rising from 82,411 in 2002–03 to 123,458 in 2011–12, an increase of almost 50 per cent.¹ The Commission for Mediation and Arbitration in the United Republic of Tanzania has experienced an inundation of individual disputes over recent years, with the rate of new claims rising from 1,977 in 2006–07 to 12,075 in 2009–10 but then falling to 6,449 in 2011–12.²

In the Americas, the United States has seen a surge in the number of claims relating to discrimination,³ while a large and steady rise in the number of individual and collective cases received by the Brazilian Labour Courts has been repeatedly noted in the last decade.⁴

In the Asia–Pacific region, Japan and the Philippines have reported a rapid increase in individual disputes in the last two decades.⁵

In Europe, France, Spain and the United Kingdom, among others, have seen a rise in individual claims, largely owing to cases related to employment termination.⁶

¹ P. Benjamin and R. Hulme: *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)*, Working Paper (Geneva, ILO, forthcoming).

² T. Ackson: *Draft report of a study on preventing and resolving labour disputes in Tanzania*, Working Paper (Geneva, ILO, forthcoming).

³ P. Salvatore, R. Meisburg, D. Ornstein and Y. Tarasewicz: *International trends in employment dispute resolution: Counsel's perspectives*, Report from the Worlds of Work Conference, Proskauer, hosted by St John's University School of Law and Fitzwilliam College, Cambridge University, 21 July 2011, pp. 36–37.

⁴ Coordenadoria de Estatística e Pesquisa do Tribunal Superior do Trabalho: *Dados Demonstrativos: Justiça do Trabalho*, 2011, <http://www.tst.jus.br/documents/10157/190d5bbd-d905-4fc2-81f6-1e92aa89e11e> [accessed 10 Dec. 2012]; F.O. de Lavor: "Formas alternativas de solução dos conflitos individuais e coletivos de trabalho", in *Revista Symposium* (2000, Ano 4, No. 1, Jan.–June), pp. 78–86.

⁵ H. Nakakubo: "Feature articles: Labor dispute resolution system", in *Japan Labor Review* (2006, Vol. 3, No. 1, Winter), p. 2; B.E.R. Bitonio: *Industrial relations and collective bargaining in the Philippines*, Working Paper No. 41 (Geneva, ILO, 2012).

⁶ Proskauer: *International trends in employment dispute resolution: Counsel's perspectives*, Report from the Worlds of Work Conference hosted by St John's University School of Law and Fitzwilliam College, Cambridge University, 21 July 2011, pp. 36–37, www.proskauer.com/worlds-of-work-employment-dispute-resolution-systems-across-the-globe-07-21-2011/ [accessed 17 Dec. 2012].

Collective disputes

135. Some of the most commonly cited reasons for the recent industrial action include rapid economic transition (for example, Viet Nam),⁷⁹ high levels of inequality (South Africa)⁸⁰ and steep economic downturn (Greece).⁸¹ Cyclical factors such as collective bargaining rounds may also impact the number of strikes in a particular year, but this does not appear to explain the increase in many countries either.⁸²

136. The absence of legal recognition of the right to strike (as in China and the public sector in Kuwait),⁸³ or the imposition of statutory restrictions on when strike action may

⁷⁹ A. Chan: "Strikes in China's export industries in comparative perspective", in *The China Journal* (2001, No. 65, Jan.), p. 30.

⁸⁰ G. Hartford: *The mining industry strike wage: What are the causes and what are the solutions?*, 2012, <http://groundup.org.za/content/mining-industry-strike-wave-what-are-causes-and-what-are-solutions> [accessed 10 Dec. 2012].

⁸¹ ITUC: *Annual survey of violations of trade union rights: Syria 2012*, 2012, <http://survey.ituc-csi.org/Syria.html#tabs-4> [accessed 10 Dec. 2012].

⁸² See for example Australia, where collective bargaining is not centralized but taking place at different enterprises at different times.

⁸³ A. Chan: "Strikes in China's export industries in comparative perspective", in *The China Journal* (2001, No. 65, Jan.), p. 30; ITUC: *Annual survey of violations of trade union rights: Kuwait 2012*, 2012,

be legally taken (Australia and Viet Nam),⁸⁴ has not prevented the increase in strike activity in these countries.

137. Although the average number of days lost to strike action is much lower today than three decades ago,⁸⁵ notable increases in collective disputes have been observed (box 2.10).

Box 2.10 Collective disputes

The number of disputes has risen in countries such as Cambodia, South Africa and Viet Nam, as well as some European countries under austerity programmes. The causes of collective action are complex and vary across regions, States and sectors, making it hard to identify underlying reasons.

In Africa, Morocco reported that 300,000 working days were lost to strike action in 2011, three times the number of the previous year.¹ In South Africa, the equivalent figure in 2010 was 20.6 million, a marked increase from the average annual rate of 3.3 million in 2004–09, although the figure dropped in 2011 to 2.8 million.²

In the Americas, the number of strikes in Brazil rose in 2008 to 411 from an average of 312 a year over the preceding six years, and Chile recorded a 50 per cent increase in the annual strike rate from 108 in 1999 to 159 in 2008.³

In the Arab States, Jordan and Kuwait recorded an unprecedented number of labour-related protests and work stoppages in 2011.⁴

In the Asia–Pacific region, Australia saw the number of working days lost to strike activity rise 83 per cent from the year ended June 2011 (159,800 lost days) to 12 months later (293,100 working days).⁵ China releases no official statistics, but strikes seem to be on the rise, usually without trade union authority.⁶ In Viet Nam, the number of officially recorded strikes went from an average of 111.8 a year in the six years 2000–05 to an average of 567 strikes in the six years 2006–11.⁷ The Republic of Korea saw a spike in strikes across its financial, metal and transport industries in 2012.⁸

In Europe, Ireland, Malta and Spain also recorded marked increases in the number of working days lost to strike action per 1,000 employees in the period 2005–09.⁹ The United Kingdom recorded a loss of 53 working days per 1,000 employees in 2011, compared to an average of 25 working days lost per 1,000 employees over the preceding five years.¹⁰ Further, in addition to widely reported strikes in Greece, Italy, Portugal and Spain against austerity measures since 2010, there has been a marked increase in the incidence of general strikes in Greece, Italy and Portugal since the mid-1980s. Specifically, in Greece, the frequency of general strikes and generalized public sector strikes rose from 14 in 1986–96 to 22 in 1997–2008, while the frequency of such strikes jumped from seven to 18 in Italy and from four to 12 in Portugal in the same periods.¹¹

¹ S. Karam: *Strike law tests Moroccan Government reforms*, Reuters, Rabat, 18 Apr. 2012, <http://www.reuters.com/article/2012/04/18/morocco-strike-idUSL6E8FH3U820120418> [accessed 29 Oct. 2012]; Emarrakech: *Maroc: Augmentation de 77% du nombre de grèves au premier trimestre 2011*, 30 June 2011, http://www.emarrakech.info/Maroc-augmentation-de-77-du-nombre-de-greves-au-premier-trimestre-2011_a57061.html [accessed 10 Dec. 2012].

<http://survey.ituc-csi.org/Kuwait.html#tabs-4> [accessed 10 Dec. 2012]; ITUC: *Annual survey of violations of trade union rights: Syria 2012*, 2012, <http://survey.ituc-csi.org/Syria.html#tabs-4> [accessed 10 Dec. 2012].

⁸⁴ Fair Work Act 2009 (Australia); A. Chan: “Strikes in China’s export industries in comparative perspective”, in *The China Journal* (2001, No. 65, Jan.), p. 30.

⁸⁵ S. Jefferys: “Collective and individual conflicts in five European countries”, in *Employee Relations* (2011, Vol. 33, No. 6), pp. 670–687; G. Gall: “Quiescence continued? Recent strike activity in nine Western European economies”, in *Economic and Industrial Democracy*, published online at: <http://eid.sagepub.com/content/early/2012/08/30/0143831X12453956>, Aug. 2012, p. 15; OECD: “Strikes” in *Society at a glance 2006: OECD social indicators* (Paris, 2007); B.E. Bitonio Jr: *Labour dispute resolution systems in the Asia–Pacific region: A nine country comparison* (Bangkok, ILO, 2008).

² J. Hofmeyr: *Transformation audit 2011: From inequality to inclusive growth* (Stellenbosch, African Minds, 2012), p. 28; Department of Labour: *Media statement for the Director-General on Industrial Action Report* (Pretoria, South Africa, 2011); T. Mkalipi: *Industrial Action 2008 Annual Report* (Pretoria, Department of Labour, South Africa, 2011), https://www.labour.gov.za/downloads/documents/annual-reports/industrial-action-annual-report/2008/industrialaction08_preface.pdf [accessed 10 Dec. 2012].

³ LABORSTA: *Strikes and lockouts – 9A Strikes and lockouts by economic activity*, ILO, http://laborsta.ilo.org/data_topic_E.html [accessed 10 Dec. 2012].

⁴ ITUC: *Annual survey of violations of trade union rights*, Brussels, 2012, <http://survey.ituc-csi.org/> [accessed 10 Dec. 2012].

⁵ Australian Bureau of Statistics: *Industrial Disputes*, Australia, June 2012, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6321.0.55.001Main+Features1Jun%202012?OpenDocument> [accessed 10 Dec. 2012].

⁶ A. Chan: "Strikes in China's export industries in comparative perspective", in *The China Journal* (2001, No. 65, Jan.), p. 44; F. Cai and M. Wang: *Labour market changes, labour disputes and social cohesion in China*, Working Paper No. 307 (Paris, OECD, 2012), <http://www.oecd.org/china/Working%20Paper%20307.pdf> [accessed 10 Dec. 2012].

⁷ A. Chan: "Strikes in China's export industries in comparative perspective", in *The China Journal* (2001, No. 65, Jan.), p. 29; A. Chan and K. Siu: *Strikes and living standards in Viet Nam: The impact of global supply chain and macroeconomic policy*, presentation at an International Expert Conference, Nuremberg, 8–9 Oct. 2012.

⁸ H. Jin and J. Lee: *S. Korea's finance workers plan first strike in 12 years*, Reuters, 13 July 2012, <http://in.reuters.com/article/2012/07/13/korea-strike-idINL3E8ID0LG20120713>; S. Mundy and J. Song: "Strikes reflect shift in S. Korea politics", in *Financial Times*, 10 Sep. 2012, <http://www.ft.com/intl/cms/s/0/411fcc06-fb34-11e1-a983-00144feabdc0.html#axzz2Ao8xAdCA> [accessed 10 Dec. 2012].

⁹ Eurofound: *Developments in industrial action 2005–09* (Dublin, 2010).

¹⁰ Office for National Statistics: *Labour disputes, Annual Article 2011*, 2012, <http://www.ons.gov.uk/ons/rel/bus-register/labour-disputes/annual-article-2011/art---labour-disputes--annual-article-2011.html> [accessed 10 Dec. 2012].

¹¹ G. Gall: "Quiescence continued? Recent strike activity in nine Western European economies", in *Economic and Industrial Democracy*, published online, op.cit., Aug. 2012, p. 15.

Review of dispute resolution systems

138. Many existing dispute resolution mechanisms suffer from shortcomings such as lack of independence and accountability; costs and delays due to under-resourced labour administrations and labour justice institutions; burdensome procedural requirements; and sometimes ineffective remedies to adequately protect fundamental rights at work.

139. These issues have prompted many member States to review their dispute resolution systems in recent decades. Key trends in resolving labour disputes include:⁸⁶ the creation and strengthening of specialized tribunals and/or courts for dealing with collective and/or individual labour disputes (Denmark, Japan and several Latin American countries); conciliation, mediation and voluntary arbitration processes for dealing with collective disputes (Brazil, Cambodia, Canada, Czech Republic, Hungary, Indonesia, Jordan, Namibia, Philippines and Spain); the establishment of special proceedings and remedies to make more effective the judicial protection of freedom of association and collective bargaining rights (Peru, Spain, Uruguay); and timeframes and other measures for expediting procedures and dealing with labour disputes (China, Ghana, Japan, South Africa and United Republic of Tanzania and six South American countries).⁸⁷

140. Some noteworthy innovations include the creation of statutory advisory services to help prevent escalation of collective disputes (Canada, Spain and United Kingdom); an

⁸⁶ Differences include the source of regulation (e.g. by collective agreement, statute or both) and whether distinctions are drawn between types of disputes for the purposes of the regulation (e.g. individual versus collective, rights versus interests disputes, and different categories of rights and interests disputes).

⁸⁷ Chile, Colombia, Ecuador, Peru, Uruguay and Bolivarian Republic of Venezuela. Two Central American countries, Costa Rica and Nicaragua, have embarked in similar reforms; A. Ciudad Reynaud: "Las reformas procesales emprendidas en América Latina", in *Revista de Derecho Procesal* (2010, No. 3-4).

enhanced role for labour administration officials in the conciliation and/or mediation of labour disputes (Japan, Jordan, Montenegro and Zimbabwe); increased emphasis on capacity building among persons with conciliation, mediation and arbitration responsibilities (Bahamas, Grenada, Haiti, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, South Africa and Zimbabwe); use of conciliation, mediation and/or arbitration processes for individual disputes, particularly in cases concerning the termination of employment (Australia, China, Indonesia, Ireland, Japan, South Africa); the permission of oral applications and evidence in proceedings relating to the resolution of labour disputes (China and several Latin American countries);⁸⁸ the introduction of statutory requirements to exchange information during collective bargaining negotiations, either as part of the duty to act in good faith or as stand-alone obligations (Argentina, Australia, Finland, Kenya, United Republic of Tanzania and Uruguay); the implementation of special measures to facilitate access for vulnerable workers (Australia); the “collapsing” of conciliation and arbitration proceedings, allowing the parties to agree to having both processes completed by the same third party within a day (South Africa); and the creation of case management systems through which information on labour disputes and outcomes are collected, analysed and disseminated (South Africa and United Republic of Tanzania).

2.3. Labour law reforms

2.3.1. Overall developments

141. An ILO review of selected aspects of labour law reform during 2008–12 shows that 76 out of 144 countries reviewed either their laws relating to social dialogue institutions and processes, their employment protection legislation or, in some cases, both.⁸⁹ A review of 40 national development frameworks in 2012 revealed that in 25 countries, labour law reform was on the policy agenda with a view to supporting private sector development or good governance. All the world’s regions and subregions saw reforms to labour law, with the largest number of reforming countries in Central Asia and Europe.

142. In some regions, particularly among developing countries, reforms have tended to improve the framework for social dialogue. In others, mainly among industrialized countries, some reforms have limited the scope of social dialogue, reduced collective bargaining rights for workers and restricted the autonomy of bargaining partners. Reforms prompted by structural adjustment and austerity policies have sometimes decentralized industrial relations, including in countries with otherwise strong traditions of national and sectoral bargaining.

2.3.2. Regional trends

143. The 2012 recurrent discussion on fundamental principles and rights at work noted that universal respect for the fundamental principles of freedom of association and the right to bargain collectively has not yet been achieved,⁹⁰ although progress has been made in some areas and with diverse regional trends. Some member States have, though, amended their constitutions to better protect freedom of association rights and principles.

⁸⁸ A. Ciudad Reynaud: “Las reformas procesales emprendidas en América Latina”, in *Revista de Derecho Procesal* (2010, No. 3–4).

⁸⁹ ILO: “Employment protection and industrial relations: Recent trends and labour market impact”, in *World of Work Report 2012: Better jobs for a better economy* (Geneva, ILS, 2012), pp. 35–57.

⁹⁰ ILO: *Fundamental principles and rights at work: From commitment to action*, Report VI, International Labour Conference, 101st Session, Geneva, 2012.

Africa

144. Reforms over the last five years in Africa have generally aimed to promote the institutions and processes of social dialogue. Nine of 40 countries studied amended their laws on social dialogue. Some countries adopted changes to promote national tripartite social dialogue machinery (including Cape Verde and Djibouti). Others reformed regulation of the rights of trade unions (such as Kenya and Senegal), of collective bargaining processes (Mauritius, Rwanda and Swaziland) and of dispute resolution in ways facilitating bipartite social dialogue (Mozambique). The Democratic Republic of the Congo, however, weakened its commitment to social dialogue, when, for budgetary reasons, it dissolved its tripartite social dialogue institution by decree.

The Americas

145. Following the structural adjustment policies of the 1990s and 2000s, the focus of current labour law reforms in many Latin American countries appears to have shifted towards promoting social dialogue. Over the last five years, several countries – mainly in South America – have reformed their laws.

146. Some of South America's reforms have entrenched the protection of the rights to organize and to bargain collectively in national constitutions. Most of the changes enhanced the legal framework for promoting collective bargaining (for example, Plurinational State of Bolivia). Other countries strengthened the role of central federations in tripartite structures and their rights to represent workers where there is otherwise no representation (such as Brazil and Uruguay). Member States also revised regulation of the right to bargain collectively, including rules on trade union representativeness (including Ecuador and El Salvador), or reinforced the role of properly organized trade unions to negotiate collective agreements (for example, Panama and Bolivarian Republic of Venezuela). Some improved systems for resolving labour disputes (such as Ecuador and Peru) or amended laws regulating judicial resolution of labour conflicts with a view to facilitating access to, and efficiency of, labour justice (including Nicaragua and Uruguay).

147. In North America, legislation did not generally strengthen collective bargaining. In the United States, attempts to strengthen union recognition and bargaining rights faltered when Congress rejected the proposed Employee Free Choice Act.⁹¹ Public sector bargaining was weakened by legislation in two states, although these reforms were later reversed or limited by courts or popular vote (see "Public sector collective bargaining" in section 2.2.1). In Canada, a 2007 Supreme Court ruling granted constitutional protection to the collective bargaining process.⁹² Saskatchewan, however, introduced changes that restricted access to collective bargaining, prohibiting strikes in any service the employer deems essential, unless through bargaining the employer agrees otherwise. It also made threshold requirements more onerous for unions to bargain.

Arab States

148. In the Arab States, only two countries amended their laws on social dialogue. In Jordan, the right to form and register unions was clarified, and the right to join unions was extended for the first time to non-Jordanian workers. In Kuwait, the right to form

⁹¹ The Employee Free Choice Act was a legislative bill introduced in both chambers of the US Congress on 10 March 2009. See H.R. 1409 and S. 560 of the Employee Free Choice Act of 10 March 2009.

⁹² In *Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, the Supreme Court ruled that Canada's Charter of Rights and Freedoms also protects the right of trade unions to bargain collectively.

unions was extended to private sector workers and limited trade union plurality was introduced locally. Both countries still have, however, a government-authorized single trade union federation, to which all trade unions must belong. Migrant workers in the Gulf countries remain deprived of basic trade union rights and of access to social dialogue mechanisms.

Asia and the Pacific

149. Institutional frameworks for labour relations are at very different stages of development (section 2.2.1), as reflected in the different types of legal changes enacted. Countries that have shifted to more democratic governance, such as Indonesia, have focused on strengthening organizational rights and on enacting procedures for recognizing bargaining. Some transitional economies, such as Mongolia and Viet Nam, have introduced legislative (and institutional) initiatives to build new labour relations systems.

150. Countries that have carried out comprehensive reform over the last five years include China (2009),⁹³ Lao People's Democratic Republic (2008),⁹⁴ Republic of Maldives (2008, 2009)⁹⁵ and Viet Nam (2012).⁹⁶ During 2008–12, changes to laws relating to social dialogue were made in eight of the 27 countries reviewed. Most of these changes aimed to improve and promote institutions and processes of social dialogue.

151. Some countries took steps to reinforce trade union rights (Viet Nam) or introduced measures to promote or refine collective-bargaining processes (Republic of Maldives). With assistance from the ILO, Myanmar adopted a law to facilitate setting up trade unions. Elsewhere, changes to laws included new provisions to facilitate bargaining, both for multi-union environments (as in Republic of Korea) and for specific categories of workers (such as low-paid workers in Australia). Other countries passed reforms to promote efficient resolution of labour disputes (China's regulations on Consultation and Mediation of Enterprise Labour Disputes, and Indonesia's Guide on the Settlement of Industrial Relationship Disputes through Bipartite Negotiation are examples).

152. Fiji went the other way: a 2011 decree provided for government involvement in electing trade union representatives and empowered employers to cancel collectively negotiated terms of employment.

Europe

153. Some European countries have modified prevailing models of collective bargaining to facilitate wage adjustments that take account of regional and enterprise differences in productivity. Reforms have generally emphasized bargaining at enterprise rather than sectoral or national levels; reviewed the favourability principle⁹⁷ (by giving pre-eminence to enterprise-level agreements even where their provisions derogate from those

⁹³ Labour Contract Law, Employment Promotion Law, Law on Mediation and Arbitration.

⁹⁴ Revised Labour Law (2006), and revised Trade Union Law (2008).

⁹⁵ A new Constitution was adopted in 2008, which recognized, for the first time, workers' rights to organize and to strike. A new Employment Act was adopted in 2009.

⁹⁶ Revised Trade Union Law (2012).

⁹⁷ According to this principle, sectoral, enterprise and occupational collective agreements are not allowed to contain terms and conditions that are less favourable to workers than those set in the national general collective agreements. This principle has traditionally aimed to avoid erosion of the collective bargaining system by opt-out and other derogation clauses.

of sectoral agreements or national law); and discontinued the extension of collective bargaining agreements.⁹⁸

154. Legislative changes in Greece, for example, provided that the national minimum wage would no longer be set through the national general collective agreement but by government decision. They expanded the scope for enterprise collective agreements to take precedence over sectoral ones, even if the latter were more favourable for workers. They also discontinued extension for a set period. Additional reforms expanded the scope for employers to reach collective agreements with associations of persons, despite objections from trade unions that these associations do not benefit from the same guarantees of independence as trade unions.⁹⁹

155. Spain also introduced measures to give precedence to company collective agreements and temporarily exclude conditions that were previously collectively agreed on for economic, technical, organizational or production-related reasons.¹⁰⁰ Italy introduced measures providing for a company agreement to derogate from conventional and statutory provisions, including those governing termination of employment.¹⁰¹ In Romania, the Social Dialogue Act (2011) abolished national collective bargaining and replaced the automatic universal application of sectoral agreements with a system that requires application to the Government for the extension of an agreement, and agreement by the National Tripartite Council for Social Dialogue.¹⁰²

156. Works councils were empowered in some countries to conclude agreements and in other ways to perform functions previously reserved for trade unions. Hungary extended certain rights that were previously trade union prerogatives to other bodies of workers' representation. Works councils there now have the exclusive right to be consulted on certain issues (including transfer of undertakings and collective redundancies). In addition, collective agreements may now deviate from certain provisions of the Labour Code not only in favour but also to the disadvantage of workers. Other countries introduced new procedures to determine unions' collective bargaining representativeness. In Romania, the Social Dialogue Act (2011) raised the threshold to at least half plus one of the company's workers to be affiliated if a trade union is to be representative and allowed to negotiate a single-employer collective agreement (the previous threshold was one third).¹⁰³

157. These policies reflect, on the one hand, the impacts of the global financial crisis and more recently the Eurozone crisis and, on the other, the influence of European institutions and the IMF in countries seeking financial assistance to deal with sovereign

⁹⁸ For example, in Slovakia, Act No. 557, 2010; and in Italy, *Accordo interconfederale fra Confindustria e CGIL, CISL e UIL* of 28 June 2011.

⁹⁹ Law No. 3845, 2010; Law No. 3899, 2010; Law No. 3986, 2011; Law No. 4024, 2011; ILO: *Report on the High-Level Mission to Greece*, Athens, 19–23 Sep. 2011; Committee on Freedom of Association Case No. 2820; ILO: *365th Report of the Committee on Freedom of Association*, Governing Body, 316th Session, Nov. 2012, GB.316/INS/9/1, paras 784–1003.

¹⁰⁰ Royal Decree Law No. 7, 2011.

¹⁰¹ Article 8 of Decree No. 138 of 12 Aug. 2011.

¹⁰² For a collective agreement to be legally enforceable at the sector level more than 50 per cent of all employees in the sector must work for companies that are members of the signatory employer organizations. If not, the agreement can still be registered but will be effective only at "group of units" level; C. Ciutacu: *National unique collective agreement ended by law*, Eurofound, 2011, www.eurofound.europa.eu/eiro/2011/07/articles/ro1107029i.htm [accessed 10 Dec. 2012].

¹⁰³ C. Ciutacu: *National unique collective agreement ended by law*, Eurofound, 2011 www.eurofound.europa.eu/eiro/2011/07/articles/ro1107029i.htm [accessed 10 Dec. 2012].

debt crises. At the start of the global crisis, involvement of the social partners in economic and social policy-making made it possible for some European countries to agree on packages of labour-market crisis measures in a tripartite setting (section 2.4). However, as the crisis deepened and with the change of its nature into a sovereign debt crisis with high volatility of interest rates, governments preferred to act unilaterally or unions were no longer willing to endorse further austerity policies.

158. A growing number of labour law reforms in Europe marks a departure from long-standing traditions of social dialogue, which had previously emphasized consensus.¹⁰⁴ But while labour regulation must be developed in light of national economic and social contexts and need not follow a single model, reforms should be based on social dialogue. Crises should not weaken valuable institutions that have been built over generations for perceived short-term economic or fiscal gains. (See also sections 2.4.1 and 2.4.2.)

2.4. National tripartite social dialogue

159. Tripartite social dialogue is vital for harmonious industrial relations and solid economic growth in increasingly complex societies. It is often called on to perform key functions of building consensus, promoting fairness and maintaining social cohesion while designing and implementing social and economic policies, which can then be articulated with other levels of social dialogue, notably, collective bargaining at sectoral and enterprise levels.

160. National tripartite social dialogue comes in a variety of forms – depending on each country's traditions – and names, such as economic and social councils (ESCs) (box 2.11) and tripartite labour councils. Besides generating consensus and negotiated proposals for economic and social policies, its processes have also historically aimed to ensure smooth transitions aftershocks and crises, such as the end of authoritarian regimes, the transition from centrally planned economies, structural adjustment, and particularly severe industrial and economic tensions, such as long strikes or austerity policies.¹⁰⁵

Box 2.11 ESCs

These councils are institutions for democratic involvement of social partners and sometimes of other civil society groups in the governance of public affairs.

Many of these institutions are members of the International Association of Economic and Social Councils and Similar Institutions (AICESIS). Of its 95 members, 27 are from Africa, 20 from Asia, 18 from Latin America and 30 from Europe.

Despite their growing number, the public profile is often low. Many of them are weak and play only a marginal role in policy-making. Their mandate and competencies are often ill-defined and they are often poorly resourced. There is a need for them to publicize their work in order to enhance their visibility and to strengthen their influence on policy- and law-making processes.

Source: AICESIS–UNDESA Partnership, 2011. "Global knowledge base on economic and social councils and similar institutions", AICESIS Working Paper, July 2011.

¹⁰⁴ The ILO experts and regional treaty bodies have noted that key aspects of labour market institutions and labour law have been weakened in some European countries; ILO: *365th Report of the Committee on Freedom of Association*, Governing Body, 316th Session, Nov. 2012, GB.316/INS/9/1, paras 784–1003; UN: *Statement of the Chair of UN Committee on economic, social and cultural rights*, United Nations General Assembly, 67th session, New York, Oct. 2012.

¹⁰⁵ T. Fashoyin: "Coopération tripartite, dialogue social et développement national" [Tripartite cooperation, social dialogue and national development], in *Revue Internationale du travail* (2004, Vol. 143, No. 4, Dec.), pp. 371–403.

161. Mechanisms for national tripartite social dialogue have been set up and function in some 80 per cent of ILO member States, though to varying degrees. Where they function well, the institutions enable tripartite partners to tackle economic and social problems at central level, thus ensuring a certain degree of coordination and solidarity that cannot be easily achieved at lower levels of decision-making. In some cases, tripartite bodies are set up to advance specifically the ILO Decent Work Agenda (box 2.12).

Box 2.12
Social dialogue, and economic and social policy in Brazil

Brazil brings social dialogue to all aspects of economic and social policy formation and implementation, with decent work a core part of the public policy agenda.

Over the last decade, Brazil has created, maintained and strengthened national councils, commissions and forums in nearly every sphere of social, economic and labour policy with the active involvement of the social partners. The policy areas include: gender and racial equality; minimum wage; immigration; international relations; working conditions in the port sector; prevention and eradication of child labour and forced labour; social security; worker safety and health; the social and economic policy of the Brazilian Presidency; working conditions in the sugar cane sector; working conditions in the building and construction trades; youth employment; and labour relations in general.

These councils, commissions and forums not only foster discussion between the social partners, but produce actual proposals to guide future legislation, regulation and executive action.

A Tripartite Working Group for the National Agenda on Decent Work (GTT-ANTD) also has been formed, and is moving forward the incorporation of decent work at every level of public policy in the nation. In addition, there is a subcommittee in the GTT-ANTD that developed a national decent work agenda for youth.

162. The promotion and ratification of ILO Governance of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by 133 countries as at November 2012, seems to have boosted the expansion of machineries for national tripartite social dialogue (box 2.13).

Box 2.13
Impact of Convention No. 144 on tripartite consultation

New bodies aimed at ensuring tripartite consultation have been formed over the past five years in several countries, including Bangladesh, Colombia, Jordan, Kenya and Kuwait.

These bodies have addressed issues pertaining to minimum wages and fundamental principles and rights at work. In countries where tripartite bodies were already in place, Convention No. 144 helped to improve the effectiveness of social dialogue procedures by inviting the social partners to comment on ILO reports (as in Armenia, Czech Republic and Japan); by involving representatives of the social partners to participate even at early stages of the decision process (South Africa); by triggering the creation of new units and committees within ministries of labour aimed to prepare for tripartite consultation on international labour standards (Togo); or by discussing specific issues confronting their labour markets, such as a national minimum wage and responses to the global crisis (India, Indonesia, Peru and Turkey).

As a result of tripartite consultations, some countries, including Albania, Benin, Slovakia and United States, were able to register, ratify or prepare the ground for ratifying additional ILO Conventions.

Source: ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 100th Session, Geneva, 2011; ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 101st Session, Geneva, 2012.

163. In the last decade, the agendas and themes of such mechanisms have expanded. National tripartite agreements, often in the form of “social pacts”,¹⁰⁶ have been used to address shocks and crises.¹⁰⁷ The issues addressed included wage setting and the use of inflation targets; social security (in particular, unemployment insurance); vocational training and active labour market policies; employment protection; the informal economy; protection of vulnerable groups; and governance of pension reform.¹⁰⁸

164. Some processes also addressed macroeconomic issues, trade and investment policies and industrial policies.¹⁰⁹ In some cases, issue-specific tripartite bodies were created, as for OSH and labour inspection (section 2.4.4). The global economic downturn of 2008–09 re-emphasized the role of social dialogue as a key component of recovery strategies.

2.4.1. Tripartism as an opportunity taken: Global crisis responses, 2008–10

165. ILO research shows that in 51 countries out of 131 (39 per cent) with data, the main anti-crisis measures were approved in consultation with the social partners. Countries with a weaker tradition of social partnership had less recourse to it: 22 per cent of the countries in the Middle East and North Africa, 30 per cent of those in Central and South Eastern Europe, 35 per cent of those in sub-Saharan Africa, and half the advanced economies.¹¹⁰

166. Countries with the most developed and institutionalized industrial relations systems reacted more quickly and proactively in 2008–10,¹¹¹ with governments immediately turning to the social partners for cooperation early in the crisis.¹¹²

167. Anti-crisis packages agreed on by tripartite bodies contained a wide array of measures from the promotion of work-sharing arrangements, training opportunities and enhanced social protection to providing financial support for enterprise sustainability and creating jobs through public infrastructure programmes. Saving jobs while securing enterprise sustainability was at the core of most packages. To keep people in jobs, a mix of public and company measures was applied.

168. Some tripartite responses were triggered directly by the ILC’s adoption of the Global Jobs Pact in June 2009, as in Bulgaria, Indonesia and South Africa. Some countries’ tripartite agreements received legal backing – Belgium, Chile and Poland, for example. Still, many countries, despite efforts to consult, failed to agree on outcomes,

¹⁰⁶ P. Pochet et al. (eds): *After the euro and enlargement: Social pacts in the EU* (Brussels, ETUI and Observatoire Social Européen, 2010), p. 413.

¹⁰⁷ L. Baccaro and S.H. Lim: “Social pacts as coalitions of ‘weak’ and ‘moderate’: Ireland, Italy and South Korea in comparative perspective”, in *European Journal of Industrial Relations* (2007, Vol. 13, No. 1, Mar.), pp. 27–46.

¹⁰⁸ H. Sarfati and Y. Ghellab: *The political economy of pension reforms in times of global crisis: State unilateralism or social dialogue?*, DIALOGUE Working Paper No. 37 (Geneva, ILO, 2012), p. 29.

¹⁰⁹ ILO: *Delivering decent work in Europe and Central Asia*, Report of the Director-General, Vol. I, Part 1, Eighth ILO European Regional Meeting, Lisbon, Portugal, 9–13 Feb. 2009 (Geneva, 2009), p.110.

¹¹⁰ ILO: “Employment protection and industrial relations: Recent trends and labour market impact”, in *World of Work Report 2012* (Geneva, ILS, 2012), pp. 35–57.

¹¹¹ L. Baccaro and S. Heeb: *Social dialogue during the financial and economic crisis: Results from the ILO–World Bank inventory using a Boolean analysis on 44 countries*, DIALOGUE Working Paper No. 31 (Geneva, ILO, 2011).

¹¹² L. Rychly: *Social dialogue in times of crisis: Finding better solutions*, DIALOGUE Working Paper No. 1 (Geneva, ILO, 2009), pp. 12–15.

owing either to a lack of consensus between the government and the social partners (for instance, Cambodia, Latvia, Romania and Serbia) or the withdrawal of one party from negotiations (Republic of Korea).¹¹³

2.4.2. Tripartism as an opportunity missed: Europe's public debt crisis responses¹¹⁴

169. After positive experiences with national tripartite social dialogue in the early stages of the financial crisis, some European countries facing pressures over public debt turned to austerity policies, most often without social dialogue.

170. The austerity measures in Greece, Ireland, Latvia, Portugal, Romania and United Kingdom aimed to cut fiscal deficits quickly by lowering public expenditure, eliminating various subsidies, raising electricity and value added tax rates, freezing public sector wages, capping pension payments and reducing or deferring social benefits. Most of these governments declared austerity non-negotiable, short-circuiting social dialogue. When governments did consult the social partners on the plans' contents, as in Ireland, they made concessions and trade unions endorsed the plans.

171. In some countries (Greece, Romania and Spain, for instance), austerity policies were accompanied by measures to restrict the scope of collective bargaining and tripartite consultation (section 2.2).

172. The introduction of austerity measures during conditions of recession was contested, and has severely tested social dialogue's resilience in the countries concerned. The social partners have often split over the need for austerity. Most trade unions opposed it, arguing that it would weaken aggregate demand and thus be recessionary. They also strongly criticized the sidelining of social dialogue in designing and implementing policy reforms, the haste of the reforms and the measures' permanence. Some employers' organizations have supported government moves towards fiscal consolidation but often with reservations over specific measures, sometimes distancing themselves from austerity policies, given their negative impact on aggregate demand and thus on enterprise profitability and sustainability, particularly for SMEs.

173. Lacking access to tripartite social dialogue, some trade unions have appealed to the courts to challenge government decisions in Latvia, Romania and the United Kingdom. Greek and Spanish trade unions submitted comments to the ILO supervisory bodies for alleged violations of ratified Conventions. In the case of Greece this has led to an ILO High-Level Mission which visited the country¹¹⁵ at the request of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹¹⁶ and the Conference Committee on the Application of Standards in 2011.¹¹⁷ On the basis of the

¹¹³ L. Baccaro and S. Heeb: *Social dialogue during the financial and economic crisis: Results from the ILO–World Bank inventory using a Boolean analysis on 44 countries*, DIALOGUE Working Paper No. 31 (Geneva, ILO, 2011).

¹¹⁴ Y. Ghellab and K. Papadakis: "The politics of economic adjustment in Europe: State unilateralism or social dialogue", in *The global crisis: Causes, responses and challenges* (Geneva, ILO, 2011), pp. 81–91.

¹¹⁵ ILO: *Report on the High-Level Mission to Greece*, Athens, 19–23 Sep. 2011.

¹¹⁶ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Report III (Part 1A), International Labour Conference, 101st Session, Geneva, 2012.

¹¹⁷ The High-Level Mission visited the country from 19 to 23 September 2011. After the Mission, follow-up meetings took place with the EU and the IMF in Brussels and Washington, DC, in order to assist the Mission in its understanding of the situation on the basis of the suggestion made by the Committee on the Application of Standards.

findings of the High-Level Mission, the CEACR formulated observations on the application of 11 Conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee on Freedom of Association¹¹⁸ reached conclusions and recommendations on Case No. 2820 concerning alleged violations of freedom of association standards and principles in Greece in November 2012, pointing to an important deficit of social dialogue and the alteration of the institutional framework of key fundamental rights of freedom of association and collective bargaining (box 2.14). The European Committee on Social Rights also reached decisions criticizing these measures when they considered them in light of the requirements of the European Social Charter in 2012.¹¹⁹

Box 2.14
Greece's labour relations during austerity

The ILO Committee on Freedom of Association examined the complaint initially submitted in October 2010 by the Greek General Confederation of Labour, the Civil Servants' Confederation, the General Federation of Employees of the National Electric Power Corporation (GENOP–DEI) and the Greek Federation of Private Employees, which was supported by the ITUC, concerning a variety of austerity measures taken in Greece over the previous two years within the framework of the international loan mechanism agreed upon with the “Troika”.¹

While deeply aware that these measures were taken within a context qualified as grave and exceptional provoked by a financial and economic crisis, the Committee found that there were repeated and extensive interventions by the State into free and voluntary collective bargaining and an important deficit of social dialogue. It highlighted the need to promote and strengthen the institutional framework for these key fundamental rights.

The Committee called for permanent and intensive social dialogue on all the issues raised in the complaint and in its conclusions, with the aim of developing a comprehensive common vision for labour relations in full conformity with the principles of freedom of association and the effective recognition of collective bargaining and the relevant ratified ILO Conventions. The Committee expected that the social partners would be fully implicated in the determination of any further alterations within the framework of the agreements with the Troika that touch upon matters core to the human rights of freedom of association and collective bargaining and which are fundamental to the very basis of democracy and social peace.

The Committee highlighted the need for, and availability of, ILO assistance to achieving these objectives.

¹ The term “Troika” refers to staff teams of the EC, the ECB and the IMF.

Source: http://www.ilo.org/brussels/press/press-releases/WCMS_193308/lang--en/index.htm [accessed 15 Nov. 2012].

174. Concerns about the impact of austerity on economic, social and cultural rights have also been expressed by the Chairperson of the Committee on Economic, Social and Cultural Rights in a statement delivered at the UN General Assembly on 23 October 2012 as well as by the Office of the High Commissioner for Human Rights.¹²⁰

¹¹⁸ ILO: *365th Report of the Committee on Freedom of Association*, Governing Body, 316th Session, Nov. 2012, GB.316/INS/9/1, paras 784–1003.

¹¹⁹ European Committee on Social Rights (ECSR): *General Federation of Employees of the National Electric Power Corporation (GENOP–DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece*, complaints 65/2011 and 66/2011.

¹²⁰ *Austerity measures may violate human rights*, Office of the High Commissioner for Human Rights, Oct. 2012, <http://www.ohchr.org/EN/NewsEvents/Pages/AusterityMeasures.aspx> [accessed 7 Nov. 2012].

175. A few European countries hit by the debt crisis have continued using social dialogue to address the issues. For instance, France's new Government in 2012 aimed to build consensus around its plans to reinvigorate the economy, while in November 2011 Finland's social partners concluded, with government backing, a framework agreement to secure enterprise competitiveness and employment protection.

2.4.3. Other challenges for tripartism

176. Many countries still face difficulties in exploiting tripartism to its full potential. ILO experience shows that in many countries tripartite institutions play at best a marginal role in policy-making, are poorly resourced, function only sporadically and often see their outputs bypassed by governments in shaping economic and social policies.

177. The lack of trust in dialogue and tripartism can reflect weak commitment on the part of governments towards tripartism, and little genuine engagement with the social partners for shaping national development strategies. National social dialogue cannot thrive where freedom of association and collective bargaining rights are not respected and where social partners are weak or fragmented. Non-existent or meagre budgets for tripartite institutions and their actors can also undermine full functioning. A foundation of political will by governments and social partners is required for success. Technical capacity and trust in each other and the process is also a precondition for such functioning.

178. Governments may view social dialogue as a time-consuming process that delays decisions requiring quick implementation. However, experience shows that time spent in social dialogue for achieving social consensus is a good investment when it results in broad social and political support for the necessary reforms and policies. Indeed, time saved by the swift and smooth implementation of reforms can bring substantial economic and competitive gains.¹²¹

179. Social dialogue actors and institutions may also have limited policy space for democratic deliberations over national economic and social policies because of the constraints associated with economic integration – such as the EU, MERCOSUR, ASEAN and SADC – which shifts decision-making on some key issues to supranational spaces where the social partners' representation may be weak or non-existent. Social dialogue actors and institutions are, however, starting to emerge at a regional or subregional level to better balance economic and social objectives (section 2.5).

2.4.4. Tripartism and inclusive policy-making

180. Even with the above challenges, national tripartite social dialogue has offered an opportunity for consensus building and informed economic and social policy-making in the last decade. It has generated cooperation among the social partners, thus avoiding unilateral regulatory action by States, and mitigated the negative impacts of market-driven policies, thereby upholding equity and social cohesion, and establishing consensus-driven policies. The following examples of negotiation, consultation or simple exchange of information illustrate efforts in line with ILO instruments to promote tripartite social dialogue and implementation of ILO standards.

¹²¹ Y. Ghellab et al.: "Social dialogue and social security governance: A topical ILO perspective", in *International Social Security Review* (2011, Vol. 64, No. 4, Oct.–Dec.), pp. 39–56.

*Industrial policy and productive transformation*¹²²

181. National social dialogue institutions have played a central role in industrial and economic development in some countries by coordinating, shaping and supporting the processes related to productive transformation and industrial policy formulation and implementation.¹²³ In Ireland, for example, from 1987 until 2008, the Government and social partners focused on high-productivity and catch-up development. Social partnership helped to coordinate industrial development and investment policies with skills, education, research and development, and labour market policies in the context of the national development strategy, increasing employment in medium- and high-technology manufacturing and augmenting income, and wages.¹²⁴

182. In Asia, responding to the crisis in 1997, the Government of the Republic of Korea established a tripartite commission which, by 2007, had reached agreements that helped to move from the traditional institution of lifetime employment and seniority-based allocation of jobs to a merit-based system, supporting mobility of workers within and between enterprises, effective labour reallocation and productive transformation.¹²⁵ In Uruguay, the Government in 2008 launched the “Productive Cabinet” to build national social dialogue institutions for long-term economic transformation and social justice. Tripartite production councils had been established in six sectors by 2010, playing a critical role in defining, implementing and evaluating industrial development plans and industrial policies.¹²⁶

Employment policy

183. In line with the provisions of the Employment Policy Convention, 1964 (No. 122), ratified by 106 countries, and the guidance provided in the Global Jobs Pact, several countries have relied on tripartite bodies for developing, implementing and monitoring national policies that pursue full employment under active labour market policies. The CEACR has noted several cases of governments involving social partners in formulating and adopting employment policies in the last five years (box 2.15). Some of the policies adopted were temporary, as in France and Italy, while others contributed to longer lasting structural reforms, as in the Netherlands.

¹²² Productive transformation is defined as a process of structural change in the economy towards higher value-added activities and jobs, and of increasing productivity within given sectors mainly due to technological and human capital upgrading. Sustained productive transformation processes are supported by social transformation and institutional development.

¹²³ I. Nübler: *Capabilities, productive transformation and development* (Geneva, ILO, forthcoming).

¹²⁴ ILO: *Skills for improved productivity, employment growth and development*, Report V, International Labour Conference, 97th Session, Geneva, 2008.

¹²⁵ W. Lee and J. Lee: *Will the model of uncoordinated decentralization persist? Changes in Korean industrial relations after the financial crisis*, paper presented at the conference on “The changing nature of the structure of collective bargaining: Is “coordinated decentralization” the answer?”, ILR–Cornell University, 5–7 Oct. 2001.

¹²⁶ S. Torres: *Industrial policy in Uruguay* (Geneva, ILO, forthcoming).

Box 2.15
Social dialogue and employment policy

In China, the Government launched stimulus packages in 2009 focusing on infrastructure, public works, rural development, investment and support for labour-intensive industries, particularly for SMEs and the service sector. Enterprises were allowed to postpone or reduce payment of social insurance contributions and some received subsidies. Social dialogue was promoted as a crisis-response tool. The national tripartite mechanism issued guidelines on how to face the economic situation, encouraging and guiding enterprises and workers to stabilize job positions and avoid layoffs as much as possible. They suggested taking measures such as wage adjustments and flexible working time through consultations.

In New Zealand, 20 initiatives to alleviate employment losses were put in place as a result of the 2009 Summit on Employment, which included Maori groups and local governments.

In the Netherlands, the crisis prompted reform of the pension system, where an agreement was found between Government and the social partners to increase the retirement age to 67, while improving working conditions for older workers.

In other countries, social dialogue on employment policy was used to increase employment for disadvantaged groups, such as migrants, older workers or youth. In Canada, for example, a special committee for recognizing foreign qualifications was set up in 2009 after government consultations with social partners and other stakeholders. In Austria, tripartite social dialogue led to the 2008 reform of the youth employment package, to include training programmes for young people. Similar training programmes were put in place by Lithuania, which complemented the reform with incentives for employers hiring young people.

Brazil launched the National Decent Work Agenda for Youth in 2011 as a result of tripartite social dialogue. The agenda addresses youth employment issues in a holistic way, including education, work–family balance, employment and social dialogue.

Source: ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 100th Session, Geneva, 2011; ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 101st Session, Geneva, 2012.

184. Yet, as reported in the 2012 general discussion on the youth employment crisis, fewer than half the countries that have adopted youth employment policies have involved the social partners – or youth representatives – in discussing and drafting them. Matters seem better in mainstreaming youth employment in national employment policies: more than three-quarters of countries developing comprehensive employment policies and integrated youth employment as a major area of concern consulted the social partners.¹²⁷ One example is Serbia, where a youth employment policy and action plan was developed through a participatory process involving several government ministries and agencies as well as the social partners, and adopted by the Government in September 2009.

185. Nationally, the social partners also promote youth employment issues indirectly, including through, for instance, the development and management of apprenticeship and vocational education and training systems, and setting up training funds. Globally, efforts by trade unions to improve the organization of young people can be seen through a number of initiatives, including the “recruitment” campaign targeting young workers that was implemented by the ITUC in 2010.

¹²⁷ ILO: *The youth employment crisis: Time for action*, Report V, International Labour Conference, 101st Session, Geneva, 2012, pp. 83–84.

186. In some European and Latin American countries, youth representatives are involved in the governance of national training systems, while several Asian and African countries have tripartite involvement in their national human resources advisory councils. Tripartite involvement is strong in designing national skills certification systems in the Caribbean Community member States; Chile, Malaysia, Mauritius, Singapore, South Africa, Sri Lanka, Tunisia and Turkey; and many European countries.

187. However, an international research project on national qualification frameworks in 16 countries found that a lack of social dialogue with the social partners in designing, implementing and evaluating such frameworks had a negative impact on social partner involvement in 15 of the countries (Australia was the exception).¹²⁸

Wages

188. In line with Conventions and Recommendations on minimum wages,¹²⁹ employers' and workers' organizations are consulted and take full part in policy processes to establish and adjust minimum wages in a few countries. National social dialogue aims to ensure both decent minimum wages that reflect socio-economic realities and the regular review and adjustment of such wages.¹³⁰

189. In Costa Rica, a tripartite national wage board is responsible for fixing minimum wages by sector and occupation through executive decree. Slovenia has used its ESC to set wages on a tripartite basis since the mid-1990s to bring down inflation and limit wage dispersion.

190. A relatively robust form of tripartism can be found in the minimum wage fixing systems of South-East Asia and some Pacific countries. Singapore's tripartite National Wages Council (established in 1972) promotes moderate wage increases and wage flexibility, based (among other things) on productivity growth and projected GDP growth. It has also helped the economy to move into higher value-added sectors and respond to external shocks. Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Philippines and Thailand all rely on tripartite consultations and decision-making to some degree. Concerns have been raised that minimum wage fixing may crowd out wage fixing through collective bargaining in a few of these countries, but as the ILO's *Global Wage Reports* have argued, a healthy labour market will benefit from both statutory wage fixing and collective bargaining (section 2.6). In Uruguay, the Government plays a convening and facilitative role while bargaining by the social partners may take place in sectors and enterprises where they are strongest.

Gender

191. Tripartite social dialogue and collective bargaining have great potential as policy tools for promoting gender equality in the world of work, including equal pay for work of equal value. Several ILO instruments highlight the central importance of social dialogue in promoting pay equity and non-discrimination¹³¹ and call for employers' and

¹²⁸ ILO: *The implementation and impact of national qualification frameworks: Report of a study in 16 countries* (Geneva, 2010).

¹²⁹ Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Minimum Wage Fixing Convention, 1970 (No. 131).

¹³⁰ F. Eyraud and C. Saget: "The revival of minimum wage setting institutions", in J. Berg and D. Kucera (eds): *In defence of labour market institutions* (Basingstoke, Palgrave MacMillan, 2008), pp. 100–118.

¹³¹ Article 1(1)(b) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, ... and other distinction, exclusion or preference ... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

workers' organizations to be involved in drawing up and implementing national legal and policy frameworks.¹³²

192. Several labour laws in recent years have been reformed, extending rights to workers with family responsibilities. Further, in 2008–10, 56 out of 77 countries adopted new measures to address the large gender participation and employment gaps.¹³³ Occasionally, these gaps were addressed through social dialogue, for instance, through participation of tripartite institutions in drafting laws promoting equality.

OSH

193. Tripartite social dialogue is a prerequisite for solid national safety and health systems and effective preventive measures at the workplace. The 2009 General Survey on OSH¹³⁴ that covered 123 countries demonstrated that a majority of ILO member States increasingly give effect to the provisions of the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Safety and Health Recommendation, 1981 (No. 164), which require tripartite consultations. Although mechanisms for social partner participation in OSH governance vary from country to country, they cover essential consultative, advisory and decision-making roles in formulating national policies, drafting OSH laws and developing national OSH systems.

HIV and AIDS

194. The HIV and AIDS Recommendation, 2010 (No. 200) – highlighting the importance of social dialogue – provides that its principles should be promoted consistent with Convention No. 144. To date, several ILO member States have established an authority for HIV and AIDS issues (usually at the Ministry of Health or related department), and some have established a specific HIV and AIDS authority – often called the national AIDS commission, council or programme.¹³⁵ Some of these bodies include the social partners, with employers' representatives more often present than those from trade unions.

Social security and pension reform

195. There is a strong role for workers' and employers' organizations in social security and pension arrangements.¹³⁶ Many member States have consulted or informed the social partners on making major reforms to social security systems and on drafting related laws. Consultations in Belize, Cuba, Dominican Republic and Peru, for example, aimed to inform the social partners of the need to reform the social security system and obtain public opinion over the changes.

¹³² Equal Remuneration Convention, 1951 (No. 100), Convention No. 111 and Equal Remuneration Recommendation, 1951 (No. 90), are particularly relevant.

¹³³ ILO: *Global employment trends for women 2012* (Geneva, 2012).

¹³⁴ ILO: *General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Safety and Health Recommendation, 1981 (No. 164), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981*, Report III (Part 1B), International Labour Conference, 98th Session, Geneva, 2009.

¹³⁵ UNESCO HIV and AIDS Education Clearinghouse website provides an enumeration of the responsible national authorities, <http://hivaidsclearinghouse.unesco.org/related-links/national-aids-commissions.html> [accessed 5 Nov. 2012].

¹³⁶ ILO: *General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 100th Session, Geneva, 2011, pp. 2013–2229.

196. Yet, many countries' central institutions for social dialogue have been involved to only a modest extent in deliberations over pension reform. A recent ILO study¹³⁷ on that extent over the last decade shows that, with rare exceptions such as Canada and Finland, social dialogue has played a minimal role. In most cases, lack of social dialogue led to reform rejection by the social partners and the reforms were faced with serious implementation problems. The recent crisis and subsequent austerity constitute further pressures on social security and pension systems, notably in Europe (section 2.4.2). Pressures on traditional social security programmes from ageing populations form another related and growing concern that requires social dialogue.¹³⁸

Labour inspection

197. The ILO Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), call for social dialogue to promote labour inspection policies aimed at enforcing labour laws and minimizing workplace risks. A range of approaches aims to ensure tripartite consultation in this framework and has been analysed in detail in the report to the 2011 ILC on labour administration and labour inspection.¹³⁹

198. In some countries, collaboration between labour inspectorates and the social partners has been pivotal in policies to tackle precarious and undeclared work. In Brazil, for instance, the tripartite pact signed in 2009 by the state of São Paulo to combat precarious work and achieve full employment and decent work involves all the relevant authorities and the social partners in efforts led by the labour inspectorate against undeclared and forced labour in the textile and maritime sectors.¹⁴⁰ In Mexico, sectoral labour inspection protocols (for example, for mining and the sugar industry) have been developed through a tripartite consultation process.

The informal economy

199. The social partners in some countries (Hungary and Ireland, for example) have been involved in national policy discussions on various aspects of the informal economy such as undeclared work. Similar local initiatives exist in Durban, South Africa, where policies to support informal workers and operators have been promulgated, including regular dialogue with representatives of the informal economy and capacity building for informal economy organizations. Elsewhere, tripartite consultations may combine national and local interventions. In Ghana, local institutions were established in two districts to launch social dialogue among local government, elected assembly officials, and representatives of SMEs and civil society. The project expanded access to credit for SMEs, extended social protection and widened pension funds to informal workers. In Turkey during 2004–07, tripartite discussions supported by an EU–ILO project aimed to raise awareness of the risks of the informal economy through the media, and created

¹³⁷ In China, France, Greece, Jordan, Mauritius, Netherlands, Slovenia, Spain, Sweden and Uruguay; H. Sarfati and Y. Ghellab: *The political economy of pension reforms in times of global crisis: State unilateralism or social dialogue?*, DIALOGUE Working Paper No. 37 (Geneva, ILO, 2012).

¹³⁸ ILO: *Employment and social protection in the new demographic context*, Report IV, International Labour Conference, 102nd Session, Geneva, 2013.

¹³⁹ ILO: *Labour inspection and labour administration*, Report V, International Labour Conference, 100th Session, Geneva, 2011, para. 221, p. 66.

¹⁴⁰ ILO: *Labour inspection and labour administration*, Report V, International Labour Conference, 100th Session, Geneva, 2011, para. 227, p. 68.

incentives to register work through the development of registration guides and links with municipal regulations for enterprises.¹⁴¹

200. Social dialogue may also relate to specific sectors with high informality, for instance, domestic work (box 2.16). A tripartite pact was signed in 2009 in Brazil to combat precarious work and forced labour in textiles.¹⁴² Peru, as early as 1992, introduced laws allowing informal workers to organize themselves, helping to create a national federation representing informal street workers (FENTRIAAP) in 2006.

Box 2.16

Institutional frameworks for social dialogue in the informal economy: Uruguay and the Philippines

Uruguay and the Philippines have created institutional frameworks for social dialogue on domestic work that have encouraged collective organization and representation, yielding tangible results in regulating work in the informal economy through consensus.

In Uruguay in 2006, the Domestic Workers Act included the domestic work sector in the tripartite wage council. This helped to identify an organization representing employers, which concluded two collective agreements in 2008 and 2010 with the national domestic workers' trade union.

In the Philippines, the Government, trade unions and domestic workers' associations as well as employers' organizations formed a technical working group on domestic work, which discusses and promotes measures to improve working conditions of domestic workers in the country and abroad. It provides a forum to explore legal reform needs and helped to draft a bill on domestic work, which has reached an advanced stage of Congressional consideration.

In 2012 these two countries were the first to ratify the ILO Domestic Workers Convention, 2011 (No. 189).

Non-standard forms of employment

201. Given the constraints associated with collective bargaining coverage for workers in non-standard forms of employment (section 2.2.1), the role of national tripartite dialogue remains key for enabling non-standard workers to protect their rights and improve their condition. Examples come from Argentina, where a tripartite National Agreement for the Promotion of Social Dialogue in the Construction Industry was signed in December 2010;¹⁴³ Singapore, where in 2008 a Tripartite Advisory on Responsible Outsourcing Practices was created; and Japan, where tripartite consensus was reached in 2008 to increase national average minimum wages, which had been affected by the rise in the number of non-standard workers.

Rural economy

202. Ensuring a strong voice for rural workers (who account for nearly half the world's workforce) and rural employers is part of the effort to improve their conditions of work and life. However, setting up and expanding strong and independent voluntary

¹⁴¹ J. Hayes: *Tackling unregistered work through social dialogue: The Turkish and European experience* (Geneva, ILO, 2007).

¹⁴² *Pacto Contra a Precarização e pelo Emprego e Trabalho Decentes em São Paulo – Cadeia Produtiva das Confeções* [Pact against precarious employment and for decent work in Sao Paulo – Textile production chain], Reporter Brasil, 24 July 2009, http://www.reporterbrasil.org.br/box.php?id_box=348 [accessed 12 Dec. 2012].

¹⁴³ *Internacional de Trabajadores de la Construcción y la Madera: Argentina: Se firma acuerdo nacional de promoción del diálogo social en la industria de la construcción*, Argentina, MERCOSUR, 2010, <http://www.bwint.org/default.asp?index=3214&Language=ES> [accessed 10 Dec. 2012].

organizations of rural workers and employers has been a challenge owing to the special characteristics of rural economies (such as the family nature of business and absence of an employment relationship), the lack of capacity among local governments and employers' and workers' organizations, an urban bias among social partners in some countries, and weaknesses in labour law enforcement by labour inspectorates.

203. A positive example comes from Argentina, where a tripartite institution, the National Registry of Workers and Employers in Agriculture (RENATEA), includes a social dialogue mechanism for registering workers and employers in agriculture, to reduce informality.

204. Cooperatives provide one means for rural workers and employers to engage in social dialogue,¹⁴⁴ as the majority of the 750,000 cooperatives and 800 million cooperative members worldwide are in rural areas.¹⁴⁵ Cooperatives can help to provide services to rural workers and to represent them: savings and credit cooperatives provide better access to financial institutions¹⁴⁶ and give representation to those banking with them.¹⁴⁷

Migrant workers

205. Of the world's estimated 214 million international migrants, 105.4 million are workers.¹⁴⁸ As a labour issue, migration should be addressed through social dialogue. Instead it is often approached primarily as a security issue. In many countries, both of origin and destination, the actors most involved in the labour market – workers' and employers' organizations – are not incorporated in migration policy development.¹⁴⁹ Labour migration is frequently sector specific (often agriculture, health care, hospitality, retail and construction industries), with particular implications for workers' rights, social protection and, above all, workers' organization and social dialogue.

206. Several countries in the last few years have developed national labour migration policies through tripartite and tripartite-plus social dialogue. Such policies – often developed with ILO assistance – can align with the countries' development strategies and employment policies while also ensuring consistency with international labour standards. In Sri Lanka, for example, a National Labour Migration Policy was adopted by the Government in 2009 after tripartite consultations.

207. Similar initiatives aimed at strengthening social dialogue for labour migration policies have been developed in Armenia, where a national gender-responsive migration strategy and action plan was adopted by the Government in December 2010, having been validated by social partners and all government stakeholders; in Georgia, where an inter-

¹⁴⁴ ILO: *Decent work and the informal economy*, Report VI, International Labour Conference, 90th Session, Geneva, 2002.

¹⁴⁵ ILO: *Promotion of rural employment for poverty reduction*, Report IV, International Labour Conference, 97th Session, Geneva, 2008.

¹⁴⁶ CGAP and the World Bank: *Financial access 2010: The state of financial inclusion through the crisis* (Washington, DC, 2010).

¹⁴⁷ Examples of cooperatives active in the informal economy can be found in Kenya, Rwanda and United Republic of Tanzania; S. Smith: *Let's organize!: A SYNDICOOP handbook for trade unions and cooperatives about organizing workers in the informal economy* (Geneva, ILO, ICA and ICFTU, 2006).

¹⁴⁸ ILO: *International labour migration: A rights-based approach* (Geneva, 2010).

¹⁴⁹ It should be noted that the Migration for Employment Convention (Revised), 1949 (No. 97), makes reference to the benefits of collective bargaining, in its provision on equal treatment, while the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), provides for consultation with social partners (Article 7) in addressing migration policies.

ministerial State Commission on Migration was set up in November 2010, which includes a working group with social partners; and in Costa Rica, which has embarked on designing a gender-responsive labour migration policy, involving the social partners in consultations.

Greening the economy

208. The transition towards a greener economy entails profound changes in production processes and technologies that will lead to the creation, destruction and reallocation of jobs. Close cooperation between government and the social partners at all levels will be central for an environmentally, economically and socially sustainable transition.¹⁵⁰ The concept of “just transition” is increasingly used in national and international policy circles to describe the idea that the transition to a greener economy has to include all stakeholders, notably those harmed by the transition, and that the unavoidable employment and social costs have to be shared across society and not only by those directly affected.

209. Several countries over the last decade have established multi-stakeholder initiatives with social partners, provincial governments, technical organizations, universities and other civil society actors to define strategies for low-carbon transition and to shape skills development strategies. (The countries include Argentina, Brazil, Czech Republic, France, India, Indonesia and South Africa.) MERCOSUR is involved in a regional initiative with similar goals. Other national initiatives help to raise awareness and devise solutions for workers and enterprises (especially SMEs) to challenges posed by the transition to low-carbon emissions.

2.5. Cross-border social dialogue

210. Some 50,000 MNEs and their 450,000 foreign affiliates, employing over 200 million people throughout the world, are key actors in the flow of foreign direct investment to developing countries and the changing configuration of production and employment.¹⁵¹ Their impact is felt in virtually every facet of global industry, trade, services and business activity. But as the World Commission on the Social Dimension of Globalization noted in 2004, without balanced multilateral rules to govern these processes there is growing concern that competition between countries is inducing them to reduce regulations, taxes, environmental protection and labour standards in a “race to the bottom”.¹⁵²

211. Partly in response to public concerns, a patchwork of bilateral and multilateral trade, investment and economic cooperation agreements have been negotiated that include a social dialogue dimension, often as part of good governance commitments. A comprehensive multilateral framework is missing, however, and the agreements that exist are effective to varying degrees in addressing the underlying issues.

212. The vacuum left by the lack of a multilateral framework has led to numerous private initiatives to guard against abuses or promote self-regulation at cross-border level.

¹⁵⁰ ILS: *Working towards sustainable development: Opportunities for decent work and social inclusion in a green economy* (Geneva, ILO, 2012); ILO: *Sustainable development, decent work and green jobs*, Report V, International Labour Conference, 102nd Session, Geneva, 2013.

¹⁵¹ *Multinational enterprises*, ILO, Geneva, www.ilo.org/global/topics/employment-promotion/multinational-enterprises/lang-en/index.htm [accessed 11 Dec. 2012].

¹⁵² World Commission on the Social Dimension of Globalization: *A fair globalization: Creating opportunities for all* (Geneva, ILO, 2004), pp. 34, 86.

Private voluntary practices, such as CSR and IFAs, increasingly integrate a social dialogue dimension in their policies and operations, and this in turn has triggered development of cross-border social dialogue actors and institutions. The private initiatives are sometimes buttressed by public–private partnerships or actions by international organizations. Partnerships such as the Better Work Programme (box 2.17 and section 3.5) rely on – and promote – social dialogue.

Box 2.17
The Better Work Programme

The Better Work Programme is a unique partnership of the ILO and the International Finance Corporation. It seeks to improve compliance with ILO fundamental principles and rights at work and national labour law in global supply chains in the garment sector, as well as to promote competitiveness of the industry in developing countries.

At global level, the Better Work Programme established an Advisory Committee that includes the International Organisation of Employers (IOE) and the ITUC as key advisers.

At national and sectoral levels, tripartite committees serve as a mechanism for tripartite social dialogue to advise the programme and strengthen working relationships between governments, employers and workers.

At factory level, Better Work monitors compliance and offers assessments, and advisory and training services. Remediation for problems is pursued through participatory bipartite factory committees in which workers and factory management seek to improve working conditions and compliance with labour standards.

The services offered by the Better Work Programme in Cambodia (and its predecessor, Better Factories Cambodia), Haiti, Jordan, Lesotho, Indonesia, Nicaragua and Viet Nam have been instrumental in creating an enabling environment for improving industrial relations. However, sustainable gains require significant additional support to workers' and employers' organizations so that they can take advantage of such opportunities to build stronger institutions.

2.5.1. MNEs and voluntary initiatives

213. MNEs have voluntarily joined several initiatives to improve their suppliers' and subsidiaries' observance of labour standards, along several broad categories (box 2.18).

Box 2.18
Voluntary initiatives involving MNEs

Initiatives generally fall within the following broad categories:

- (a) management-driven corporate codes of conduct and statements on business ethics;
- (b) industry-driven standardization, such as the Electronic Industry Citizenship Coalition or the Global Social Compliance Programme;
- (c) multi-stakeholder initiatives that may involve companies, trade unions, NGOs and other CSOs such as the UN Global Compact and the Ethical Trading Initiative;
- (d) commercial standards, such as the International Organization for Standardization (ISO) standard on social responsibility (ISO 26000);
- (e) public–private initiatives such as the Better Work Programme; and
- (f) negotiated labour–management agreements with cross-border coverage, known as TCAs, including IFAs and European framework agreements (EFAs), and sometimes regional company-based framework agreements.

TCAs

214. TCAs are voluntary instruments negotiated between MNEs and GUFs representing workers by sector of activity at global level. The agreements promote a minimum level of labour standards and organize a common labour relations framework across the worldwide operations of MNEs. Similarly, EFAs are concluded between the central or European management of MNEs and a variety of actors representing their employees, such as European works councils (EWC), European industry federations, national trade unions and companies' employee representation structures.

215. IFAs are of particular interest as they result from social dialogue and because the vast majority of them refer to international labour standards. Although the content of IFAs varies, their common element is an emphasis on the fundamental principles and rights at work,¹⁵³ particularly freedom of association and collective bargaining – the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), – and a frequent emphasis on the Workers' Representatives Convention, 1971 (No. 135).¹⁵⁴ Certain IFAs go further, prohibiting discrimination against elected workers' representatives at the enterprise and upholding the right of access by elected workers' representatives to all workplaces as well as neutrality clauses in union organizing campaigns.

216. As of October 2012, more than 80 IFAs were in force worldwide, covering some 6.3 million workers, excluding suppliers and subcontractors; 14 were with companies based in Australia, Brazil, Canada, Indonesia, Japan, Malaysia, New Zealand, Russian Federation, South Africa and United States. (Box 2.19 offers some qualitative analysis.) In mid-2011, around 120 EFAs were in place.¹⁵⁵ Together, IFAs and EFAs cover more than 8 million workers around the world.

217. TCAs are increasingly seen by industrial relations specialists and practitioners as the cross-border instruments closest to a traditional understanding of social dialogue, in the sense of negotiation, consultation or simply exchange of information between employers and workers, and closest to the notions of collective bargaining, dispute prevention and resolution, and respect of labour law.

218. TCAs also promote recognition for social partnership across national borders. They encourage prevention and peaceful resolution of industrial disputes across MNEs' worldwide suppliers, subsidiaries and other affiliates and promote the organization of workers within MNEs.

219. From a trade union perspective, TCAs should lead to more democratic industrial relations, and hence to improved working conditions along global value chains. They have the potential to expand trade union coverage, resolve labour–management disputes,¹⁵⁶ promote freedom of association and collective bargaining, and help to

¹⁵³ IFAs have also included extensive prohibitions and action against child labour; ILO: *Accelerating action against child labour*, Report of the Director-General, International Labour Conference, 99th Session, Geneva, 2010, paras 151–155.

¹⁵⁴ Some IFAs explicitly recognize the ILO Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well as the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), on the elimination of child labour.

¹⁵⁵ Database on TCAs, EC, <http://ec.europa.eu/social/main.jsp?catId=978&langId=en> [accessed 17 Dec. 2012].

¹⁵⁶ K. Papadakis (ed.): *Shaping global industrial relations: The impact of international framework agreements* (New York/Geneva, Palgrave Macmillan/ILO, 2011), pp. 295–296.

organize workers in MNE subsidiaries and suppliers, mainly in the developing world. Trade unions also value the union coordination across borders and between the local and global levels that is necessary to achieve TCAs. From a management perspective, TCAs can help to avoid disputes, raise levels of trust in labour–management relations and boost the company’s credibility among shareholders and other investors.

Box 2.19
How successful are IFAs?

IFAs are still largely unknown among managers in many countries’ MNE subsidiaries and local suppliers, and within the ranks of local trade unions. Local actors who are aware of them seldom have much understanding of their role.

Issues include wide gaps in local actors’ involvement in negotiating IFAs; inadequate communication on the outcomes of these negotiations; subsequent lack of ownership; and little or no linkage between local unions and GUFs that sign the agreements.

IFAs have, though, been successful in specific cases. In Brazil for example, within the supply chains of a well-known automaker, IFAs signed by the International Metalworkers’ Federation were used by local trade unions to reinstate representatives who had been fired, and to negotiate new contracts improving staff working conditions. In India, an IFA between Uni Global Union and an MNE in the security business increased local trade union membership and led to a collective bargaining contract covering almost 200,000 workers. In the United States, IFAs signed by major automakers and furniture MNEs led to successful trade union recognition campaigns, and to management neutrality during organizing drives in subsidiaries and suppliers of the MNEs.

Source: M. Fichter: *Global Union strategy: The arena of global production networks, global framework agreements and trade union network*, paper presented at the IndustriALL Conference: Review of experiences and way forward for the future, Frankfurt am Main, 17–18 Oct. 2012.

220. Despite the rising number of IFAs, challenges in adopting and implementing them persist.¹⁵⁷ IFAs and EFAs have had difficulty in securing a presence in “buyer-driven” global supply chains such as textiles, apparel and clothing and electronics, which are characterized by significant outsourcing to multiple developing country suppliers.

221. CSR initiatives and IFAs occasionally overlap, as IFAs may refer to existing company codes, multi-stakeholder initiatives or the standards of inter-governmental organizations.

CSR

222. A 2011 ILO study on management-driven CSR points to evidence of increasing emphasis of voluntary CSR initiatives on social dialogue.¹⁵⁸ The interest by companies in social dialogue is also highlighted through requests relevant to social dialogue-related principles received by the ILO Helpdesk for Business on international labour standards.¹⁵⁹ Since its launch in March 2009, the Helpdesk has received 21 questions concerning freedom of association, 19 questions on collective bargaining and 11 questions on broader social dialogue issues; and there have been 7,000 visits to the Helpdesk web pages on freedom of association, collective bargaining and social dialogue.

¹⁵⁷ K. Papadakis (ed.): *Shaping global industrial relations: The impact of international framework agreements* (New York/Geneva, Palgrave Macmillan/ILO, 2011), pp. 1–5.

¹⁵⁸ E. Umlas: *Recent trends in CSR initiatives and their impact on the fundamental principles and rights at work* (Geneva, ILO, unpublished).

¹⁵⁹ ILO Helpdesk for Business on international labour standards, www.ilo.org/business [accessed 5 Nov. 2012].

223. Notable trends in CSR and social dialogue include increased reference to international labour standards in codes of conduct and private voluntary standards systems. There has also been a move of CSR codes away from “policing” and monitoring suppliers towards root-cause analysis and capacity building, involving dialogue between management and workers and between suppliers and buyers.

224. However, owing to insufficient reporting by businesses and a lack of research in this area, it is generally very hard to assess the impacts on social dialogue of management-driven CSR activities.¹⁶⁰ The lack of social dialogue across the value chain of MNEs adopting CSR initiatives is a major challenge for CSR effectiveness.¹⁶¹

225. Since its adoption in 1977, the ILO MNE Declaration has promoted social dialogue as a key means of achieving its main goal, to “encourage the positive contribution which MNEs can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise”. The ILO MNE Declaration has been used as a reference to stimulate dialogue between public actors and MNEs. Countries such as Argentina, Azerbaijan, Brazil, Chile, Côte d’Ivoire, Indonesia, Liberia, Mauritius, Paraguay, Sierra Leone and Uruguay are using the MNE Declaration. The EC encouraged Member States and MNEs to embrace CSR policies and the leading instruments, including the MNE Declaration in its 2011 Communication on CSR. However, overall the awareness of the MNE Declaration seems to be low among the tripartite constituents.¹⁶²

2.5.2. Bilateral and multilateral agreements and regional integration initiatives

226. Labour-related clauses have increasingly been integrated in bilateral and multilateral trade agreements as provisions dealing with labour standards and social dialogue.¹⁶³

227. Some trade agreements, especially those concluded by Canada and the United States, allow for consultations with national employers’ and workers’ organizations on implementing the agreements’ labour provisions. Most trade agreements concluded by Canada and the United States allow any concerned entity, including workers’ and employers’ organizations, to submit concerns about failure of the parties to the agreements to honour their labour commitments. Some recent EU trade agreements provide for consultative committees, with the social partners involved, to discuss economic, social and environmental aspects.

228. The North American Free Trade Agreement (NAFTA) Labor Side Agreement between Canada, Mexico and the United States signed in 1993 was the first trade agreement to create a ministerial commission for labour cooperation and national advisory committees to advise on implementation, with participation of employers’ and workers’ organizations, academics and civil society. Similar approaches are used in the Central America–Dominican Republic–United States FTA (CAFTA-DR) between Costa

¹⁶⁰ P.L. Fall and M.M. Zahran: *United Nations corporate partnerships: The role and functioning of the Global Compact*, Joint Inspection Unit Report 9 (Geneva, UN, 2010).

¹⁶¹ R. Locke et al.: “Virtue out of necessity? Compliance, commitment, and the improvement of labor conditions in global supply chains”, in *Politics & Society* (2009, Vol. 37, No. 3, Sep.), p. 346.

¹⁶² This finding is based on preliminary ILO desk research on government CSR policies in 40 member States.

¹⁶³ ILS: *World of Work Report 2009: The global jobs crisis* (Geneva, ILO, 2009); F.C. Ebert and A. Posthuma: *Labour provisions in trade arrangements: Current trends and perspectives*, ILS Discussion Paper 205 (Geneva, ILO, 2011).

Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and United States, and the Labour Side Agreements to Canada's trade agreements with Chile, Colombia and Peru.

229. A framework for social dialogue has been established by the Andean Community of Nations through the establishment of a Business Advisory Council and Labour Advisory Council, which are involved in preparing the community's legal acts.¹⁶⁴

230. MERCOSUR countries have established an active tripartite Social-Labour Commission and a tripartite Economic-Social Consultative Forum for policy development.¹⁶⁵ A tripartite unit on child labour has also been set up, which has developed various cooperative activities, including an information campaign against child labour in MERCOSUR border regions.

231. The Organization of American States annually hosts the Inter-American Conference of Ministries of Labour, where the Business Technical Advisory Committee on Labor Matters and the Trade Union Technical Advisory Council take part as advisory bodies, representing employers and workers of the Americas, with ILO assistance.

232. In the West African Economic and Monetary Union, a Tripartite Council for Labour and Social Dialogue with civil society participation was set up in March 2009 to provide advice on reforms that have social impacts in the member States. In 2011, a Social Dialogue Forum was established for promoting social dialogue in the Economic Community of West African States and harmonizing labour law across member States.

233. In 2011 to mid-2012, SADC ministers and social partners wrote the draft SADC Decent Work Programme and the Employment and Labour Protocol, and decided to promote the ratification of the governance Conventions on labour inspection, employment policy and tripartite consultations. Based on tripartite dialogue in the East African Community, an East African Decent Work Programme for 2011–15 was adopted in November 2009. The East African Employers' Organization was launched in April 2012 as a counterpart to the East African Trade Union Confederation, set up in 1988. The 2009 session of the Regional Coordination Mechanism for Africa recommended that employment and decent work be mainstreamed in the work of the mechanism's clusters.

234. Integration of ASEAN countries in trade, investment and free movement of skilled labour is scheduled to come into effect in 2015, but does not include an institutional mechanism for tripartite dialogue or consultation. Trade unions have created a regional trade union council – since given observer status at the ASEAN Free Trade Area – and six of ASEAN's national employer federations have created the ASEAN Confederation of Employers. The ASEAN Labour Ministers' Work Programme for 2010–15 contains references to strengthening tripartite social dialogue.

235. The EU–Republic of Korea FTA, in force since 2011, includes a firm commitment from both sides to labour and environmental standards. The agreement sets institutional structures to implement and monitor such commitments, including through civil society. On labour, the agreement calls for ratifying and implementing all ILO up-to-date Conventions (that is, going beyond core labour standards). It also provides for setting up “monitoring mechanisms”, which should include civil society advisory groups that

¹⁶⁴ Article 44 of the Cartagena Agreement. The institutional functions and competences of these bodies have subsequently been regulated by secondary legal acts.

¹⁶⁵ Shortly after adoption of the MERCOSUR Social-Labour Declaration, an IFA was concluded between the German MNE Volkswagen and trade unions of the MERCOSUR member States.

include representation from labour and business organizations, and for seeking advice from competent international organizations, such as the ILO.

236. The EU's internal experience in social dialogue is by far the deepest of any multilateral economic arrangement. The European Economic and Social Committee established in 1958 has been a leading EU social dialogue forum, composed of employers' organizations, trade unions and representatives of other interests. The EU Lisbon Treaty of 2007 took matters further: it contains an EU commitment to promote the role of social partners, acknowledges their autonomy, and establishes a Tripartite Social Summit for Growth and Employment that brings together the leadership of the EU social partners and EU institutions prior to European Council meetings. The Europe 2020 strategy adopted by the European Council in 2010 and the 2011 EU legislation for strengthened economic governance provide for the "European Semester" process, an annual cycle of macroeconomic, budgetary and structural policy coordination including arrangements for consultation of social partners. The European Council of December 2012 agreed that the roadmap for complementing the European Economic and Monetary Union should also cover a social dimension, including social dialogue.

237. Bipartite dialogue between European employers and trade unions takes place at EU cross-industry and sector levels. It provides a procedure that combines the consultation of the social partners by the EC with the option to leave social regulation to bipartite agreements between management and labour organized at European level. EU social partners can also engage in social dialogue, including agreements, at their own initiative.

238. The European social partners have not, however, used their rights very extensively. This is mainly due to difficulties in reconciling interests when formulating joint agreements. Some agreements have been reached (on parental leave, part-time work, fixed-term work, telework, stress at work, harassment and violence, and inclusive labour markets) but the social partners have also failed to reach agreement (as in the cases of the information and consultation of employees, temporary agency work and *the recasting of the Directive on European Works Councils*).¹⁶⁶ Finally, the EU has established 41 sectoral social dialogue committees covering more than three-quarters of the EU workforce and many enterprises, the majority of which are SMEs. By early 2010, EU sectoral social dialogue had produced more than 500 texts of varying legal status, ranging from joint opinions and responses to consultations, to agreements implemented as EU legislation.¹⁶⁷

239. Furthermore, since 1994 the EWC Directive, updated by the recast of the Directive in 2008, has established standing bodies for the information and consultation of workers in EU-scale undertakings and EU-scale groups of undertakings. According to 2012 data, as reported by Eurofound, 931 multinational companies have an active EWC.¹⁶⁸

240. A number of model bilateral investment treaties (BITs) declare that it is prohibited to lower standards including "rights of association" and the "right to organize and to bargain collectively" in labour matters for the encouragement, attraction or retention of an investment. Such clauses exist in the model BITs of Belgium (2002), United States

¹⁶⁶ *European social partners*, Eurofound, 2011, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/EUROPEANSOCIALPARTNERS.htm> [accessed 11 Dec. 2012].

¹⁶⁷ *Social affairs: Commission report on the sectoral social dialogue at European level*, Europa, 2010, http://europa.eu/rapid/press-release_MEMO-10-354_en.htm?locale=en [accessed 7 Dec. 2012].

¹⁶⁸ *European works councils*, Eurofound, 2011, <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeanworkscouncils.htm> [accessed 18 Dec. 2012].

(2004), Austria (2008) and the 2007 draft model BIT of Norway, with at least one model BIT (Belgium) mentioning ILO standards directly.¹⁶⁹

2.6. Social dialogue and economic performance

241. The question of the impact of social dialogue on overall economic performance and growth has received considerable attention by researchers. Any analysis of this impact requires disaggregating the effects of social dialogue into the separate channels through which they may influence economic outcomes. Particular attention has been paid to the impact of trade unions and collective bargaining.

242. From a neo-classical economics standpoint, trade unions and collective bargaining can induce a labour market distortion that constrains the free functioning of the labour market and results in suboptimal economic outcomes. Arguments deriving from this standpoint generally stress the monopoly consequences of trade unionism and labour market segmentation as the principal distortions. Their focus is typically on union versus non-union wage differentials, with the associated claim that collective bargaining leads to above market-clearing wages outcomes, with either unemployment and/or the displacement of workers to the non-union sector and cluster of low-wage workers as a consequence.

243. Such arguments are behind “insider/outsider” theories of labour market performance, including the theory of a “labour elite” in developing countries that benefits at the expense of a burgeoning informal economy. The arguments often claim that economic actors can better adjust to product-market changes without collective bargaining or labour laws that provide employment protection. Yet this approach relies on assumptions rarely seen in the real world, namely that markets operate with perfect competition, frictionless labour mobility and no information asymmetries.

244. At the opposite pole are Keynesian and institutional economic theories, which stress the economic benefits of reducing asymmetries of information and power. These theories see the role of workers’ organizations and collective bargaining as positive, both as a result of the information and voice effects and through the income effect on aggregate demand. They claim that by reducing information asymmetries trade unions improve the quality of managerial decisions by making such decisions better informed and more likely to be implemented. They also highlight factors that can contribute to an increase in productivity such as more stable labour relations, lower turnover and improvements in workplace practices including a higher incidence of firm-specific training.¹⁷⁰

245. Most observers agree on two stylized facts about the impact of social dialogue on economic outcomes. First, collective bargaining typically influences wages in two ways: it increases wages beyond what the market might offer and reduces wage inequality. Second, although at the micro-level wages are a cost to employers, at the macro-level wages (and the consumption they afford) are the major contribution to aggregate demand in most economies, thus providing the necessary economic basis for sustainable enterprises.

¹⁶⁹ B. Boie: *Labour related provisions in international investment agreements*, Working Paper No. 126 (Geneva, ILO, 2012).

¹⁷⁰ R.B. Freeman and J. Medoff: *What do unions do?* (New York, Basic Books, 1984); F. Fakhfakh et al.: “Workplace change and productivity: Does employee voice make a difference?”, in S. Hayter (ed.): *The role of collective bargaining in the global economy* (Geneva, ILO, 2011), pp.107–135.

246. The economic environment in which social dialogue occurs has changed dramatically in recent decades as financial and trade globalization widened the opportunities of physical and financial investment and diversified the geographical spread of such investment. Trade openness and capital account liberalization have improved capital mobility, leading to a decline in workers' bargaining power, a trend buttressed by corporate governance that aims to maximize dividends for shareholders. Other elements in this decline include stiffer competition amid globalization, labour market reforms, less redistributive tax and social systems, increased unemployment (especially during the global crisis) and declining unionization and falling coverage of collective bargaining in some countries.¹⁷¹

247. Over the last 30 years, wage growth has lagged behind productivity growth across the world, leading to a steep fall in the share of wages, salaries and employee benefits in total national income. The labour share of income has declined in almost three-quarters of the 69 countries with data.¹⁷² In the United States, for example, since 1980 real hourly pre-tax compensation has increased by 35 per cent while real hourly labour productivity in the non-farm business sector has grown by about 85 per cent. In Germany over the past two decades, real monthly wages have remained flat while labour productivity has increased by almost a quarter. The decline in the labour share is even seen in some emerging economies where wages have been growing. Even in China, where wages have roughly tripled over the last decade, GDP has risen faster than the total wage bill, reducing the labour share.¹⁷³

248. The ILO's *Global Wage Report 2012/13* shows that the declining labour share in GDP has potentially lasting negative effects on economic growth as it hurts household consumption, weakens already insufficient aggregate demand and undermines consumer confidence. These in turn weaken business confidence, affecting investment decisions. Beyond the economic concerns, some fear that the labour share decline and erosion of labour's bargaining power can have adverse effects on popular confidence in governments and the market economy. High and rapidly rising pay among chief executive officers and in the financial sector have added to these concerns.¹⁷⁴

249. While shortfalls in aggregate demand in some countries can be compensated by increasing net exports, not all countries can run a current account surplus at the same time – some countries must then import more than they export, subtracting from domestic GDP. Hence the strategy of cutting unit labour costs through deregulation and weakening or decentralization of collective bargaining – a frequent policy recommendation for crisis-afflicted countries and the basis on which many austerity policies have been designed¹⁷⁵ – may lead to a beggar thy neighbour downward spiral in terms of labour share of income, aggregate demand and GDP growth.

¹⁷¹ OECD: *OECD Employment Outlook 2012* (Paris, 2012); S. Tilford: *Economic recovery requires a better deal for labour* (London, Centre for European Reform, 2012).

¹⁷² ILS: *World of Work Report 2011: Making markets work for jobs* (Geneva, 2011); ILS: *World of Work Report 2008: Income inequalities in the age of financial globalization* (Geneva, 2008).

¹⁷³ ILO: *Global Wage Report 2012/13: Wages and equitable growth* (Geneva, 2012), p. 41.

¹⁷⁴ ILO: *Global Wage Report 2012/13: Wages and equitable growth* (Geneva, 2012).

¹⁷⁵ Including in Western economies where the trend towards deregulation of employment protection legislation and decentralization of collective bargaining is associated with a general increase in wage inequality; S. Cazes et al.: *Employment protection and collective bargaining: Beyond the deregulation agenda*, Employment Working Paper No. 133 (Geneva, ILO, 2012), p. 8.

250. Even in countries that increase exports, lower employment, wages and labour share may depress domestic consumption more than exports increase, thereby failing to reduce countries' debt and current account deficits.

251. In addition to the trend of a falling labour share in national income in many countries is the widespread rise in inequality within countries,¹⁷⁶ as the benefits of growth are concentrated at the top of the income scale. When the wages of the top 1 per cent of income earners in OECD countries with data are deducted from the overall labour share of national income, the decline in the labour share is even steeper for most wage earners, almost doubling in countries such as Canada and the United States.¹⁷⁷ In economic terms, inequality matters as it is, in itself, a constraint on growth.¹⁷⁸ Further, the higher the level of inequality, the more growth that is needed to reduce poverty. Inequality is also a leading economic cause of the deterioration of people's self-reported well-being.¹⁷⁹ Inequality has deleterious consequences for physical and psychological health – effects surpassed only by the experience of unemployment.¹⁸⁰

252. ILO research has shown a clear inverse correlation between collective bargaining coverage and inequality (the higher the coverage the lesser the inequality).¹⁸¹

253. Research findings suggest that most countries with coordinated collective bargaining systems and high trade union density have less wage dispersion than other countries and their economies are associated with lower inequality.¹⁸² OECD research links more extensive collective bargaining with reduced unemployment.¹⁸³ In addition, union density has little or no impact on overall economic performance measured by GDP growth and it does not expand the informal economy. On the contrary, a 2008 review of over 1,000 published studies on the economic effects of unions and collective bargaining concludes that stronger trade union rights are associated with higher shares of formal employment.¹⁸⁴

¹⁷⁶ Both in terms of the falling share of wages and a rising share of profits (functional inequality), and the growing gap between the top 10 per cent and the bottom 10 per cent of wage earners (personal inequality).

¹⁷⁷ OECD: *OECD Employment Outlook 2012* (Paris, 2012).

¹⁷⁸ A.G. Berg and J.D. Ostry: "Equality and efficiency: Is there a trade-off between the two or do they go hand-in-hand?" in *Finance & Development* (2011, Vol. 48, No. 3, Sep.).

¹⁷⁹ ILS: *World of Work Report 2012* (Geneva, 2012).

¹⁸⁰ D. Campbell: *Well-being and the non-material dimension of work*, Employment Sector Working Paper No. 125 (Geneva, 2012).

¹⁸¹ As measured by the decile ratio D9/D1, which evidences the difference between the top and bottom deciles of earnings distribution; S. Hayter and B. Weinberg: "Mind the gap: Collective bargaining and wage inequality", in S. Hayter (ed.): *The role of collective bargaining in the global economy* (Geneva, ILO, 2011), pp. 136–186.

¹⁸² ILO: *Global Wage Report 2010/11: Wage policies in times of crisis* (Geneva, 2010), p. 57.

¹⁸³ A. Bassanini and R. Duval: *Employment patterns in OECD countries: Reassessing the role of policies and institutions*, OECD Social, Employment and Migration Working Papers 35 (Paris, 2006).

¹⁸⁴ J. Berg and D. Kucera (eds): *In defence of labour market institutions* (Basingstoke, Palgrave Macmillan, 2008).

Chapter 3

ILO action on social dialogue: Responding to constituents' diverse realities and needs

254. This chapter presents the ILO's actions to meet the challenges of, and realize the opportunities for, social dialogue. These actions include research, policy advice, technical cooperation, capacity building and promotion of international labour standards. The Office undertakes these actions as part of the Strategic Policy Framework (SPF) 2010–15, notably under outcomes 9–13.¹ The chapter then discusses the link between social dialogue and the other three strategic objectives of the ILO, reviews how the ILO is working with other international organizations to try to mainstream social dialogue and tripartism in their agendas and finally reviews how the ILO uses its means of action to deliver activities.

255. As noted in the Introduction, the Office's Evaluation Unit has produced an analytical working paper as requested by the Governing Body in 2012.² The paper synthesizes results and lessons learnt from completed independent evaluations of ILO technical cooperation programs in the social dialogue sphere and reviews other studies related to social dialogue. The object of the paper is to strengthen the ILO's capacity to make evidence-based decisions using evaluation results and to contribute to the recurrent discussion on social dialogue.

3.1. Overall observations

256. The promotion of tripartite social dialogue, sound industrial relations and collective bargaining and compliance with labour laws is carried out through research, advocacy, policy advice, legislative reforms and capacity building. Office support is provided to labour administrations and to workers' and employers' organizations. ILO activities in recent years have focused on capacity building through training courses, seminars and manuals for social partners and governments. Technical advice on policies, legislation, regulations and procedures, institution building and sharing of good practices have also formed part of the support package. At global and regional levels, sectoral meetings and other activities have aided constituents to promote social dialogue in specific economic sectors.

¹ ILO: *Strategic policy framework 2010–15: Making decent work happen*, Governing Body, 304th Session, Geneva, Mar. 2009, GB.304/PFA/2(Rev.).

² ILO: *ILO programme implementation 2010–11*, Governing Body, 313th Session, Geneva, Mar. 2012, GB.313/PFA/1.

257. Different conditions in which the tripartite social dialogue institutions operate and the political, institutional and social environment for dialogue and collective bargaining in each country have largely determined how social dialogue can be fostered by ILO action.

3.2. Support for the actors of social dialogue

258. Support for, and development of, the capacities of the tripartite constituents is one of the most important activities of the ILO. Increasing the constituents' awareness of the benefits of social dialogue as a governance tool, promoting their capacities to participate in social dialogue and policy-making, strengthening organizational and internal governance structures and building capacity for collective bargaining and labour law compliance are key objectives. For this reason, capacity building for the social partners is at the core of many DWCPs and technical cooperation projects – the main tools of ILO service delivery at country level (section 3.8).

3.2.1. Labour administrations

259. ILO technical advisory services to support labour administrations and inspectorates have been largely based on in-country needs assessments conducted by the Office at government request. Assessment recommendations offer a basis for prioritizing government action but also for planning ILO technical assistance. Since 2011, assessments focusing either on the whole system of labour administration or on its selected institutions have been carried out in, for example, Bosnia and Herzegovina, Cambodia, Cameroon, Costa Rica, Egypt, Gabon, Greece, Jordan, Lebanon, Namibia, Saudi Arabia, Sri Lanka, Tunisia, Uganda, Ukraine and Viet Nam or are forthcoming (Botswana, Democratic Republic of the Congo and Lesotho).

260. Earlier assessments have helped to launch inclusive dialogue on national labour inspection policies including OSH (for example, China, Republic of Maldives and Sri Lanka); internal coordination and planning (Costa Rica, Dominican Republic, Guatemala, Honduras, Indonesia and Ukraine); ministry performance management (South Africa); and specialized training of labour administrators and inspectors (Republic of Maldives, Namibia, South Africa, Sri Lanka, Swaziland and Ukraine). Assessments have often been followed up by plans of action agreed with the national constituents, and then supported by technical cooperation focused also on promoting tripartite approaches.

261. Speed in action has been key during transitions and crises. The Arab Spring led to the Office mobilizing fast so as to meet the new interest of the region's national constituents in social dialogue, including modernizing labour administration and inspection. In Greece, a needs assessment of the labour inspection system took place in October 2012 in rapid response to a request by the Government. In China, a project by the ILO International Training Centre in Turin (ITC–ILO) in 2010 followed a 2009 comprehensive review of China's labour inspection policy.

262. Capacity-building seminars have been organized to assist labour administrations to ensure workplace compliance. For example, a Labour Administration and Inspection Academy held at the ITC–ILO in 2011 brought together over 77 participants from 38 countries and covered a range of sessions on labour administration and inspection, including social dialogue. Regional workshops are being held in Latin America and the Arab States following the template of the Academy, but with a focus on regional issues and policies.

263. Since the ILC discussion on labour inspection in 2011, the Office has developed a pilot project on a standard methodology for labour inspection data collection to improve international comparability and benchmarking (carried out in Costa Rica, Oman, South Africa, Sri Lanka and Ukraine). The Office has produced several publications and numerous tools in this area.

264. In 2012, the Office conducted an experimental Expert Colloquium of senior policy-makers from the labour inspectorates of Belgium, Brazil, Colombia, China, Denmark, India, Russian Federation, South Africa, United States and Viet Nam. The goal was to exchange experiences on building effective labour inspectorates at different stages of economic development and share innovative strategies to achieve compliance in the face of new labour market challenges. The success of the experiment suggests that the approach should be used again in the future.

3.2.2. Employers' organizations

265. Employers' organizations in many countries have achieved tangible policy results on socio-economic issues owing to the Office's technical cooperation work. These achievements range from improving social security regulations in Cambodia, to more favourable SME policies in Jordan.

266. An assessment tool developed by the Office, "Enabling environment for sustainable enterprises",³ is a resource for employers' and business organizations to assess the environment in which businesses start up and grow. It places the social partners at the centre of efforts to promote sustainable enterprises (in line with the general discussion at the 2007 ILC);⁴ it also helps employers to identify constraints to enterprise sustainability and to formulate policy reform proposals that can be used in dialogue and advocacy with governments. The tool was pilot tested in Botswana, Mongolia, Oman and Swaziland.

267. The Office has assisted employers' organizations across all regions to develop and deliver services and tools, aimed to attract new and retain existing members. For example, as a result of ILO support in 2010–11, the Employers' Confederation of the Philippines (ECOP) delivered new services to improve the competitiveness of its members and promote CSR.

268. In an increasingly demanding environment for businesses and workers, since the beginning of the crisis the Office has provided capacity building on union–management negotiation skills in Armenia, Botswana, Cape Verde, Kazakhstan, Morocco, South Africa, Swaziland and Tajikistan, among other countries. Training in conciliation and mediation skills was provided in Botswana, Cape Verde, Egypt, Grenada, Indonesia, Serbia, Swaziland, United Republic of Tanzania, Tunisia and Zimbabwe.

269. The Office has provided support to the Cambodian Federation of Employers and Business Associations through capacity-building activities, technical workshops and a strengthening of media coverage and the image of that body and of the Garment Manufacturers' Association of Cambodia.

³ *Conducive environment for sustainable enterprise, including COOPs*, ILO, EMP/ENTERPRISE, www.ilo.org/eese [accessed 9 Nov. 2012].

⁴ ILO: *The promotion of sustainable enterprises*, Report VI, International Labour Conference, 96th Session, Geneva, 2007.

270. The employers' organizations in Botswana, Rwanda, Swaziland and Zimbabwe benefited from ILO assistance to build bipartite relationships with workers' organizations and launch joint advocacy for sustainable enterprise, employment creation and job security. Across the Atlantic, the Office supported the Honduran Council of Private Enterprises in building capacity to provide members with information and analysis on labour and social issues, enabling it to participate in the national Enterprise Workforce Commission. Still further afield, it provided technical guidance and support to the Employers' Confederation of the Philippines in developing its medium-term policies and legislative agenda, as well as its advocacy and lobbying capacities.

271. The ILO has worked with employers' organizations in Albania, Bosnia and Herzegovina, Republic of Moldova and Serbia in developing member surveys, analysing those data, publishing results and developing a communication and lobbying strategy so that members' views can be understood in national, sectoral and regional social dialogue.

272. To better understand the factors driving change for employers' organizations, an International Symposium on the Business of Representing Business was organized by the ILO Bureau for Employers' Activities in September 2011. It brought together heads of business membership organizations, companies and academics to share experiences and debate potential ways forward.

3.2.3. Workers' organizations

273. The Office's technical advisory and capacity-building activities to support workers' organizations and trade unions in recent years has centred on promoting international labour standards in crisis and transition. In Egypt, the Office in March 2011 assisted a new independent trade union to develop capacity. A regional Arab Democratic Trade Union Forum was set up in September that year and a regional project to strengthen the capacity of workers' organizations in the field of socio-economic and legal issues was launched in the Arab States at the end of the year. The Office's technical advisory services assisted workers' organizations to participate in strengthened tripartite and bipartite social dialogue mechanisms in Cambodia, Cape Verde and Jordan, and helped to tackle trade union fragmentation by establishing inclusive trade union platforms in Cambodia, India and Nepal.

274. In response to the expressed needs of workers' organizations, ILO-supported capacity building has strengthened trade unions' work in several areas, including labour legislation, social security reforms, OSH as well as HIV and AIDS. The Office has helped to strengthen the following: bipartite dialogue between unions and ministries of labour (in Armenia, Bangladesh, Benin, China, Dominican Republic, Ethiopia, Grenada, India, Mexico, Namibia, Nepal and Philippines); a rights-based approach to labour migration (Plurinational State of Bolivia, Nepal, Philippines and Thailand); gender equality and youth employment (Armenia and Kazakhstan); and domestic work and the informal economy (Brazil, Cambodia, Cameroon, Cape Verde, Croatia, Kazakhstan, Malaysia, Mongolia, Mozambique, Nepal, Pakistan, Peru and Philippines). Resource and training materials were produced on the role of trade unions in DWCPs, non-discrimination and the ILO MNE Declaration. Training programmes for trade unions in migrant workers' countries of origin and of destination have prompted bilateral trade union cooperation agreements.

275. The ILO Bureau of Workers' Activities was instrumental in mobilizing workers' support for the adoption of the ILO Domestic Workers Convention, 2011 (No. 189), through organizing global and regional meetings. Capacity-building activities began before the adoption of the Convention with support to organizing efforts in India and

Hong Kong (China). In 2010–11, tools and trade union manuals were produced on decent work for domestic workers; freedom of association and collective bargaining; wages; HIV and AIDS; OSH; sustainable development; economic literacy; child labour; EPZs; and prevention and resolution of conflict in crisis-affected countries.

276. Over 100 graduates have been trained since 2010 in the master's degree programme of the Global Labour University for trade unionists as part of South–South and Triangular Cooperation between Brazil, Germany, India and South Africa.

277. High-level symposia, involving academics and practitioners, have been held to disseminate research findings and to establish research and policy development priorities in areas such as precarious work; labour and the global crisis; and climate change and the green economy. The ILO's *International Journal of Labour Research* provides a platform for exchange among trade unions and academia, including discussion of crisis-related solutions.

3.3. Fair, productive and sound industrial relations

278. The Office has analysed comparative trends and innovations in industrial and employment relations, including from a sectoral perspective. Recent national studies have examined the role that collective bargaining and tripartite social dialogue play in crisis response, in equitable wage policies and in addressing issues for workers in non-standard employment, sometimes with other institutions.⁵ It emphasized the financial crisis, which has amplified the need for – while simultaneously accelerating – business adjustments. Given the huge impact that such constant adjustments may have on the workforce, enterprises and society at large, studies have focused on processes accompanying such adjustments by appropriate forms of social dialogue, at all levels, by highlighting effective responses to the challenges from these external pressures. The Office is also examining industrial relations trends with a focus on Africa (2010–11) and Asia and the Pacific (2012–13). The outputs of this research are available through working papers and edited volumes.⁶

279. The Office has developed a Social Dialogue Indicators database since 2008.⁷ It provides an overview of trade unions in ILO member States, including the latest available membership (for 82 countries), trade union density (85) and collective bargaining coverage (69).

280. The ITC–ILO has developed toolkits and carried out training in areas such as dispute prevention and resolution. In 2007–11, it delivered 83 training activities directly related to social dialogue, labour law and labour administration/inspection, with 2,093 participants.

281. Tripartite constituents received specialized OSH training at sectoral level, with an emphasis on the most hazardous sectors of agriculture, construction, fishing and mining. In the current biennium, training on OSH was provided for workers and employers in Azerbaijan, Kenya and Paraguay. For mining, tripartite regional and subregional OSH workshops were conducted for selected Asian countries (Mongolia, 2009), for Latin

⁵ ILO and the World Bank: *Inventory of policy responses to the financial and economic crisis: A joint synthesis report* (Geneva/Washington, DC, 2012).

⁶ DIALOGUE publications, ILO, www.ilo.org/ifpdial/information-resources/publications/lang--en/index.htm [accessed 8 Nov. 2012].

⁷ DIALOGUE data, ILO, www.ilo.org/ifpdial/information-resources/dialogue-data/lang--en/index.htm [accessed 8 Nov. 2012].

American countries (Peru, 2011) and for sub-Saharan African countries (United Republic of Tanzania, 2012).

282. During 2010–12, training programmes on collective bargaining and dispute resolution were held regionally and nationally. In Cambodia, training on collective bargaining and ILO-assisted improvements in determining the most representative union for bargaining led to a substantial increase in bargaining agreements in the garment industry in 2009–10. It also led to a Memorandum of Understanding that took effect first in 2011, and then again from October 2012 to October 2014, which contributed to a dramatic fall in strikes in that industry.

283. Similar training was delivered on the prevention of HIV and AIDS, the promotion of OSH, and enforcement of labour inspection in construction, education, health services, railway and transport, and mining. The Office provided training to public bipartite constituents from Bosnia and Herzegovina, Botswana, The former Yugoslav Republic of Macedonia and Philippines using the ILO *Manual on collective bargaining and dispute resolution in the public service* (2011). Since 2010, guides, handbooks, manuals and training modules have been produced on the Collective Bargaining Convention, 1981 (No. 154); labour dispute systems; machineries for national tripartite social dialogue; joint union–management negotiation skills; and conciliation and mediation skills.

284. Technical advisory services helped to set up or strengthen dispute resolution systems in several countries, including Bosnia and Herzegovina, Cambodia, Colombia (box 3.1), Democratic Republic of the Congo, Swaziland and United Republic of Tanzania. In Zimbabwe, collective bargaining mechanisms in the public services underwent reform through ILO assistance, with the aim of establishing a Public Service Collective Bargaining Council in 2009; technical assistance was extended in 2010 in drafting a constitution for the council and in legislative reforms to harmonize the public and private labour relations system.⁸ In Madagascar and Togo, the Office supported development of collective bargaining in free trade zones, through technical advisory services and capacity building.

285. Training was held for the Royal Swaziland Police in their country on the principles of social dialogue, freedom of association and collective bargaining, which resulted in a draft Code of Conduct on the Role of the Police and Social Partners during industrial disputes and industrial action. In Bosnia and Herzegovina, after Office-facilitated subregional capacity building, a bill on peaceful settlement of labour disputes was adopted by the Parliament of Republika Srpska, and the 2010-created Agency for Peaceful Settlement of Labour Disputes benefited from training courses aimed at increasing knowledge on international labour standards and mediation techniques. The agency's case management capacity was enhanced and, although the number of referred disputes doubled, its success rate⁹ climbed from 25 per cent in 2010 to 47 per cent in 2011. Similarly positive results were achieved in Montenegro, where the ILO provided technical assistance in drafting the law on amicable settlement of labour disputes.

⁸ Launched in August 2010 as a follow-up to the Commission of Inquiry on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

⁹ Number of settlements facilitated by the agency out of the total number of processed cases.

Box 3.1
Tripartite mediation of labour disputes on
freedom of association rights in Colombia

Established in 2000, the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) is a tripartite body responsible for addressing labour disputes related to freedom of association rights in Colombia. It has received allegations of serious violations of trade unions' rights.

In 2008, the ILO started to work with the CETCOIT to enhance its operational capacity. Starting with an assessment of the institutional capacity of the CETCOIT, the Office then facilitated tripartite agreements for the adoption of practical measures aimed at improving the functioning and impact of the CETCOIT. A tripartite agreement was reached for the nomination of a former judge and the President of the Constitutional Court of Colombia as mediators and the adoption of clear functioning procedures and receivability requirements for cases brought before the CETCOIT.

The positive impact of these measures was rapidly seen with the settlement of three major and long-standing cases in less than a month. In 2012, an independent evaluation of the project considered the support given to the CETCOIT as one of the project's key achievements in building trust and tripartite dialogue in the country. In November 2012, the ILO Governing Body underlined the project's results as part of the implementation of the Tripartite Agreement on Freedom of Association and Democracy in Colombia.

3.4. Labour law reforms

286. The Office responded to requests from governments, and sometimes from employers' and workers' organizations for assistance in labour law reforms. Taking into account the nature of requests, the scale of the revision envisaged, the urgency and the capacity of the State concerned, the Office did the following:

Comments on draft legislation or regulations

287. The Office provided policy advice to ensure that the contemplated reform would achieve its objective, comply with international labour standards (especially the core labour standards, and those which the State has ratified) and reflect contemporary practices in policy and legislative drafting. The Office has seen an increase in demand for advisory services in recent years. It is working on drafting and reform processes in Cambodia, Liberia, Nepal, Russian Federation, South Sudan, Ukraine and Viet Nam, and has provided comments on draft legislation and other technical advice to 59 countries. It has also participated in policy debates and presented an ILO technical memorandum of comments.

Assistance in establishing and managing the law reform process

288. This included developing the terms of reference and key policy questions, the manner in which the social partners will be consulted and participate, the procedure for drafting and adopting a legal text, and the legislative drafting. In the current biennium, the Office is delivering the full package of labour law advisory services to 12 countries (Afghanistan, Haiti, Kiribati, Republic of Maldives, Mongolia, Lao People's Democratic Republic, Nepal, Papua New Guinea, Samoa, Vanuatu, Viet Nam and Zambia).

289. The Office has refined its approach in providing support for labour law reform in least-developed countries and States in transition, especially those emerging from civil war or crisis. In such situations, the Office now heavily stresses capacity building for all constituents and supports government action to consult the social partners. The Office has also sought representatives from countries in which it is engaged in sustained work to attend the annual training course on participatory labour law making at the ITC-ILO.

Other areas

290. The Office maintains the Employment Protection Legislation database (EPLex). This contains information on the employment termination laws of some 95 countries, covering the key topics by evaluating more than 50 variables.¹⁰ EPLex data are used to provide comparative labour law advice to member States and to inform research carried out by the ILO and other bodies such as the OECD. The database is regularly updated. The Office is now working to develop a method to quantitatively analyse the EPLex data, so as to supplement the existing qualitative research.

291. The Office has initiated research on the contribution of labour law to poverty alleviation in low- and middle-income countries in collaboration with Cambridge University's Centre for Business Research (United Kingdom) and Monash University (Australia). The research will test a preliminary version of an analytical template to assess the suitability of proposed labour law reforms to national conditions. The final version will offer a qualitative frame of analysis, and could serve as the basis to develop operational tools that will enhance the Office's services in labour law reform.

292. The Office is also engaged in research on comparative law and practice in non-standard employment, temporary work and private employment agencies. Constituents are increasingly asking for Office support on these issues, reflecting both the continuing spread of such types of employment and agencies, as well as the complicated issues that arise, notably in regulating the employment relationship.

3.5. National tripartite social dialogue

293. The ILO supports constituents to strengthen social dialogue institutions and mechanisms in line with international labour standards, notably the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The main activities include technical advice, capacity building and knowledge sharing.

294. Since 2008, the Office has provided capacity-building and advisory services aimed at the establishment, improved functioning or revitalization of tripartite institutions and mechanisms in member States and improved services delivered to members (including devising crisis responses), as well as national policies on employment and pension reform. Countries and territories include Armenia, Chad, China, Democratic Republic of the Congo, El Salvador, Grenada, Lao People's Democratic Republic, Morocco, Occupied Palestinian Territory, Saint Vincent and the Grenadines, Serbia, South Africa, Swaziland, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Uganda and Zimbabwe.

295. Following the Arab Spring, the Office initiated a number of activities in order to assist Egypt, Oman, Morocco and Tunisia so as to strengthen institutions for tripartite social dialogue with a view to reducing conflicts and managing the social and economic challenges of the political transitions. A Tunisian tripartite social contract was signed on 14 January 2013 following technical support from the Office. The signing coincided with the two-year anniversary of the start of the Arab Spring.

296. Technical advisory services also facilitated ratification of Convention No. 144 by Honduras and the Lao People's Democratic Republic.

¹⁰ Employment Protection Legislation database (EPLex), ILO, DIALOGUE, www.ilo.org/dyn/epl/termmain.home [accessed 9 Nov. 2012].

297. A major social dialogue project, *Programme régional de promotion du dialogue social en Afrique francophone* (PRODIAF) was run in Africa in 1996–2010, and helped to promote social dialogue between governments, employers and workers and prevent social conflict in more than 20 countries. The project explored social dialogue and tripartite cooperation systems to make improvements, changes and reinforcements where they were deemed necessary. PRODIAF also focused on institutional and organizational aspects of tripartite consultation and negotiation mechanisms, strengthening research activities and creating a network of African social dialogue practitioners and experts. The project stimulated a trend across the continent of negotiations of tripartite “social pacts” or “partnership agreements”.

298. ILO advisory services also promoted tripartism in labour administrations in line with the Labour Administration Convention, 1978 (No. 150). For example, in Afghanistan, Namibia, South Africa and Sri Lanka, the Office helped to launch discussions about the best ways to institutionalize tripartite dialogue for enforcing labour standards. In Aruba, Belize, India, Indonesia, Republic of Moldova, South Africa, The former Yugoslav Republic of Macedonia (box 3.2) and Ukraine, ILO advisory services helped to tighten collaboration between the labour administration and social partners. In Indonesia, the ILO helped to develop consultations between the labour ministry and social partners, and public agencies involved in labour inspection. In Jordan, the national labour inspection policy and enforcement strategy were revised and updated, in consultation with social partners among others. The sectoral dimension has sometimes been integrated in this action (box 3.3).

Box 3.2

Revitalizing tripartism in The former Yugoslav Republic of Macedonia

In August 2010, the ESC started working with a new composition and under a new regulation. ILO technical assistance was instrumental in both results.

Following advocacy and advisory services provided by the Office, the Labour Relations Law was amended in 2009 to include new criteria of representativeness of the social partners, alongside a transparent procedure of certification. Through a technical cooperation project the ILO provided technical advice, which led to the recognition of two representative trade unions and of one employers' organization. The composition of the new ESC better reflects current industrial relations.

The ILO facilitated and contributed legal advisory services to negotiations on the new tripartite agreement regulating the organization and functioning of the ESC. The agreement, signed in 2010 by the Prime Minister and the presidents of the most representative workers' and employers' organizations at national level, provides for an expanded role of the ESC, in conformity with international labour standards, as well as for the obligation of the Government to request the ESC's opinion on a wide range of issues related to labour, employment and socio-economic development and to provide feedback on the follow-up to the ESC's opinions, recommendations and proposals.

Since August 2010, the ESC has met regularly every two months. In September 2011, it agreed on a national minimum wage, which was enacted by the Parliament, for the first time in 20 years.

Box 3.3 Sectoral social dialogue

The ILO supports tripartite constituents to address challenges in specific sectors at global, regional and national levels. The Office responds to the need for new forms of sector-based social dialogue and innovative sector-specific interventions arising from rapid changes related to the effects of a globalizing economy on work organization and industrial relations.

Interventions focus on promoting the development of sectoral social dialogue mechanisms, employment promotion and skills development, improving working conditions and safety and health, and promotion of equality and inclusion, among other themes. Supranational sectoral social dialogue has recently addressed such emerging issues as new forms of employment and work arrangements, the growing role of multinationals and the reorganization of production through global supply chains, future skills needs and the impact of the crisis.

Through ILO sectoral meetings, constituents jointly formulate and promote global level sector-specific policy recommendations to serve as a basis for policy development and action. The ILO has convened 15 sectoral meetings that have addressed priority needs identified by constituents for their specific sectors. During the same period, six new sectoral tools including guidelines, codes of practice and manuals were adopted by tripartite or bipartite experts from the concerned sectors to provide practical guidance for the Decent Work Agenda in those sectors.

Many of these tools supplement a rich body of ILO sector-specific Conventions and Recommendations. Between 2008 and 2011, 47 member States ratified 19 sectoral Conventions. At the regional and national levels, the ILO promotes the ratification and implementation of sectoral standards, provides technical support for the alignment of national provisions to the standards and follows up on sector-specific recommendations from Conferences and other meetings.

3.6. Cross-border social dialogue

299. Social dialogue is beginning to emerge at the international level, based on a variety of instruments and initiatives that promote international labour standards.¹¹ These constitute building blocks of an emerging cross-border social dialogue and, in some cases, industrial relations framework.

300. The Office engages with MNEs and GUFs through the sectoral advisory bodies that are composed of members from the ITUC, the IOE, relevant GUFs, IOE sectoral partners and government regional coordinators. Sectoral meetings and discussions increasingly involve representatives of MNEs, as social dialogue at global sectoral level is maturing in some industries, notably oil and gas and chemicals, and as the relationship between the IOE (typically representing national peak level associations of employers) and MNEs is strengthened. The involvement of the Office with GUFs, in addition to sectoral meetings, is expanding based on requests for technical advisory services and capacity building of their affiliates, which are national “peak” sectoral unions.

301. The recent decision by the ILO Governing Body to offer the ILO’s facilities for consultations between employers and workers on the basis of the MNE Declaration is an example of the Office further involving MNEs and GUFs in ILO work.¹²

¹¹ Such as IFAs, certification systems in trade agreements, the UN Global Compact, the *OECD Guidelines for multinational enterprises* and the UN Guiding Principles on Business and Human Rights, ISO 26000

¹² ILO: *Report of the tripartite ad hoc working group on the follow-up mechanism of the MNE Declaration*, Governing Body, 313th Session, Geneva, Mar. 2012, GB.313/POL/9(Rev.).

302. The Better Work Programme – one of the ILO's largest technical cooperation projects – uses social dialogue to address working conditions and productivity in global supply chains (see Chapter 2, box 2.17). The programme engages international buyers with local factories and involves the governments, workers and employers at national and enterprise level. It conducts assessments of factories' compliance with national labour laws and fundamental principles and rights at work, and reports the results in a transparent and accessible fashion. Based on the assessments, buyers can work with suppliers to remedy deficiencies or, in case of continued non-compliance, switch orders to compliant factories. Better Work works with the factories and workers to develop improvement plans and then provides continuing monitoring to verify them. It also offers training to managers, supervisors and workers on matters of interest to them. These activities involve coordinated action by various teams in the Office (box 3.4).

Box 3.4

Coordinated ILO action on social dialogue in Viet Nam

The Office's labour law team has provided support to multifaceted, ongoing labour law reforms in Viet Nam with input from different units of the Office to ensure that the country's new legislation is in line with international labour standards while providing a sound framework for worker protection, harmonious industrial relations and effective labour administration in a period of rapid growth and investment in the country.

In the course of these labour law reforms, the Office's labour administration team carried out a needs assessment of Viet Nam's labour inspection system as a key institution to properly monitor and enforce the law. A work programme is being developed in collaboration with the Government to address some of the recommendations of the assessment and to steadily improve the performance of the labour inspection system to provide effective services to constituents and support the rule of law in the workplace.

As a complement to the work of the public labour inspection system, the Better Work Programme has been operating in the garment sector in Viet Nam since June 2009 to improve working conditions at enterprise level in suppliers of multinational clothing and apparel buyers. The programme provides a mechanism for stronger cooperation between governments, employers' and workers' organizations and international buyers. This includes support for the public labour inspectorate through joint planning and training activities for labour inspectors and information sharing on workplace practices. Better Work also supports the role of the social partners to be more effective advocates for improved working conditions and enhanced productivity within specific enterprises and in the sector as a whole. A strong element of this work is delivery of in-factory training for union representatives in areas such as conflict resolution and negotiation skills. The experience gained through Better Work provided the ILO with case studies used in the labour law reform process.

For the social partners in Viet Nam to effectively play their roles, it has been crucial to develop the capacity of employers' and workers' organizations in the country. The Bureaux of Employers' and Workers' Activities and the Office's industrial relations team work with the constituents in Viet Nam to improve collective bargaining skills, knowledge of the labour law, management of their respective organizations, and social dialogue and consultation in general.

303. As of mid-2012, 700 factories employing over 750,000 workers were enrolled in Better Work Programmes. In the past three years, more than 1,600 factory assessment visits have been carried out, and an average of 70 per cent of factories are implementing Better Work plans that aim to improve respect of labour standards and competitiveness. Significant improvements are seen in the countries that have been assessed more than once. In Jordan, for example, comparison between baseline data and the most recent assessment reports indicates that compliance has improved by 47 per cent in discipline and disputes and by 19 per cent on minimum wage payment. Non-compliance in

coercion has declined by 38 per cent. In Haiti, compliance has improved by 25 per cent in reduction of discrimination due to religion and political opinion and by 45 per cent in union operations.

304. Over the last decade, the ILO has gained expertise in supporting constituents' work through TCAs, notably by providing research and data collection as well as interaction with signatory parties. It has also produced several working papers and books;¹³ built strong networks with academics and researchers from leading institutions such as Eurofound; cooperated with the EC in building a database on TCAs;¹⁴ and participated in EU tripartite expert meetings¹⁵ and research and capacity-building workshops for businesses starting to engage in TCAs.¹⁶

3.7. Mainstreaming the social dialogue model: Efforts to induce coherence across international organizations

3.7.1. Multilateral organizations

305. The ILO is the most advanced and institutionalized global forum for social dialogue, providing a unique platform for tripartite cooperation. It is recognized by other international organizations as the sole legitimate source and guardian of international labour standards. As the UN has attempted in recent years to achieve better system-wide coherence, the ILO has had greater opportunities to integrate the notions of social dialogue and tripartism into the work of other UN agencies, especially at national level. This typically occurs through the negotiation and implementation of United Nations Development Assistance Frameworks (UNDAFs), which define strategic programme frameworks and provide insight into country progress, outcomes and goals. The ILO's four strategic objectives, the Decent Work Agenda and the cross-cutting element of gender equality have been increasingly mainstreamed in UNDAFs.

306. An analysis of the 25 UNDAF documents signed in 2011 shows that 97 per cent integrated at least three of the ILO strategic objectives, up from 75 per cent in 2010. Close to 60 per cent of the most recent UNDAFs include all four ILO strategic objectives.

307. The ILO has offered technical assistance to involve the social partners in UNDAF consultations and has provided technical support to increase their role in formulating the national development frameworks and plans with which UN programmes are to be aligned. The Office has prepared briefing materials relevant to the UN reform for workers' and employers' organizations¹⁷ as well as capacity-building programmes

¹³ K. Papadakis (ed.): *Shaping global industrial relations: The impact of international framework agreements* (Geneva/New York, ILO/Palgrave Macmillan, 2011).

¹⁴ Database on TCAs, EC, <http://ec.europa.eu/social/main.jsp?catId=978&langId=en> [accessed 12 Dec. 2012].

¹⁵ EC: *Experts group meeting reports (2009–11) on transnational company agreements*, <http://ec.europa.eu/social/main.jsp?catId=707&langId=en&intPageId=214> [accessed 12 Dec. 2012].

¹⁶ Learning Employers Network, ITC–ILO, <http://lempnet.itcilo.org/en/tcas> [accessed 9 Nov. 2012].

¹⁷ *UN reform and workers' organizations*, Bureau for Workers' Activities (ACTRAV) and the Department of Partnerships and Development Cooperation (PARDEV), ILO, 2009, www.ilo.org/actrav/what/pubs/WCMS_113742/lang--en/index.htm [accessed 11 Dec. 2012]; *United Nations reform and the International Labour Organization*, ILO, PARDEV, 2009, www.ilo.org/pardev/partnerships-and-relations/un-system/WCMS_173313/lang--en/index.htm [accessed 9 Nov. 2012].

regionally.¹⁸ Assistance is provided to UN Country Teams to apply the UN's Toolkit on Mainstreaming Employment and Decent Work (adopted by the UN's Chief Executive Board in 2008). The toolkit is a key entry point for social partners, as it acknowledges the specific role of workers' and employers' organizations in the analytical and programming work of UN agencies.

308. The ILO has encouraged other international organizations to engage with the social partners, as part of its broader work on promoting policy coherence among international organizations. Examples include the UN through its Global Compact Labour Working Group, which is chaired by the IOE and the ITUC; the Inter-agency Roundtable on CSR, which includes participation of the IOE and the ITUC. The Global Compact Office recently requested all its local networks to reach out to national workers' organizations to enhance opportunities for dialogue among local network members, especially on the labour principles of the Global Compact.

309. The ILO has been active to achieve the MDGs, particularly the first goal of eradicating extreme poverty and hunger by 2015. At the policy level, the Office played a very important role in bringing decent work to the forefront as a central element of development policies. As a result, in 2008 a new target was included under the first goal, to capture progress in achieving full and productive employment and decent work for all, including women and young people.

310. The Social Protection Floor Initiative, including the adoption by the ILC of Recommendation No. 202 on the social protection floor, is a major contribution of the ILO that urges countries to invest in poverty alleviation, inclusion and efforts to help manage the risks faced by vulnerable households and groups to contribute to socially sustainable development.

311. The global financial crisis has provided opportunities for the ILO to work with the international financial institutions and other economic institutions to try and achieve more policy coherence in social dialogue. The opportunities were often provided by the G20.¹⁹ For example, following a G20 request at the London Summit (April 2009), which asked the ILO to "work with other relevant organizations to assess the actions taken and those required for the future" to address the employment impact of the financial crisis, the ILO and the World Bank conducted a survey of G20 governments' policy responses to the crisis. The survey was based on the structure of the Global Jobs Pact and compiled a list of government interventions during the crisis, including those related to social dialogue.²⁰

312. The G20 also asked the ILO, in partnership with other organizations and with employers and workers, to develop a training strategy for its consideration. The resulting G20 Training Strategy²¹ explains how a strong partnership between government, employers and workers is an essential feature of an effective and enduring bridge between the worlds of learning and work. The strategy also stresses participation of

¹⁸ ILO: *ILO capacity-building programme: Working with UN workers and employers contribution to achieving decent work in a changing regional environment*, workshop (Colombo, 2011). www.ilo.org/colombo/whatwedo/events/WCMS_164577/lang--en/index.htm [accessed 9 Nov. 2012].

¹⁹ G. Köhler: *The challenges of Delivering as One: Overcoming fragmentation and moving towards policy coherence* (Geneva, ILO, 2011).

²⁰ ILO and the World Bank: *Inventory of policy responses to the financial and economic crisis: A joint synthesis report* (Geneva/Washington, DC, 2012).

²¹ ILO: *A skilled workforce for strong, sustainable and balanced growth: A G20 Training Strategy* (Geneva, 2010).

employers' and workers' representatives in the design, implementation and evaluation of skills policies. The Governments of Bangladesh, Benin, Haiti and Malawi have agreed to be pilot countries for testing the strategy, with particular emphasis on the participation of social partners.

313. The ILO welcomed the publication of the World Bank's *World Development Report 2013* entitled "Jobs"²² which updates the organization's analysis and policy prescriptions on employment and development. The report took note of various contributions from ILO experts.

314. In defining jobs as "activities that generate income ... without violating human rights" (World Development Report, page 5) the report recognized the floor set by fundamental principles and rights at work, including those that concern voice and participation of workers. Based on a balanced review of the evidence on labour market legislation and policies, the report moved well beyond earlier positions of the World Bank on labour market flexibility (World Development Report – especially in Chapter 8). It developed the notion of a "plateau effect" in which there is ample space for governments and societies to decide on the desired level of labour protection and regulations and recognized that social cohesion is an important objective of development. Through such considerations, the report paves the way for the World Bank to align itself with the ILO's Decent Work Agenda and thus enhance policy coherence. The treatment of freedom of association and the role of workers and employers in national social dialogue, however, appeared underdeveloped, notably on participation in policy choices in times of crisis, to ensure fairness, inclusion, social cohesion and stability when tough economic and social choices need to be made.²³

315. While the above progress on policy coherence is welcome, it has not always translated into policy coherence on the ground. In Romania, for example, the ILO and the IMF were unable to agree on a common platform of recommendations on labour protection legislation, minimum wages, and the role of social dialogue and collective bargaining during austerity. The ILO supervisory bodies expressed reservations about the impact on a number of ILO Conventions ratified by Greece of austerity measures adopted by that country to meet conditions required by the "Troika" (see Chapter 2, section 2.4.2).

316. In 2005, an independent evaluation of ILO strategy on social dialogue, labour law and labour administration services found that while the ILO was recognized as the competent and authoritative international organization on social dialogue, it was faced with "increasing competition" from other international organizations in labour law reform and areas such as collective bargaining and industrial relations.²⁴ While progress has been made since then, these concerns remain valid.

²² World Bank: *World Development Report 2013: Jobs* (Washington, DC, 2012).

²³ ILO (Office) comments on the World Bank's *World Development Report 2013: Jobs*, 2 Nov. 2012, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ed_emp_msu/documents/statement/wcms_192350.pdf [accessed 9 Nov. 2012]; a similar evolution in policy has been observed in the OECD. The *OECD Employment Outlook 2012* expressed support for coordinated collective bargaining in wage setting as a way that "contributes to both good structural performance and labour market resilience", as well as to "achieving low structural unemployment rates and in mitigating the direct impact of shocks on employment by facilitating adjustments to wages and/or working time"; OECD: *OECD Employment Outlook 2012* (Paris, 2012), http://dx.doi.org/10.1787/empl_outlook-2012-en [accessed 9 Nov. 2012].

²⁴ ILO: *Independent evaluation of the InFocus Programme on Social Dialogue, Labour Law and Labour Administration*, Governing Body, 294th Session, Nov. 2005, GB.294/PFA/8/1.

317. The idea of setting up an inter-agency economic and social security council that would have a degree of authority over all UN agencies, the Bretton Woods Institutions and the WTO, has at times been promoted as a way to improve coherence and prevent serious crises.²⁵ Such a world authority has been envisioned as a new economic policy decision-making body that would have an analogous impact on global economic and social matters as the UN Security Council for peace and security matters.

3.7.2. Regional organizations and initiatives

318. Collaboration between the ILO and regional bodies has developed extensively over recent years, as regional integration initiatives have proliferated and in some cases deepened.²⁶

319. EU–ILO collaboration on social dialogue has intensified through annual high-level meetings between the EC, European External Action Service and the ILO. One area of intensive work has been capacity building for social partners from EU enlargement countries and from Member States that joined in 2004 and 2007 to engage in EU social dialogue. This has involved training by the ITC–ILO; research and analysis on issues such as working conditions and wages in the private and public sectors; and stocktaking of national social dialogue in new Member States.

320. The ILO is regularly represented at European sectoral dialogue committee meetings, while the EC attends ILO sectoral meetings.

321. In 2012, the EC began funding a three-year ITC–ILO project on the impact of crisis and austerity on labour law, industrial relations and social dialogue in nine EU Member States (Bulgaria, Czech Republic, Greece, Ireland, Italy, Poland, Portugal, Slovakia and Spain).

322. Since 2012, after an invitation by the EC Task Force for Greece, the ILO has taken part in regular high-level consultation meetings in Brussels. The Task Force's objective is to assist Greece in using EU structural funds for promoting employment and investment and for improving governance.

323. The ILO is also involved in social dialogue initiatives as part of the external dimension of EU employment and social policies. The ILO cooperates with the European Economic and Social Committee, the workers' and employers' groups that work with that committee and with EU social partners to launch national labour councils or ESCs in North Africa and the Middle East.

324. ILO collaboration with the Organization of American States has gained momentum since 2005, when a Memorandum of Understanding was signed aimed at joint action for promoting decent work at regional and national levels. The ILO provides technical assistance to the Inter-American Conference of Ministries of Labor, where the Business Technical Advisory Committee on Labor Matters and the Trade Union Technical Advisory Council participate as advisory bodies, representing employers and workers of the Americas. This has led to a joint statement on youth employment in 2011 that was recognized as a stepping stone for policy development by the Conference of Labor Ministries and the Inter-American Summit of Presidents.

²⁵ World Commission on the Social Dimension of Globalization: *A fair globalization: Creating opportunities for all* (Geneva, ILO, 2004), para. 530; ITUC: *Decisions adopted by the Second ITUC World Congress – Vancouver, 21–25 June 2010* (Brussels, 2010), http://www.ituc-csi.org/IMG/pdf/CONGRESS_Decisions_EN.pdf [accessed 17 Dec. 2012].

²⁶ ILO: *The ILO and the EU, partners for decent work and social justice: Impact of ten years of cooperation* (Brussels, 2012).

325. There have been several efforts to promote social dialogue and strengthen tripartite forums and institutions at regional and subregional levels in Latin America. Programmes have operated in Central America and the Dominican Republic (2008–12); Argentina, Chile, Ecuador, Guatemala, Panama and Peru (2009–12); and earlier in Argentina, Plurinational State of Bolivia, Brazil, Ecuador, Mexico and Peru (2004–07).

326. Tripartite meetings of ASEAN governments and social partners have been organized under the auspices of the ILO, including a tripartite meeting to discuss ASEAN-wide developments on industrial relations.

327. The ILO has supported several endeavours to develop subregional social dialogue structures throughout Africa, such as the Social Dialogue Forum of the Economic Community of West African States and the Tripartite Committee on Social Dialogue within the Central African Economic and Monetary Community. PRODIAP activities (section 3.4) have, since 1996, contributed decisively to this effort. The Office has also supported the adoption of action plans aimed at promoting the Decent Work Agenda and ratifying ILO governance Conventions, such as within SADC and the East African Community. The ILO has provided technical and financial support both to the secretariats of these structures and to their member States. With support from the Office, the African Union has launched a process for adopting the Guidelines for Promoting and Strengthening Social Dialogue in Africa, and a Productivity Agenda for Africa anchored in social dialogue.

328. A regional agenda to promote social dialogue in the Arab States was initiated during the Arab Employment Forum, organized by the Arab Labour Organization and the ILO in Lebanon in October 2009. A Jobs Pact for Recovery and Growth forum convened governments, employers' and workers' organizations from all 22 member States of the Arab League to formulate a decent work response to the economic and financial crisis. It concluded with an Arab Action Agenda for Employment, based on the ILO Global Jobs Pact (June 2009) and the resolutions of the Arab Economic, Development and Social Summit (January 2009). A follow-up regional conference on social dialogue in the Arab States took place in Morocco in December 2010. All events – which predated the Arab Spring – called for the need to overcome challenges of freedom of association and collective bargaining and the need to support independent, democratic and transparent employers' and workers' organizations in the Arab States.

3.8. Link between social dialogue and the other ILO strategic objectives

329. The ILO strategic objective of promoting tripartism and social dialogue is both an end in itself and a means to achieve the other three strategic objectives of the ILO: promoting and realizing fundamental principles and rights at work; creating greater opportunities for women and men to secure decent employment and income; and enhancing the coverage and effectiveness of social protection for all.

Box 3.5
ILO standard setting and social dialogue

Standard-setting activities play an invaluable role in promoting social dialogue because, as seen in Chapter 1, social dialogue is embedded in all international labour standards.

The most recent instruments with particular relevance to social dialogue are the Maritime Labour Convention, 2006 (MLC, 2006), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Work in Fishing Convention, 2007 (No. 188), Convention No. 189 and their accompanying Recommendations, as well as the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Human Resources Development Recommendation, 2004 (No. 195), the Employment Relationship Recommendation, 2006 (No. 198), the HIV and AIDS Recommendation, 2010 (No. 200), and the Social Protection Floors Recommendation, 2012 (No. 202).

Since 2008, 13 projects (including two of global scope) for the promotion of the right to freedom of association and collective bargaining have been under way (in Bangladesh, Egypt, Georgia Jordan, Republic of Maldives, Morocco, Myanmar, Philippines, Sri Lanka and Ukraine) and two have been completed (Colombia and United Republic of Tanzania).

Global campaigns are under way to promote the ratification and implementation of the eight fundamental Conventions and the four governance Conventions as well as the OSH Conventions (the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)), the Maritime Labour Convention, 2006 (MLC, 2006), and Convention No. 188.

3.8.1. Social dialogue and the promotion and realization of fundamental principles and rights at work

Addressing challenges to freedom of association in EPZs

330. Since 2008, the Office has been developing research, capacity-building and knowledge-sharing activities on EPZs with strong social dialogue components, as well as technical cooperation (box 3.6).²⁷ The research aims at gathering quantitative and qualitative information on industrial relations practices in EPZs. The Office's technical cooperation activities have mainly promoted the right to organize in EPZs.

331. A manual on freedom of association for women in EPZs, who constitute the majority of workers, has been produced to inform trade unions of women's rights and engage them in activities that promote freedom of association and organizing as key means to improve women's rights and working conditions.²⁸ Guidelines on freedom of association and the right to collective bargaining in EPZs, designed to improve the legal and institutional framework for realizing these rights and the capacity of the tripartite constituents to apply them, are being developed and pilot-tested. An online resource guide that compiles key information on EPZs has been developed and maintained by the ILO's Bureau of Library and Information Services (INFORM).²⁹

²⁷ ILO: *Agenda of the International Labour Conference: Proposals for the agenda of the 102nd Session (2013) of the Conference*, Governing Body, 309th Session, Nov. 2012, GB.309/2/2, Appendix II.

²⁸ A. Sukthankar and R. Gopalakrishnan: *Freedom of association for women workers in EPZs: A manual*, Working Paper (Geneva, ILO, 2012).

²⁹ *Resource guide on export processing zones (EPZs)*, ILO, INFORM, www.ilo.org/public/english/support/lib/resource/subject/epz.htm [accessed 9 Nov. 2012].

Box 3.6
Social dialogue and workers' rights in Sri Lankan EPZs

EPZs in Sri Lanka employ nearly 130,000 people in over 280 enterprises. The Board of Investment operates 12 EPZs, which are equipped with the infrastructure needed by modern industries.

In 2009, the ILO launched a technical cooperation project on promoting fundamental principles and rights at work in Sri Lanka. The project has helped tripartite constituents to make significant progress towards greater labour law compliance in EPZs.

As a first step, the project trained 4,200 EPZs' managers and workers on fundamental rights at work and supported the employers' organization in establishing a Human Resources Network that reached 400 members in less than a year. With the project's technical assistance, tripartite constituents also adopted a series of legal and practical measures for the exercise and respect of fundamental rights at work, including freedom of association rights. This led to the establishment of trade unions' facilitation centres in EPZs where workers and their representatives can meet and conduct their activities. The centres are located in Sri Lanka's three larger zones, where 61 per cent of the workforce, largely composed of young women, is concentrated.

A tripartite agreement was reached to increase fines for unfair labour practices and the Ministry of Labour issued a circular to improve the implementation of the law on holding referendums. The project has also supported the Ministry in its efforts to strengthen its labour inspection and enforcement services.

The labour inspectorate has been revamped with the adoption of the country's first labour inspection policy and the development of a modern computerized labour inspection system covering all provinces. Modern tools for inspections visits, monitoring and reporting of its findings were also produced and a total of 120 labour officials were trained on effective inspection techniques and skills. In 2011, 194 announced and 535 unannounced inspection visits took place noting 338 violations, according to government data. The impact of all these measures will be seen in Sri Lanka's first annual inspection report to be published in 2013.

Child labour

332. The Office has tried to integrate social dialogue and a stronger understanding of labour relations into its policies and activities on child labour, for example, in technical cooperation projects in Angola, Argentina, Chile, India, Indonesia, Malawi, Panama, South Africa, Zambia and Zimbabwe. "New generation" projects have been developed with the social partners, or foresee their close involvement to enhance national ownership and sustainability. Examples include projects on eliminating child labour in the cocoa sector in Côte d'Ivoire and Ghana and establishing coordinating committees among trade unions to combat child labour in Cambodia. Several training guides and capacity-building activities targeting the social partners have been co-developed with the IOE and the ITUC.

Using social dialogue to promote equality for indigenous peoples

333. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), has been ratified by 22 countries. The ILO supervisory bodies have monitored and guided implementation of the Convention through various means, including regular examination of reports by the governments concerned. To that end, a number of ILO constituents have assisted indigenous and tribal peoples' organizations with bringing specific issues to the attention of the ILO supervisory bodies. One programme³⁰ provides technical assistance to all

³⁰ *Programme to promote ILO Convention No. 169 (PRO 169)*, Training tool box, <http://pro169.org/> [accessed 16 Dec. 2012].

stakeholders, with a view to addressing implementation gaps through capacity development and awareness-raising materials, such as a 2009 guide,³¹ which provides governments, indigenous and tribal peoples as well as workers' and employers' organizations with a practical tool for the implementation of indigenous peoples' rights, based on the experiences, good practices and lessons learnt. The PRO 169 website provides access to a "tool box", allowing trainers to develop courses for local activists and community leaders in indigenous and tribal peoples' rights.

3.8.2. Social dialogue and social protection for all

334. The Social Protection Floor Recommendation, 2012 (No. 202), strongly reflects links between social protection and social dialogue, both because of the tripartite and participatory process of its adoption and because the development of systems of social protection benefits will rely on continuing forms of social dialogue. The social protection floor concept emphasizes not only a lifecycle approach to combating poverty and vulnerability, but also an approach that should be nationally determined. In both aspects there is need for encompassing social dialogue not only among the traditional social partners, who should remain at the centre, but among other stakeholders, such as NGOs, cooperatives and microinsurance providers.

Work and family

335. The Office continued to carry out activities under the Workers with Family Responsibilities Convention, 1981 (No. 156), a key feature of which is the emphasis on participation of employers' and workers' organizations in designing and implementing policies for work–family balance. A comprehensive ILO study on workplace solutions for childcare as well as a joint ILO–UNDP report³² present examples and good practices from social dialogue and collective bargaining.³³ With ILO assistance, trade unions in the Dominican Republic, India, Indonesia, Malaysia and Thailand submitted policy proposals to their governments on how to strengthen maternity protection and launched campaigns to ratify the Maternity Protection Convention, 2000 (No. 183).

Working time

336. The Office provides advice to countries to promote social dialogue on working-time adjustments as crisis response measures, for example, in Chile. The Office also provides knowledge and technical advice to constituents to assist them in developing innovative enterprise-level agreements on working time, as in Bulgaria and The former Yugoslav Republic of Macedonia. In addition, based on the conclusions of the Tripartite Meeting of Experts on Working-time Arrangements, work is under way to expand the knowledge base on the structure and effects of working-time arrangements in different sectors, with a focus on health services. The goal is to provide practical guidance to constituents on how to develop working-time arrangements that balance workers' family needs with organizational performance requirements.

³¹ ILO: *Indigenous and tribal peoples' rights in practice: A guide to ILO Convention No. 169* (Geneva, 2009), http://pro169.org/res/materials/en/general_resources/IPsRightsInPractice-singlepages.pdf [accessed 16 Dec. 2012].

³² ILO–UNDP: *Work and family: Towards new forms of reconciliation with social co-responsibility* (Santiago, 2009).

³³ C. Hein and N. Cassirer: *Workplace solutions for childcare* (Geneva, ILO, 2010).

Minimum wages

337. Minimum wage fixing in many countries is one of the main instances of social dialogue. The Office has provided capacity building on minimum wage fixing to specialized tripartite bodies. In the context of a wider ILO project to strengthen social dialogue in Central America and the Dominican Republic, the Office provided capacity building on minimum wage fixing to Costa Rican constituents, including members of the Consejo Nacional de Salarios, the tripartite national wage board responsible for fixing minimum wages by sector and occupation. Similar capacity building targeted the Wages Advisory Board of Lesotho and the Wages Commission for Domestic Workers in Namibia in 2012. Intensive work has been carried out in the Philippines and Viet Nam on minimum wage reform.

OSH

338. The Office continues to promote social dialogue as an integral part of developing legal frameworks and national programmes and systems for OSH, including through developing national OSH profiles, setting up national tripartite bodies³⁴ (an established practice in many industrialized countries), adopting or amending national OSH laws and adopting national OSH programmes. Achievements on OSH issues, such as ratification and application of ILO Convention No. 187, have also served to strengthen tripartite and bipartite social dialogue. Examples of progress include Brazil and Uruguay, which have promoted tripartite sectoral committees on OSH issues in industries such as construction, chemicals, clothing, metallurgy, and oil and gas, as well as in the rural and health sectors.

HIV and AIDS

339. Recommendation No. 200 on HIV and AIDS drew heavily on social dialogue both in its process of adoption and for its implementation at national level. The Office's work in the area has been based on a multi-sectoral approach aimed at involving the social partners and other relevant actors such as CSOs representing people living with HIV. The Office has provided technical advisory services and capacity building at country level to ensure the social partners' active participation in the bodies responsible for coordinating HIV and AIDS responses, so that actions taken in the world of work are an integral part of the national response to the HIV epidemic. In 2011, the Office supported participation in country coordinating mechanisms established by the Global Fund to Fight AIDS, Tuberculosis and Malaria of ministries of labour in 43 member States, of employers' organizations in 40 and of workers' organizations in 21.

Domestic workers

340. Convention No. 189 and its supplementing Domestic Workers Recommendation, 2011 (No. 201), promote social dialogue in two ways. First, they promote the right to freedom of association and the right to collective bargaining for domestic workers; second, they emphasize the need for consultations with the representative organizations of workers and employers in the practical implementation of key provisions of the instrument. The ILO provides assistance for implementing Convention No. 189, for example, to Uruguay and the Philippines, the first two Members to ratify the Domestic Workers Convention, 2011 (No. 189),³⁵ and helped to establish institutional frameworks

³⁴ 2009–12: Albania, Azerbaijan, Bangladesh, Brazil, Cambodia, Cameroon, Dominican Republic, Egypt, Fiji, Indonesia, Iraq, Lebanon, Malawi, Mauritius, Nicaragua, Seychelles, Sierra Leone, Tajikistan and Zambia; before 2009: Croatia, El Salvador, Estonia, Indonesia, Malaysia, Mongolia, Pakistan, Panama, Thailand, Uruguay and Viet Nam.

³⁵ At the time of writing three countries had ratified Convention No. 189 (Mauritius, Philippines and Uruguay).

for social dialogue on domestic work, which encouraged collective organization and representation in the sector (see Chapter 2, box 2.17).

Migrant workers

341. The Office promotes the use of social dialogue in supporting countries to develop their national labour migration policies and laws through broad participatory processes. The goal is to achieve better governance of labour migration and better regulation of the recruitment process and protection of migrant workers. Countries assisted include Armenia, Azerbaijan, Cambodia, Georgia and South Africa. The Office provides similar support to regional integration communities, notably for improving and implementing regional protocols on labour migration and drawing up policies on subregional measures for migrant workers' social security coverage. Such bodies include the European Economic and Social Committee, the ASEAN tripartite Forum on Migrant Labour, the East African Community and the SADC. The SADC Decent Work Programme has a particular focus on labour migration as a regional issue and is developing an action plan on migration for the region.

3.8.3. Social dialogue to create greater opportunities for all women and men to secure decent employment and income

Employment policies

342. The ILO promotes social dialogue as part of economic policy-making in line with Convention No. 122. It supports social dialogue as a means of integrating the ILO's Decent Work Agenda into the national poverty reduction strategies and national development frameworks by fostering the participation of workers and employers in the formulation of social and economic policies (for example, in Benin, Burkina Faso, Cameroon, Mali, Togo – including through the APERP project (*Appui à la promotion de l'emploi et la réduction de la pauvreté*)). Social dialogue is also key in ILO's support to the formulation of national employment policies.

343. The ILO has supported the capacity of inter-ministerial and tripartite committees to ensure that social dialogue is present at every step of the national employment policy formulation process, from the situation analysis that leads to policy choices to the validation of the policy implementation and its evaluation. The ILO works to ensure that social dialogue goes beyond ministries of labour to include ministries of economy and planning and sectoral ministries, which play a key role in generating employment.

MNEs

344. The ILO MNE Declaration promotes social dialogue as a key means of achieving its main goal, "to encourage the positive contribution which MNEs can make to economic and social progress and ... minimize and resolve the difficulties to which their various operations may give rise". The Office's activities associated with the MNE Declaration encourage companies to consult with the government and national employers' and workers' organizations to stimulate dialogue on maximizing the employment impact of foreign direct investment, particularly among youth (as seen in Argentina, Azerbaijan, Côte d'Ivoire and Liberia).

SMEs

345. The ILO Sustaining Competitive and Responsible Enterprises (SCORE) training programme, which has supported SMEs to increase their productivity and competitiveness while they improve working conditions and environmental practices, is

built on a foundation of workplace dialogue, through the formation of joint enterprise improvement teams.

346. The ILO's System for the measurement and improvement of productivity (SYMAPRO) aims to improve efficiency, quality and working conditions through the involvement and commitment of operational staff, and of middle and senior management. Integrated performance indicators derive from social dialogue and address both working process and working conditions. In Mexico, SYMAPRO has been embedded in collective bargaining agreements at sectoral level. Since the signature of the Labour Modernization Agreement of the sugar industry by the social partners in 2007, bi-monthly tripartite network meetings to share implementation experiences have helped to avoid conflicts in a sector that had experienced yearly strikes in earlier decades. SYMAPRO has also been successfully introduced in collective bargaining agreements at state level (including several industries in Sonora) and company level (tourism in Nuevo Vallarta).

Green jobs

347. In 2007 the ILO, with the UN Environment Programme, the ITUC and the IOE, established the Green Jobs Initiative. The first report of the programme³⁶ recognizes social dialogue as a fundamental means to integrate social implications into environmental policies and programmes. At the 2012 UN Conference on Sustainable Development (Rio +20), the ILO emphasized social dialogue as part of the framework for just and socially inclusive transition to low-carbon emission economies. The Office has supported government initiatives to tackle issues of green jobs and climate change through social dialogue, including the Multistakeholder Taskforce on Green Jobs and Climate Change, established in 2009 in India.

Rural economy

348. Following the general discussion on rural employment at the 2008 ILC³⁷ and the discussion on a rural strategy at the March 2011 Governing Body, the Office has engaged in capacity building to promote social dialogue in rural areas. For example, a project in Tamil Nadu, India allowed the Rural Workers Union to recruit over 170,000 workers in recent years (see Chapter 2, box 2.4). The ILO's local economic development approach, used since the late-1990s in over 36 countries, fosters the establishment of forums that include local government, local branches of trade unions, employers' associations and other organizations of working people such as cooperatives, small business associations and women's groups to jointly design and implement a common development strategy for local areas. Social dialogue is also a component of the PROMER II project, which supports micro- and small enterprise creation through an integrated decent work approach in eight rural regions of Senegal. The project helps organizations develop their capacity to provide services in order to help create micro- and small enterprises (and thus gain affiliates) and to enter into dialogue with local authorities; promotes trade union presence, particularly on labour rights and working conditions; and has created tripartite consultation frameworks in 15 value chains. Other

³⁶ UN Environment Programme: *Green jobs: Towards decent work in a sustainable, low-carbon world* (Nairobi, 2008).

³⁷ ILO: *Promotion of rural employment for poverty reduction*, Report IV, International Labour Conference, 97th Session, Geneva, 2008.

work developed tools to address poverty reduction through tourism in rural areas³⁸ and freedom of association for women rural workers.³⁹

Cooperatives

349. Many ILO technical cooperation projects in Africa and Latin America have shown that social and solidarity economy organizations and cooperatives can play an important role in local development strategies, in line with the Promotion of Cooperatives Recommendation, 2002 (No. 193). The ILO's SYNDICOOP experience in Africa (notably Kenya, Rwanda, South Africa, United Republic of Tanzania and Uganda) shows that participating trade union and cooperative organizations have benefited from the strategic alliance between them, which led to strengthened organizations, enhanced services for members and a unified voice in important social dialogue processes such as the development of poverty reduction strategies. The Office has produced a handbook entitled "Let's organize!" for trade unions and cooperatives about organizing workers in the informal economy.⁴⁰ The Office engages in joint events with other UN agencies (such as the Food and Agriculture Organization of the UN) to raise awareness and create enabling environments for developing cooperatives and farmers' organizations.

3.8.4. Mainstreaming gender equality and strengthening women's voice

350. In line with the 2009 ILC resolution concerning gender equality,⁴¹ the Office has responded to requests to advance gender equality in the world of work through capacity building, technical advisory services and research. Actions have aimed at strengthening women's engagement and voice by organizing women in EPZs and rural areas; involving more women in social dialogue institutions; helping women advance in decision-making in trade unions; enabling women to take a larger role in collective bargaining; closing gender pay gaps; reconciling work and family responsibilities; combating gender-based violence at the workplace; and enhancing women's economic opportunities. The Office has also reviewed legislative texts to improve the application of international labour standards and strengthen the gender sensitivity of labour legislation and enforcement frameworks.⁴²

351. Recent capacity-building activities have included training modules on labour inspection and gender equality and a workshop for labour court judges on the application of the ILO's gender equality Conventions. Judges came from Botswana, Malawi, Nigeria, South Africa and Zambia.

352. The promotion of gender equality, women's economic empowerment and representation at the workplace have been mainstreamed through projects promoting freedom of association (El Salvador, Indonesia, Jordan, Philippines and South Africa); capacity of labour inspectorates (Indonesia, Jordan, Lebanon, Oman, South Africa and Ukraine); capacity building of workers' and employers' organizations (Bangladesh,

³⁸ ILO: *Toolkit on poverty reduction through tourism*, 2011, http://www.ilo.org/sector/Resources/training-materials/WCMS_162289/lang--en/index.htm [accessed 11 Dec. 2012].

³⁹ R. Gopalakrishnan and A. Sukthankar: *Freedom of association for women rural workers: A manual* (Geneva, ILO, 2012).

⁴⁰ S. Smith: *Let's organize!: A SYNDICOOP handbook for trade unions and cooperatives about organizing workers in the informal economy* (Geneva, ILO, ICA and ICFTU, 2006).

⁴¹ ILO: *Resolution concerning gender equality at the heart of decent work*, International Labour Conference, 98th Session, Geneva, 2009.

⁴² ILO: *Gender equality and social dialogue: An annotated bibliography* (Geneva, 2012).

Benin, Plurinational State of Bolivia, Cambodia, Colombia, Mali, Morocco, Nepal, Niger, Pakistan, Philippines, Senegal, Togo, Zambia and countries in Central Europe); and development of decent work indicators (Indonesia).⁴³

3.9. Social dialogue in DWCPs and technical cooperation

353. The ILO action on social dialogue is mainly delivered through DWCPs and technical cooperation projects. Box 3.7 presents a broad view of the types of financing supporting activities related to social dialogue.

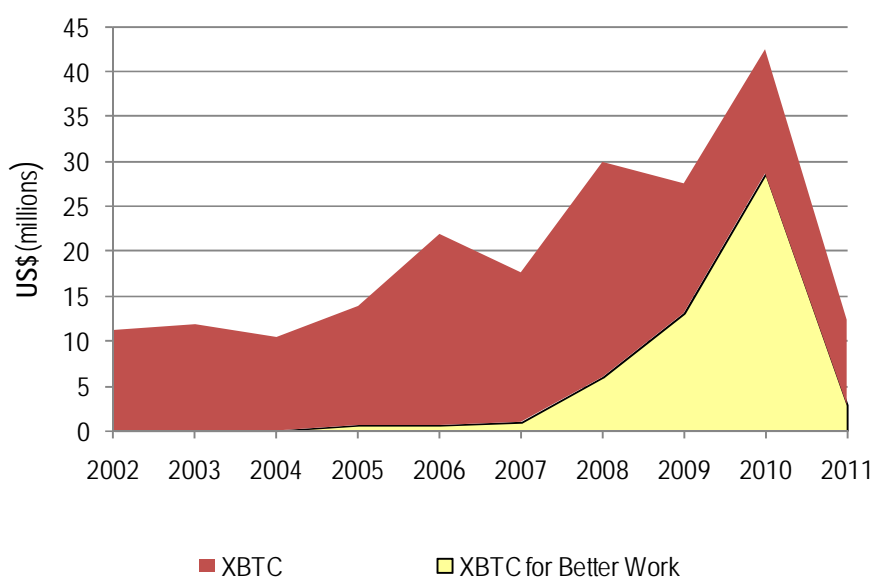
Box 3.7 Financing of social dialogue activities

Over the biennium 2010–11, the strategic objective of social dialogue received funding from all sources, namely the regular budget (the second largest allocation after Employment), the Regular Budget Supplementary Account and extra-budgetary technical cooperation (XBTC), in different proportions.

While the large majority of employers' and workers' activities were funded by the regular budget (91 per cent and 87 per cent, respectively), other activities were highly dependent on XBTC sources. The latter made up more than a quarter of the resources for labour law and administration activities, and more than a third of the funding for social dialogue and industrial relations as well as sector-specific activities. The remaining expenditure was covered by the Regular Budget Supplementary Account.

XBTC for social dialogue has risen and fallen year-on-year without a clear trend, being intrinsically linked to the evolution of the Better Work Programme. The overall XBTC allocated by the Office to the strategic objective of social dialogue in 2002–12 averaged approximately 6 per cent (with some peak variations, such as 16 per cent in 2010, due to Better Work Programme allocations), making it the strategic objective the least funded by XBTC.

XBTC approvals for social dialogue 2002–11 (in US\$)



⁴³ ILO: *ILO Gender News*, No. 19 (Geneva, ILO, Nov. 2012).

354. The ILO set up DWCPs in 2005 as the main delivery vehicle for its support to countries. They are joint endeavours of national tripartite constituents to advance the Decent Work Agenda. Since their introduction, approximately 100 DWCPs have been designed in all regions.

355. DWCPs have two basic objectives. First, they promote decent work as a key component of national development strategies. Second, they organize ILO knowledge, instruments, advocacy and cooperation at the service of tripartite constituents in a results-based framework to advance the Decent Work Agenda within the fields of comparative advantage of the Organization. DWCPs are also the distinct ILO contribution to UN Country Programmes and constitute one main instrument to integrate regular budget and XBTC.

356. Tripartism and social dialogue have been central to planning and implementing a coherent and integrated ILO programme of assistance to constituents in member States. Each DWCP has been organized around a few priorities and outcomes identified by the social partners. Through the elaboration of a DWCP, national constituents jointly undertake situation and needs analyses and set out priorities for realizing decent work in their country. The constituents are, in most cases, both beneficiaries and implementing agencies of the programme. Similarly, DWCPs acknowledge social dialogue both as a desired result and as a means to increase the chance of achieving tangible and long-lasting results in any social and economic areas.

357. A desk review of 30 DWCPs for 14 countries across five regions ⁴⁴ carried out for this report shows that when first generation DWCPs are compared with second or even third generation DWCPs, important progress is seen in most countries, regardless of region, in four areas relevant to social dialogue: quality of assessment of tripartite constituents and their needs in the designing stage of DWCPs (especially in Bosnia and Herzegovina, Cambodia, Jordan, Lesotho, Mali and Republic of Moldova); ownership of programme and participation/involvement of tripartite constituents in the DWCP cycle – that is, design, implementation, monitoring and evaluation (especially in Albania, Argentina, Bosnia and Herzegovina, Burkina Faso, Cambodia and Ethiopia); integration of technical and institutional capacity building of tripartite constituents in the programmes (especially in Argentina, Bangladesh, Bosnia and Herzegovina, Ethiopia, Indonesia, Jordan, Lesotho and Mali); and integration of the promotion of social dialogue practices, mechanisms, and/or legal frameworks (especially in Argentina, Cambodia, Lesotho, Mali and Republic of Moldova).

358. This review points to an increasing recognition of the importance of social dialogue in DWCPs. It also serves to demonstrate that social dialogue and tripartism are advancing in many countries through the institutionalization of the participation of constituents at the consultation and implementation phases of DWCPs.

⁴⁴ Albania, Argentina, Bangladesh, Bosnia and Herzegovina, Burkina Faso, Cambodia, Ethiopia, Indonesia, Jordan, Lesotho, Mali, Republic of Moldova, Senegal and Zimbabwe.

Chapter 4

Key observations, lessons learnt and possible ways forward

359. Taking into account the information presented in Chapters 1, 2 and 3, a number of key observations and lessons emerge on the needs and challenges faced by constituents and on potential ways for the ILO to strengthen its efforts to promote social dialogue as the preferred governance approach to achieve decent work for all. This chapter presents these observations as a contribution to the discussion by the ILC on the way forward.

360. **Effective ILO action depends on responsiveness, national commitment and sustainability.** Promoting social dialogue and sound industrial relations and building the necessary institutions require sustained efforts rather than ad hoc initiatives. The Office should continue to provide high-quality and timely input to strengthen these institutions and promote practices that are responsive and adapted to national and regional contexts while conforming with relevant international labour standards. Rapidly responding to requests for assistance, as in the context of the Arab Spring and the impact of austerity in Europe, are critical to take advantage of opportunities for social dialogue and to defend it when it is threatened. Strong commitment by government is a necessary condition for sustained progress on social dialogue at the country level and the involvement and strengthening of employers' organizations and workers' organizations are key components of sustainability.

361. **Tripartism built on trust is key.** Tripartite social dialogue can help to ensure coherence between bipartite and tripartite institutions of social dialogue. Given the current thrust to decentralization of collective bargaining towards the enterprise level in some countries and in an environment characterized by increasing labour market segmentation, tripartite social dialogue can provide space for the social partners to share information, shape strategies and coordinate their actions. Involving employers' and workers' organizations in tripartite processes over issues where they may share common values, such as non-discrimination, HIV and AIDS, work–family balance and disability has helped to improve trust among social partners and their relationship with governments and pave the way for social dialogue in other areas.

362. **Making social dialogue inclusive.** Tripartite actors need to make social dialogue inclusive, covering those in non-standard employment, SMEs, the rural economy, migrant workers and other vulnerable and unorganized groups. This may require building of capacities of social partners at different levels to allow them to organize their diverse potential constituencies. Such outreach and organizing can be a first step towards expanding the scope of dialogue and negotiation. In some cases building more inclusive social dialogue will require legal changes or institutional innovations to fill protection gaps in labour legislation or international labour standards. Equally, labour administration and inspection need to play a pivotal role in progressively including the informal economy and vulnerable workers in labour law protection.

363. Restrictions on freedom of association and the right to collective bargaining remain a major challenge. Without freedom of association and collective bargaining, social dialogue is weakened and its potential contribution to socio-economic development and response to crises is undermined. Social dialogue as a participatory approach is a fundamental contribution to democratic governance, transparency and social justice and member States, employers' and workers' organizations can gain from expanded use of social dialogue processes. The Office has consistently supported the tripartite constituents in efforts to promote freedom of association and collective bargaining and tripartite social dialogue, as well as promoting the ratification and implementation of fundamental and governance ILO Conventions. However, the ILC may wish to encourage governments to strengthen their commitment to social dialogue; social partners to increase their efforts to use dialogue and negotiation as the preferred method to address their different interests; and the Office to increase its ability to provide well-targeted capacity building, evidence-based policy advice and advocacy.

364. The declining labour share in most countries and its impact on growth and equity require ILO attention. The ILO could address the declining labour share of national income by helping constituents to strengthen institutions for wage determination, particularly minimum wage setting and collective bargaining, and to develop appropriate supporting and enabling environments for more inclusive labour market outcomes, including measures such as active coordination of wage agreements or the use of extension mechanisms that spread the benefits of collective bargaining agreements to enterprises across entire sectors.¹ The ILO could build on earlier studies to analyse the causes of the declining labour share and identify effective actions to build institutions (or reverse the erosion of institutions in high-income economies) that contribute to more equitable income patterns. The Organization could offer technical support to build capacity in both developing and high-income countries to strengthen such systems and institutions.

365. A "race to the middle" may be an emerging challenge. In some European and other high-income countries there has been a weakening of social dialogue institutions as austerity and other anti-crisis measures are being imposed without social dialogue and, at times, explicitly undermine collective bargaining processes that had been established over generations. By contrast, in other parts of the world important progress has been made in progressively establishing social dialogue through legal and institutional frameworks and processes. In parts of Asia and Latin America in particular, social dialogue and collective bargaining have been strengthened as part of economic development strategies. These divergent trends could result, de facto, in a convergence toward social dialogue and collective bargaining systems that are less ambitious and productive than the earlier benchmarks established in high-income countries in the twentieth century. The ILO and constituents should consider the need to reverse the erosion of these institutions in high-income countries while offering full support to the strengthening of these institutions in developing and emerging countries.

366. Organizational transformation is affecting employers and workers. Economic, social and political processes shaped by globalization and the global crisis are transforming organizations of employers and workers. On the employers' side, there appears to be members' interest in moving towards business representative organizations with a broad agenda. On the workers' side, one of the priorities has been the need to

¹ ILO: *Global Wage Report 2012/13: Wages and equitable growth* (Geneva, 2012), p. 63; ILO: *Global Wage Report 2008/09: Minimum wages and collective bargaining: Towards policy coherence* (Geneva, 2008), pp. 59–60.

promote unified trade union agendas at multiple levels and to tackle excessive fragmentation that weakens workers' voice and influence in some countries. To respond to this fast-changing landscape, the Office needs to better understand and analyse, through research and policy dialogue, the changes in representation as well as the related strategies that employers' and workers' organizations are adopting or can pursue in the future.

367. Supporting labour administration and labour inspection services and building robust labour courts can generate a virtuous cycle of compliance. Measures for ensuring compliance with labour law, including labour inspection and appropriate enforcement mechanisms, help to guarantee workers' rights, promote the rule of law at the workplace, level the playing field for compliant employers, and have a dissuasive effect that can generate a virtuous cycle of deterrence and compliance. Effective labour legislation and inspection can also play a role in the progressive inclusion of firms in the informal economy and coverage of vulnerable workers by labour law protection. Labour law enforcement institutions also play an important role in ensuring that crisis and austerity measures do not weaken social dialogue and workers' rights. In some countries the effectiveness of labour inspection and enforcement requires strengthening of the justice system. Building robust labour court systems is an area where ILO guidance in the form of an international labour standard could be envisaged, a possibility mooted during recent Governing Body discussions on the agenda of subsequent ILC sessions.

368. Meaningful Office participation in labour law reforms. Stronger results are achieved where the Office can respond not merely by providing written comments on legislative proposals, but by participating in national policy discussions. Sustained support and technical assistance to labour law reform can usually only be delivered within the framework of broader technical cooperation activities. The work of the Office is more effective where social dialogue is already well established, which implies the need for building social partners' capacity parallel to providing support for labour law reform. Moreover, effective Office support for labour law reform requires a deep knowledge of the policy and political environment and thus close engagement with the government and the social partners at national level, as well as close coordination at Office level among units comprising a variety of technical specializations.

369. The collective bargaining agenda needs to be expanded to enlarge the scope for win-win outcomes. National and sectoral bi- and tripartite social dialogue is important as it boosts positive developments in labour management interaction while facilitating collective bargaining and workplace cooperation. Beyond wages, other themes such as work organization, vocational training, work–family balance, skills development and enterprise performance, can further enable social partners to negotiate integrative agreements that combine the interests of enterprises with those of workers. This is particularly important in times of crisis and austerity.

370. Workplace cooperation in the form of information and consultation can be a key tool for anticipating and managing change that addresses the needs of employers and workers. Recent developments in labour–management relations at sector and enterprise levels, including new forms of consensus building through information and consultation, proved useful in mitigating the impact of the crisis. Sustainable enterprises and job creation emerged as two unifying themes on which employers' and workers' organizations have been able to cooperate, especially in the context of enterprise restructuring and fiscal challenges. Updated international guidance on workplace cooperation in the form of information and consultation could be useful.

Following up on the conclusions of the Cartier Working Party,² the inclusion of this as a standard-setting item on the agenda of a future ILC would provide an opportunity for constituents to reflect on ways to enhance social dialogue as a tool for effectively managing change. It could entail a consolidation and updating of related ILO instruments, that is, the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), and the Communications within the Undertaking Recommendation, 1967 (No. 129).³ Safeguards would be needed to ensure that such cooperation does not replace collective bargaining as the main voluntary method for regulating conditions of work and employment, in line with ILO standards and principles.

371. Effective labour dispute resolution mechanisms, such as mediation, conciliation, voluntary arbitration and adjudication, are necessary complements to collective bargaining and labour law. Such procedures and mechanisms provide an important underpinning for stable and productive industrial relations and compliance with labour laws. As some countries face large and increasing caseloads in their labour justice systems it is evident that preventing labour disputes at the workplace through cooperation, communication and procedures for resolving grievances as well as access to swift and inexpensive conciliation, arbitration or adjudication mechanisms are important institutions for well-functioning labour markets. There is a growing need to examine the systems as a whole and for the Office to assist, where required, in systemic changes to ensure well-functioning institutions and practices. This may be within the labour administration or an independent statutory institution. Research and exchange of information on national experiences and innovations can allow other countries to leapfrog in building effective labour dispute systems. The possibility of having a general discussion on this issue has been raised during recent Governing Body discussions for future ILC agendas.

372. Cross-border social dialogue, global supply chains and voluntary initiatives. The increasing use of the notion of social dialogue in global supply chains, for example, by private certification agencies and MNEs, raises the need for reinforced ILO action in the area of awareness raising, capacity building and research to ensure policy coherence and proper use of the concept of social dialogue in these new arenas. In buyer-driven, labour-intensive global supply chains, such as in the textile and garments sector, the experience of the Better Work Programme and its strong social dialogue components at local and cross-border levels provide evidence of the added value of ILO interventions in global supply chains. Extending the Office's work to other buyer-driven global supply chains could lead to additional breakthroughs in creating institutional spaces for social dialogue and industrial relations. On the side of producer-driven, capital intensive industries, such as chemicals and automobiles, with relatively high levels of unionization, a number of TCAs have been negotiated between GUFs and MNEs. TCAs have proved a useful tool in promoting freedom of association and organizing workers down the value chains of MNEs. The ILO could develop tools and provide support to global, regional and local actors involved in such initiatives, with ILO labour standards and the MNE Declaration as points of reference.

² The Working Party on Policy regarding the Revision of Standards ("Cartier Working Party") was entrusted in 2002 with, among other things, undertaking a case-by-case examination of all international labour Conventions and Recommendations; ILO: *Conventions in need of revision (second stage)*, Governing Body, 267th Session, Geneva, Nov. 1996, GB.267/LILS/WP/PRS/2.

³ ILO: *Proposals for the agenda of the 103rd Session (2014) of the Conference*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/INS/2/2.

373. Promoting tripartism at supranational intergovernmental levels. The increased interest in social dialogue and the growing integration of this notion into the agendas of bilateral, regional and multilateral agreements of governments (EU, MERCOSUR, NAFTA, EU–Republic of Korea FTA, SADC, etc.) constitute another opportunity for the ILO to offer its unique, specialized role and expertise. The ILO could be encouraged to provide additional support to constituents as they engage at the supranational level, with a view to supporting the creation or expansion of tripartism in the new international context and to reinforcing its relations with the corresponding supranational entities.

374. Ensuring coherence in the use of social dialogue by international organizations based on ILO standards and principles. There is increasing interest and engagement from other international organizations in social dialogue and industrial and employment relations. Despite progress made, policies advocated by some international institutions remain inconsistent with ILO standards and values. But the growing integration of these issues into the agendas of bilateral, regional and multilateral organizations constitutes an opportunity for the ILO to assert its unique and specialized role. The ILC might wish to consider the option of an ILO standard to define social dialogue at all levels, in order to ensure policy coherence in the international system.

375. Closing important knowledge gaps. In the area of labour administration, the Office needs to expand its knowledge base on the intersection between public inspection and private monitoring initiatives; measurement and promotion of performance in services provided by labour administrations; effective approaches to provide labour administration and inspection services to workers in the informal economy; and the statistical methodology for improving collection of labour inspection data. It also needs to conduct dialogue with governments that have undertaken innovative strategies to learn from their efforts to address new and emerging issues related to coverage of labour laws and achieving compliance in changing economies. The Office needs to build networks and promote collaboration with other international organizations and with academic institutions. From the perspective of employers' organizations, a focus of the Office's research and capacity-building work should be on the business case for social dialogue in the context of the business values including the sustainability and development of enterprises, competitiveness, innovation and corporate responsibility. From the point of view of workers' organizations, there is need for evidence-based research and advocacy on crisis impact, the employment relationship, EPZs, vulnerable groups, the informal economy, migrant workers, cross-border industrial relations and gender. Systematic ILO research and a periodical publication in the area of social dialogue could address research gaps and complement other ILO publications in major areas of interest, such as wages and employment.

Chapter 5

Suggested points for discussion by the Conference with a view to the adoption of a plan of action on social dialogue

376. The aim of the present recurrent discussion on social dialogue is to generate a better understanding of, and respond more effectively to, the diverse realities and needs of its Members, using all means of action at the disposal of the ILO.¹ The results of the discussion should lead the ILO to adjust its priorities accordingly, and inform programme, budget and other governance decisions. The discussion is intended to lead to the adoption of a plan of action on social dialogue, taking into account practices that have succeeded in strengthening social dialogue in national contexts and action aimed at attaining the MDGs and eradicating poverty. The plan of action by the present session of the Conference would span the remaining part of the current ILO SPF 2010–15 and beyond.²

Point No. 1: Social dialogue in the context of crisis and transitions

377. The global crisis and political transitions create opportunities and challenges for social dialogue in both the private and public sectors.

- How can the ILO help to safeguard and promote the use of social dialogue institutions and freedom of association and the right to organize and bargain collectively, including in the context of austerity and anti-crisis measures?
- What institutional arrangements and other action would be necessary in order to ensure that social dialogue in all its forms, including collective bargaining, lead to fair solutions for both enterprises and workers?

Point No. 2: Strengthening social dialogue and dispute prevention and resolution mechanisms

378. Globalization, labour market reforms, high unemployment, the changed employment relationship and other changes in the world of work have created new challenges for social dialogue in many countries.

¹ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, International Labour Conference, 97th Session, Geneva, 2008, Part 2(A)(i).

² It should be recalled that a seven-year cycle was set for recurrent discussions concerning the four strategic objectives, and that social dialogue would be covered once in this seven-year period.

- What action could be taken to build support for social dialogue in all its forms and to update mechanisms for preventing and resolving social and industrial conflicts?
- Should ILO guidance, including in the form of international labour standards, be envisaged in areas such as: (a) information and consultation aimed at anticipating, managing and adjusting to change; (b) labour dispute resolution mechanisms, such as mediation, conciliation and voluntary arbitration, as necessary complements to labour law and collective bargaining; and (c) labour law enforcement institutions and adjudication, including labour courts?

Point No. 3: Including more sectors, enterprises and workers in social dialogue mechanisms

379. Social dialogue is weak or absent in significant parts of the economy, such as in the informal economy, in the rural economy, in SMEs and in economic activities dominated by non-standard forms of employment. Taking into consideration the need for protecting workers' rights while ensuring enterprise sustainability:

- How could social dialogue be made more inclusive, and the social partners at different levels better represent vulnerable and unorganized workers and businesses?
- What support could be provided to labour administration and inspection systems in view of facilitating the transition from the informal economy to the formal economy, extending labour law protection to vulnerable workers?

Point No. 4: Social dialogue, globalization and global supply chains

380. The organization of production in global supply chains, including in EPZs, has affected social dialogue, and raises the question of possible ILO action, based on international labour standards, and the MNE Declaration.

- What action can be envisaged in response to such challenges, including in cross-border social dialogue?
- How should the ILO move forward in implementing the Social Justice Declaration which calls upon the ILO to develop “new partnerships with non-state entities and economic actors, such as MNEs and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO operational programmes and activities ...”³?

Point No. 5: Policy coherence

381. Governments are increasingly including freedom of association, collective bargaining and social dialogue institutions and processes in bilateral and regional trade and integration agreements, while international organizations are increasingly involved in these matters.

³ Part 2(A)(v) of the Declaration.

- How should the ILO ensure that policies and actions of other international institutions and integration agreements that relate to social dialogue are consistent with ILO standards and values, so as to promote policy coherence?
- How can the ILO, within its mandate, facilitate and promote social dialogue and tripartism at the level of regional integration, the UN, and within bilateral and multilateral interstate agreements?