

## Background note for the Special Plenary Debate

### “Strengthening social dialogue for inclusive and sustainable growth”

This document, which supplements the Report of the Director-General to the 16th Asia-Pacific Regional Meeting (Geneva, 2016), has been prepared as an additional resource for the Special Plenary Debate titled: “Strengthening social dialogue for inclusive and sustainable growth”.

#### Context

1. Social dialogue is key to realizing the Sustainable Development Goals (SDGs) and to reducing inequality. SDG 8 makes a direct reference to decent work; an associated indicator measures increased national compliance with labour rights, specifically freedom of association and collective bargaining. Greater equality (SDG 10) shall be measured through labour share of GDP and increased wages, further highlighting the vital role of dialogue and bargaining. This underlines the pressing need for governments – supported by workers and employers organizations – to build strong labour market institutions in order to achieve these universally agreed goals.
2. Social dialogue at both bipartite and tripartite levels is vital for harmonious industrial relations and solid economic growth and inclusive development 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 policies.
3. National tripartite social dialogue comes in a variety of forms depending on each country’s traditions and values. It can take place through formally established bipartite or tripartite bodies, for example, national commissions for social dialogue, economic and social councils, and bipartite sectoral bodies. It can equally take place in informal and ad-hoc settings. The presence of these institutions at national level helps to ensure a certain degree of coordination and solidarity that cannot be achieved at lower levels of decision-making. Besides generating consensus and negotiated proposals for economic and social policies, its processes have also historically aimed to ensure smooth transitions and deal with economic shocks, such as the end of authoritarian regimes, the transition from centrally planned economies, structural adjustment, and particularly severe industrial and economic tensions.
4. ILO’s governance paradigm is based on social dialogue and tripartism – to promote social justice, fair workplace relations, and decent work – so that social partners are involved in shaping the decisions that affect their operations as well as socio-economic policies generally. Sustaining constructive bipartite and tripartite dialogue is particularly important in an era when many labour market institutions are facing challenges from the changes in technology, demography and the emergence of non-standard forms of work. This requires building the capacity of workers’ and employers’ organizations to represent and service their members, enhance their legitimacy, contribute to stable industrial relations, and engage effectively in policy development at all levels – regional, subregional, national,

industry and enterprise. In conflict-affected countries, social dialogue can also help build stability and national reconciliation.

5. Social dialogue mechanisms at these various levels can and should be used to address the entire range of issues pertaining to the world of work such as: fundamental principles and rights at work; gender and non-discrimination; OSH; social protection systems; employment and industrial policies; outsourcing and subcontracting; vocational training and skills; and HIV/AIDS, among many others. The region<sup>1</sup> contains numerous examples of successful policy making on these issues through robust social dialogue. Some 21 countries in the Asia-Pacific and Arab States have ratified a key governance Convention, Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), including most recently Afghanistan, Singapore and Lao PDR in 2010.

## **Freedom of association and collective bargaining**

6. A fundamental challenge for effective social dialogue in any country and at all levels is the lack of a supportive legal and institutional framework for freedom of association and collective bargaining. Among other impacts, this affects the ability of representative organizations to meaningfully engage in bipartite and tripartite dialogue. Workers' and employers' organizations must be able to represent their members, free from interference from governments, and from one another. Adherence to international labour standards would guarantee this independence, and thus facilitate the operations of social partners.
7. In some countries in the region, laws prohibit workers from forming and joining unions of their choosing, or prohibit union multiplicity. In the latter cases, unions are typically organized in a top-down fashion, so that workers cannot freely choose their representatives; and enterprise-level union leaders are often appointed from management ranks. Even when trade union organizations are independent, some governments may deny union registration without recourse to judicial review. Employers' organizations may similarly receive their mandates by statute, rather than being freely chosen by members. All these constraints undermine the ability of workers' and employers' organizations to genuinely represent their constituencies across a range of issue areas.
8. While some countries in the region face issues related to trade union monopoly, in others the problem is union multiplicity and fragmentation. This can be a consequence of government and management interference. Governments may encourage the formation of new union federations in order to weaken the union movement. Where employers create yellow unions or offer financial incentives to union leaders, union multiplicity is a natural result. Lack of adequate protection from anti-union discrimination and employer interference in trade union formation may contribute to low levels of unionization. It is essential that governments put in place adequate machinery to identify, prevent and remediate such practices, in line with Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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<sup>1</sup> Henceforth, for the purposes of this note, 'Asia and the Pacific' refers to the region that includes 47 countries, plus the Occupied Palestinian Territory, across all income levels from East Asia, South-East Asia, South Asia, the Pacific Island countries and the Arab States of West Asia, unless explicitly stated otherwise.

9. As a result of these and other obstacles, collective bargaining coverage – the percentage of workers covered by collective agreements – in the region remains very low. In some countries, this figure is lower than 5% of formal sector employment. This remains a significant challenge for countries trying to reduce inequality, boost productivity, increase per capita GDP, and promote inclusive growth.
10. In recent years, some countries in the region have shown movement in the direction of stronger representation and social dialogue. For example, in Myanmar, following a complaint and a commission of enquiry, the Government has amended the law, formally recognized unions and addressed issues in labour disputes. Subsequently, hundreds of workers' unions were formed. In the context of union multiplicity, several unions have agreed on how they will represent the country in International Labour Conferences.
11. A key element of social dialogue is bipartite, between workers and employers and their representatives at enterprise, sectoral or geographic level. A number of countries in the region encourage enterprise level dialogue through agreed guidelines (such as in Malaysia) or require it by law (e.g., Viet Nam and Indonesia). Greater use of bipartite dialogue at sectoral and national level may help workers and employers jointly to identify common problems and solutions and to establish wider coverage of CBAs.
12. A main issue in the region is compliance with the principles of freedom of association. In this regard it is encouraging that in Viet Nam in April 2016, through the Joint Tripartite Statement signed at the first Tripartite Industrial Relations Forum, the Government reaffirmed its intention to consider ratifying C 87 and C 98, and to introduce the possibility of setting up organizations of workers that will not be required to affiliate with the single national trade union body.

## **Social dialogue in informal and certain forms of non-standard employment**

13. Informality and certain forms of non-standard forms of employment not only restrict workers' basic rights and protections they also limit government revenues, and reduce the potential for improving productivity. Such workers are vulnerable as they have no legal protection and lack voice and representation in social dialogue processes where they exist. Moreover, if they attempt to organize they may face legal and practical barriers, or dismissal or non-renewal of employment contracts.
14. Many employers' organizations have supported initiatives to formalize informal enterprises. Employers in outsourcing/agency sectors have also formed associations or joined employers' organizations. On the workers' side, despite obstacles, unions throughout Asia and the Pacific have tried to organize workers in the informal economy and in non-standard forms of employment. For example, Pakistan trade unions recently succeeded in forming and registering the first union of agricultural workers in Sind Province, while in Myanmar, many agricultural unions have been formed. Trade unions are much committed to organise and protect informal and non-standardised workforce after ILO adopted the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). However, the evolving employer-employee relationship does present ongoing challenges for workers in non-standard forms of employment to form and join organizations, and to have their interests represented.

15. Workers in the informal economy, or in domestic work or those with other non-standard forms of employment, also need to engage with other actors. For access to universal social protection, for example, they will need to deal with government departments. Home-based workers who require reliable and steady supplies of water, electricity and connectivity will need to engage with utility providers. Those who are working as street vendors have to talk to urban planning authorities for securing public spaces.
16. Social partners representing informal workers and those in non-standard employment will need to continue to adapt to these heterogeneous employment situations and work with non-traditional partners, such as urban planning authorities, rural development authorities, and government departments dealing with family welfare. They may also need to mobilize public support for necessary changes. In Thailand, for example, home-based workers successfully campaigned for the Universal Health Coverage scheme and for a Home Workers Protection Act B.E.2553 (2010) which is based on the Home Work Convention, 1996 (No. 177). National and sectoral social dialogue bodies should be made more inclusive, in order to also cover workers and employers in the informal economy, and other vulnerable groups, for example by establishing specific subcommittees with appropriate representation to address informal economy concerns.

## **Labour Law Reform and social dialogue**

17. Many countries in the region have, in recent years, worked through social dialogue mechanisms to review and amend labour legislation and regulations. Labour law touches all members of society, but workers and employers are the most directly affected and have most at stake. Social partners should be closely involved in developing legislation and policies, based on adequate preparation, analyses and consultations. Some examples where social partners have been engaged in labour law reform in recent years include in Oman and the Occupied Palestinian Territory; several Pacific Island countries including Samoa, Kiribati and Vanuatu; several provinces in Pakistan; Laos, Vietnam and Myanmar (further details can be found in the report prepared for this APRM).
18. Legislation should guarantee minimum protections for all workers, including those who are not represented in social dialogue bodies where draft legislation is discussed and negotiated. It must also allow for workers and employers, at national, sectoral and enterprise levels, to negotiate wages and terms and conditions above statutory minima via collective bargaining mechanisms. Social dialogue and negotiations between social partners should be encouraged to improve the function of legislation, and to advance working conditions above the legal minimum.
19. When considering new legislation, it is useful to clearly set out the objectives, purposes and rationales and consult with the social partners and other stakeholders as well as the judicial and administrative bodies that will have to interpret and apply the legislation. Careful preparation and drafting, informed by comparable legislation in other countries, can make the law more relevant, increase its effective coverage, and reduce textual ambiguities. In the Arab States and Asia-Pacific region generally, there is wide scope for improving dialogue, regulations and enforcement.

## **Wage fixing and social dialogue**

- 20.** In line with ILO Conventions and Recommendations on minimum wages, employers' and workers' organizations should be consulted and take full part in policy processes to establish and adjust minimum wages. National social dialogue on the issue can ensure both decent minimum wages that reflect socio-economic realities and the regular review and adjustment of such wages.
- 21.** A relatively robust form of tripartism can be found in the minimum wage fixing systems of many Asian and some Pacific countries. Singapore's tripartite National Wages Council (established in 1972) makes recommendations on wage increases and wage flexibility, based (among other criteria) 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. In 2014 Singapore introduced a 'progressive wage model' for the cleaning industry, based on tripartite agreement, making wage levels mandatory in licensing agreements, and setting a wage floor for workers in this industry.
- 22.** In the Arab States, in 2012, the Occupied Palestinian Territory launched the national tripartite Minimum Wage-Fixing Commission which later that year established the first minimum wage. Australia, China, Japan, Korea, Cambodia, Lao People's Democratic Republic, Malaysia, Myanmar, Vietnam and Philippines, among others, 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 some of these countries; as the ILO's Global Wage Reports have argued, a healthy labour market will benefit from a balance of both statutory minimum wage fixing and collective bargaining.

## **Dialogue at a time of global and regional integration**

- 23.** Progress in regional integration, and developments in new technology will have profound implications for workers, employers and their organizations. In this environment, the social partners have the opportunity to enhance cooperation and engage more fully in policy discourse.
- 24.** Workers and employers are usually unrepresented in regional and sub-regional bodies throughout the region unlike the situation prevailing in other regional groupings (EU, WAEMU, SADC and Mercosur) where there exist supra national mechanisms for social dialogue in which workers and employers are represented alongside those of public authorities though there are important differences between those mechanisms. ASEAN, for example, is becoming progressively more integrated, with free flows of investment, trade and skilled workers – which will have far-reaching implications for labour markets and LMIs. Dialogue with workers' and employers' organizations could enhance the social aspects of these measures which so far have been rather limited. They should be able to engage systematically with national governments and the secretariats of regional bodies to establish consultative mechanisms and strengthen their capacities to operate at regional and subregional levels. The ASEAN Confederation of Employers (ACE) and the ASEAN Trade Union Council (ATUC) held the first joint consultation meeting in Bangkok in March 2016 to discuss a common agenda on labour migration. Both parties agreed to hold regular annual dialogues.

25. The social partners will need to strengthen their own capacities and develop bottom-up consultation mechanisms to incorporate the views of diverse stakeholders. The ILO could help them to establish indicators that capture the extent of social dialogue, along with robust systems for monitoring and evaluation.

## **The way forward**

26. Given the important labour market and development challenges that exist in the region, including reducing inequalities and achieving the SDGs, and the demonstrated role that social dialogue can play in meeting those challenges, it is vital that all efforts be made to continuously strengthen the institutions and actors in social dialogue.
27. This will require that governments, workers' and employers' organizations renew their commitment to social dialogue and tripartism, based on full respect for freedom of association and collective bargaining. Investment in the institutions of dialogue, in order to ensure that meaningful and well-informed decisions can be taken, will also be necessary.
28. The capacity of constituents to engage in dialogue and collective bargaining may need to be strengthened; obstacles to effective and meaningful dialogue could be identified and removed; and consideration could be given to establishing or improving mechanisms for dialogue at different levels, including at regional and subregional levels
29. It will also require a commitment to expand the scope and participation in dialogue and collective bargaining, to promote gender equality and to increase and strengthen women's participation in social dialogue mechanisms. Measures could be taken to ensure that workers and employers in the informal economy, domestic workers, and other vulnerable groups are adequately represented.
30. Finally, there are examples in the region of good practices in dialogue and bargaining, as well as examples where these institutions are weak, restricted or not functioning. Efforts could be made to spread and replicate these indigenous models of good practices throughout the Arab States and Asia and the Pacific.