



ILO background paper No. 2

Strategy for harmonization of labour laws: A discussion on options

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International Labour Organization,
Decent Work Team and Office for the Caribbean



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● ● ● Introduction

The 9th ILO Meeting of Caribbean Ministers of Labour in 2015 adopted Conclusion 1.2 concerning harmonisation of labour legislation, which reads: “A review of the CARICOM Model approach to legislation be undertaken to determine whether a principles-based approach might be more effective.” The current 2017 Meeting follows up on this conclusion.

In order to provide inputs for the discussion, Section I of this paper discusses the rational for harmonization of legislation. Section II provides an overview of issues concerning harmonization of labour laws in the Caribbean. Section III briefly examines the effort already made towards harmonization through CARICOM Model Labour Laws. Section IV further examines the principle-based approach. The final Section of the paper suggests a way forward.

● ● ● I. Context - harmonizing legislation

Harmonization of legislation is not about unifying laws. Unified laws would create “identical rules”, whereas harmonization leads to “more or less similar law in different countries”.¹ Harmonization of labour laws could therefore be understood as making labour laws more or less similar, or “approximating” among different countries.

Harmonized laws can bring the following benefits:

- Improved legal certainty and reduced legal risk and conflicts across the member States;
- Cooperation and cross-border activities made easier;
- Efficiency, transparency increased, and costs reduced, for intra-regional and international transaction;
- A level playing field among parties concerned;² and
- They would eventually lead to economic growth.

¹ Gebauer, Martin. “Unification and Harmonization of Laws.” Para 4. Max Planck Encyclopedia of Public International Law.

² Adapted from the following publication: United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States (UN-OHRLLS). *Leaflet on benefits of trade and transport conventions*. Website of the UN-OHRLLS. <http://unohrlls.org/custom-content/uploads/2016/05/Leaflet-on-benefits-of-trade-and-transport-conventions.pdf> (Accessed on 8 October 2016)

Harmonization of legislation is typically carried out through the following types of instruments.³

	Pros	Cons	Examples
International Treaties and Conventions (binding instruments)	• Binding upon ratification - More commitment can therefore be expected. • High degree of harmonization since they provide mutually agreed common standards.	• Flexibility of provisions is limited. (But some international treaties contain flexibility clauses⁴, and sometimes allow State parties to make reservations on specific provisions.)	• ILO Conventions • European Union Directives
Model laws	• They provide for principles based on international standards, with details such as definition of terms (complete law on its own). • Ready-made text available which can be adjusted in specific provisions.	• Because of higher flexibility, there is a risk of excessive divergence from the rules.	• CARICOM Model Labour Laws (to be discussed later)

In addition, there are other means, such as:

1. **Model provisions for national laws.** Model law mentioned above is a complete law on its own, but model provisions deal with specific points mentioned within a law.
2. **Explanatory guides.** These guides are documents explaining specific concepts or definitions dealt with in a law.
3. **Standardized forms.** An example is an occupational hazards checklist. The forms are therefore more for implementation of laws

These methods can be used in combination.

³ Estella-Faria, José Angelo. *Legal Harmonization through Model Laws: The Experience of the United Nations Commission on International Trade Law (UNCITRAL)* (A paper submitted to a meeting in 2005 of the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA)), pp.11-17.

⁴ For instance, ILO's Minimum Age Convention, 1973 (No. 138) allows that different minimum ages may be adopted by ratifying States depending on the level of economic development.

● ● ● II. Issues – harmonization of labour laws in the Caribbean

In the context of the Caribbean Community (CARICOM), harmonization of laws has been one of the important areas of activity since its inception. Article 42 of the Annex on the Caribbean Common Market to the original Treaty of Chaguaramas of 1973 already provide for the desirability of harmonization of relevant laws as soon as practicable, though this Article did not specifically mention labour. Article 6 of the current Revised Treaty of Chaguaramas which deals with the objectives of the Community, provides for various objectives including “improved standards of living and work” and “full employment of labour and other factors of production”. In addition, Article 45 of the Revised Treaty sets the goal of free movement of their nationals within the Community. Article 46, though more specifically on skilled nationals, requires Member States to establish appropriate legislative, administrative and procedural arrangements to, among others, provide for movement of Community nationals into and within their jurisdictions. With the operationalization of the Single Market and Economy (CSME) in 2006, free movement of persons, including workers, is designated as one of the pillars of this mechanism.

Harmonization of laws has since taken place at different rates in different areas. For instance, in the field of social security, harmonized legal and administrative arrangements are being implemented through the CARICOM Agreement on Social Security.

In the field of labour legislation, efforts towards harmonization have been made in the Caribbean, but the review in the following Sections reveals that the results are uneven. Therefore, the benefits of harmonization are not yet fully embraced and the free movement of workers is hampered in two ways -- 1) As an issue of perception, different labour laws in different countries create legal uncertainty and may discourage persons from moving to another Caribbean country; and 2) As an issue of practice, those workers who actually move to another Caribbean country may face different treatments than within their home country, which may be disadvantageous in some cases.

Section III examines the efforts already made towards harmonization of labour laws through a model law approach. Section IV considers the alternative principle-based approach as guided by the conclusion of the last ILO Meeting of Caribbean Ministers of Labour.

● ● ● III. Model law approach – Review of the use of CARICOM Model Labour Laws

In the Caribbean, CARICOM Model Labour Laws were developed in four areas with support from the ILO⁵:

1. Equality of Opportunity and Treatment in Employment and Occupation (1995);
2. Registration Status and Recognition of Trade Unions and Employers' Organizations (1995);
3. Termination of Employment (1995); and
4. Occupational Safety and Health and the Working Environment (1997).

These Models are based on the relevant ILO Conventions⁶ considered up-to-date by the ILO⁷, except for Convention No. 158, on which discussion on its status is still ongoing. Examples of the provisions of the Model Laws are included in **Annex 1 of this paper**.

As mentioned in Section I, model laws have dual functions. On the one hand, they provide minimum rules based on the principles in international labour standards. On the other, model laws are complete laws on their own ("ready-made text"). Therefore, they can, if desired, be directly inserted ("copy and paste") into national laws. The use of the Model Labour Laws was reviewed in respect of these two functions.

⁵ The texts are available on the ILO webpage on CARICOM Model Laws: <http://blue.lim.ilo.org/cariblex/cml.shtml> (Accessed on 10 October 2016).

⁶ Equality of Opportunity and Treatment in Employment and Occupation

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Registration Status and Recognition of Trade Unions and Employers' Organizations

- Freedom of Association Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Termination of Employment

- Termination of Employment Convention, 1982 (No. 158)

Occupational Safety and Health and the Working Environment

- Occupational Safety and Health Convention, 1981 (No. 155)

⁷ Working Party on Policy regarding the revision of standards (commonly called Cartier Working Party). *Information note on the progress of work and decisions taken concerning the revision of standards (updated in June 2002)*, p.41. Website of ILO http://www.ilo.org/global/standards/international-labour-standards-policy/WCMS_125644/lang--en/index.htm (Accessed on 9 October 2016).

How well are the provisions contained in the Model Laws incorporated in labour laws in the Caribbean?

With respect to the review on the first function, a review in 2007 of national legislation of the 13 English- and Dutch-speaking CARICOM Member States⁸ indicates that these countries generally had relevant laws in place, but certain provisions of the Model Laws were not incorporated in the national laws,⁹ leading to cases of non-compliance with international labour standards, which were commented on by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). For instance:

- Termination
 - Protection against unfair dismissal – wider scope of exemptions, not all prohibited grounds for dismissal included.
 - An “act of God” not included as a basis for termination of workers due to redundancy.
- Trade Unions and Employers’ Organizations
 - Requirement for representativity of workers to be recognized as a majority union is different.
- Equality
 - Legal provisions on equality in some countries are laid down in their constitution. Constitutional guarantees tend to lack sanctions for enforcement.
 - Not all the prohibited grounds of discrimination included (e.g. disability, family responsibilities).
 - The law restricted the scope of the term “remuneration” to wage, while Convention No. 100 defines the term more broadly.
 - The principle of “equal remuneration for work of equal value” is not fully set out in law.
- OSH
 - Some technical requirements not included (e.g. provision of facility for disposable of waste)

⁸ Laws of Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago were reviewed under an ILO Project “Harmonization of Labour Legislation in ILO member States in the English- and Dutch-speaking Caribbean”.

⁹ ILO. *Final Report: ILO Tripartite Capacity-Building Workshop on Labour Legislation* (A report of the workshop from 3 to 6 December 2007 in The Bahamas), pp.3-10.

- Some rights and duties not included (especially workers' right to refuse to work in a condition that presents imminent and serious danger to life or health).¹⁰

To what extent is the “copy and paste” function of the Model Laws being used?

A review was undertaken in January 2017 to identify labour laws of 13 Caribbean countries (not including Haiti and the non-metropolitan territories) that incorporate partially or almost fully the texts from the CARICOM Model Labour Laws. This review is not a deep analysis, but is a review of the extent to which the texts of the Model Laws were inserted directly into national laws.

Though there were certain limitations in the review,¹¹ in most cases, the provisions of the Model Laws were directly incorporated (“copied and pasted”) selectively. There is evidence that 10 out of 13 countries (Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago) used the provisions of the Model Laws in some way, but in most cases, their use is limited to some provisions of the Model Laws. Only two countries (Guyana and Saint Lucia) have made significant use of them.

Further analysis of the results shows that generally, Model Laws on technical/scientific matters (registration and recognition of trade unions and employers' organizations, OSH) tended to be used more widely than principle-related matters (equality, termination). Findings by theme of the Model Labour Laws are as follows:

- **Equality.** This model is used either very selectively, or almost entirely.
- **Trade Unions and Employers' Organisations.** This model is used by the largest number of countries (seven countries).
- **Termination.** The use of this model is limited compared to others. The Model Law contains the largest number of substantive provisions that are not used in national laws.
- **OSH.** This is also widely used (six countries).

The table below shows the percentage of the number of provisions of national laws that incorporated the substantive provisions of the CARICOM Model Laws. Therefore, it does not mean that countries listed under “moderate” are not in compliance with international labour standards. It simply shows that selected provisions of the Model Laws were inserted directly (or “copied and pasted”) into the national law.

¹⁰ Details on each country is available on the ILO webpage “Legislative Review for the 13 Caribbean member States of the ILO”. www.ilo.org/caribbean/projects/WCMS_305932/lang--en/index.htm (Accessed on 5 October 2016).

¹¹ Some national provisions might have inspired the Model Laws, rather than the opposite, as they are contained in laws adopted before the Model Laws.

Degree of the direct insertion of the provisions of the Model Labour Laws*

	Moderate direct insertion (1-50%)	Significant direct insertion (51%+)
Equality	Grenada Trinidad and Tobago	Guyana Saint Lucia
Trade Unions and Employers' Organisations	Antigua and Barbuda Barbados Guyana Trinidad and Tobago	Belize Grenada Saint Lucia
Termination	Belize Dominica Grenada Guyana Saint Vincent and the Grenadines	Saint Lucia
Occupational Safety and Health	Barbados Dominica Jamaica Trinidad and Tobago	Guyana Saint Lucia

* Results do not include Haiti and non-metropolitan territories

In addition to the above review, interviews with labour officials of certain Caribbean countries indicated that the Model Laws have been used in the drafting of laws. Some instances of such use have been reported to the CEACR.¹²

● ● ● IV. Principle-based approach

Conclusion 1.2 of the 9th ILO Meeting of Caribbean Ministers of Labour invited the exploration of another possible approach for harmonization of labour legislation – A principle-based approach. This Section examines a CARICOM instrument of principles, the **Declaration of Labour and Industrial Relations Principles** approved by the Thirteenth Meeting of the Standing Committee of Ministers Responsible for Labour (SCML) of CARICOM in April 1995. The full text is attached to this paper (Annex 2).

¹² For instance, in Dominica, the Industrial Relations Advisory Committee had discussed the principle of equal remuneration for work of equal value, and its recommendation referred to the Model Labour Law on equality of opportunity and treatment (Comment in relation to the Equal Remuneration Convention, 1951 (No. 100) published in 2016)

Subjects covered by the Declaration

This Declaration covers a wide range of labour matters: freedom of association, collective bargaining, non-discrimination, right to work, vocational training, forced labour, minimum age, rest and leisure, working time, wages, termination of employment, occupational health and safety, social security, labour administration, national labour policy, dispute settlement, and tripartism. In comparison with the subjects covered in international labour standards¹³, the Declaration does not contain express reference to child labour, maternity protection and HIV.

Principles provided in the Declaration

While the Declaration speaks to many subjects, their references are in some cases quite brief without providing any standards. For instance, the term “working hours” is mentioned only once in this manner:

“Article 17 Right to Rest and Leisure. The Member States shall promote and protect, by appropriate means, the right of all workers...to rest and leisure, including limitation of working hours and periodic holidays with pay”.

The relevant provision is mainly on right to rest and leisure and it does not provide for minimum standards on working hours.

The CARICOM Declaration on Labour and Industrial Relations Principles continues to be relevant. If it were to address main workplace issues in today’s world, it would need to be updated to add subjects such as those mentioned above, and be substantiated with more specific standards.

Furthermore, there appears to be no substantive follow up for the implementation of the Declaration. If the Declaration were to be effective, there should be a mechanism to monitor and consult on the implementation of the Declaration.

● ● ● V. Conclusion and the proposed way forward

The review on the use of Model Laws showed that while all Caribbean countries had relevant laws in place, certain detailed requirements in the Model Laws were not incorporated into

¹³ List of subjects is available on ILO website at <http://www.ilo.org/dyn/normlex/en/f?p=1000:12030:0::NO::>

national law. It has also shown that most Caribbean countries directly inserted only selective provisions of the Model Laws.

Turning to the principle-based approach, the 1995 CARICOM Declaration on Labour and Industrial Relations Principles is a comprehensive and relevant instrument of principles, but its provisions would need updating and substantiating if the Declaration were to address current labour issues and to include details which set minimum standards.

Harmonization of labour laws is not about implementing unified laws. It is still an action of an individual country to be undertaken towards a common direction. The way forward for harmonization would therefore have to facilitate the action of each country. In the Caribbean context, it is important to reflect where the difficulties lie, and what assistance would be effective. It might be the capacity of legal drafters. It might be the preparation of policy papers for submission to the cabinet. It might be tripartite dialogue. The way forward could therefore combine different elements designed to assist different stakeholders involved at different stages of law-making and implementation.

Proposed way forward for further harmonization of labour laws in the Caribbean

It is proposed that the way forward would consist of the following systematically combined products:

1. a legally binding instrument based on the CARICOM Declaration on Labour and Industrial Relations Principles, supplemented with –
2. detailed model provisions
3. practical tools.

1. Legally binding instrument based on the CARICOM Declaration on Labour and Industrial Relations Principles (“Labour Charter”)

The main product for further harmonization of labour legislation should be one single instrument that contains minimum standards and principles based on international labour standards and good practices (hereinafter **“Labour Charter”** for the ease of reference). The Labour Charter would allow countries to prepare national laws in accordance with their own legal drafting style and based on minimum standards. The contents of the instrument of principles could be developed by updating and substantiating the 1995 CARICOM Declaration of Labour and Industrial Relations Principles. Other existing instruments, like ILO Conventions, may also be used.

In order to ensure follow-up and implementation, the Charter could be made legally binding. There is a useful experience in Africa. The Southern African Development Community (SADC), a regional Organization consisting of 15 countries in Southern Africa,¹⁴ adopted a Protocol on Employment and Labour in 2014,¹⁵ which comprehensively covers a wide range of labour issues (See Annex 3 of this paper). This Protocol is a binding instrument, subject to ratification by Member States. Two years after its adoption, the Protocol is not yet ratified by any Member States.¹⁶ Considering the fact that the Member States supported its adoption at the SADC, the possible reason might be that resources in the Member States are insufficient to incorporate the Protocol into national laws and to implement them. Drawing on this experience in Africa, the supporting products mentioned below would therefore be useful in supplementing the Labour Charter.

2. Detailed model provisions

Certain provisions contained in the Labour Charter could be supplemented with detailed model provisions. Unlike comprehensive model laws, each model provision deals with a specific technical point (e.g. procedure for termination of employment). The texts of model provisions contain enough details so that they could be directly inserted in national law. The drafters, such as officers of the office of chief parliamentary counsel, may take advantage of these. Existing provisions of the CARICOM Model Labour Laws would be an important resource for this purpose. Model provisions on matters not covered by the Model Laws can also be developed as required.

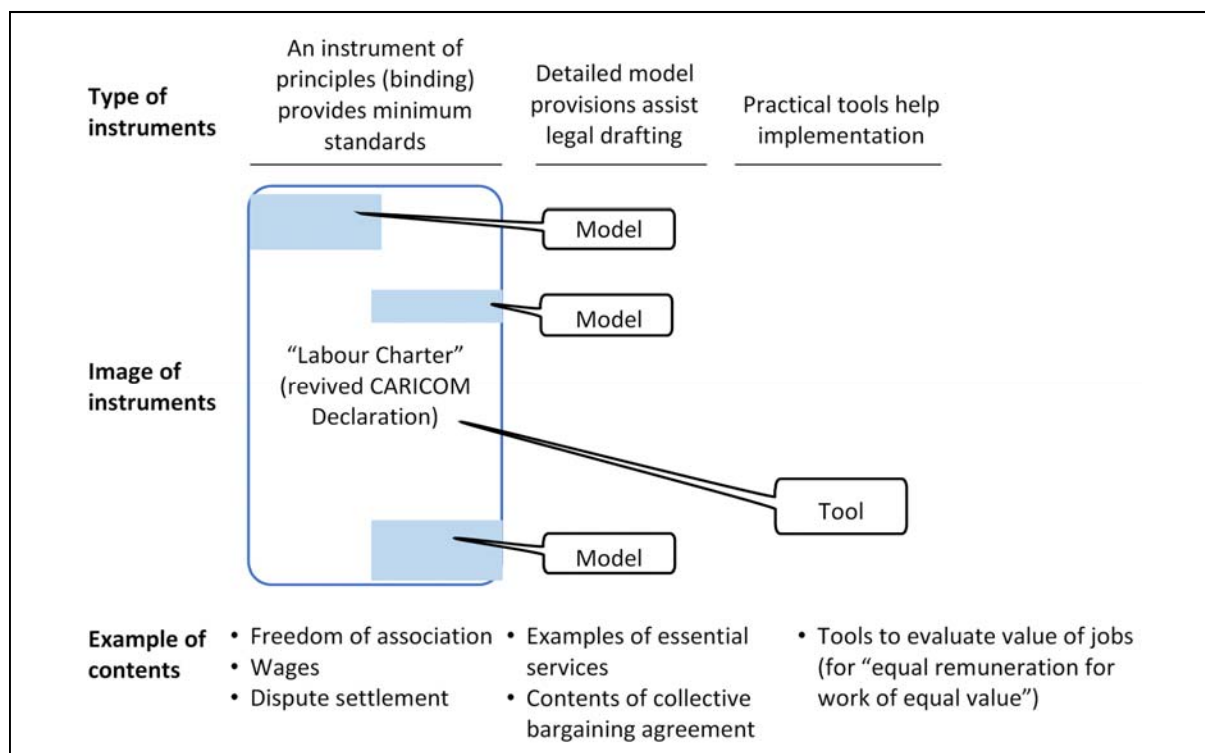
3. Practical tools

Practical tools on specific topics mentioned in the instrument of principles or in detailed model provisions may be developed, such as on the principle of equal remuneration for work of equal value. These would facilitate implementation of the national laws developed.

¹⁴ Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

¹⁵ SADC. *Communiqué of the 36th Summit of SADC Heads of State and Government (Mbabane, Swaziland, 30-31 August 2016)*. Paragraph 38.

¹⁶ Status of 8 June 2016. Based on the information available on the website of the Southern Africa Trade Union Coordination Council (SATUCC) (<https://satucc.wordpress.com/2016/06/08/almost-two-years-passed-no-member-state-has-ratified-sadc-employment-labour-protocol/> - accessed on 18 January 2017)



How these materials may be used by stakeholders

A Caribbean country would consult the Labour Charter and map its current labour laws against the Charter. The mapping would help identify subjects missing in the current laws. Further detailed comparison between the Charter and the national laws could help identify national legal provisions to be amended or new ones to be developed.

The government could then start drafting amendments or an entirely new law. If the government does not have enough drafting capacity and faces difficulty in developing the provisions of the Charter into its own national law, the government may consult a model provision on the matter in question once it is available. Texts of the model provision may help develop the country’s own text, or, if desired, the text of the model provision could be directly inserted into an appropriate part of the draft amendment or law.

When the amendment or the law is passed, it would need to be implemented and enforced. Then a relevant practical tool may be needed and could be sourced from those available. For example, if a sample checklist for occupational hazards in the workplace was developed as one of the practical tools, it may be distributed to joint occupational safety and health committees in companies.

Examples of the provisions of the CARICOM Model Labour Laws

Model Law on Equality of Opportunity and Treatment in Employment and Occupation

Definition of Discrimination

3. (1) For the purposes of this Act, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

Prohibited Grounds of Discrimination

(2) The grounds referred to in subsection (1) are -

(a) race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors.

(b) any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic extraction, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Model Law on registration Status and Recognition of Trade Unions and Employers' Organizations

Registration

13. (1) Every trade union and employers' organisation to which this Act applies shall be registered in accordance with this Act.

(2) The rights and benefits conferred by this Act upon trade unions and employers' organisations and their members may be exercised only if those organisations are registered in accordance with the provisions of this Part.

(3) Any 7 members or more of a trade union or 3 [or other minimum as may be deemed appropriate at the national level] members or more of an employers' organisation may by subscribing their names to the rules of the union or organisation and otherwise complying with the provisions of this Act, apply to the registrar for registration as a trade union or employers' organisation.

(4) The applicants shall transmit 3 copies of the constitution of the trade union or employers' organisation, duly authenticated by signature of the president or chairperson and secretary, to the registrar along with the application for registration.

(5) If the registrar is satisfied in respect of any application that -

(a) the requirements of this section have been met;

(b) the constitution is consistent with this Act and the Constitution of the country and does not contain provisions which are contrary to the provisions of any national law;

(c) the name of the trade union or organisation is not identical to that of any existing trade union organisation or so closely resembling such name as to be likely to deceive its own members or the members of the public

he or she shall forthwith register the trade union or employers' organisation and furnish it with a certificate of registration.

Model Law on Termination of Employment

Interpretation

2. In this act:

"collective agreement" means a written agreement between an employer, or an employers organisation authorized by the employer, and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

"commission agent" means an agent or employee who is remunerated by commission;

"continuous employment" means an employee's period of uninterrupted employment with the same employer or the successor employer;

"contract worker" means a person who performs work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

"dependent contractor" means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

Model Law on Occupational Safety and Health and the Working Environment

Fire Exits, Drills and Emergency Exiting

20. (1) In every industrial establishment, adequate fire exits shall be provided, and the doors that are provided for use as fire exits shall, while work is in progress at that industrial establishment, be either left unlocked, or secured in such a way as to be capable of being readily and quickly opened from the inside.

20. (2) Such warning signs as the fire authority may specify shall be prominently displayed in an industrial establishment in which explosives or highly flammable materials are stored or used.

20. (3) The contents of every room in which employees work shall be so arranged that these is for all employees in the room a free passageway leading to a means of escape in case of fire.

20. (4) Where in an industrial establishment more than twenty persons are employed in the same building, or where explosive or highly flammable materials are stacked or used in a building where persons are employed, effective steps shall be taken to ensure that all workers are familiar with the means of escape, their use and the routine to be followed in case of fire and a record of the number and frequency of evacuation drills shall be kept and presented, upon demand, for inspection.

Annex 2

CARICOM Declaration of Labour and Industrial Relations Principles

The States, Parties to the Treaty Establishing the Caribbean Community (hereinafter called "**the Member States**")

Recalling the Treaty establishing the Caribbean Community, the CARICOM Charter of Civil Society, the Declaration of Philadelphia, the United Nations Declaration on Human Rights and International Labour Conventions and recommendations which collectively established generally accepted principles of labour and industrial relations;

Reaffirming their common determination to fulfil the hopes and aspirations of their peoples for freely chosen productive employment, and improved standards of work and living through, *inter alia*, optimum utilisation of available human resources; accelerated, coordinated and sustained economic development; and the efficient operation of common services and functional cooperation in the social, cultural, educational and technological fields;

Convinced that regional integration in the Caribbean should include among its goals promotion of full employment; cross-border mobility of labour; improved living and working conditions through enhanced production and productivity; adequate social security policies and programmes deepening dialogue between employers and trade unions; collective bargaining; tripartite consultations among their Governments, workers' and employers' organisations; development of human resources; and expanding opportunities for employment;

Believing that all human beings, irrespective of race, creed, sex, national extraction, colour, marital status, or social origin, political persuasion have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equality opportunity;

Aware that the struggle against poverty needs to be carried on with unrelenting vigour within Member States and by continuous and collective international efforts in which the representatives of workers and employers, enjoying a recognised status with those of Government, join with them in free discussion and democratic decision with a view to the promotion of the common welfare;

Affirming that the applicable norms of industrial relations require the establishment and maintenance of an environment in which the Social Partners may freely carry out their activities and that the establishment and implementation of effective labour and industrial relations policies are fundamental to economic development and social stability;

Acknowledging that labour departments and other public authorities which are responsible for administering public labour policies in Member States should be adequately staffed with well-trained personnel, and that the foregoing are indispensable pre-conditions for the effective implementation and enforcement of measures to promote good industrial relations practices;

Reaffirming further the need for Member States to ensure that effective recognition is given, in practice, to the exercise by workers and employers of the right of freedom of association and to collective bargaining, to the promotion of cooperation between management and labour in a continuous joint endeavour to improve the productive efficiency of all enterprises and to collaboration by workers' and employers' organisations with governments at the national level, in the development and implementation of social and economic policies, programmes and measures;

Recognising that enhancing the competitiveness of production for domestic, regional and international markets is essential for social and economic development of the Region and requires the closest collaboration of workers and employers and their respective organisations who must pool their efforts and strive for continuing increases in productivity and output in all enterprises;

Have Declared as follows:

CHAPTER 1 SCOPE OF DECLARATION

ARTICLE 1 Applicability of Principles

The principles herein set forth are subject to such constitutional provisions and applicable laws as may be established in the national interest by Member States and recognised by competent tribunals.

ARTICLE 2 Restrictions on Rights

Entitlement to the rights recognised as belonging to workers and employers is subject to the respect for the rights of others and to the discharge of obligations correlative to such rights.

CHAPTER II FREEDOM OF ASSOCIATION

ARTICLE 3
Rights to Organise and to Membership

Workers and employers, without any distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing.

ARTICLE 4
Right to Regulate Internal Arrangements

Workers' and employers' organisations shall have the right to draw up their constitution and rules and to regulate their internal arrangements without interference from public authorities having the effect of restructuring this right of impeding its lawful exercise.

ARTICLE 5
Non-Subversion of Workers' Organisations

Employers shall refrain from establishing workers' organisations under the control of employers or employers' organisations or supporting workers' organisations by financial or other means with the object of placing such organisations under the control of employers or employers' organisations.

CHAPTER III
COLLECTIVE BARGAINING

ARTICLE 6
Right to Collective Bargaining

1. Workers and employers shall have the right to free collective bargaining as a vehicle for determining terms and conditions of employment without interference from public authorities.
2. The Social Partners shall promote the full development and utilisation of machinery for voluntary negotiation between the parties, with the view to the regulation of terms and conditions of employment by means of collective agreement.

ARTICLE 7
Recognition Machinery and Good Faith Bargaining

1. The Member states shall establish adequate statutory machinery and procedures to facilitate and promote the recognition of workers' organisations by employers and employers'

organisations as appropriate based on the free choice of the majority of their employees for the purpose of collective bargaining.

2. The parties to the collective bargaining process shall maintain a reasonable and constructive approach and thereby demonstrate their mutual obligation to bargain in good faith.

3. Competent authorities and employers shall, as far as practicable and within the limits imposed by law or by collective agreement, provide information necessary to enable workers' representatives to pursue meaningful negotiations which shall have due regard for existing sectoral, national, economic and financial circumstances.

ARTICLE 8

Promotion of Stable Relations

1. Workers' organisations, employers and employers' organisations shall employ their best endeavours to conclude appropriate collective agreements on the basis of equity, fairness and justice and with a view to promoting stability in industrial relations.

2. The Social Partners shall promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers; organisations with a view to the regulation of terms and conditions of employment by means of collective bargaining.

ARTICLE 9

Protection for Trade Union Representatives

Trade Union representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as trade union representative or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other arrangements arrived at by the collective bargaining process.

ARTICLE 10

Elected Representatives and Workers' Representatives

Where there exist in the same undertaking both trade union representatives and elected worker representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected worker representatives is not used to undermine the position of the trade unions concerned or their representatives, and to encourage cooperation on all relevant matters between the elected worker representatives and the trade unions concerned and their representatives.

CHAPTER IV
NON-DISCRIMINATION IN EMPLOYMENT AND OCCUPATION

ARTICLE 11
Equality of Opportunity and Treatment

Subject to Article 12 (2), 13 and 14 of this Chapter, the Member States undertake to adopt and pursue national policies designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin.

ARTICLE 12
Equal Remuneration for Work of Equal Value

1. The Member States shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
2. Differential rates between workers which correspond, without regard to sex, to differences as determined by objective appraisal in the work to be performed, shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

ARTICLE 13
Special Measures of Protection

Special measures of protection or assistance provided for disadvantaged groups in relevant instruments adopted by competent intergovernmental organisation shall not be deemed to be discriminatory.

ARTICLE 14
Acts Prejudicial to National Security

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the state shall not be deemed to be discriminatory, provided the individual concerned shall have the right to appeal to a competent body established in accordance with national law and practice.

CHAPTER V
EMPLOYMENT POLICY

ARTICLE 15
Right to work

1. The Member States shall protect the right of everyone to work, to free choice of employment, to just and favourable conditions of work and to be gainfully employed.
2. The Member States shall pursue policies designed to promote full productive and freely chosen employment.
3. The Member States shall develop policies and programmes of vocational guidance and training, closely linked with employment.
4. Citizens of Member States shall have the right to live and work in the country of their choice within the Community subject to the legislation of the host country.

ARTICLE 16
Prohibition of Forced Labour

1. The Member States shall not impose nor permit to be imposed, forced or compulsory labour for the benefit of private individuals, companies or associations. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.
2. The Member States undertake to prohibit the employment of children of less than fifteen (15) years.

ARTICLE 17
Right to Rest and Leisure

The Member States shall promote and protect, by appropriate means, the right of all workers in every location of its territory to rest and leisure, including limitation of working hours and periodic holidays with pay.

ARTICLE 18
Payment of Wages

Except as otherwise provided by law or authorised by the competent authorities, wages payable

in money shall be paid in legal tender only and shall be paid directly to the worker unless the worker shall have agreed to the contrary.

ARTICLE 19
Deductions from Wages

Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award or where the worker concerned has agreed to such deductions.

ARTICLE 20
Limitation on Attachment or Assignment of Wages

Wages may be attached or assigned only in the manner and within limits prescribed by national law and shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his or her family.

ARTICLE 21
Wages as Privileged Debts

In the event of bankruptcy or judicial liquidation of an undertaking or insolvency, wages and other remuneration due to all workers for work done prior to such bankruptcy or insolvency or liquidation shall constitute a privileged debt to be paid in full before ordinary creditors establish a claim to a share of the assets.

ARTICLE 22
Termination of Employment

The employment of a worker shall not be terminated unless there is a valid reason for such a termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service subject to due process.

ARTICLE 23
Natural Justice

Where the employment of a worker is to be terminated for reasons related to the worker's conduct or performance, such worker must be given an opportunity to rebut the allegations made unless the employer concerned cannot reasonably be expected to provide the opportunity. A worker aggrieved in this behalf shall be entitled to appeal against such termination to an impartial body.

ARTICLE 24
Termination and Redundancy

When an employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the trade union representatives concerned or the workers where there are no such representatives, in reasonable time with the relevant information including the reasons for terminations contemplated, the number and categories of workers likely to be affected, and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the trade union representatives concerned or the workers where there are no such representatives, as early as possible, an opportunity for consultation on measures to be taken to avert or minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment, and inform the competent authority accordingly.

ARTICLE 25
Minimisation of Staff Reductions

1. Positive steps shall be taken by all parties concerned to avert or minimise as far as possible reduction of the work force, without prejudice to the efficient operation of the undertaking, establishment or service. If the proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer shall notify the competent authorities in advance of any such reduction.

2. Workers whose employment has been terminated owing to a reduction of the work force shall be given priority of re-engagement, to the extent possible, by the employer when he or she again engages workers.

ARTICLE 26
Joint Responsibility of Social Partners

Workers' organisations and employers shall establish on a mutually agreed basis, appropriate procedures for recruitment and termination of employment which would protect the interests of workers and employers.

ARTICLE 27
Incentive Schemes

Trade Unions and employers shall encourage, subject to mutual agreement in specific cases, the introduction of incentives schemes whenever applicable on the understanding that the benefits of higher productivity will be shared between workers and employers.

ARTICLE 28
Promoting Worker's Career Prospects

The Social Partners shall promote training and development schemes to enhance the career prospects of workers, their skills and productivity in order to contribute to national, social and economic development.

ARTICLE 29
Occupational Health and Safety

1. The Member States shall formulate a national policy on occupational health and safety, and shall enact and enforce the legislation necessary to protect occupational health and safety and the working environment.
2. Employers shall provide a safe and healthy working environment and workers shall perform their work in accordance with occupational health and safety rules and regulations.

ARTICLE 30
Social Security

1. The Member States shall ensure that Social Security Schemes remain viable and that contributions and benefit payments are based on regular actuarial valuations and sound business investments of funds for the long-term sustainability of such Schemes.
2. The Member States shall protect the right to Social Security of nationals of the Caribbean Community who move to other Member States by reason of employment and shall enter into reciprocal agreements with other Member States in order to provide agreed benefits based on contributions and applicable legislation.

CHAPTER VI
LABOUR ADMINISTRATION

ARTICLE 31
Organisation of Labour Administration

The Member States shall ensure, in a manner appropriate to national conditions, the organisation and effective operation in their respective territories of a system of labour administration, the functions and responsibilities of which are properly coordinated.

ARTICLE 32
Responsibility for Labour Policy

The competent authorities within the system of labour administration shall, as appropriate, be responsible for or contribute to the preparation, administration, coordination, and review of national labour policy. Within the ambit of public administration, they shall be responsible for the preparation and implementation of laws and regulations giving effect to the national labour policy.

ARTICLE 33
Cooperation by Social Partners

The Member States shall make arrangements, suitable to national conditions, to secure within the system of labour administration, consultation, cooperation and negotiation between public authorities and the most representative employers' and workers' organisations at the local, national or regional levels as appropriate.

CHAPTER 34
National Labour Policy

To the extent compatible with national laws, regulations and practice, competent authorities within the system of labour administration shall contribute to the development of labour policy, and may participate in representing the Member State concerned in respect of such affairs and contribute to the preparation of relevant measures to be adopted at national level.

CHAPTER 35
Qualifications of Labour Officials

1. Staff of the labour administration system shall consist of suitably qualified persons enjoying comparable remuneration within their respective countries, access to appropriate training, and

independence from improper external influences in the effective performance of their duties.

2. The Member States shall ensure that such staff function with impartiality, professional independence, and integrity.

CHAPTER VII DISPUTES SETTLEMENT

ARTICLE 36 Industrial Action as Last Resort

In the event of a grievance, difference or dispute between them, the Social Partners shall respect the agreed applicable procedures and shall employ industrial action as an instrument of last resort only after all measures and procedures including negotiation, conciliation and mediation have been completely exhausted and the dispute has not been resolved.

ARTICLE 37 Provision of Disputes Settlement Facilities by States

The Member States shall establish, maintain and make available to the Social Partners at all reasonable times appropriate facilities for the speedy resolution of industrial disputes, including negotiation, conciliation, mediation and arbitration.

ARTICLE 38 Restrictions on Industrial Action

The Social Partners shall avoid resorting to industrial action over issues arising from the interpretation and application of the terms in a collective agreement. They shall endeavour to settle any difference in this regard through negotiations in good faith, conciliation, mediation or arbitration.

ARTICLE 39 Respect for Agreements

The Parties shall honour the spirit and substance of all agreements freely entered into and shall be bound by any award resulting from arbitration proceedings.

ARTICLE 40
Conduct of Industrial Action

1. In any case where workers resort to industrial action, such action shall be conducted in a peaceful manner and shall in all other respects comply with the provisions of collective agreements, arbitration awards and applicable law.
2. The parties involved in any disputes shall avoid resort to unfair labour practices including intimidatory actions.

ARTICLE 41
Work Resumption in Unpremeditated Industrial Action

In the event of a spontaneous or unpremeditated strike or lockout, the parties shall employ their best endeavours to bring about an immediate resumption of work and to settle speedily the issue in accordance with agreed or applicable procedures.

ARTICLE 42
Essential Services

1. Disputes in essential services shall, as far as possible, be settled by direct negotiations by the parties involved. Where negotiations fail to resolve the dispute, the parties concerned shall employ such procedures as conciliation, mediation or arbitration in a manner which allows the parties to take part at every stage and which provides guarantees of speediness, independence and impartiality.
2. Nothing in this Article shall be construed as recognising the right to industrial action by workers employed in the essential services as may be defined in the legislation of Member States.

CHAPTER VIII
CONSULTATION AND TRIPARTISM

ARTICLE 43
Essential Elements of Industrial Relations

The Member States undertake to promote collective bargaining, consultation and tripartism as essential elements of the system of industrial relations in the CARICOM Region.

ARTICLE 44
Consultations on Application of Principles

The Member States shall employ their best endeavours to consult with the Social Partners in establishing the relevant principles and policies to be applied in conditions and situations of financial stringencies.

ARTICLE 45
Limits of Consultation

Nothing in this Chapter shall be construed as permitting Member States to utilise the practice of consultation or tripartism as a substitute for collective bargaining as defined in this Declaration.

Annex 3

Overview of South African Development Community Protocol on Employment and Labour

1. SADC

The Southern African Development Community (SADC) was established in 1980. The membership consists of 15 countries in Southern Africa (Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe).

In a thrive to assimilate its respective legislations, the SADC has adopted a number of “Protocols”. They provide for specific actions and procedures on matters related to the objectives of the SADC. They are legally binding documents and require the ratification by two-thirds of Member States (i.e. 10 Member States) to enter into force. There are currently 33 Protocols and 26 of them have entered into force.¹⁷

2. SADC Protocol on Employment and Labour

The SADC adopted a Protocol on Employment and Labour in 2014. It is a comprehensive instrument covering wide range of issues including:

- Labour principles and rights
 - Freedom of association and collective bargaining
 - Equal treatment
 - Improvement of working and living conditions
 - Decent work for all
- Provisions on specific labour matters
 - Social protection
 - Occupational safety and health
 - Retirement
 - Unemployment and under-employment
 - Maternity and parternity
 - Informal employment
 - Skills development
 - Labour market information systems
- Protection for specific categories of persons
 - Persons with disabilities
 - Children and young people

¹⁷ SADC. *Communiqué of the 36th Summit of SADC Heads of State and Government (Mbabane, Swaziland, 30-31 August 2016)*. Paragraph 38.

- o Migrant workers

The SADC Protocol is an instrument of principles and regulates the following, among others:

- It declares rights for workers and rights for employers and requires Member States to ensure them, but leaves details of legal and other implementation measures up to Member States.
 - o Example: Article 7 Equal Treatment

“1. State Parties shall adopt laws and policies to ensure that every person is equal and accorded equal treatment and equal protection before the law.
[...]
(a) the eradication of occupational segregation and all forms of employment discrimination...”
- The Protocol indicates areas for action and what must be achieved, but leaves specific types of mechanisms to achieve the required results to Member States.
 - o Example: Article 21 Labour Market Information Systems

“State Parties shall put measures in place to:
[...]
(b) establish a regional data collection and dissemination mechanism on employment and labour matters in order to facilitate effective planning and monitoring of the labour market in the Region”