InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work



International Labour Office

Fundamental Principles and Rights at Work

Value, viability, incidence and importance as elements for economic progress and social justice

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FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK
Value, viability, incidence and importance as elements for economic progress and social justice

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Foreword

The Declaration of fundamental principles and rights at work and its follow-up was adopted by the International Labour Conference in June, 1998. Said instrument makes provision for Member States to respect, promote, and implement in good faith, freedom of association, the right to organize and effective recognition of the right to bargain collectively; the eradication of all forms of forced labour; the effective abolition of child labour; and the elimination of discrimination as regards employment or occupation. In promoting the Declaration, the InFocus programme is accountable within the Organisation for the procedures related to reports and technical cooperation activities concerning said instrument. The programme also assumes the responsibility of raising awareness, giving technical support and advisory services, as well as undertaking studies on different issues that are associated to fundamental rights at work. This working paper is intended to encourage discussion on issues considered in the Declaration and expresses the point of view of the authors, not necessarily that of the ILO.

Although the Member States of the Organisation reached consensus on adopting the Declaration, and despite the fact that it is relatively new, numerous points have been brought up and addressed at several national and regional forums. Questions such as how the Declaration contributes to a globalized world, whether it is opportune to apply fundamental rights in order to improve productivity, whether the application of fundamental rights raise labour costs and to what extent the principles are related, are what Daniel Martínez and Maria Luz Vega, colleagues at the ILO with vast professional experience in the area and in particular in Latin America, try to answer in a comprehensive fashion and from their own perspective.

The Declaration has been recognized as an instrument for social justice, which is a prerequisite for social development. Democracy, equity and justice are some of the elements that the authors consider as being strengthened when the principles and rights embodied in the Declaration are fully upheld. In having said this, the authors sustain that this new instrument of the ILO establishes the foundation for generating decent work.

With this paper the InFocus Programme for promoting the Declaration intends to open new doors for reflection and debate, by broaching new issues, challenges and analyses that will inspire constituents as well as civil society at large to advance in achieving ILO objectives. Moreover, this document is the first of its kind to focus mainly on Latin America, a region where we hope the Declaration will invigorate the development of a significant amount of programmes and activities.

With this new publication we expect to draw analyses and proposals from researchers and social actors that will serve to pave the way for the application of fundamental principles and rights at work.

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Director of the InFocus Programme
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1. Introduction

For the international community at large fundamental principles and rights at work have become the social minimum for the global economy. Demonstrative of this is the existence of the ILO Declaration of fundamental principles and rights at work and its follow-up (adopted by the International Labour Conference at its 86th Session in Geneva on June 18th, 1998), and the alliance of all Member States of the Organisation to respect and promote it.

Despite its novelty and relatively short existence, the Declaration is an instrument that has been under considerable debate, widely disseminated and addressed, not only by constituents of the Organisation but also by civil society, as it promotes the social development aspects of international relations and in general supports the new matrix for governing globalization.

Poverty, unemployment and labour costs are core issues under discussion, having become the centre of the debate on economic development that is linked to social justice and respect for minimum rights that are immutable and indispensable in the framework of economic growth.

This Working Paper is the result of reflecting upon the content of follow-up reports on the Declaration (Annual and World Reports) and the development of certain programmes and technical cooperation projects. Moreover, the Paper reflects the experience of the authors (focussed mainly on Latin America - thus the dedicated chapter) from their daily tasks in promoting the Declaration. Although the conclusions of the authors reflect their personal opinions, there has been no constraint in dealing with or comparing other opinions about the interrelations of rights, their economic impact or their incidence on the development of the globalization process.

The endeavour is, therefore, to set the stage for reflection, based on the existence of an international Declaration that was adopted by consensus at a time when social justice seemed to be a more obvious need, and to have the readers participate in a series of experiences that would lead them to conclude, at least from the authors' point of view, that the presence and application of fundamental rights at work is necessary and pertinent.

Fundamental rights, as reconciled basic principles that are interdependent and essential, is synonymous to decent work and from this perspective the authors formulate the concept that the Declaration (as a necessary instrument that demands application) is the foundation for justice and equality.

With this Paper we hope to bring to light new topics for discussion, to create new expectations for debate and to encourage participation in the overall process of promoting the Declaration.

2. Fundamental principles and rights - the evolution of a legal framework: from natural rights to a positive law

Whenever a community is formed, rules and norms appear that are designed to organize the functioning of the community in all aspects, based on common principles (*Ubi societas, ibi ius*), i.e. when humans group together a legal system automatically arises. The law, defined (according to Roman tradition) as a body of prescribed rules of conduct in the form of mandatory norms and designed to ensure order and justice, reigns among the people who live in society (Hauriou, 1980, page. 171), therefore, being essential for all collectivity. Thus, every regulatory body is based on the need of a person to have order, as well as a specific perception of justice, related to a scale of values (principles) particular to each social group.

The Modern State, as seen in the same perspective as a Welfare State, establishes and applies a norm that is considered to be necessary for regulating its relations with the individuals of society. From this arises the need for moral ”correction” of existing imbalances, based on the notion of equality and social justice (perceived generically by our societies as essential principles for development). In sum, the coming into being of the Welfare State has meant the establishing of guarantees to balance the correlation of forces that exist in all community relations, whatever the area that is contemplated, essentially searching for equity (in the sense of freedom of decision) and ensuring that all members of society have equal access to common services, i.e. facilitating the real possibility of accessing them.

The Modern State is, therefore, based on the equal distribution of rights, obligations and benefits (the so-called distributive justice). That is to say, based on common interests it guarantees the means for those who are at a disadvantage and therefore, “unequal” to have the same opportunities for exercising their minimum “potential” in all ambits, and in doing so to develop the essence of their freedom[1]. As Rawls points out (1971, page. 5), a State would be just when its citizens are prepared to agree upon a series of principles that entrusts rights and responsibilities to each person and that determines the appropriate distribution of benefits and duties related to social cooperation.

In the context of justice, the concept of fundamental or human rights as a “statutory” expression of a community’s essential values acquires singular relevance. Indeed, all humans have the right to demand a minimum amount of respect, given that the individual as such presumes that there are moral limits to any given external action. All persons have the right to exercise freedom, without being interfered with and without it interfering with other individuals. It is, therefore, an equal right for all, inherent to each individual in society. Being treated equally is an indicator of justice[2] and in being treated in a fair way implies being considered in an equitable way.

In fact, a free and democratic State considers fundamental rights and freedom[3] as being a “just” instrument within the limitations of political power. Thus, the State tries to determine the

[1] As mentioned by García (1998, page 15), the strength of the state depends on the moral and material level of its citizens and is, therefore, at odds with misery, misery that simultaneously threatens social stability with its tendency to provoke revolution. In other words, state action aimed at correcting imbalances of the industrialized society is not only an ethical demand, but a necessity, as from this point of view a choice has essentially to be made between revolution and social reform.

[2] Mills, 1987, points out that equality has to be considered as a basic precept for justice.

[3] Although the terms fundamental rights and human rights circumscribe a person in individual and collective aspects, they represent different ambits. Human rights are considered to be fundamental and in this sense have been qualified as such since the 50s. In general it is understood that human rights are those that are recognized by

existence of principles that are beyond the State's power but inherent to the people (individually and collectively), thus, recognizing the supremacy of the human being and civil society. The instruments of political power are born to serve civil society. However, natural rights are beyond the reach of positive laws (including those that are multinational such as International Treaties or Conventions), linked for being essential but not requiring adherence or ratification by any national instrument, as they are valid in themselves.

Notwithstanding, these rights are not immutable or permanent in time. As the former Secretary General of the United Nations, Boutros Boutros-Ghali, voiced in his inaugural speech during the Vienna Conference on Human Rights in 1993, "*While human rights are common... each cultural epoch has its own special way of helping to implement them... ...human rights are, in their essence, in constant movement. By that I mean that human rights have a dual nature. They should express absolute, timeless injunctions, yet simultaneously reflect a moment in the development of history. Human rights are both absolute and historically defined."*

The equality principle is demonstrative of this "evolutionary" nature [4]. Equality in the eighteenth century was understood as a limited right, a reinforcement to strengthen freedom yet subject to strict limitations[5]. Since the twentieth century, the social State has established equality in a broader perspective, as a basis for other rights and as grounds for the action of the State itself: equal treatment of "inequalities" has become the cornerstone of the State's development. In labour, the transformation of the equality concept is a vivid example. In the nineteenth century women and some minority groups (especially related to race) were not considered as citizens, neither entitled to having rights. The industrial revolution initially prompted their insertion in the labour market, based on protection (inferiors with rights), considering that safeguards allow for their insertion and thus, guarantee equality. Since the 60s, true equality has been foremost as a basic right. For example, the primary concept of equal pay for equal work was based on true equity and equal access. Today this is reflected in the existing right of equal remuneration for work of equal value.

Basic rights and freedom are, therefore, an assembly of instruments that *per se* reflect in a universal regulatory body the demands for dignity, freedom and social equalities that are recognized as being indispensable for the effective functioning of the State and that can be modified in function of changes in a society's values.

All that is expressed clearly, without being questioned, is fundamental. In this context fundamental rights around the world, although changeable, have common characteristics, irrelevant of the degree of development of each country. As stated in Article 1 of the Declaration of the World Conference on Human Rights in Vienna (1993) *"The international community must treat human rights globally in a fair and equal manner on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must me borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms".*

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a legal order and that are given special protection. The term fundamental rights is more related to the ambit of inherent rights.

[4] Not to be overlooked is that said right is already present in the first political organizations. A case in point is Greece, where the State was based on principles of freedom, equality and philanthropy. For the citizens of Athens the concept of freedom was absolute and only restricted by the mandate of the law. For this reason all Athens were equal and truly free (notwithstanding, freedom was perceived in a context of slavery).

[5] One should keep in mind that thinkers such as Tocqueville claimed that the equality component, inherent to democracy, tends to extend to social and economic areas and therefore, is the principal threat to freedom.

What are these rights? Universal and historically ethical expression has determined this.

Due to their nature, fundamental rights have been classified around the different aspects of man's projection in society. The need to give expression at the right level to a series of economic, cultural and social rights arose after a series of factors. One was the recognition (with the French Revolution) of a body of **political and civil rights,** inherent to all human beings in their role as citizens[6] (*zoon politikon* in the concept of Aristotle). Another factor was the coming of age of social movements after the Industrial Revolution. A third element was the progressive social and economic complexities of the markets – labour included. The above mentioned **economic, cultural and social rights** were the result of liberal ideologies and the mobilizing of the underprivileged to try and overcome their own social limitations[7].

As a result of evolving economies, fundamental social rights have undergone a transformation and their content have been extended as a consequence of highly increased social commitments, born from the evolution of liberal doctrines[8]. As an example, in contrast to the XVIII century, at present property ownership is not an absolute right and has limitations in its social function (for example, expropriation by the State based on need and public utility). Another case in point is freedom of enterprises (key regulation for a market economy), deemed to be restricted due to the possibility of indicative planning and the existence of a public sector for which some economic activities are reserved.

At the same time, strictly in the ambit of labour, the new democratic societies recognize the right to strike, freedom of association and the right to bargain collectively as fundamental basic rights, reflecting the principal character of the collective value as an equalizer of class associations and their means of action.

The character of the fundament human right to bargain collectively through union organization - understood as the maximum expression of collective relations - reveals the importance that societies give to the labour right in its most original form. In fact, in most modern constitutions the right to freedom of association and collective bargaining appear together with the right to live, the right to property ownership and freedom of residence. Thus, this recognition of the collective labour right at the highest level implies in itself the importance of collective labour action in achieving the core objectives of human beings and ultimately, society. The aim is to achieve social justice, not only by way of regulating the right (law, contract, etc.), but also through *sui generis* means that are the maximum expression of the general will, therefore, having a special rank and regulatory character, while embracing fundamental rights.

Work and its most concrete manifestations are recognized as being fundamental in the greater majority of constitutional texts, although with different characteristics, depending on the protection element. The right to work, non-discrimination (equality at the workplace), and the prohibition of forced labour[9] usually appear together with other fundamental rights, encompassing and obliging compliance directly from public institutions. This allows the citizens to exercise their rights directly, even if they are not contemplated in a common law.

[6] Destined to protect life, freedom, security and the physical and moral integrity of persons, as well as their right to participate in public life or the government.

[7] At present a new series of rights are being debated such as those related to development, peace, preservation of the natural environment, etc. based more on the idea of general citizenship and global solidarity.

[8] Without a doubt, the strengthened eruption in a democratic society of the value of equality, that is behind these rights and that acts as a fundamental limit, is the point of development of a new understanding of fundamental rights.

[9] The fight against slavery was the beginning of the social struggle that finally lead to the labour right in its collective aspect.

However, other rights such as minimum wage, work hours, social security etc. are on occasion programmatically dealt with, therefore, not directly applicable, i.e. they are only recognized when related actions are contemplated in the legislation.

It is, therefore, clear that protecting the dignity of the human being is the ultimate objective of all modern States and thus, embodied in the constitution, treaties and supranational standards. In this context, the most minimum infringement, understood in terms of inherent and fundamental rights, doesn't only impede the application of the rights themselves, but also goes against just and balanced social relations, against the State and against the foundations of democracy (apart from the illegality of not complying with norms).

Without a doubt, establishing some minimum standards for social protection and outlining the basic elements that allow compliance with the fundamental requirements become essential for the progress of a modern society. The importance of setting said minimum standards is reflected in the internationalization of rights, where the globalization of human rights is fundamental (since the French Declaration of 1789, this has been a general tendency). As stated in the Preamble of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations, *"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"*. These rights that are the natural regulatory base (in the sense of the classic natural right) must be protected through norms from the rule of the law, and this by placing them on the highest rank of the pyramid.

3. Fundamental rights at work

Currently, the already mentioned consideration of rights at work in the Constitution (regarding a standard of highest hierarchy) is an expression, in the national ambit, of the importance given to certain social rights. A modern Constitution establishes[10]:

- Equality, not only through energetic opposition to discrimination, but with effective measures to help those who are excluded or the under-privileged;
- Affirmation of the State's commitment to free its citizens from life's anxieties, as long as it can be addressed in the community;
- Recognition of the groups organized by civil society and their rights to defend their interests in a context of common wellbeing;
- Freedom to work as a right and duty.

The idea that work is an indispensable legal right is unquestionably clear when putting it in writing in a law and in this case, as mentioned, at the top of the hierarchy.

In the Modern State, characterized by its democratic values and with a high social component, the labour issue is contemplated expression through the promotion of basic principles which are fundamental rights. In this new order the principle of equality is, irrefutably, the integrating factor of protection to which every citizen is entitled.

Continuously assuring all citizens of access to a determined amount of services that are considered as being essential (covering the basic needs of people), contemplates in itself the rights of all individuals, while strengthening solidarity. This notion -considered by some as "social citizenship"– upheld by rights that the State itself guarantees, is the single equivalent of

[10] In Latin America, for example freedom, the right and obligation to work, as well as equality in the eyes of the law are recognized in practically all Constitutions.

the social cohesion principle, as it implies the equal capacity of all human beings to take part in a comprehensive and active fashion in the social life of the community. Solidarity should, however, not to be confused with the concept of individual needs, for if so it would only be operative when an individual can prove that he/she lacks a necessity, which would convert the Social State[11] into a Welfare State. In the field of labour, equality is established through fundamental labour rights that are the minimum condition needed to balance the initial situation, but that due to economic circumstances could become unfavourable.

All social inclusion policies should implicitly include respecting the solidarity principle, the backdrop of a social State. Solidarity should be reflected in the social content of state policies and programmes and policies, and also in the national budgets. This would imply transferring resources to favour the most disadvantaged sectors, regions and groups.

Such distribution would be sustained through economic inclusion (executed through positive means), encouraging participation and social dialogue. However, while maintaining social values of solidarity and mutual support that guarantees free access of all members of society to public services.

In this context it is necessary to boost competitiveness of the weakest regions, provinces or states by means of policies that promote in an efficacious manner solidarity, production and community progress, all of them aimed at reducing disparity while generating progress for all. Social cohesion is, therefore, an "economic equality" factor that serves communities to create and increase levels of employment and productivity and thus, improve their quality of life.

From a political viewpoint, cohesion signifies awareness of belonging to a community, without renouncing the national or regional particularities. In this context it is essential to reinforce the idea of common citizenship, guaranteeing the fundamental rights of citizens by giving them equal opportunities. This in essence implies strengthening the democratic character of decision making, based on equity and insisting on the idea of equitable distribution of benefits.

As seen, the challenge of breaching the gap has not been in vain as regards labour rights, understood as the equal opportunity to choose and keep one's own personal life project by means of regulated labour relations that are adapted to the interest of each individual worker.

In the labour area, the Social State reconciles the values of security and freedom, providing in this way legitimacy. Thus, the State provides public services and in assuring citizens of their access to the basic services, allows them in turn to accrue their individual rights, boosting solidarity. At the same time that the State establishes rules for employment, it exercises direct protection over labour relations, even facilitating the development of collective autonomy, protecting in this way the worker from possible risks that may affect his earning power.

Today the State guarantees social protection[12], although it recognizes its limitations when trying to integrate diverse interests that are common in society. To this end, the State either associates the representatives of said interests in the preparation of standards, or it lets them define in their own ambit what they perceive as common wellbeing.

From this perspective the State, in practice, doesn't appear to be capable of confronting alone the inequalities and injustices related to social exclusion. It does not have the monopoly over

[11] Thus, a state that guarantees individual development based on equality and legalities.
[12] Rejection of this role of the state is a common trait of neo-liberal and neo-corporate analysis, that consider the state as an instrument and not as the guarantor of socio-economic relations.

defining social interest, which is understood as solidarity that is required to ensure the protection of the whole society. The State should, therefore, join the regional instances that the world presents and the social actors. In other words, the State should be considered as the guarantor of the general interest, but not the only one to define it.

Defining general interest is synonymous to "exercising politics", as it implies taking up the position that something like *general interest* does exist. It also implies admitting that political activity is a very important means (but not the only one) to continue finding and defining public rights which are freedom, equality, security and social protection, among others. In turn, the way to put into practice these approaches to public rights is through State controlled institutions, control that is the principal objective of the State's political faculties.

Freedom, that accompanies a democratic regime, spawns debates on the various angles from which the rights of the public can better be contemplated. It also gives rise to the understanding and participation of citizens in these debates. In this manner the regular and frequently foreseeable retroactive judgements of the citizens regarding their governors are facilitated and made effective through voting.

On the other hand, while not acknowledging that no final answer exists as to what the rights of the public are, the democratic policy assumes two basic positions: one is the generalized acceptance of certain rules of the game that basically exclude physical violence and establish a *pro tempore* portrayal of the governors, while the other is that pluralistic opinions and points of view are not only inevitable but also desirable.

Conflict in a democracy is legitimate and opportune for at least three reasons. First, everybody is subject to severe cognitive limitations. Second, conflictive plurality in democracy demonstrates that the rights of the public should be broken up in many changeable aspects whose interrelations are, in addition, immensely complex. Third, these conflicts are a form of competition, regulated by a law that excludes certain resources and strategies that would jeopardize democracy itself and social coexistence.

However, the resources that each party puts into play during the conflict must be distributed, if not in an equal manner, then in such a way that there is not too much imbalance, referring in practice to discriminatory unilateral impositions that favour one over the other. Therefore, the need arises for rules, and in society, for labour standards.

If acknowledged that policies, or at least democratic policies, are only justified if oriented towards the good of the public, and being the principal and most legitimate way of trying to approach this value, then the State is, institutionally, the only alternative for two reasons. One reason is because it is the only institution that outlines a territory with a legal system, supported by the supremacy of legitimate means of constraining what it has at its disposal. The other is that for the same reason the State is the only entity whose specific commitment is to ensure the general wellbeing of the population.

On the other hand, when agents from the private sector sit down to negotiate or reach consensus, it can only be expected, rationally and reasonably, that they take into consideration their own interests. Of course, the result of this could be heavy external pressure. Even worse, should the relation of power between the two parties be extremely unbalanced, this would not be "negotiating" but a legitimate facade of unilateral imposition of one of these wills.

From this perspective, the State guarantees through its means (the law) the basis for protecting general interests and sets the minimum principles that define it, assuring respect for basic rights.

In this context, the texts dealing with human rights share the idea of general values guaranteeing a series of individual and collective rights that are typically "social". This is the case of the international pact on Civil and Political Rights (UN Resolution 2200A (XXI) of 16.12.66) that reflects the right to freedom of association (Art. 22), equality (Art. 26) and the prohibition of slavery (Art.8). Also, the pact on socio-economic and cultural rights (UN Resolution 2200A (XXI) of 16.12.66) establishes equality (Art. 7), the elimination of forced labour (Art. 6) and the protection of children (Art. 10) as basic precepts. The Agreement to protect fundamental human rights and freedom (UN Rome, 4.11.50) establishes for its part, the prohibition of slavery and forced labour (Art. 5), freedom of association (Art. 11.2), and the prohibition of discrimination (Art. 14). Numerous other declarations and pacts such as the Elimination of Discrimination against Women Convention, or the Rights of the Child Convention, as well as some regional instruments (for example the American Declaration of the rights and duties of man) persist in this same fashion.

The Universal Declaration of Human Rights commences with equality: "*...equal and inalienable rights of all members of the human family"* in its Preamble. It considers as human rights: equality (Art. 2)[13] –stressing in Article 7 the need for equality before the law and Article 23.2 expressing the need for equal remuneration for equal work- the prohibition of slavery and bondage (Art. 4), the freedom of association as a means of defending professional interests (Art. 23.4) and the protection of children through education (Art. 26). The Declaration also contains other labour rights such as social security (Art. 22) and rest periods (Art. 24), reflecting in a general manner upon the right to work (Art. 23).

As an agency of the United Nations, overseeing labour issues, the International Labour Organisation considers fundamental rights as those which guarantee that workers and employers may freely request *"a just share of the fruits of progress*" (Declaration of Philadelphia), whether individually or collectively and without discrimination. Since its beginnings the Organisation has been advocating the need for some basic minimum rights that are rooted in the fundamental rights related to civil and political freedom[14]. Thus, basic labour rights, in the opinion of the Organisation, are meant to guarantee minimum rights and social protection, whatever a country's level of development may be, or its historical or cultural particularities. The intention is to guarantee that all individuals have the necessary means to claim in every State (considering the specifics) equitable compensation for their work. Cassin states that the ILO Constitution is the basis for developing international rights related to the essential freedom of individuals (Cassin, 1950, page 68).

Due to the effects of the trade phenomenon in globalization, the International Labour Organisation considers that although globalization of the economy could be a factor for economic growth, which in turn could be an essential condition for social progress, globalization alone is not a sufficient condition to ensure said progress. Growth should be accompanied by a minimum set of rules for a society to function, based on common values, by virtue of which the interested parties have the possibility to claim their fair share of the wealth that they contributed to creating. In this context, the ILO must endeavour to re-establish the interest in boosting the efforts of all the countries that are dedicated to the goal of ensuring that

[13] It establishes "*...rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*.
[14] See the ILO Constitution and the Philadelphia Declaration, 1944 (incorporated in the Constitution in 1946).

social progress goes hand in hand with economic progress, while respecting the diversity of situations, capacities and preferences of each country.

To this end, eight ILO conventions have been qualified by the Governing Body of the Organisation as being fundamental to guarantee the rights of those who work, whatever the level of development of each Member State may be[15]. This does not imply that other instruments do not contribute to a lesser or greater degree to the defense of human rights (Jenks, 1968, pages 235 and 236). Said eight conventions are considered to be of higher priority than the others, as they are the instruments that are necessary in the struggle for better individual and collective conditions at work. These instruments are:

- Convention 87. Freedom of Association and Protection of the Right to Organise, 1948
- Convention 98. Right to Organise and Collective Bargaining, 1949
- Convention 29. Forced Labour, 1930
- Convention 105. Abolition of Forced Labour, 1957 [16]
- Convention 111. Discrimination (Employment and Occupation) 1958 [17]
- Convention 100. Equal remuneration, 1951
- Convention 138. Minimum Age, 1973
- Convention 182. Worst Forms of Child Labour, 1999

The rights[18] stated in these instruments are, therefore, considered as the foundation to achieve sustainable economic growth and development (paragraph 54b of the Programme of Action of the World Summit on Social Development held in Copenhagen), as they sustain the dignity of people and their equality in society.

Notwithstanding, as the ILO's objective is social progress and justice in a climate of freedom, it recalls, without prejudice to any particular ILO legal instruments (Conventions and Recommendations), that related to these issues there exist common international norms that have higher legal hierarchy than ILO instruments and that because of the Organisation's constitutional mandate, thus are enforceable to all Member Sates. They are principles that are applicable without the need for ratification or commitment (ILO, 1953, page. 40).

Thus, even if Governments have not ratified the Conventions qualified as being fundamental and therefore, not bound to apply them legally, all 120 members have an obligation to themselves and as Member States, to put into practice the general principles embodied in these rights, as they are the expression of some values that were accepted when Members freely joined. This is the specific mandate that was affirmed in the ILO Declaration of Fundamental Principles and Rights at Work, 1998[19].

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[15] In 1994 only 6 Conventions were considered, in 1995 the minimum age Convention was added and in 1999 the Convention related to the elimination of the worst forms of child labour.

[16] Said Convention makes reference in its Preamble to the connection of all international Charters on human rights and points out: *"Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights."*

[17] Said Convention makes reference in its Preamble to the connection of all international Charters on human rights and points out: *"Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights"*.

[18] Without going into a possible discussion of whether international standards form part of human rights (see Valticos, 1998).

[19] Although the first mention of this idea appears in the report of the Director General at the International Labour Conference in 1994, the Declaration originated in Copenhagen in 1995, when the heads of States and Governments, gathered at the World Summit for Social Development, assumed some common fronts and adopted

In view of this, the Declaration of 1998 makes a new and important contribution in recognizing that all ILO Members, "*...even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions*".

In sum, for the ILO the existence of labour rights is part of a true commitment made by all Member States[20], an expression of recognizing socially the existence of some social values that are general, essential, superior and minimum.

Also in the field of labour, rights are not unchangeable (*ver supra)* and in fact, the ILO Declaration and the *selection* of Conventions is an example of this. As the world of labour evolves, values and principles acquire a new meaning and scope.

4. Fundamental rights at work: a binding whole

Fundamental rights at work are, as mentioned, the free expression of individuals in exercising their productive and professional activities. They are basic instruments that guarantee some key development aspects during an important stage of life, allowing people to exercise their capacity as regards being useful in the community and receiving in turn compensation.

Individuals need, therefore, the freedom to choose a profession, protecting themselves from forced or morally unacceptable labour (as is the case of child labour that spikes future development). They also need free access to work, through the existence of true and effective equality and protection to freely exercise their right through another freedom, association. Freedom can only be guaranteed through established minimum rights that permit the exercising of rights without limitations and based on equality: these are the fundamental rights.

As mentioned, originally labour rights were established to overcome, by social means, the economic inequalities between employers and workers. However, this is only possible through compliance with certain minimum rights that are embodied in the Declaration.

Although these rights have their own evolving nature in practice, they are closely linked, and it is not possible to achieve the final objective -work based on principles of equality- without guaranteeing the effective compliance witheach and every one of them. These rights are characterized as being fundamental because of their nature, i.e. inherent human rights that act as "basic facilitators" – in as much as they allow for the development of other labour rights that are closely connected.

It is, therefore, impossible to guarantee equality while forced labour is rampant or to talk about equality at work when a child is forced to work due to a scarcity of money. Equality cannot exist if there is a lack of effective means to guarantee all rights at work (free association and collective bargaining) or if human beings are continuously used in forced or intolerable labour.

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a Programme of Action that referred to as "basic rights of workers": the prohibition of forced labour and child labour, the freedom of association and the right to organize and bargain collectively, equal remuneration for equal work and non-discrimination at work. The Conference of Ministers, organized by the World Trade Organization in Singapore in 1996, offered the opportunity to embark on a new epoch: The States renewed their commitment to respect recognized fundamental labour standards, agreeing that the ILO is the competent body to set and deal with these standards and affirmed their support for its work in promoting them.

[20] Without prejudice to the legal value of the Declaration that is at least equivalent to a resolution

The international Conventions that deal with core rights establish the above-mentioned link between these rights and contain numerous regulations that clearly indicate and advocate the existing links. For example, the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) establishes in Article 2: "*Workers and employers, without distinction whatsoever, shall have the right to establish organisations and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation"*. For its part the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) -the expression and development of Convention 87- states specifically in Article 1 that "*Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment"*.

The Committee on freedom of association has, itself, recognized that equality is inseparable from freedom of association and collective bargaining, declaring that freedom of association would not exist should there be any limitations on equality (ILO, 1996, paragraph 205).

Non-discrimination as a guarantee for freedom of association, is reflected in all the decisions of the Committee on Freedom of Association, as well as in the observations and proposals from the Commission of Experts on the Application of Standards and Recommendations. Thus, the prohibition of favouritism or discrimination against certain organizations or race, and in particular protection against acts of anti-union discrimination, by virtue of Article 1 of Convention 98 and as mentioned in the statutes, are statements that facilitate the determining, in an obvious manner, of the interrelation (for not using the words intrinsic interdependence) between both principles. The interdependency is made obvious by the fact that the second major cause for violating freedom of association, according to the complaints presented before the Committee on freedom of association in the 80s and 90s, was discrimination (see Von Potobsky, 1998).

Discrimination is, moreover, the obstacle that impedes true compliance with the prohibition of forced labour, as the Conventions dealing with the issue reveal. In fact, the Forced Labour Convention, 1930 (No. 29) makes reference in Article 14 to equal remuneration by stating "*...forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labourer is employed or in the district from which the labourer is recruited...*[21]. The Abolition of Forced Labour Convention, 1957 (No.105) for its part, goes into detail about the concept of interrelation and prohibits in Article 1 forced labour*: d) ...as a punishment for having participated in strikes..; e) ...as a means of racial, social, national or religious discrimination*[22]. Thus, bondage that limits freedom of association or as a form of encroaching on equality, makes the point clear, including from a legal standpoint.

This premise doesn't sway, but rather strengthens the decisions of the Committee on Human Rights of the United Nations to consider non-discrimination as a core and universal principle that is relevant to all human rights[23].

[21] Curiously this Convention nonetheless makes provision in Article 11 for the protection of women, (also stated in all Conventions prior to 1970) limiting authorized forced labour *Only adult able-bodied males who are of an apparent age of not less than eighteen and not more than forty-five years may be called upon for forced or compulsory labour.*

[22] In the latter ambit the Commission of Experts, on examining the national legislation on strikes related to Convention 105, have followed the principles of the Committee on Freedom of Association to determine the restrictions on the right to strike, even including both principles in the interpretation.

[23] Observation number 18- Non-discrimination (37th session, 1989) paragraph 1, ILO 1996, page 28.

The Conventions concerning equality are a true reflection of said interrelation. The Equal Remuneration Convention, 1951 (No. 100) establishes in Article 2 c) that the principle of equal remuneration should be applied through *collective agreements between employers and workers*[24]. The Convention indicates that coherent and efficacious collective bargaining is an indispensable requirement in the application of this principle, for frequently wages are determined by way of said collective instruments.

Finally, the Conventions dealing with minimum age and child labour are also considered in this framework of legal interrelation. The recent Worst Forms of Child Labour Convention, 1999 (No. 182) specifically states in the preamble: "*Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930",* and defines in Article 3 a) "*...all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict."*

The Recommendation concerning minimum age (No. 146, 1973) has a bearing on age mentioned in Convention 100 by pointing out in Article 13 that "*In connection with the application of the preceding Paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to -*

a) the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work ".

Not only international Conventions reflect the intrinsic judicial relations of fundamental principles and rights, the Declaration itself assumes this by dealing with the four principles as a whole, as only one legal body, i.e. an indissoluble framework.

Interdependent Relationship of the four categories

As time passes we see more indications of the interdependent ties between the four categories of principles and rights at work. They mutually strengthen one another. The information we have examined points to a distinct connection between forced labour and the other three categories. We are particularly concerned about forced labour as a means for stifling political opinions or association activities and as a manifestation of discrimination for reasons of ethnic origin.
ILO, 2002a. (Nonetheless, in March 2002 some members of the ILO Governing Body expressed their disapproval as regards this criterion).

The national legislation also makes reference to said indissolubility and frequently the same issues are found in the conventions and universal standards. Thus, in most standards discriminatory dismissal not only includes the issue of equality (based on the classic criteria of race, gender, religious beliefs, nationality etc.), but also that of freedom of association (discriminatory dismissals based on the condition of association, for example).

[24] Article 3. 2 completes this connection by establishing that *The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or where such rates are determined by collective agreements, by the parties thereto.*

In several countries such as Cabo Verde, Côte d'Ivoire, France, Haiti, Italy, Luxembourg, Panama and the Dominican Republic, workers covered by the labour law are protected against anti-union discrimination, while countries like Australia or Ecuador even provide special protection.

On the other hand, the issue of forced labour, in relation to striking, (as reflected in Convention 105) appears in some Constitutions, and the concept of equality in minimum age appears with more precision in the new laws on minors or children in the different countries.

In Honduras for example, the Constitution establishes the protection of all children against all forms of abandonment, cruelty and exploitation, expressing that no child may be subject to servitude, (reflecting the connection that exists between child labour and forced labour). In this regard there are numerous legislation that include concrete regulations on prostitution and the sexual exploitation of children, establishing sanctions (Sri Lanka, Art. 360B of the Penal Code; Philippines, Art. 5 Title III of Law 7610), or qualifying it as a felony in Colombia and Costa Rica[25].

5. Effects of non-compliance with some fundamental rights: proof of the interrelation.

The intrinsic relationship between the four principles is evident in everyday life. If we look at the issue of sexual exploitation, for example, it is obvious to conclude that only a combination of the four principles and their effective application could lead to ensuring the absolute eradication of sexual exploitation from a social perspective. This does, however, not imply that all four principles have to be dealt with simultaneously. Nonetheless, complete compliance with principles cannot be obtained until the objective of each one of the four principles has been reached. Action should be taken in each case in function of specific circumstances, real needs and commitment, but the final goal should be effective compliance with the four principles, so as to reach the minimum required social base.

In this context it is indispensable to bear in mind that if action aimed at enforcing compliance with principles is from the perspective of a particular principle (for example where more opportunities are considered to make compliance effective), this must not be perceived as being independent but rather as an integral part of the larger picture. Action focussed on only one principle, without contemplating the whole panorama could generate distortions in the labour market. A case in point is a project financed by an international organization to support poor women in two Ugandan communities by giving them financial credit (see Kasente, 1998). This limited and focussed action to guarantee equality in this group only generated greater inequalities, poverty and child labour. In fact, the women in this region for cultural and economic reasons based on discriminatory criteria had never had access to credit before, nor could they manage to trade their agricultural produce. Eventually, the credit that was given brought about economic development but did not generate among the men a change of attitude in working with or for the women. The land worked by the women had better seeds, more capacity and better conditions to obtain better production, but without effective manual labour (culturally the men didn't have the willingness), which conduced them to harnessing their children, without even the minimum labour conditions and segregating the children from the community.

[25] Qualified as such, the inducement of minors to commit perverse or premature sexual acts.

Sexual exploitation that affects in many cases minors, has similar (including typical) situations of submission as that of forced labour, with accentuated inequality (with a greater incidence among girls and excluded sectors of the population) and violation, while being marginal to any kind of legal defense access. Activities linked to the trading of sex, in particular of children, frequently present evidence of flagrant violation of the four principles, not to mention unlawfulness in other legal ambits and the consequent incidence on the issue of decent work. Without prejudice to specialized programmes, specific action is required to rectify this situation, action that would foster effective compliance with the fundamental rights of all workers. A similar situation has been detected in the area of domestic work (women who are excluded in developing countries, retaining their identification documents to prevent their free circulation in the labour market, having no contact with professional associations and in a situation of isolation). It is also apparent in many cases of farm work, especially in the countries that are receptors of immigrants, and in particular in remote zones that are difficult to access in the jungle and mountains (gold panning in Peru, farms in Pará in Brazil, or agriculture in the jungle of Bolivia).

As regards associations, non-compliance with restrictions prescribed in the union legislation[26], frequently bring about discriminatory practices (to mention again the related number of cases presented before the ILO Committee on Freedom of Association) as well as a weakening of the organized workers' movement that impedes access of the most vulnerable sectors and sectors where forced labour and child labour are more prominent (this is the case in the already mentioned agriculture sector – excluded from the right to association in some legislation, for example in Honduras and Bolivia- or domestic work in Brazil, Canada, Jordania and Kuwait).

According to numerous studies, there is a cause-effect relationship between union organization and discrimination at the workplace, for when discriminatory practices are exercised for any reason, the employer provokes the disorganization of the work group, causing absenteeism and lack of dedication from the workers[27].

In practice it has been demonstrated that the presence of workers' associations bridges the wage gap between women and men. Although it is difficult to prove this link in countries such as the USA or Australia (see the studies of Lewis, 1986 and Christie, 1996, pages 43-56), several studies in Great Britain, Japan and Germany have revealed that the wage gap between women and men is less if women are unionized (see Blanchflower, 1996, pages 219-254, Nakumura, Sato and Kamiya, 1988, and Schmidt and Zimmermann, 1995, pages 705-710). In the case of indigenous people in Canada, the studies of Patrinos and Sakellariou (1992, pages 257-266) have shown that the presence of unions facilitate the mitigation of wage discrimination.

Equality and the abolition of forced labour and child labour are not only subject to the effective application of the law. There are many governments that have established that the participation of workers' and employers' organizations is necessary in designing programmes and methods to fight against said situations. This implies the immediate application of true freedom of association and full exercise of the same, which is a *sine qua non* condition for compliance

[26] Nonetheless, restrictions on and at times suppression of civil rights continue to create grave violation of freedom of association, as shown in the conclusions of the ILO supervising bodies. Advisors of the ILO to the Declaration have highlighted the delicate relationship between civil rights and freedom of association of workers and employers. Although the situation has improved over the last years, a third of the complaints brought before the Committee on Freedom of Association remain directly related — in total or in part — to the violation of civil rights.

[27] See Wrench, 1997. As regards statistics on the cost (for the employer) of discrimination and racial harassment at the workplace in the United Kingdom, see the report of the Commission on racial equality, 1995, pages 11-13.

with other rights. In this context the ILO contributes by promoting in most of its instruments tripartite action as a way to overcome the different labour problems, while a great part of the efforts of international workers' associations regarding forced labour has been dedicated to child labour.

In some countries interrelation is expressed in practice through collective bargaining. In Côte d'Ivoire, Article 44 of the Collective Inter-professional Convention of July 20, 1977 reflects Article 31.2 of the Labour Law according to which all employers must guarantee equal remuneration for equal work or work of the same value among wage earners, irrelevant of sex, nationality, race, religion, social origin, etc.

In the same context, for example, the Employers' Confederation of Sweden have been playing a very active role in the fight against discrimination at the workplace[28], as in the case of the Confederation of Christian Organizations of Belgium[29].

Brazilian trade unions have contributed by raising awareness on the matter of forced labour and in creating support mechanisms. In the State of Piaui, in the 80s, the Rural Workers' Union of Pimenteira, after rescuing workers who were in situations of forced labour in sugarcane plantations, tried to prevent forced labour from being repeated, negotiating to gain control of registering the workers who left the villages to work on the plantations and to register the data with the local police. Also in Bahía, the Rural Workers' Union of Feira Santana tried to implement a similar control at the points where workers were leaving and entering. At a national level, the Central Workers' Union (*Central Única de Trabajadores – CUT*) created a direct phone line for complaints from enslaved workers, which were channeled to competent authorities. The line was suspended for lack of acceptance by the population.

There is no doubt that women constitute a large and growing portion of the working population, but they continue to be insufficiently organized or represented in associations. In the opinion of certain experts this is because the sectors that predominantly include women, such as domestic service, are excluded from the legal protection of freedom of association. With the aim of establishing equality between the two genders and strengthening the associations, it is indispensable that women are given the freedom to join a union and that their interests are represented on an equal footing to that of men. As the ILO Commission of Experts stated, women should not only be present at the negotiating table but they also deserve the opportunity of expressing their own interests more precisely during collective bargaining, in order to have the assurance that in all collective agreements the priorities and aspirations of both genders are taken into consideration (see ILO*,* 2000a, annex 6, paragraph 21). A similar situation is present among minority groups (indigenous and foreign people for example) who are not included in unions and whose demands do not appear in the unions' programmes.

[28] Thus, participated in the Work Group of the European Commission that in 1995 elaborated the joint Declaration on the prevention of racial discrimination and xenophobia and the promotion of equal treatment at the workplace, in preparation for the Summit of social dialogue that was held in Florence on October 21st, 1995. After formulating said Declaration, the parties published a text of good conduct in which they examined different kinds of impediments, but above all they highlighted positive examples and the benefits of equal opportunities in the labour market. The publication also contains ideas and proposals for change. In November, 1997 social partners decided to make a centralized joint appeal for employers' and workers' associations, as well as enterprises and wage earners to develop greater ethnical diversity, taking into account the need for functionality and the local conditions. In order to support the efforts at the local level, the partners compiled a guideline. Moreover, in the spring of 1998, they decided to establish a joint committee to follow-up, support and evaluate the activities, so as to obtain greater diversity in the world of labour and less discrimination.

[29] They fought energetically for the adoption of the collective work agreement (July 17th, 1998 – No. 38) that formally prohibits discrimination as regards hiring. After this date they organized training sessions with the militants and have published numerous pamphlets to raise awareness.

The ILO's voice at Work

Two of the greatest achievements in the last decade have been the codification and promotion of human rights — civil, political, economic, social and cultural — and the strengthening of democracy in all regions of the world. The consolidation of democracy goes hand in hand with an expansion of freedom of association and the right to organize. This has been the case in Chile, Indonesia, Mozambique, Poland and South Africa, among other countries. The ILO Constitution reflects this achievement that has been advocated by the Organisation since its foundation in 1919, and since thirty years ago the International Labour Conference has been highlighting the close ties that exist between freedom of association and the right to organize, collective bargaining and core civil rights, having adopted a resolution on the matter[30] . ILO, 2000b, paragraph 56.

It is encouraging to observe that in the last ten years there has been significant improvement regarding civil rights in several countries, above all concerning the setting free of union leaders who were detained in prison (for example, in the *Republic of Korea, Indonesia, Nigeria and Swaziland*) and of detained employers (for example, in *Nicaragua*) and the lifting of the state of emergency (for example, in *Bolivia*). Simultaneously, in many cases there has been a re-instatement of basic rights such as freedom of association and the right to organize. This is reflected in countries where law and democracy have been restored after previously being subject to dictatorships or martial law (for example, in *Nigeria*), and in those where there have been significant political and economic reforms (for example, in *Indonesia* and *South Africa*). It is, therefore, evident that freedom of association and the right to organize determine and facilitate the exercising of other very diverse rights at work. If workers and employers are denied the right to organize, they can certainly not exercise their other rights. Freedom of association benefits all those who are directly involved, and society at large.

In this context, the lack of freedom of association also has an impact on child labour. For example, frequently teachers are denied the right to unionize, a situation that fosters demoralization, poor teaching and as a consequence, student dropout. Children (particularly girls who in the most primitive societies, are considered as less important subjects to be educated) enter the labour market and frequently in dangerous situations due to the absolute lack of a stimulating environment.

On the other hand, forced labour, as in the case of freedom of association and other principles, is undeniably connected to the exploitation of children and women. Also Convention 182, as mentioned, makes specific reference to the connection between "traditional and perpetual" forced labour[31] and new forms of bondage such as that related to the work imposed on inmates in private prisons. Furthermore, violation of the non-discrimination principle is manifest in forced labour, as frequently the traditional forms of serfdom are in direct relation to ethnic diversities as in the case of Pygmies and Bantus in the Congo, or some indigenous people in Ghana.

The relation between forced domestic labour and child trafficking is evident and documented. According to the Government of Haiti the so-called *restavec*, domestic workers who are "admitted for life", include 250.000 children from underprivileged families (ILO, 1999a). The

[30] Regarding the Resolution on freedom of association and its relation to civil rights, adopted by the International Labour Conference on June 25th, 1970 at its 54th meeting.

[31] In the case of the slaves in Ghana (illegal since 98 with the reform of the Penal Code). The practice consisted of offering girls to animistic priests, to work for them and in this way to atone for the mistakes committed by family members.

submission of children to forced labour is clearly marked according to criteria of gender and age, as the younger the child is, the more difficult it is to escape from bondage. Child trafficking has become a lucrative business and it is estimated that there are 1.200.000 victims each year (ILO, 2002b, paragraph 106), taking into consideration that trafficking is also a consequence of poor family conditions and special cultures (this is the case in Western and Central Africa) and that it intensifies where sexual and racial differences exist, as in Brazil, where 502.000 children are working in homes and those being affected by bondage are girls and Afro-Brazilians.

In fact, frequently child labour is more aggravated in the case of girls and more apparent in some places, as for example in the rural areas of Bangladesh where girls work in the fields and additionally do domestic work. In some countries (Zimbabwe, for example) agricultural work is reserved for females and in this case girls are recruited in child labour (ILO, 2002b, paragraph 77).

Collective bargaining is an instrument that can be useful in the fight against child labour, as illustrated in some recent agreements. In Uganda the National Workers' Union for plantation and agriculture workers and the Kakira Sugar Works, signed a collective agreement that includes a clause establishing the prohibition of enterprises to hire workers under the age of 18.

The National Confederation of Agriculture Workers in Brazil (*CONTAG*) gives training courses to the workers on methods to include in collective bargaining agreements clauses that prohibit children from working.

At the international level, the International Workers' Union of Food, Agriculture, Hotels, Restaurants and Tobacco have prepared a collective agreement model with the objective of combating prostitution in the tourism sector. The agreement includes codes of conduct.

In sum, from this viewpoint it is clear that respect for fundamental rights at work is the only action in practice that could lead to the possibility of developing decent work. Multiple examples show that infringements on basic human rights do not only mean partial incompliance but also total violation of minimum guarantees.

6. The political and economic value of principles: necessary elements or a restriction on freedom?

At present there are at least three different positions regarding the economic impact of applying fundamental rights at work.

The first holds that said rights produce inflexibility in the functioning of the labour market, which contributes to "exorbitant" increases in wages and labour costs and consequently, higher unemployment. Should this inflexibility not exist, the only unemployment that would prevail would be voluntary. On the other hand, excessively high salaries thwart the competitiveness of enterprises, therefore affecting economic development and simultaneously, the potential of the economy to generate employment.

The second position is that the application of fundamental rights at work neither has a negative impact on salaries, nor on the level of employment. It contributes to social peace and in this way, to a reduction in country risk and an increase in investment that in turn boosts economic growth and generates employment.

The third position defends the application and respect of fundament rights at work, but taking into consideration that in certain countries this could generate a level of labour costs that micro and small businesses cannot afford, thus contributing to an increased segmentation of the labour market and informality. Those who defend this position argue that there should, therefore, be two types of labour regulations: one "more expensive" for formal enterprises and their workers, and another "cheaper" one for informal businesses.

These positions constitute three different ways of arguing and addressing one and the same question: Does the application of fundamental rights at work positively or negatively affect economic growth in the short and long term or not?

Although each of the three different positions can be defended or sustained with greater or lesser technical arguments and with greater or lesser empirical evidence, the truth is that although the theorists of each position are able to easily "disprove" the technical arguments of the others, empirical evidence is generally very partial (for every piece of evidence obtained in any given country, opposing evidence can be found in other countries). Also, in many cases the evidence is neither very obvious nor very empirical, but rather deliberately "contrived" data in order to back that which needs to be defended.

However, what seems to be clear regarding this issue is that there are no studies or research that give conclusive answers to the question.

In fact, a recent (and serious) investigation undertaken by Kucera (2001) concludes that it is not possible to demonstrate that the application and respect for fundamental rights at work encourages and contributes to economic growth... ...but neither the contrary.

Nonetheless, and as pointed out by Trebilcok (2001), when the negotiations of the Uruguay Round on trade were nearing their end in 1994, a debate began on the possible reference to international labour standards. At the first Ministerial Conference of the recently founded World Trade Organization (Singapore, December 1996), the ministers adopted the following in paragraph 4 of their final Declaration: "*We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organisation (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them"*. (World Trade Organization 1996, paragraph 4).

At the same time, the Organization for Economic Cooperation and Development (OECD) had initiated a study on trade and international labour standards, which was published in 1996 (OECD, 1996). Among the results, this study basically lead to the conclusion that there is no commercial advantage in not respecting freedom of association and in this way took up, from an economic point of view, the same position that the ILO has been defending for a long time as regards respecting fundamental human rights. This first verification was confirmed in the study for the year 2000 (OECD, 2000).

From all the revised studies the conclusion is that it is impossible to establish the net cost of fundamental rights, as this depends on the economic, political and institutional circumstances under which they develop, while bearing in mind that there are political and institutional costs that must be evaluated.

On the other hand, and as mentioned by Humblet and Zarka-Martes (2001), more than 80 years after the creation of the ILO, the adoption of universal labour standards continues to be relevant as "*...failure of any nation to adopt humane conditions of labour is an obstacle in the*

way of other nations which desire to improve the conditions in their own countries" (Preamble of the ILO Constitution). Referring to the ILO the authors hold fast that "*...its raison de'être is still to guarantee social peace, without which neither the multilateral trade system nor the financial system – and by extension the global economy – would be able to develop or even survive*" (ILO 1997, page. 8).

Recognizing, therefore, that there are no conclusive answers to the point in question, perhaps we should proceed to look at the issue from another angle. In doing so it would be necessary to start by recognizing (and here there is more than sufficient empirical evidence) the different degree of economic, political and social development of the countries and the great technical and economic heterogeneity existing within many of them. It should also be taken into consideration that economic, political and social development go hand in hand, i.e. there are no countries with high social development and at the same time poor economic and political development, or vice versa. Countries with a high level of economic growth also have high political and social development, while countries with poor economic growth also have greater political and social shortcomings.

If this is the case, and as mentioned evidence is abundant, then the issue or question should be formulated in a different way. Instead of addressing the economic impact of fundamental rights at work, we should ask ourselves why countries with greater respect for fundamental rights have higher levels of productivity and competitiveness and why by contrast, the countries where fundamental rights at work are violated almost systematically, the levels of productivity and competitiveness are lower.

So that it cannot be argued that the way in which the question is asked establishes a priori causality that is not proven (greater - lesser - regarding fundamental rights, greater - lesser – level of economic development), the question could, without any inconvenience, be reversed. In other words, why are the countries with higher productivity and competitiveness the same as the ones with higher respect for fundamental rights at work, and why in the countries with poor economic development are these rights not respected or hardly ever respected?

This same question could be asked (in either way) of specific countries (the least developed): Why in these countries do the rural areas that have less labour regulations or no regulations whatsoever have the lowest level of productivity and income and why are certain sectors of the urban economy (also the great minority) that have greater labour regulations the sectors that have the highest productivity and income?

The first answer to this question is that (and here there is also sufficient empirical evidence) the level of economic development (productivity, competitiveness, etc.) depends on the performance of local and foreign investment over time. The more developed countries are those that have had the highest rates of investment in the last century (or over the last thirty years, as in the case of Southeast Asia and certain Latin American countries such as Chile). In contrast, the less developed countries are those with lower levels of investment. There is vast evidence of this among the majority of the African countries and in Latin and Central America.

If this is the case - and the statistics of the International Monetary Fund and World Bank seem to confirm this- the question, therefore, is whether fundamental rights at work affect the flow of investment in the countries or not and how.

But by addressing this question we could be faced with the same answers as those to the original question. Yes, they affect investment, and negatively, because these rights distort the labour market, distortions that by raising salaries, discourage investment. Yes, they affect investment,

but positively, because social peace is one of the competitive advantages that are taken into account as one of the main criteria for investment. No, they don't affect investment, because investors are guided by other factors that are not labour related: taxes, legal stability, market, etc.

Then we should ask ourselves what in reality the investors base their decisions on.

Different surveys that have been undertaken show, at least in Latin America, that fundamental rights at work, and labour regulations in general, are not paramount factors for deciding to invest. In any event, the only socio-labour factor that investors seem to consider is the qualification of manual labour. In other words, the surveys show that regulations on fundamental rights at work, the social cost of protection and the salary policy neither attract nor discourage investors.

What attracts or discourages them?

The "attraction" factors are firstly, whether demand, local or foreign, exists for the goods and services to be produced. Second, whether there is macroeconomic stability, especially related to monetary issues (interest rates and exchange rates). Third, whether there is judicial stability that includes an autonomous, just and expeditious power. Fourth, whether there is sufficient and adequately qualified manual labour. Last but not least, whether there exists a certain culture of dialogue to ensure consensus and the effective remedy of disputes in the framework of a stable democracy.

By contrast, the "discouraging" factors are a lack of the attraction points previously mentioned and a climate of social upheaval and political instability that puts at risk the adequate functioning of the markets, the judicial system, the safety of company executives, etc.

It is, however, true that in the short term disrespect for fundamental rights at work, and therefore labour deregulation, whether de facto or dejure, could be beneficial to certain types of traditional entrepreneurs who sustain their companies at the absolute lowest costs, even if it means lower productivity levels. These enterprises survive thanks to low costs, not derived from high levels of productivity but rather from over exploitation, especially of labour. However, these entrepreneurs do not represent the modern employer of today nor of tomorrow, neither are they the ones who lead the economic growth and development of the countries. To a large degree this is a kind of entrepreneur that is becoming extinct as the countries are progressing.

If respecting fundamental rights at work does not constitute a factor for investment, then what is its importance? It is most definitely of great importance, not only for the economy, at least in the short term, but also for the human aspect, i.e. social and political. Notwithstanding, its economic impact in the long term should also be kept in mind.

Let's examine this issue in more detail.

The social importance of fundamental rights at work is related to the degree of security that people have or perceive with respect to their current or future situation. As mentioned in previous chapters, all persons, for simply being a person, have the right to feel that they have a role to play in a social group and that society and the State must offer them minimum securities, among them labour securities, in order to fulfil this role and to be fairly compensated for it. Without security there is no freedom, and without freedom, economic development will never be satisfied, except among the privileged minorities.

This social importance has obvious political implications. While dealing with this issue one cannot avoid thinking about Argentina. The insecurity that is consuming the majority of the population (insecurity associated to poverty), including the middle class, is generating (or could generate) a climate of social instability that could put the political system of the country in jeopardy. This is not about anomie (so frequent), but about rebellious and in a certain way revolutionary behaviour (although not in the Marxist sense of the term, but more in line with the labour moments of the French revolution). Moreover, in such situations capital flows out of the country and potential investors look for new opportunities elsewhere.

On the other hand, one should not overlook the long-term economic impact of respecting fundamental rights at work. We believe that this impact is positive, as demonstrated in the economic development of Western Europe countries, the United States, Canada, Australia and, in the case of Latin America, Chile (except during the military regime), Costa Rica and Uruguay. Moreover, there is no evidence showing that respect for fundamental rights at work has had a negative impact on economic growth in the long term, keeping the countries in a state of underdevelopment. Also countries such as those in Southeast Asia, that now have a low level of labour regulation, saw how once the macroeconomic balance was re-established after the crisis of 1997, investments returned, despite the existing high levels of labour regulations at that time. This demonstrates the relatively little importance that is given to high levels of regulation when making short-term investment decisions.

Thus, evidence shows that the lack of respect for fundamental rights at work does not constitute an element that helps to attract investments. In other words, and looking at the issue from denial, investors are not searching for countries where fundament rights at work are violated to place their investments. If, for example, one uses as an indicator the lack of respect (or disrespect) for fundamental rights at work compiled by professors of the University of Amberes (Wermenbol, Cuyvers and Van den Bilcke, 1998), one observes that the countries with the worst incidence are north Korea, Kazakhstan, Serbia, Uzbekistan, Vietnam, Sudan, Cambodia, Mali, Pakistan, Uganda, Bangladesh, New Guinea, Burma, Morocco and China. However, on examining the quantity of foreign investment published by the International Monetary Fund (IMF, 2001) it becomes clear that these are the same countries that attracted the least amount of investment, with the exception of China that until recently was closed to foreign investment. The attraction of China undoubtedly lies in the vast opportunities that its markets offer.

In addressing the issue from a positive perspective, respect for fundamental rights does seem to have economic importance in the long term. The mentioned studies of the University of Amberes and the IMF demonstrate that the highest rates of investment sustained over time are to be found in countries where the incidence of respect for fundamental rights is higher: the Netherlands, Norway, Sweden, Finland, Germany, Poland, Spain, Yugoslavia, Argentina, France, etc.

What would explain this positive impact that fundamental rights at work have on economic growth in the long term? Existing studies (albeit studies that cover more than just labour) suggest that, as in the case of Chile, Costa Rica and Uruguay in Latin America, the answer lies in the social and political stability that is generated a a result of respecting these rights. The stability in turn, as mentioned, constitutes a *sine qua non* condition for a sustainable increase in investment flow.

For this reason, as the Director General of the ILO, Juan Somavía, has repeatedly pointed out, it is necessary and urgent to incorporate social objectives, especially those related to labour, in the economic policy to "*...reduce the lack of decent work*" (2001). Currently a debate is

underway about whether the governments should give priority to economic growth driven by the market and later deal with the social consequences of this option, or if by contrast, efficacious economic systems should be incorporated in a social framework of rights, participation, dialogue and protection. Many argue that there are solutions that would require a compromise between the quality and quantity of jobs, and between social costs and investment. They also argue that regulated protection restricts the flexibility and productivity of enterprises. Nonetheless, as mentioned, respect for fundamental rights, as regards inducing sustainable increases in productivity in the long term, constitutes an optimum strategy for boosting enterprise competitiveness and in turn a successful economic policy**.**

7. Fundamental rights at work: the minimum common denominator in facing globalization.

As mentioned at the beginning of this reflection, the cornerstone of a modern social State is the equal treatment of its citizens in all ambits, a principle that is ever more necessary and pertinent if we place it beyond the national borders, in a context of globalization. Thus, in the field of labour equal treatment of workers is the core factor to prevent illegal practices in international trade and to guarantee basic minimum work conditions that would pave the way for people to progress while exercising a productive activity in a context of general social justice.

The ILO Constitution establishes that "*...failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries*", a consideration that since 1919 has embraced the idea of loyalty and universal solidarity and that is translated into a minimum level of labour conditions which the Constitution sets forth.

According to the Constitution (and other Universal Declarations, as well as the positive law in almost all countries) the existence of a series of fundamental principles and rights seems necessary and unavoidable in order to reach the objective of guaranteeing equal labour conditions that reflect said minimum common denominator, i.e. a series of minimum values that are inherent to the population and that are applicable and demanded, in conformity with the positive law, irrelevant of the development level of the country. This general need implies reconciling (at the same level) the recognized said principles in such a way that they become "universal" rights.

From an economic perspective –as we have pointed out- compliance with these rights would not mean a loss in the fiscal coffers, as apart from not aggravating the costs (as mentioned -*see supra*- although quantitative benefits cannot be affirmed, neither can the extraordinary costs be proven), it would imply that no other State can make use, in a "legitimate" way, of substandard working conditions in order to obtain products at better prices. In other words, fundamental rights that are established and enforced universally would deter the so-called social dumping.

In this context, the mentioned study of the OECD for the year 2000 revealed that countries which comply with fundamental rights are able to improve on their economic efficiency because the qualification of their workers improve and a better work environment is created. Moreover, the existence of minimum labour standards mitigates the adverse effects that arise when there is a transition in the economy to a more open regime, facilitating foreign investment. Based on this study, the ILO investigated the direct impact of international standards on labour costs and direct foreign investment in 127 countries, finding that no solid evidence was available to indicate that foreign investors favoured countries with inferior labour

standards. The statistical sample seemed to demonstrate the contrary, (Kucera, 2001). In other words, fundamental rights do not only guarantee labour *fair play*, but also facilitate investment and in turn local productivity.

Compliance with fundamental rights is, in this context, a factor for development since it provides favourable conditions for a more efficient economy and better distribution of the income, begetting a reciprocal relation of efficiency–compliance. From this viewpoint the concept of development has to be understood in a broader sense and not be limited to strictly economic analyses, i.e. development related to the social-capital progress of a State, as the studies of Amartya Sen show.

When each of the rights is analyzed in a global context, it is easy to understand this approach. For example, even though full compliance with freedom of association could increase labour costs marginally, the need to respect rights is evident, since it is an indispensable principle to create an appropriate environment for boosting productivity, innovation and social peace. It would also attract foreign investment and moreover, permits society to cope with the shock and emergencies that result from financial crisis and natural disasters. Freedom of association is synonymous to civil solidarity and peace. There are many examples to support this, resulting in greater recognition of social dialogue as a social instrument for governments to address labour issues. Social dialogue facilitates productive consensus and allows for the development of solidarity and efficacy in the economic context. An example of this is a decision taken, by those who previously participated in a collective agreement in an enterprise, to pay lower salaries as a result of an economic crisis. However, when this is done in the rule of law and without consulting the social actors, the result apart from being legally questionable, (even if there is legal grounds to do so) is illegitimate because it does not meet with the backing of the involved parties. If it is the parties who decide to reduce their salaries, in a determined period and under special circumstances, the decision apart from being legitimate, would be applicable, acceptable, supported and effective, as the needs of the enterprise would be situated at the same level as the workers' rights.

In this sense social dialogue is a key instrument, in as much as it makes the economic conditions of the enterprise more predictable, since it allow for better decisions to be made while simultaneously giving credibility to the decisions of the management. Furthermore, social dialogue doesn't only have an impact on the enterprise or sector where it concentrates but extends to the public at large.

The results of racial and gender discrimination in practice have been qualified as being costly and ineffective (OECD, 2000, page. 42). As with forced labour, although it strictly speaking reduces labour costs (not only through the imposition of work, but also abusive conditions) it is considered to be an abominable social practice that meets with strong disapproval from society (in fact it is the only practice expressly denunciated by the WTO, prohibiting the trade of goods manufactured with bonded labour[32]).

Some policies in enterprises on equality or non-discrimination could generate in the short term an increase in costs related to administration, training and re-organization; and, in addition, the general and equal disbursement of benefits (for example an increase in salary for those who are being discriminated against) could also increase costs. Nonetheless, the truth is that in the mid and long term there is an improvement in motivation, a better response to the general economic

[32] General Agreement on Tarrifs and Trade, October 30, 47, included in the Uruguay Rounds in Article 1 (a) of the General Agreement on Tarrifs and Trade, 94.

situation of the enterprise and as some studies show, productivity improves proportionally to an increase of disbursed salaries (Arkelof and Yellen, 1990, pages. 255-283).

Child labour is, therefore, seen as an element for social stagnation, as it is the origin of unqualified and untrained manual labour. The use of child labour impoverishes the potential economic capacity of a country and negatively impacts the general health level.

Therefore, fundamental rights have an economic function that goes beyond the main function of achieving justice and equality at the workplace. It allows for a better-qualified and more productive workforce. Harnessing the productive potential of a worker is not a question of strength or piecework. In a production system where workers perform specific tasks, productivity depends on the existence of adequate cooperative labour relations and interrelations between the enterprise and workers, as well as a degree of job security of each worker individually.

Although the advantages of labour standards have been demonstrated, the existence of standards concerning fundamental rights is not the panacea for all labour problems. Without application their value is limited and very "literary", although being an inevitable reference. Certainly, a State that lacks resources to promote compliance and respect for rights, for example promoting education programmes and policies to prevent child labour, will not be effective in their search for solutions and will produce an imbalance in relation to other States.

In sum, fundamental rights have moral and economic world support, based on both social justice and the fact that it permits the prevention of destructive competitiveness, facilitating the governance of a globalized world. Thus, complying with rights is something that everyone must learn and exercise. The existence of cultural factors cannot be cited (typically used to justify child labour) or other arguments used in order to undermine the importance of compliance. The need to comply with rights is real, while flexibility in the application is only permitted when it is related to adapting to needs and in complying with the final objective.

The final objective is, therefore, an effective coordination of social and economic policies in the different countries that would engender improved and increased employment based on social justice, and this can only be achieved if a series of minimum rights are in place. These rights must be universal, and this is the reason for the value given to ILO instruments -whether the declaration or international fundamental standards. These are rights that deter destructive competition. They are born from solidarity and can be adapted in an equitable way to the needs of every country. Universality does not imply that the same level of decentralization or labour relations must exist in all countries, but rather that the right to bargain is guaranteed without obstacles and developed in accordance with the needs of the social actors.

8. The State, governments, social actors and fundamental rights at work

Until now we have been dealing with fundamental rights at work, their importance and their bearing on the economy and policies. This has been under the supposition that they are respected and that the national standards that regulate them are effectively applied. However, in practice: Are rights respected by the State and social actors, in this case employers and workers, who are directly involved?

Using as an indicator the overall number of complaints brought before the ILO regarding incompliance with the international conventions on said right[33], it is apparent that there is interest on the part of the governments (in as much as participating in the control mechanisms and being involved in the procedures) and especially, the workers (who normally are the plaintiffs) that these rights are respected. However, although the complaints about violations of the conventions and national legislation –in many cases well founded- are numerous and on the rise (between 1951 and 2001, 2158 cases only related to freedom of association and collective bargaining were presented and dealt with).

The situation is similar as regards respect for human rights in general. There is the political will to respect them, but violation persists, especially in countries that are relatively less developed and that have authoritarian regimes and fragile institutions[34]. In the social ambit greater or lesser respect for principles and fundamental rights has nothing to do with prosperity or economic progress, but rather with freedom and the institutional capacity to ensure observance with the same and to apply exemplary sanctions that sufficiently dissuade offenders. Although this is possible in a democratic environment, it is still not free from obstacles.

In many of the countries where authoritarian governments or formal dictatorships reign, there isn't the political will in the executive branch to respect human rights and fundamental rights at work, even if their official declarations, generally oriented to foreign markets, allege the contrary. Often time these are corrupt governments that are serving the interests of their own members and small economic and social groups where they are involved, attributing to these personal interests the character of country interest, considering that the success of their own businesses are synonymous to national development. For these governments the rights of the people and the community pose a threat, because in respecting the rights of the population, these governments would be obliged to modify the nature of their authoritarian or dictatorial regime.

If in the majority of countries, or at least in those with formal democracies, there are governors with the political conviction to respect fundamental rights and States with the institutional capacity to supervise and sanction, then the question is: Does this same will and conviction exist among employers and workers?

In the case of employers, it is apparent that their infringements on fundamental rights at work are less in the more developed countries but more in those countries that have a lower level of development, especially, as mentioned, in countries where the regimes are not truly (and not only formally) democratic and lacking solid public institutions.

[33] These are the complaints lodged in virtue of Articles 24 and 26 of the ILO Constitution. The complaints lodged in virtue of Article 24 related to freedom of association and violation of the right to collective bargaining are particularly relevant as a primary indicator that, in counting on a special control mechanism (Committee on Freedom of Association), the article is widely used.

[34] See the complaints lodged before the Committee on Human Rights at the UN or the cases submitted to diverse regional bodies as, for example, the Inter-American Court of Human Rights.

The above-mentioned is sustained by the fact -reasonably assumed- that "a democratic culture" borders on the behaviour of the society and its organizations, including the performance of the workforce in the enterprises. Therefore, the greater the respect for fundamental rights at work, the greater the development of this "democratic corporate culture", leading us to define between true enterprises and mercantilistic businesses. The true enterprises operate with a perspective of competitiveness, not only in the short term but also in the long term, for which they require sustainable productivity increases, attained by a constant upgrading of their technologies and the developing of a labour relation with effective cooperation between the owner or manager and the worker. On the other hand, mercantilistic businesses are production units that have the vocation to operate with the highest possible profit margins in the short term, without an explicit vocation for permanence, and giving preference to the absolute lowest costs over an increase in productivity.

In establishing the impact on democratic development, it implies that there is a relation between democracy, the true enterprise hereinafter referred to as "*enterprise*" and mercantalistic business hereinafter referred to as "*mercantilist*", as defined previously. In continuation the issue is covered in more detail.

In the more developed countries there are relatively speaking many more *enterprises* than *mercantilists*. Therefore, a true corporate culture exists, developed over many years of economic progress in a context of a developing democratic regime. In these countries it is, thus, not surprising that respect for fundamental rights at work and human rights in general have become the foundation of democracy itself and that these rights have been incorporated in the culture of organizations that, as in the case of the *enterprises*, have been born or have grown in a democratic environment. It is neither surprising that in these countries the State sets the regulations that it considers necessary to supervise the effective application of norms relative to these rights and to sanction the offenders.

In the countries that are relatively less developed, especially those with authoritarian regimes or incipient democratic regimes after years of effective political dictatorship[35], *enterprises* are scarce and *mercantilists* abundant. This is obviously not an unjustified value judgement from our part. The predominance of *mercantilists,* in the sense that it has been given here, is in a certain way explicable. In countries where there are small and fragile markets, no (or limited) legal security, weak institutions, corruption and political tyranny, running an *enterprise* is very difficult, and generating a corporate culture is, at least in the short term, almost impossible. Under these conditions *mercantilists* flourish. The latter aims to satisfy small market segments, making sure that a return on the investment is procured as soon as possible. Once this is achieved, business activities are continued for as long as it is feasible to procure the highest possible profits. When the business comes to an end, it is a question of searching for a new opportunity for implementing another operation that has similar characteristics. Moreover, when talking about new opportunities, it is not unusual that these are offered by a politician who wants to share with his partner the benefits of the business, given that in many countries the career of political leaders tend to be ephemeral.

For *enterprises*, fundamental rights at work are important, for *mercantilists* they aren't. For *enterprises*, respect for fundamental rights is even a necessity, as it provides the *sine qua non* condition for being able to establish alliances with the worker (collective bargaining). This in

[35] With political dictatorship we refer to regimes that are formally democratic (for example the regime of Stroerner in Paraguay or of Fujimori in Peru), but whose practices and ways af acting are not truly democratic, but rather proper of a dictatorship or an authoritarian regime that serves the corporate interests of certain minority groups.

turn engenders sustainable increases in productivity and competitiveness, which ensures (within the normal risk that exists in all markets) a long and successful future for the enterprise. For the *mercantilists*, fundamental rights at work are not only of no importance, but moreover, a true obstacle. If there is no goal of increasing productivity and competitiveness in the long term, but rather to recover the investment as soon as possible and to obtain as much profit as possible, then it is required to operate with the absolutely lowest costs. The existence of rights, unions and, in general, labour standards impose restrictions on a cost reduction strategy of this kind.

When arguments are heard, as in the case of micro-enterprises in the informal sector, that their informality is due to not being able to confront the high costs of formality, especially related to labour, one cannot help thinking that these arguments are to a certain extent correct. However, this is not sufficient reason to explain this phenomenon. To these arguments or reasons are added the lack of a true corporate culture, replaced by a culture of quick and easy profit. The question is whether in countries that are less developed, with weak institutions and States with a high degree of corruption, there is an alternative to quick and easy business.

On the other hand, one cannot ignore the existence of a corporate behaviour that could be coined as a "cultural transmutation". This is the behaviour of some multinational enterprises that expand their operations to countries that are relatively less developed, in many cases by buying state-run companies that are in a process of privatization. Although they respect the labour rights of the country of origin where the company matrix is established, they adopt in the country of arrival a different behaviour, not that of the enterprises of the country where they come from, but rather the behaviour of the *mercantilists* (in the sense previously mentioned). When one sees this kind of "cultural transmutation" (and we are all aware of many cases) it is pertinent to ask whether these multinational companies arrive in developing countries to set up *enterprises* or just to become *mercantilists*. One would expect that the presence of these enterprises would help to develop a democratic corporate culture of respect for the rights of the people and workers, but in some cases what they actually do is foment a culture of quick and easy profit.

In other cases the multinational companies adopt certain rules of the game typical of a stable environment with good labour relations and productivity. Taking the case of Bolivia as an example, the labour relation system is rather conservative and since 1993 there had not been any collective bargaining. However, the process of capitalization (privatization) initiated in 1996 produced the only existing collective bargaining agreements in the 90s in the recently privatized electricity (ENTEL) and water (Aguas del Ilimani) companies. Multinational enterprises with foreign capital preferred to begin with a stable situation in the enterprise guaranteed by a conventional labour framework rather than an unstable yet flexible labour market where labour guarantees are in the hands of employers under particular circumstances. In this case the multinational enterprise with foreign capital preferred social peace initially with some stable labour relations to a possible reduction in costs using the flexibility permitted by law.

It is also necessary to make a distinction among workers for different reasons to those of the employers. It is not surprising to see how on many occasions workers from the informal sector or domestic workers are resigned to the fact that the employer does not make contributions to social security or finance any other services established by law, in exchange for receiving higher wages. These are not workers who relinquish their rights because they do not consider them to be important, but workers with very low productivity and income who prefer more money now in exchange for less (or no) security later, when they have to face a situation of

illness or unemployment, among others. The problem is that these workers represent the majority of the workforce in most developing countries[36], and they feel that they are not represented (usually due to ignorance) by the different unions that exist in their countries.

For workers from the private and public sectors of the formal economy, rights and defending the same are important, especially freedom of association and collective bargaining. As there is an imbalance in the labour area where the power of the worker is significantly less than that of the employer, the effective application of standards related to these fundamental rights allows for a better balance (or less imbalance). If standards were not applied, the relationship between an employer and worker would merely be individualized (and not an employer with collective workers) and based on the lopsided bargaining power of each one[37].

Social dialogue has definitely contributed in certain countries to the implementation of programmes designed to stabilize the economy, as in the case of some Latin American countries. It has also been present in the role that the Israeli unions played in the programmes for stabilization in the 80s. By contrast, in Venezuela at the onset of the 90s and in Zambia in 1985, lack of support for dialogue attempts was the downfall of their stabilizing programmes.

Albeit difficult to prove that social dialogue gives impetus to the performance of a country's economy, there is evidence that its existence in general boosts economic and social results. Lange and Garret (1985) addressed this theory, considering that positive economic results are foreseen in a country where the majority of workers are associated to a union and where collective bargaining is managed through associations that are the most representative. In this case, according to the authors, experience shows that the development of nation-wide social policies is possible, as well as the guarantees for wage increase tendencies.

In this kind of situation the question to address would be the following: What is the position of the employers' and workers' associations? The employers' associations defend, at least in most countries, respect for fundamental rights at work and the effective application of related standards. This defense does not pose as an obstacle, on the one hand, for admitting that in associated enterprises these rights are violated, and on the other hand, for reporting what they consider to be an abuse of rights on the part of the workers' unions. Cases such as the existence of various workers' unions in the same enterprise, with each one filing their own list of demands and whose leaders enjoy union privileges or the exercising of the right to strike without having previously exhausted conciliation and mediation mechanisms, are frequently reported by employers' associations. To this one has to add the problems related to exercising freedom of association that, although less frequent than in the case of workers, are on occasion made worse because of government policies or local circumstances (frequently in the countries with centralized economies in Central and Eastern Europe).

Workers' unions and their centralized unions also defend fundamental rights at work because apart form this being one of their main missions, it is the observance of these rights that makes their existence as representatives of the workers possible. As in the case of employers' associations, workers' unions also frequently report violations of their rights by the enterprises. In some cases they consider the position of the employers' associations to be of a double standard in as much as they defend the existence of rights but at the enterprise level these are not applied conscientiously or permanently.

[36] Most illegal immigrants in underdeveloped countries face similar situations.

[37] Since the onset of the 90s there has been a constant increase in the number of enterprises, at least in Latin America, where the employer only recognizes the existence of individual relations and considers the work contract to be a substitute (perfect) for collective bargaining.

Despite mutual criticism, one must recognize that at both the employer and worker level strong defense exists for the importance and need for respecting fundamental rights at work and for the effective application of existing related standards. With this in mind: How can we achieve proper promotion of these rights and ensure effective observance of the same on the part of both employers and workers and their respective associations?

In this regard the starting point must be principles, i.e. acceptance on the part of each of the associations of the need, representation and legitimacy of other associations, whether they are of workers or employers. Statements such as those heard on a certain occasion from the president of an important employers' association of a South American country, declaring that he opposes any process of social dialogue and arguing that unions are dying and it is preferable that they die soon because there is no sense to a dialogue process that only serves to revive the dead that we never wanted to resurrect, reflects an ideology that impedes the promoting of fundamental rights. Similarly, the opinion of a union leader, also from a South American country, that the employer is by nature a plunderer and exploiter, or that the only way to improve the labour situation of workers is armed conflict, reflects a mentality and ideology that undermines any effort to effectively promote and exercise rights.

From the standpoint of recognizing the need, representation and legitimacy of others, there are two strategies that should be key for employers and workers, as well as for the governments to promote the effective application of fundamental rights at work.

The first strategy would be to promote the development of a corporate culture with healthy labour relations which is based on the premise that, as a core element for the same, respect for fundament rights doesn't only have social and ethical value but also economic importance, in as much as it contributes to sustainable increases in productivity and competitiveness, and in turn, prosperity. In other words, a culture that considers that the labour relation isn't a zero sum equation but rather a positive sum. In order to develop this strategy and in promoting rights and the need for their observance, social dialogue (in enterprises, economic sectors and at the national level) is an adequate means. In fact, it is difficult to imagine a country where fundamental rights are respected but where there is no social dialogue or social consensus, or to imagine the opposite situation. There are many and various means to develop this strategy: dissemination campaigns, training programmes, bipartite and tripartite dialogue, etc.

The second strategy would be to develop an effective campaign for denouncing, investigating and, as the case may merit, sanctioning infringements on fundamental rights at work. Certainly in the world of modern labour relations the task of prevention and training is essential. However, this does not imply undermining the responsibilities of the government and social actors to denounce and assess alleged violations of rights and, in the case of the State, the responsibility to impose the sanctions established by law.

In order for a macro-economic and social policy that respects human rights, to be legitimate, dialogue is required between the government and employers' and worker's associations, increasing the possibility of accepting trade-off and sacrifices based on solidarity and consensus. Although unions are gradually being affected by the number of affiliates, it is certain that they are the only institutions capable of voicing the opinion of those who, in reality, are the producers of the wealth. In fact, agreements such as that signed in the Republic of Korea in 1998 on reforming the labour market after the Asian crisis is an example of the advantages in involving all those who are part of a social framework in decision making. Any

trade-off or agreement must in any event guarantee a minimum base, which in the area of labour is sustained by fundamental principles and rights at work.

There is no doubt that the existence of legal minimum rights embodied in the national legislation prompts dialogue to guarantee basic issues for the adequate functioning of tripartite relations, such as true freedom of association, the effective recognition of collective bargaining and non-discrimination. We should bear in mind that legitimacy is derived from consensus and respect for certain universal minimum rights.

9. Principles and fundamentals rights at work in Latin America and the Caribbean.

9.1 Fundamental rights at work in the regulations of Latin American and Caribbean countries

The existence of international American instruments that deal with human rights is the first indicator of the importance given to the topic in the region. Democracy, and the full application of economic, social and cultural rights is a continuous struggle for the defenders of fundamental freedom in a context of the State's gradual loss of control over the economy and the growing influence of multinational enterprises and world financial organizations.

The American Human Rights Convention circumscribes fundament rights, embracing the Universal Declaration of Human Rights and inserting it in the bosom of the Organization of American States (OAS), in the regulatory framework of their international and regional relations. At the same time systems of jurisdictional protection or almost jurisdictional are established by the Inter-American Commission and Inter-American Court of Human Rights. Thus, the connection between human rights and democracy seem to be at the heart of the OAS in the Declaration of Santiago, 1991 (relating to *human rights, democracy and the renewal of the Inter-American system),* as well as in the Democratic Charter adopted by consensus in the year 2001.

Labour and social rights are clearly reflected in the three regional instruments, which are the American Declaration of the Rights and Duties of Man (OAS Res XXX, 1948, OAS/Ser.L.V/IL82 doc.6 rev.1 p.17, 1992), the American Human Rights Convention (OAS effective July 18 1978, OAS/Ser.L.V/ii.82 doc.6 rev.1 p. 25, 1992) and the Protocol of the Convention, known as the Protocol of San Salvador (OAS, No 69, 1988, OEA/Ser.L.V/IL82/ doc.6 rev.1 p. 67, 1992).

The Declaration bases the right to freedom of association (Art. XXII) and the right and duty to work on the principle of equality and dignity as set forth in its Preamble (reaffirmed in Article II). The Convention for its part, and in what is related to fundamental rights at work, recognizes the right to protection during infancy (Art.19), equality before the Law (Art. 24), the prohibition of slavery and bondage and forced or compulsory labour[38] (Art. 6) and freedom of association (Art.16)[39].

[38] Practically in the terms that the related ILO Conventions are formulated.

[39] Although referring to all kinds of association (cultural, political, labour union, etc.), the article manifests again, in line with Convention 87 of the ILO and restricting the right only when public order, health, moral, or rights and freedom of others are threatened and restricted in the case of the armed forces and the police force.

Finally, the Protocol of San Salvador, based on the right to work (Art. 6) recognizes equal remuneration for equal work[40] (Art. 7, paragraph a.) and recognizes in Article 8 union rights, not only guaranteeing freedom of association but also the exercising of the right to strike. As regards children, Article 13 recognizes the right to education, making provision in 3.a that primary school education should be mandatory and free, which seems to indicate the need to establish a minimum age and avoid child labour, which is reaffirmed in Article 16 by guaranteeing the right of the child.

Legal recognition is, therefore, broad-based and the universal standards are reiterated regionally, providing a more specific character to universal commitments.

The sub-regional Charters and Declarations deal with the above-mentioned rights. For example, non-discrimination appears in Article 6 of the Central-American Social Integration Treaty of March 30, 1995[41], while all four fundamental rights appear as dealt with in the Civil Rights Charter of the Caribbean Community and the Declaration of Labour Principles and Industrial Relations (Bahamas April 28, 1995). For its part, the socio-labour Declaration of MERCOSUR (Río de Janeiro, December, 1998) expressly includes equality, collective bargaining, freedom of association and protection of the under aged. Also Annex 1 of the Labour Cooperation Agreement that complements the North America Free Trade Agreement 1993-94 and the Canada-Chile Free Trade Agreement are expressions of a tendency towards the true recognition of fundamental labour rights.

The agreement on the Free Trade Area of the Americas (FTAA) only covers the obligation of non-discrimination and equal wages.

Notwithstanding the specific regulations of the Agreements, the general idea of promoting fundamental principles and rights is taken into consideration. The Summit of Presidents in Santiago (Declaration of Santiago, April, 1998) agreed to "promote international labour standards that are recognized by the International Labour Organisation". The same agreement was incorporated in the Declaration and Action Plan of the Third Summit of the Americas, held in the city of Quebec, Canada in April, 2001, whereby the Heads of States and Governments commissioned their Ministers of Labour to address the labour and employment dimensions.

The instruments exist, the issue is under debate, human rights are considered in the national and regional context, but the problem persists and it seems that enormous obstacles are encountered in obtaining a panorama of compliance or inclusively, ratification by the States (which implies a commitment) of the different instruments.

Moreover, there also exists consensus in the Americas to create promoting bodies in the integration instruments[42], in order to make them operative, that include and guarantee the participation of social actors in their functioning. In some cases, such as the Organization of American States, MERCOSUR or the North American Free Trade Agreement (NAFTA) controlling mechanisms are included that have the capacity to assess disputes related to non-compliance and to interpret the standards related to integration. Nonetheless, infringements persist and there are still continuous denouncements and complaints about violations of human rights in the social ambit.

[40] The ILO term is for work of equal value (Convention 100).
[41] In this case it is the only fundament right that is included.
[42] This is the case of the System for Central-American Integration and NAFTA.

If we take the ILO as a reference, it is easy to verify that incompliance regarding human rights is significant in the region. Only with relation to freedom of association principles[43] and in virtue of Article 26 of the Organisation, in the Americas 1123 cases were presented between 1951 and 2001 from a total of 2158, which represents 52.4% of the total. If we concentrate on the 1990-2001 period, the numbers are even higher, situated at 55%.[44]

The Inter-American Court of Human Rights has on various occasions explicitly dealt with different fundamental labour rights. Freedom of association, discrimination and forced labour are issues that are mentioned in several rulings and reports, with specific criteria used for interpretation. Complaints and reports about incompliance with these issues are also dealt with by renowned non-governmental organizations, such as Human Rights Watch[45].

Are international instruments an effective mechanism in the Americas? Evaluating the regional and world-wide effect, and even taking into consideration the impact of a far reaching general norm, the existence of promotional and control instruments or mechanisms guarantee efficacy. The restrictions on trade, or on preferential systems as a way to avoid social dumping, and based on the fundamental principles and rights at work, have contributed not only to progress in understanding the importance of recognizing these rights but also to establish greater relevance of the State's responsibility in protecting human rights. This responsibility cannot be transferred to individuals, neither the responsibility of guaranteeing the rights, nor that related to the violation of rights.

An additional concern in the Americas that has been especially well targeted by the ILO has been the promoting, respect, demand and enforcement of fundamental labour rights, at both the national and international level. This has been done through providing and perfecting legal mechanisms that permit the population to demand respect for said rights locally, as well as through developing an integral system for verifying and handling the complaints at the international level. This includes the recognition of individuals as the principle actors of said process.

Without prejudice to the existence of the control mechanisms of the Controlling Body in function of ratified Conventions or freedom of association violations, the Declaration capitalizes on the political will of the Member States and guarantees follow-up mechanisms that ensure, or at least support, compliance with fundamental rights.

Technical cooperation (that is expressed in the region through specific projects), as well as the follow-up mechanisms (Annual and World Reports) that give importance and make reference to the continent, are effective tools to improve on the application of workers' basic rights and in turn social justice.

[43] Said complaints can be lodged independently of ratification of the related Conventions.

[44] In the past ten years the Committee on Freedom of Association has studied the complaints about freedom of association violations that consist of: assassination and/or disappearances (for example, in *Colombia, the Dominican Republic, Ecuador, Guatemala),* physical aggression (for example, in *Argentina, Colombia, Ecuador, Guatemala, Haiti*), arrests and detentions (for example, in *El Salvador, Panama, Paraguay*), restriction on freedom of movement (for example, in *Colombia*) violation of freedom of opinion and speech (for example, in *Ecuador*), raiding locations and confiscating union property (for example, in *Nicaragua*), and the State declaring a state of emergency and suspension of civil rights (for example, in *Bolivia*).

[45] In the executive summary is stated : "however, in the whole of South America and the Caribbean, they followed-up without resolving many of the chronic problems as police brutality, deplorable prison conditions, domestic violence and violations of labour rights". Panorama. Report 2002.

9.2. Fundamental rights at work and economic activity

In addition to the relation between fundamental rights, investment and economic growth, which we have referred to in chapters 6 and 7, some countries and certain large enterprises in the region have implemented mechanisms that connect fundamental rights at work to economic activity, whether in the country or at the enterprise level.

The best known mechanism is the special tariff treatment adopted by the United States of America that allows for lower import tariffs to be applied by this country on goods and services derived from Latin America and the Caribbean, if and when the production process of said goods and services does not violate fundamental rights at work, as defined by the ILO (additionally the System also includes standards on safety and health at work). Any complaint regarding said violations (generally lodged by a North American union) is seen by a tribunal of the USA Trade Department , and the resolution could be to temporarily suspend the goods and services under consideration from being exported to the USA. This mechanism has been used by unions with some frequency and has resulted in the accused governments and enterprises taking prompt action to solve the dispute that could otherwise gravely impact the economy of the country.

Most large enterprises apply other more specific mechanisms in order to ensure respect for fundamental rights at work. One of the better known instruments is the code of conduct. The most recent and innovative in the region, for its scope and thematic has been that agreed upon between the Spanish telephone company *Telefónica* and *Union Network International*, on March 12, 2001.

In the ambit of smaller enterprises, another mechanism that is applied with relative frequency is the supervision of work conditions and respect for fundamental rights on the part of multinational companies in small or medium-sized local businesses that they subcontract for production.

9.3. Regional integration and fundamental rights

As mentioned, the regional integration processes in Latin America and the Caribbean have been reactivated during the present decade, emerging in a scenario characterized by globalization of the markets and trade liberalization. In North America, as in the Caribbean, Central America, the Andean Region and the Southern Cone, there is a marked tendency towards forming sub-regional integrated areas. Also evident is that the new conventions establish objectives of greater cooperation than provided for in traditional treaties, defining free trade areas and determining tariffs for other countries while respecting basic objectives.

At present the goal is to expand integration towards proposals on social, cultural and political aspects, considering that they represent the necessary conditions to consolidate common options[46].

[46] The Latin American economic integration processes of the past ten years have been developed around a dense network of conventions with different characteristics to their historic or conventional regional coverage, commitments, dynamics and implications. Among these, in the decade of the 90s, are: the Association for Latin American Integration, MERCOSUR, the Andean Community of Nations, the Central American Integration System, the G-3, the Caribbean Community (CARICOM) and the Association of Caribbean States. To this is added a wide repertoire of bilateral and multilateral agreements.

All the economic integration processes include social aspects, although at times they were not outlined clearly when the trade blocks were created (this was the case of the European Union and MERCOSUR). Nonetheless, with the presence of ineludible social elements and the effects that these processes produce in the community, sooner or later the "social dimension" or the "labour issue" appears as an unavoidable part of the region and supra-regional debates. Today it seems impossible (the analysis of the processes point to this) to implement a successful integration process if it is not supported by a series of basic political and social pillars which in essence are: a democratic regime (i.e. with true participation of the citizens in exercising political power) and the rule of the law with strict and overall respect for human rights, including fundamental labour rights.

The close link between integration processes and the development of labour in civil society that sustains it is clear, as any possible homogenization of different countries' trade or economy affects or could seriously affect the levels of employment, relations between social actors and the workers. This being the case, it is not possible to address economic integration without at some point during the debate mentioning the labour aspects, and without involving the actors in the economic affairs of the country. Of course, integration could alter favourably or unfavourably, especially in the short term, the internal structure of the labour market, as well as the composition and mechanisms of conventional interrelations of the social actors, modifying the balance of collective relations. Social dumping, in as much as its objective is to achieve international competitiveness based on low labour costs, is a thorn in the hide of today's discussions on integration.

Is there a new international framework for social issues? The answer is clearly affirmative, considering the various forums where the regulating of international trade has been discussed (the Uruguay Round of GATT, the World Conference on Social Development in Copenhagen, etc.). Also under discussion is the impact of the social component at the national level (unemployment in an industrialized world or poverty and labour precariousness in the non-industrialized countries), as well as the consideration that themes like social clauses or minimum labour standards should be at the top of the international agenda.

From this perspective the current approach is on determining in what way regional integration can contribute to achieving the objectives of social policies in the countries. This is done by not losing from sight that integration seeks to develop society at large, to obtain productive change and to improve the populations' level and quality of life, and by including in the regional integration process a social component to reach the specific goals that are sought after in this field.

Putting behind the old dichotomy put forward by some economic concepts that distinguishes between policies for growth and those for equity, the focus is now on determining whether economic growth should precede wealth distribution, or whether they are simultaneous processes.

The various integration experiences in the region –except in the case of the OAS- have basically been driven by issues related to economy or trade, establishing mechanisms that permit or facilitate the free circulation of capital, goods and services. For this reason said efforts have not benefited, at least initially, the labour aspects that all integration necessarily contains because of the undeniable participation of the human factor. Usually, and as in the case of Europe at a stage prior to the creation of the European Union, and occasionally many years later, the labour components are developed with specific or complementary instruments.

In order to examine the degree of labour standard inclusion in the different integration agreements and treaties, the ILO undertook in the year 2000 a study that established the following conclusions (Ciudad, 2001).

The study was initiated by classifying the following labour standards contained in said instruments: a) fundamental rights; b) work conditions; c) employment; d) labour administration; e) social security; and f) promotional and controlling mechanisms. Finally, the instruments were dealt with individually, indicating which labour standards are contained in each one.

Regarding *fundament rights*, the integration instruments make express reference to freedom of association and the right to organize[47], the right to collective bargaining, the abolition of forced labour, the eradication of child labour, the elimination of discrimination, and the right to equal remuneration.

Similarly and from a wider perspective, the analyzed international instruments refer to *work conditions* (hours of work, rest, fair and adequate remuneration, work stability, job promotion, standards concerning working women, the handicapped, vacations, public holidays), *occupational safety and health and mechanisms to address labour disputes*. The treaties also deal with the issues of *employment* (job promotion, labour mobility or migrant workers, vocational training and vocational orientation), *labour administration* and *social security* (generally, subsidies for work accidents or illness, compensation for work injuries or illness, health care, funeral aid, unemployment protection, old-age pension and survivors' pension).

The study shows that all nine integration experiences in the Americas that were analyzed have, to different degrees and with greater or lesser scope, incorporated labour related standards, although in some cases referring to the labour issue in a generic manner.

On the other hand, the study reveals that all institutionalized labour rights incorporated in the integration instruments were developed gradually according to the autonomous progress of each experience. These instruments were subject to greater or lesser regulation, depending on very different circumstances and motivation in each case.

Although the labour rights incorporated in the instruments of the different experiences are varied, they have started forming a rather coherent group, complementing one another mutually, without confronting any contradictory or dissimilar options. This paves the way for feasible progress towards a more harmonious development of a group of agreed upon labour standards in the integration experiences, and for this reason the identified labour rights have been classified in the manner described in previous paragraphs.

The group of labour rights that have been included in the integration instruments are the fruits of the experiences themselves. Other rights could have formed part of this list of regulations but over a period of several decades of integration efforts it has been proven that the previously mentioned group of rights were always selected in the labour regulations and not others.

The labour standards that are adopted within the different integration experiences differ from one case to another. There are those favouring fundamental rights at work (OAS, CARICOM,

[47] The Freedom of Association Committee of the ILO Governing Body has always considered that the right to strike is one of the fundamental rights of workers and that it is an expression of the right to freedom of association, as well as being one of the essential means available to workers and their associations to promote and defend their work interests. ILO, 1996, pages 111 onwards.

MERCOSUR, NAFTA and the Free Trade Agreement between Canada and Chile), while others favour employment and social security.

As mentioned, the first explicit inclusion of the social component in the integration agreements and treaties in America was the annexed labour agreement of the Free Trade Area of the Americas (FTAA), which is worth analyzing in more detail. From the start both those who proposed and those who opposed greater protection of labour rights considerably debated this labour right agreement. Those who advocated greater labour right protection saw FTAA as being too weak and the opposition considered that it was not appropriate to include labour issues, as they were not directly related to trade. Finally, an Agreement was approved that contained convincing arguments in support of labour rights, but weak mechanisms to guarantee their respect in the countries that appended their signatures. The text concentrates on work practices in the three States and makes provision for three protection levels regarding labour rights and commitments of the parties in applying their own laws regarding them.

The first level of protection concerns freedom of association and the right to organize, the right to collective bargaining and the right to strike. Violations within these areas are subject to a revision process on the part of the National Administrative Office (NAO) where the complaint is lodged. The NAO may also opt to recommend the labour Minister or Secretary to request "ministerial consultation", which would imply an agreement of the Labour Minister or Secretary of the Parties to participate in a specific action programme designed to clarify any problem put forward.

The second level of protection deals with forced labour, discrimination, equal remuneration for men and women, workers' compensation, and the immigrant work force. Violations within these areas could lead to revision and ministerial consultation, as in the previous case, and to a resolution to create an Evaluation Committee, comprising of individuals who are independent from FTAA and who must formulate impartial recommendations on the points in question.

The third level of labour right protection covers the work of children, the minimum wage, and safety and health at work. Violations of these rights could lead to a revision and assessment or arbitration between the Parties, and even potential sanctions. Arbitration would conduce to a report on the problem and recommendations that must be incorporated into a work plan. Should one of the parties not apply the work plan, a cash fine could be imposed, and in the event of this fine not being paid, it could result in the suspension of NAFTA benefits.

Apart from the protection of labour rights in the annexed agreement, the FTAA obliges the parties to guarantee "just, equitable and transparent" labour processes, which implies compliance with the due process of the law, and that the labour tribunals are "impartial and independent, and don't have substantial interest in the results of the procedure". The FTAA does not rule on how to resolve said problems.

The type and scope of labour standards adopted during different integration experiences vary from one case to another, as mentioned. Thus, there are some that focus on fundamental rights at work, while others focus on employment and social security.

In Latin America the social component is broached from a single perspective and most of the agreements related to the setting up of economic blocks include the social issue as an item for debate. The Declaration (in the style of the European Social Charter) is today a document that

is embraced by MERCOSUR and appears to be truly viable in the Andean Community of Nations[48].

With all that has been stated, progress in Latin American and Caribbean countries is evident with respect to the ratification of international Standards on fundamental principles and rights at work, as well as their progressive inclusion in the different instruments of bi-national, sub-regional and regional integration. This would lead one to believe that this tendency will continue and be strengthened.

However, the application of these standards is still deficient. As previously mentioned, the number of complaints about violations of the conventions are gradually increasing, especially regarding fundamental rights to freedom of association and collective bargaining. The great challenge in the region is not the ratification of norms and their incorporation in the instruments, but rather, as has been repeated, the efficacious application of the same.

10. The need for effective application of fundamental rights: the basis for decent work

Since 1999, with the objective of reconciling current needs with trade agreements and political realities, the ILO has been advocating the promotion of opportunities for women and men that would allow for decent and productive work under conditions of freedom, equity, security and human dignity, an objective that covers all workers, whatever the sector may be.

In achieving these objectives the belief remains steadfast that the existence of rights is the foundation of a decent society, in particular those rights inherent to the people, whether they are adopted or not in the legislation. This idea stretches beyond legality and enters into the concepts of values, ethics and principles. It is these that must drive the social programmes and policies of each country, irrelevant of whether or not they have been adopted in the national legislation.

The concept of decent work was inspired, as mentioned, by the constitutional mandate of the ILO that work is not a commodity. What are the rights that give expression to this concept of basic dignity? They are unquestionably those that create conditions for compliance with other rights, i.e. the necessary and common minimum rights of the community at large that allow for the creation of an articulate system in function of the particular needs of each country to acquire other rights.

These are the principles that facilitate creating a decent society and on the other hand, the governance of globalization, giving it a social dimension.

These rights must be expressed at all levels and not only in theory or in the international treaties or instruments such as the ILO Declaration. Individual enterprises must be conscious that discrimination, forced labour or bondage impacts the market negatively, limiting their individual opportunities of economic growth and creating a non-viable society where goods have less chance of being bought. It is easy to demonstrate that the use of bondage or child labour does not improve the image of an enterprise and neither serves for progress.

There may be hesitance about freedom of association, a principle that for some enterprises is an obstacle for their flexibility needs. However, numerous enterprises have demonstrated that

[48] No instrument has been approved which contains the principal workers' rights, despite an interesting debate on the issue. See Iturraspe, 1994, pages 12-14.

investing in human resources, as well as in the development of associations, generates internal agreements that improve both benefits and productivity.

This is perhaps the moment to take another look and reconsider whether work is only in "private enterprises". *Fair play*, which embraces the basic principles, is part of overall development that serves for economic progress and for a reduction of poverty.

Finally, the principles and rights contained in the Declaration constitute pillars for equitably and efficiently targeting the regulation of the labour market and this because "good norms" are those that are commonly recognized and accepted openly without the threat of eventual sanction.

Compliance with fundamental principles and the consequent existence of decent work go hand in hand with a just and sustainable development model. Work must be equitable and generate sufficient income with adequate social protection. The World Bank Report 2000/2001 on world development recognizes the need for a far-reaching social programme, stating that inequality is ever present (World Bank, 2002). In this context the World Bank suggests, as the ILO, that in order to obtain decent work, as a formula to reduce poverty, the States must assume positive obligations so as to ensure the right to work, health, education and social security.

In sum, decent work can be achieved through a commitment based on respect for essential values, and currently in society they are represented by fundamental principles and rights.

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