

The International Labour Organisation and ILS: An introduction

Jajoon Coue

Specialist – International Labour
Standards and Labour Law

ILO Decent Work Team – Bangkok

June 2016

International Labour Organization (ILO)

- UN-associated Organization of Governments, Employers and Workers from 187 countries
- Mandate to promote **social justice** in context of globalization through decent work as a matter of
 - respect for individual dignity
 - economic and social development
 - international peace and stability

Decent Work Pillars (SO)

- To promote and realize fundamental principles and **rights** at work
- To create greater opportunities for women and men to secure decent **employment** and income
- To enhance the coverage and effectiveness of **social protection** for all
- To strengthen tripartism & **social dialogue**

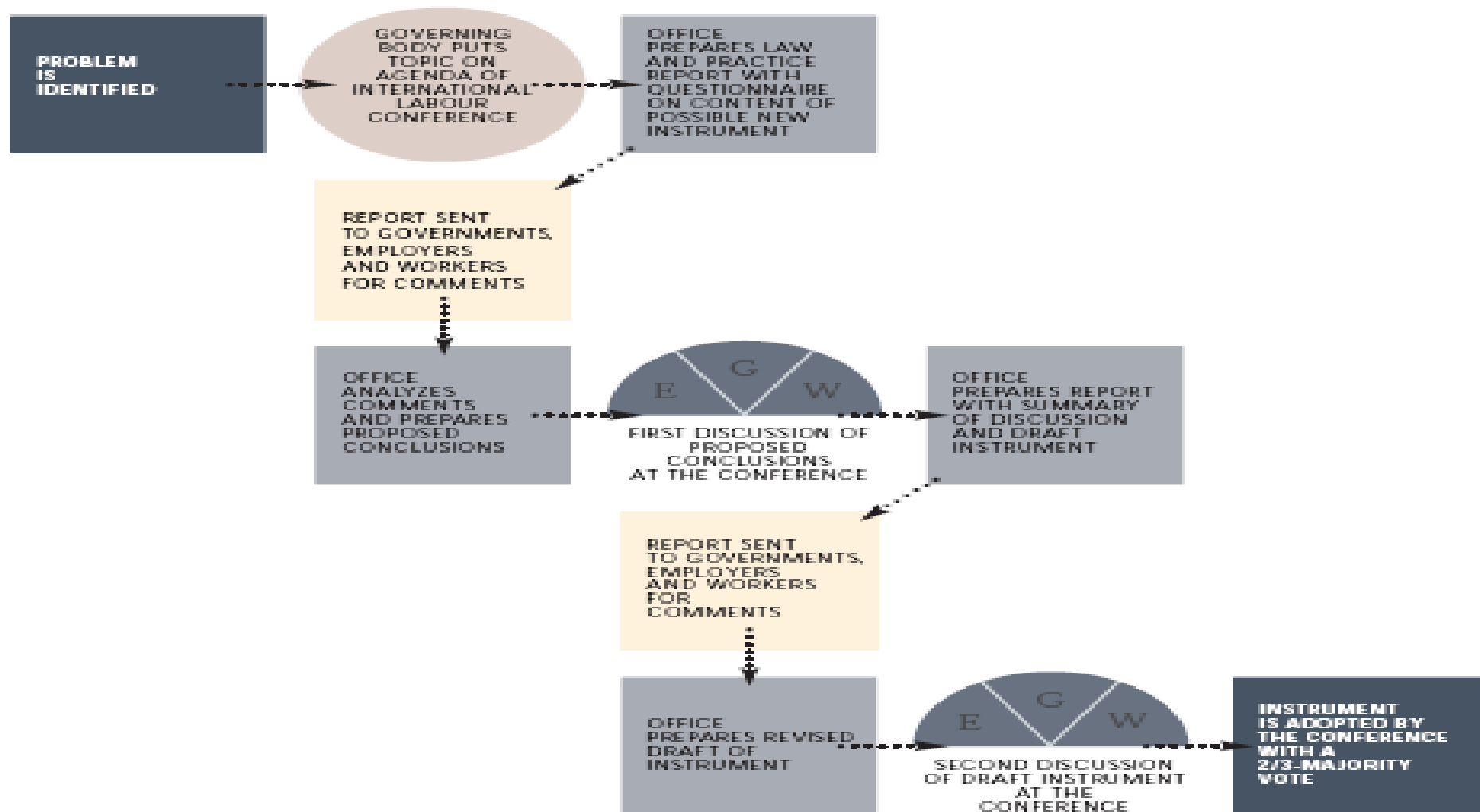
ILO - Means of Action

- Normative approach
 - Adoption of international labour standards (ILS)
 - Promotion of ratification of international labour **Conventions**
 - Supervision of the application of ILS
- Knowledge
 - Research, analysis and publications
 - Conferences for information sharing
- Services
 - Direct technical expert advisory services
 - Projects

International Labour Standards

- Legal instruments (int'l treaties) that express int'l consensus on the measures or approach to adopt with regard to specific aspects of the world of work
- **CONVENTIONS**
 - If ratified, they are binding under *international* law
 - If not ratified, they influence national law and policy
- **RECOMMENDATIONS**
 - Same authority as Conventions
 - Not open to ratification
 - More detailed guidelines

How an international labour standard is adopted



Who adopts international labour standards?

The International Labour Conference brings together delegations from all ILO member states. Each delegation comprises:

2 government delegates

1 employer delegate

1 worker delegate

Government, employer and worker delegates each have one vote in plenary.

International Labour Standards

- Since 1919, 189 Conventions and 204 Recommendations adopted
- 78 Conventions and 79 Rs considered up-to-date
- Subjects covered by ILS: FPRW, employment policy, OSH, maternity protection, social security, indigenous and tribal peoples, labour inspection and administration

Fundamental Principles and Rights at Work

- 8 Conventions are fundamental, setting standards on 4 principles at work fundamental to globalization (Declaration on Fund Principles & Rights at Work, 1998)
 - freedom of association and collective bargaining
 - elimination of forced labour
 - abolition of child labour
 - elimination of discrimination at work

Fundamental Conventions as of 1 March 2016/ ILO:187 Member States

Year	No.	Official Title	Ratifications
1930	29	Forced labour	(178)
1948	87	Freedom of Association and Protection of the Right to Organise	(153)
1949	98	Right to Organise and Collective Bargaining	(164)
1951	100	Equal Remuneration	(172)
1957	105	Abolition of Forced Labour	(175)
1958	111	Discrimination (Employment & Occupation)	(173)
1973	138	Minimum Age	(168)
1999	182	Worst Forms of Child Labour	(180)

<i>(C. in force)</i>	29	87	98	100	111	105	138	182
Brunei (1)							2011	2008
Cambodia (13)	1969	1999	1999	1999	1999	1999	1999	2006
Indonesia (18)	1950	1998	1957	1958	1999	1999	1999	2000
Lao PDR (8)	1964			2008	2008		2005	2005
Malaysia (14)	1957		1961	1997		x	1997	2000
Myanmar (19)	1955	1955						2013
Philippines (34)	2005	1953	1953	1960	1953	1960	1998	2000
Singapore (20)	1965		1965	2002		x	2005	2001
Thailand (15)	1969			1999		1969	2004	2001
Viet Nam (18)	2007			1997	1997		2003	2000

Governance Conventions

- 4 Conventions are considered priority, or governance conventions as, while not themselves expressing fundamental human rights, concern subjects that are essential to sound governing of labour market (areas of employment, inspection and dialogue)
- Convention Nos 81 and 129 – Labour Inspection
- Convention No. 122 – Employment Policy
- Convention No. 144 – Tripartite Consultation

Governance Conventions

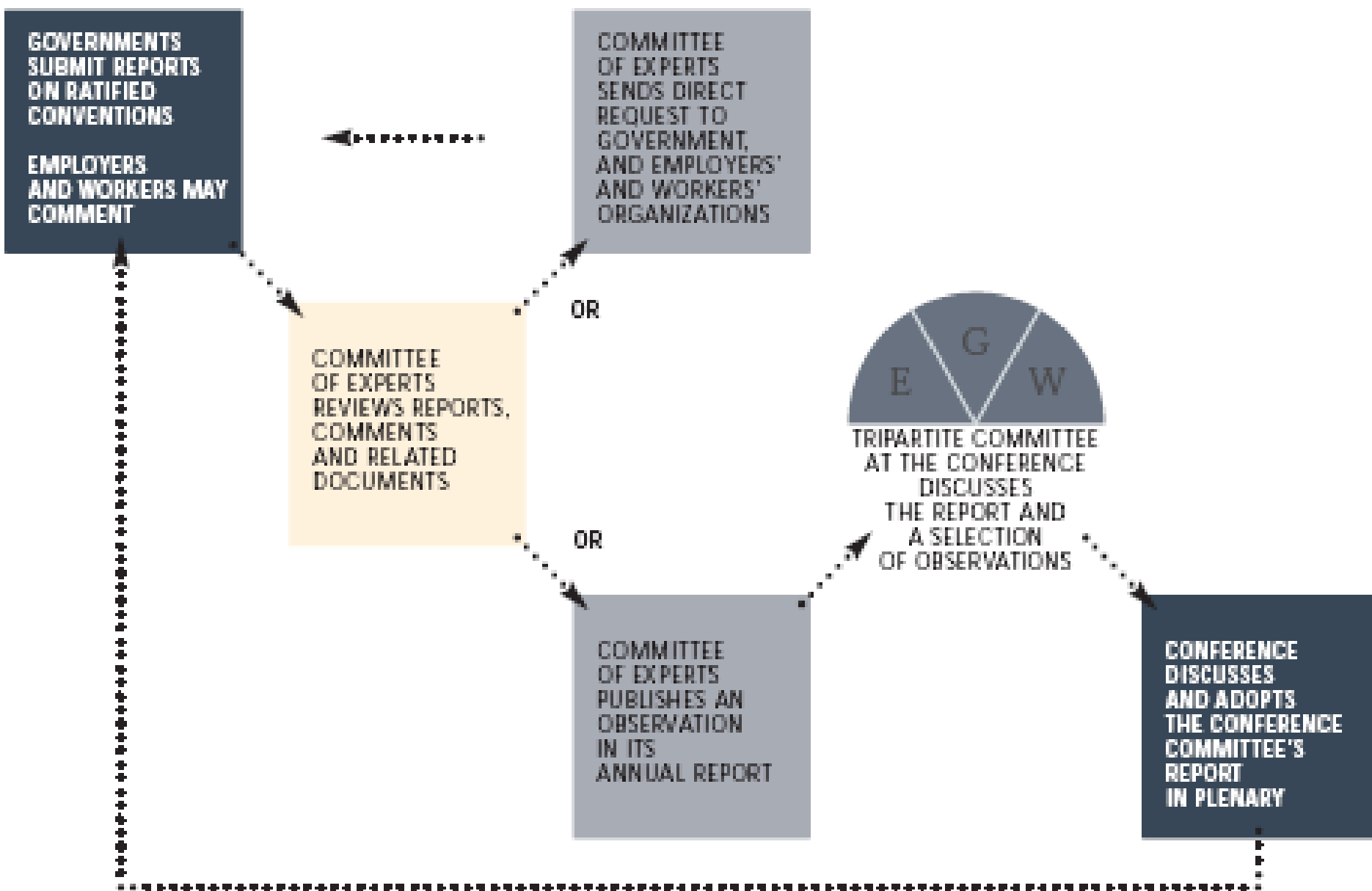
1947	81	Labour Inspection	(145)
1964	122	Employment Policy	(111)
1969	129	Labour Inspection (Agriculture)	(53)
1976	144	Tripartite Consultation	(139)

	122	81	129	144
Brunei				
Cambodia	1971			
Indonesia		2004		1990
Lao PDR				2010
Malaysia		1963		2002
Myanmar				
Philippines	1976			1991
Singapore		1965		2010
Thailand	1969			
Viet Nam	2012	1994		2008

Regular supervision

- Based on article 22 of the Constitution
 - Periodic reports:
 - **EVERY 3 YEARS**: 8 fundamental Conventions, 4 priority ones.
 - **5 YEARS** – all others
- Must reach the Office between **1 June and 1 September**
- Es and Ws may make comments on application of ratified Cs
 - Reports analysed and comments issued by the CEACR
 - Complementary role played by ILC Committee

The regular supervisory process



Submission (Art 19) : what is it ?

- to bring newly adopted Conventions and Recommendations before the national authorities competent to legislate or take other action to give effect to the C. & R.
 - Government must send Report of Submission to the ILO
 - Copy of government's report must be sent to most representative workers' and employers' organizations

Submission : why ?

- obtaining a decision from the competent authorities on action to take
 - submission must be accompanied by a statement of the government's view
 - (C. 144 = consultation !)
 - legislature should hold debate
- informing and mobilizing public opinion, thus submission to the legislative assembly even when
 - this assembly is not vested with legislative power or
 - the instrument does not require legislative action

Submission : when ?

- DG sends a certified copy of the authentic text of the instruments to the Government
 - labour and/or foreign affairs ministers
- submission within 12 or, in exceptional circumstances, 18 months of adoption for
 - unitary states
 - federal states that consider the Convention or Recommendation appropriate for federal action
- submission within 18 months for federal states when action appropriate for by constituent states

Art. 19 Reports : Features

- in respect of unratified Conv's & Recom's, by topic
- every year the ILO Governing Body selects a different subject matter
- follows a report form approved by the GB
- Gov't reports due by 1 April of the year for which the GB has requested the report
- Committee of Experts analyses reports with comments in a "General Survey"

Art. 19 Reports : Purpose

- to document comparative law and practice on a topic of current interest
- to assess the extent to which effect has been given to the C. or R.
- to identify obstacles to ratification
- to establish need for renewed promotion or revision/abrogation/withdrawal of the instruments concerned

Art. 19 Reports : Topics

- Since 2009, GS has been aligned with recurrent discussions at ILC on one of the 4 strategic objectives
- 2010 - Employment Policy C., 1964 (No. 122), Employment Policy (Supplementary Provisions) R., 1984 (No. 169), Human Resources Development C., 1975 (No. 142), and Job Creation in Small and Medium-Size Enterprises R., 1998 (No. 189)
- 2011- Social Security instruments
- 2012 – Fundamental Human Rights instruments
- 2015 – Right of Association (Agriculture) and Rural Workers' Organisations Instruments

Art. 24 Procedure

- (1) Upon receipt, Office informs the Government and sends the representation to the GB
- (2) Officers of the GB report to the GB on fulfilment of conditions of receivability
 - writing
 - Natl. workers' or employers' organization
 - reference to art. 24 ILO Constitution
 - against an ILO member State
 - that has ratified the Convention
 - indication of violation of the Convention

Art. 24 Procedure (cont.)

- (3) tripartite Committee with GB members OR reference to the Committee on Freedom of Association
- (4) tripartite committee conducts private examination, and proposes to the GB conclusions and recommendations, but
 - committee may hear complainant
 - government may request
 - to be heard
 - direct contacts

Art. 24 Procedure (cont....)

- (5) GB considers the matter in private in the presence of the Government
- (6) GB decides on whether to publish the representation and the reply, if any, in the Official Bulletin
 - GB can at any moment decide to have the representation further examined under the complaints procedure
- (7) Office notifies the decisions of the GB to the Government and the complainant

Commission of Inquiry (Art. 26)

- Used rarely, for gross and systematic violations of ILS
 - Ratification of C a prerequisite
- Can be filed by
 - (1) another ratifying Member State
 - (2) a W or E delegate to the Conference,
 - (3) the Governing Body
- Examination by Commission of Inquiry
 - members are appointed by the Governing Body in their personal capacity (not necessarily tripartite)

COI (cont.)

- **BASIS** – COI establishes its own procedure
 - (evidence, hearing, local visits)
- **RESULT**
 - (a) report published with recommendations (R)
 - (b) gov't accepts (R) or government does not accept (R) within 3 months
 - = International Court of Justice
 - (c) gov't does not comply with (R)
 - = Art. 33 - any “appropriate measures” proposed by GB

COI - Myanmar

- Filed in 1996 by ILC worker delegates in re grave mass violations of C. 29
 - Previously commented upon by CEACR, other UN bodies
- COI established in March '97, report issued in August 1998
 - Widespread, systematic violations in law and practice
 - Reform of Village Act and Towns Act
 - Stronger penalties for violations of FL

COI – Myanmar (2)

- 1999 resolution – prevented Myanmar from participation in ILO activities, limited work of Office to activities directly related to FL recommendations
- 2000 resolution of the ILC – first-ever invocation of Article 33
 - Established special sitting in ILC and GB sessions and called upon constituents to *review relations with the Member State and ensure that latter cannot take advantage of said relations to extend or perpetuate practices of forced labour*
- ILC 2012 - 1999 resolution lifted, 2000 resolution stayed for one year

Committee on Freedom of Association

- Tripartite GB Committee established in 1951 to hear complaints of violations of F of A (RATIFICATION NOT REQUIRED)
- Complaints may be received
 - Alleging specific violations of F of A
 - From national W and E organisations with direct interest in the matter
 - Without exhaustion of national procedures
- Issues recommendations, approved by GB
 - No call for further examination
 - Interim or definitive conclusions
 - Request to be kept informed of progress on progress of recommendations
 - Thus far over 2700 cases examined and disposed of

AP ratification record

- **FORCED LABOUR (29 / 105)** - all ratifications except one (US/29) are to come from the region
 - OVER HALF of the 20 million estimated people in FL are in ASIA
- **FREEDOM OF ASSOCIATION 87 / 98** - barely any progress in the last decade, despite indications that more **social dialogue** is needed given rise in labour disputes and a growing middle class with higher expectations of fairness
- 87/98 - many of the world's most populous nations have not ratified yet (China, India, Viet Nam, Thailand, Iran, Republic of Korea)
- **CHILD LABOUR** - 4 out 6 remaining rat's (notably India) to come from AP
 - 1 out of 10 children are labourers, of which half in WFCL

LABOUR LAW and ILS

- Many labour laws primarily focussed on setting out regulations with regards to 'bread-and-butter' working conditions (i.e. hours of work, wages)
- Broad failure to comprehensively provide for such important areas as OSH, labour inspection (though interest in these areas is growing – **Malaysia, Pacific Islands** for OSH, **Vietnam** for labour inspection)
- Generally, lack of **active labour market policies** (unemployment insurance, training and employment assistance measures)

Subcontracting/Outsourcing

- ASIA CONTEXT
- Virtually no provisions on subcontracting throughout the region
 - Philippines – D.O. 182 limits use of subcontracting to 20% in each enterprise
 - Indonesia – regulations limiting use of subcontractors
- Lack of regulation contributes to
 - Inferior wages and working conditions for subcontracted workers, downward pressure on all working conditions
 - Reinforces informality
 - Diminishes exercise of FPRW – forced labour aggravated, FOA rights weakened

THANK YOU