

High-Level Seminar on Promoting Freedom of Association and the Effective Recognition of the Right to Collective Bargaining

26 and 27 October 2011, Dar es Salaam, Tanzania

Table of Contents

Executive Summary	3
1. Welcome and Opening Remarks.....	4
2. Defining the purposes of the workshop (see Annex 1)	5
3. Presentation of new publication on development benefits of freedom of association	6
4. Presentation on ILO Conventions 87 and 98 on Freedom of Association	7
5. Working Group Discussion: Key Issues on Freedom of Association in Tanzania	7
6. Presentation on Committee of Freedom of Association: A Source of Jurisprudence	8
7. Freedom of Association and Collective Bargaining in Tanzania: Key Issues and Challenges for Effective Implementation.....	8
7.1 Presentation by Registrar of Organisations, Ministry of Labour and Employment.....	8
7.2 Presentation by TUCTA.....	9
7.3 Presentation by ZATUC.....	9
7.4 Presentation by Association of Tanzania Employers (ATE)	9
8. Policy Recommendations.....	9
9. Closing session.....	10
10. Impact of the workshop.....	10
11. Media Workshop in Tanzania	11

Executive Summary

The High-Level Seminar *Promoting Freedom of Association and the Effective Recognition of the Right to Collective Bargaining* was organised by the International Labour Organisation's (ILO) projects *Global Project on promoting freedom of association and collective bargaining* and *Improving Labour Law Compliance in the United Republic of Tanzania (ILLC)*. The workshop, which took place on 26th and 27th October 2011 at the ILO office in Dar es Salaam, brought together 22 labour offices from the Ministry of Labour and Employment (MOLE, Tanzania mainland) and the Ministry of Labour, Economic Empowerment and Cooperatives (MLEC, Zanzibar), representatives from the trade unions and employers' associations from Tanzania mainland and Zanzibar, as well as other stakeholders.

The main objective of the workshop was two-fold:

- a. Raise the awareness and knowledge of the rights of employers' and workers' organizations to freely organize and engage in voluntary collective bargaining under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) , and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
- b. Enhance the capacity of governments, employers' and workers' organisations to implement and put into practice the standards and principles on freedom of association and collective bargaining.

Within these two objectives was the overarching goal of highlighting the pivotal role of freedom of association in fostering and maintaining sustainable development.

The workshop comprised of presentations by ILO officials on Freedom Association and Development, Freedom of Association and the Committee on Freedom of Association, and participatory working group discussions. The group discussions centred on the link between freedom of association and four thematic areas: (inclusive economic growth and poverty reduction; positive business environment; cooperation in times of crisis, and strengthening democracy and governance) in the ILO publication, entitled "Freedom of Association and Development". The participants also held group discussions on the institutional challenges and opportunities to improve the recognition, exercise and enforcement of the rights of freedom of association and collective bargaining. Finally, the participants agreed on policy recommendations on the way forward.

The workshop concluded with the following recommendations:

1. Promotion of Social Dialogue
2. Enhance negotiating skills of tripartite partners, including joint training between employers' and workers' organizations
3. Provision of permanent and independent secretariats, with their own budget lines, for Labour, Economic and Social Council (LESCO) and Labour Advisory Board (LAB)
4. Develop a strategic plan for LESCO and LAB
5. Collaboration with research institutions
6. Lobbying parliamentary committees
7. Focus on SMEs – training (business strategies, etc.) and advocacy
8. Enhance good management and governance at the workplace
9. Participation of Workers' and employers' in national development planning

10. Advocacy in the media for increased understanding and awareness on Freedom of Association, Collective Bargaining (including the benefits of trade unions) and Social Dialogue
11. Provision of information on important matters (early warning system)
12. Strengthening media for increased public participation in policy processes, through tripartite structures (LESCO, LAB, etc.)

26 October 2011

1. Welcome and Opening Remarks

Mr. Michael Lerner (CTA, ILLC), welcomed all participants and briefly introduced the two projects which organised the workshop. He stated that the aim of the workshop was to assist the constituents and the ILO in identifying the specific challenges and opportunities in the realisation of freedom of association and collective bargaining.

Introductory remarks were given by Mr. Alexio Musindo, the Director of the ILO Country Office in Dar es Salaam, which covers Tanzania, Kenya, Rwanda and Uganda. He stated that Freedom of Association (FoA) is the cornerstone of the ILO's approach to Decent Work and development. He highlighted the importance of FoA, as a fundamental right that is an enabling mechanism with the potential to foster and support economic and social performance. He mentioned the role of the two projects (Global Project and ILLC) and the support of the donors: Norway and the United States of America (US Department of Labour) in the organisation of the workshop. He stated that the goal of the workshop is to raise awareness about the benefits of FoA. The Director talked about the recently concluded meeting in Morogoro, Tanzania, where the ILO and representatives from Tanzanian government, employers and trade unions met to advance the new Decent Work Country Programme, including the key areas of labour standards and social dialogue. He noted that the meeting reaffirmed the commitment of all partners to the fundamental principles and rights at work, including the principles of FoA and collective bargaining. Finally, he stated that he expected that the presentations and discussions would bring forth ideas for the government institutions, trade unions and employers' organisations on how to work together to achieve real and tangible results for development.

Mr. Cornelius Kariwa (Chairman of the Association of Tanzania Employers, ATE) expressed his appreciation for a workshop on this timely and important topic, and for the opportunity for major stakeholders in labour relations in mainland and Zanzibar to come together to discuss freedom of association and the right to collectively bargain, which is a fundamental human right exercisable at the workplace. However, he warned against absolute freedom in this regard, which might lead to anarchy. He noted that the proliferation of trade unions at times had led to conflict at the enterprise level between competing unions. He proposed that freedom of association should be regulated in a way that is home-grown and with the consent of the concerned stakeholders, without infringing on rights. This might include some kind of charter or manifesto, which all organizations involved, could agree to respect.

Mr. Nicholas Mgaya (Secretary General of Trade Union Congress of Tanzania, TUCTA), expressed his appreciation for the invitation to what he considered to be a very important tripartite workshop. He mentioned the proliferation of unions in the mainland, and added that the government enact legislations and also develop regulations in light of Conventions 87 and 98 to address the issue. He added that TUCTA hoped that the office of the Registrar of trade unions would be given more powers to effectively regulate the registration and conduct of trade unions and employers' associations and thereby achieve meaningful social dialogue.

The Deputy Permanent Secretary (Ms. Edine Mangesho), speaking on behalf of the Permanent Secretary (Mr. Eric Shitindi), opened the workshop by also expressing her sincere appreciation to the ILO for organising the workshop, as a means of drawing attention to the importance of freedom of association and collective bargaining at the workplace. She commended the participants for finding time to attend, as an indication of the importance they attach to freedom of association. She mentioned the role of the government in regulating the employment relationship, and noted the enactment of laws, which provide for freedom of association and collective bargaining in both the mainland and Zanzibar. She noted that collective bargaining plays a significant role in improving terms and conditions of employment. This in her view made it a duty of all managers at the workplace to see to it that freedom of association and collective bargaining are part and parcel of workplace governance.

She added that negotiations and round table discussions are the best options to address workplace disputes. She said that some of the challenges for effective social dialogue and negotiations are lack of capacity and expertise of social partners; weak cooperation and partnership and also resource constraints. She noted that the social partners needed in the tripartite system a new way of thinking to address the challenges. She felt that it was possible to address the challenges, but that would entail every one playing a part and also be part of that change. Finally, she said that she was glad that the seminar would be addressing the key issues and related challenges to freedom of association and collective bargaining. She added that the Ministry would provide some policy recommendations, and would be ready to work on the final policy recommendations within the framework of tripartism and social dialogue.

2. Defining the purposes of the workshop (see Annex 1)

Mr. Kofi Addo (ILO, Geneva) gave an overview of the project and what the workshop intended to achieve. He mentioned the importance of freedom of association since the establishment of the ILO, and added that in spite of the high number of ratifications of Conventions 87 and 98 problems of application in law and practice still exist in many Member States. He noted that many Governments continue to face challenges in translating their commitments to freedom of association and collective bargaining in reality due to insufficient institutional capacity. He said that the aim of the Norwegian funded project is to assist Governments with information and examples on how these fundamental rights fit into the overarching social and economic policies of countries. He said that the workshop would provide the forum to discuss the key points raised in the new publication on Freedom of Association and Development in analysing the

Tanzanian situation. Also, the workshop would assist the social partners' efforts at developing policy recommendations on the way forward.

He made reference to the media workshop scheduled for 3 and 4 November on media strategies. The aim of the media workshop is to assist the constituents in using the media to better communicate the fundamental rights of freedom of association and collective bargaining to their members and the general public.

3. Presentation of new publication on development benefits of freedom of association

Mr. Addo in his presentation discussed why freedom of association is important for development, the challenges for freedom of association, how freedom of association contributes to sustainable development, the challenges and opportunities in looking at the role of each of the tripartite constituents.

With respect to why freedom of association is important for development, Mr. Addo said that freedom of association is a fundamental right, which is not just an outcome, but an integral part of the process of development. He mentioned among others a number of challenges in the effective functioning of FoA, such as, anti-union discrimination, interference in the internal affairs of trade unions, in some countries FoA is considered a privilege instead of a right.

Mr. Addo raised the issue of what labour organisations can do in furthering economic development. He mentioned that the economic literature has raised two competing questions on the impact of trade unions and other labour organisations, whether: (i) that unions impede economic growth, and (ii) unions help workers negotiate. He said that the evidence indicates that labour organisations produce more equitable and inclusive economic outcomes through collective bargaining and through their political lobbying for governmental policies favourable to workers. He added that with freedom also goes responsibility, and that the responsibility for achieving the level of economic growth which works for social development falls on all the tripartite constituents, making it imperative that they work together to achieve socio-economic progress.

Mr. Addo presented the four key areas in the publication on the link between FoA and development, namely: (i) inclusive economic growth and poverty reduction; (ii) creating positive business environment; (iii) cooperation in times of crisis, and (iv) strengthening democracy and governance. He highlighted some of the case studies in the publication to buttress the points. He also referred to the positive impact labour organisations can make towards the rural sector, as a way to help ensure a proper balance between the development of rural and urban areas.

He noted that Tanzania had ratified all the ILO core conventions. He commended the country for making employment an important policy and strategic issue in poverty reduction under the National Strategy for Growth and Reduction of Poverty (MKUKUTA). He highlighted the conclusions of the recent 12th African Regional Meeting as falling within the development objectives of the country, and emphasised the need for a regional approach within the East African Community to address issues

of common concern. He drew attention to a World Bank report¹, which states that between 2006 and 2017, 720,000 youth will enter the labour force, and they will need to find jobs beyond the informal sector. This he felt created an opportunity in using FoA as an enabling mechanism to bring the tripartite constituents together to work towards creating employment opportunities, and improving the economic climate and providing social protection. Finally, he said that there is the need for policy coherence at the national level in order to bridge the economic and social divide by mainstreaming social objectives into the design of economic policies.

4. Presentation on ILO Conventions 87 and 98 on Freedom of Association

Mr. Frederick Amakye Parry (ILO, Regional Office for Africa), gave an in-depth presentation of Conventions 87 and 98. Mr. Parry in his presentation emphasised, in particular, the areas that were of concern to the tripartite constituents. He highlighted the importance of FoA as a right that is universally recognised. He noted the link between FoA and respect for civil liberties. He highlighted the ILO FoA instruments and provided a detailed analysis of Convention 87. He explained the meaning of the different articles falling under this Convention, the principles upon which they are dependent, and the legal requirements for the effective implementation of the Convention. He also stressed on the issue of the recognition of the most representative organisations, as a way of striking a balance between trade union unity and fragmentation of trade union movement. However, he said that the determination of the most representative organisations must be based on objective, pre-established and precise criteria. He mentioned that workers right to strike even if not expressly mentioned in ILO Convention on FoA, is fully recognised and protected, and that the right to strike is recognised by other international instruments. He talked about the workers covered under the Convention, and also the right to establish federations and confederations. Finally, he covered the different articles under Convention 98, for example, protection of workers against action of anti-union discrimination from employers, protection of workers, and employers' organisations against acts of interference by each other, the promotion of collective bargaining and to negotiate in good faith, and the conditions which favour collective bargaining and the topics that a collective agreement should cover.

5. Working Group Discussion: Key Issues on Freedom of Association in Tanzania

During this session, the participants were divided into four groups, with each group made up of members of the tripartite constituents. Each group was given one of the four thematic areas highlighted in the publication on Freedom of Association and Development. Under each of the key areas, each group nominated a spokesperson to make a presentation of their findings. Each group came up with advantages and disadvantages of the link between freedom of association and the particular theme. These points formed the basis for the development of the policy recommendations.

¹ World Bank (2009), *Sustaining Job Creation and Improving Quality of Jobs in Tanzania* (Dar es Salaam).

27 October 2011

6. Presentation on Committee of Freedom of Association: A Source of Jurisprudence

Mr. Lerner gave a presentation on the ILO Committee on Freedom of Association (CFA), highlighting its role in establishing jurisprudence regarding the interpretation of the provisions of Conventions 87 and 98 and the principles of FoA generally. In particular, Mr Lerner noted the use of the 2006 CFA Digest as a summary of the CFA's decisions and principles, covering most aspects of FoA and the protection of trade union rights and the rights to collective bargaining. The participants were given copies of the 2006 CFA Digest, and taught how to use it. The presentation provided several specific examples of how to look up relevant issues in the Digest. (The examples provided were on multiple trade unions in the workplace and political activity by trade unions.)

7. Freedom of Association and Collective Bargaining in Tanzania: Key Issues and Challenges for Effective Implementation

7.1 Presentation by Registrar of Organisations, Ministry of Labour and Employment

Ms. D. Uiso referred to the Employment and Labour Relations Act, No.6/2004 (ELRA), as the legislation governing FoA and protects the right to bargain in Tanzania. According to the ELRA, all employees in the private and public sectors have the right to exercise FoA and CB except the Tanzanian People's Defence Forces, the Police Force, the Prisons Service and National Service. She clarified the rationale behind the ELRA not allowing senior management employees to join trade unions, as a way to avoid conflict of interest. She explained the different interpretations under the ELRA for Trade Unions, Employer organisations. Her presentation was centred on topics of interest to trade unions and employers' organisations, such as: the system for registration of workers' organisations; conditions governing registration of employer's organisations; the requirement for registration of a federation; the consequences regarding cancellation and dissolution and appeals; procedure to follow in exercising organisational rights at the workplace; duties and obligations of registered organisations. She also gave an in-depth review of collective bargaining under the ELRA. She said that recognition of trade unions for collective bargaining is a new concept in the labour relations system of Tanzania, and explained the procedure involved when a trade union requests an employer to recognise it as the exclusive bargaining agent in respect of a proposed bargaining unit. She also explained what the ELRA states under the obligations of the parties to bargain in good faith. She provided more information on the issue of disclosure of information under the ELRA, and also on mediation on FoA and CB issues. Finally, she mentioned the challenges that Tanzania faces in the effective implementation of FoA and CB, and what needed to be done to address the issues.

7.2 Presentation by TUCTA

The Secretary General said that the ELRA and the Labour Institutions Act had both positive and negative aspects, and that TUCTA has produced a document that addresses the negative parts of the legislations. He noted that the challenges facing the effective implementation of FoA in Tanzania are due to a number of factors. He listed eight factors, which are stated below:

(i) multiplicity of trade unions; (ii) lack of effective regulations; (iii) the need to educate both employers and employees about the legislations; (iv) the lack of knowledge about collective bargaining agreements; (v) provision of training for workers; (vi) the problem of outsourcing of jobs; (vii) lack of respect by some employers and their failure to comply with Tanzanian labour laws, and (viii) problems associated with unfair termination and suspension of workers and trade union leaders.

7.3 Presentation by ZATUC

Mr. Khamis Mwinyi Mohammed (Secretary General of Zanzibar Association of Trade Unions, ZATUC), expressed his gratitude to the ILO, the Norwegian Government and the ILLC project for organising the workshop, which in his view provided a forum to share views and ideas on the real situation of freedom of association and collective bargaining in the United Republic of Tanzania. He noted that the baseline survey conducted by ZATUC in December 2009, indicated that much had been done in the area of freedom of association, whereby workers from both the public and private sectors are allowed to form and participate in union activities without interference. However, he mentioned some of the problems the unions in Zanzibar face from some individuals in government in exercising their fundamental rights. He noted that more needed to be done in the area of collective bargaining in Zanzibar.

He highlighted some of the issues and challenges that unions face in Zanzibar. Among the issues are the need to raise awareness of the importance of freedom of association for the social partners; restructuring of the institutional framework for effective performance of social dialogue; enhancing political will; improving the lobbying and advocacy skills of social partners, and finding ways of working with multinational companies and employers who do not respect freedom of association.

7.4 Presentation by Association of Tanzania Employers (ATE)

The ATE representative referred to the remarks made by the ATE Chair at the opening session, which highlighted the dangers of inter-union conflict, and the difficulty that employers have in addressing this issue. Such competition may arise between, on the one hand, trade unions that were established in the workplace, and on the other hand, trade unions that were seeking to establish a new branch. This inter-union conflict (where one union effectively is trying to recruit the members who already belong to another union) often could put the employer in a difficult position: the employer wants to respect freedom of association, but the inter-union conflict has negative consequences for enterprise productivity.

8. Policy Recommendations

During the session on the discussion of policy recommendations, the participants agreed on 12 points, which they believed needed to be addressed to ensure that

opportunities for the effective functioning of freedom of association in Tanzania is assured and also successfully linked to development outcomes.

Below are the 12 points:

1. Promotion of Social Dialogue
2. Enhance negotiating skills of tripartite partners, including joint training between employers' and workers' organizations
3. Provision of permanent and independent secretariats, with their own budget lines, for Labour, Economic and Social Council (LESCO) and Labour Advisory Board (LAB)
4. Develop a strategic plan for LESCO and LAB
5. Collaboration with research institutions
6. Lobbying parliamentary committees
7. Focus on SMEs – training (business strategies, etc.) and advocacy
8. Enhance good management and governance at the workplace
9. Participation of Workers' and employers' in national development planning
10. Advocacy in the media for increased understanding and awareness on Freedom of Association, Collective Bargaining (including the benefits of trade unions) and Social Dialogue
11. Provision of information on important matters (early warning system)
12. Strengthening media for increased public participation in policy processes, through tripartite structures (LESCO, LAB, etc.)

9. Closing session

Mr Lerner offered brief closing remarks on behalf of the ILO, thanking the participants for their time and efforts, and noting in particular the relevance of the 12 policy recommendations. Mr Lerner also reiterated ILO continued support to Tanzanian government, workers and employers in promoting the realization of an effective right to FoA. It was also noted that work in this area is ongoing with support from the ILO-USDOL project on Improving Labour Law Compliance in the United Republic of Tanzania, and further, the tripartite social partners had included these issues in the new Decent Work Country Programme – thereby guaranteeing that they would remain on the policy and technical assistance agendas for the next few years, even beyond the end of the ILLC project.

10. Impact of the workshop

The feedback from the participants indicated that the workshop was very useful in drawing their attention to the developmental aspects of freedom of association that they had not before considered.

The participants pointed out the presentations and case studies have provided useful lessons and also drawn their attention to the positive effect of freedom of association and collective bargaining on economic growth and development, making it imperative that the tripartite constituents, more than even before, work together to achieve their common objective of socio-economic development. The participants also said that the policy recommendations that all agreed on add further impetus to the prominent role that employment creation plays in the Government's National Strategy for Growth and Reduction of Poverty (MKUKUTA).

To promote a wider dissemination of the concepts and materials presented in the workshop, all participants were provided with a CD-ROM that contained electronic copies of the presentations and official remarks given during the workshop, the recent publication on FoA and Development, the 2006 CFA Digest, and a number of other related publications from the ILO.

11. Media Workshop in Tanzania

The media workshop was conducted on 3-4 November by Mr. Moncef Bouhafa of Center for Development Communication (CDC), and included 15 participants from government, employers and trade unions on Tanzania mainland and Zanzibar.

The aim of the media workshop was to assist the constituents in using the media to better communicate the fundamental rights of freedom of association and collective bargaining to their members and the general public. In recognition of the unique needs of each of the constituents, the project developed two separate toolkits entitled: “Putting Your Message to Work: A media manual on freedom of association and collective bargaining” Government and Trade Union versions. A third toolkit already developed by ACT/EMP (“Persuasive Communication: Making the voice of business heard”) was used for the employers’ associations.

The workshops were divided into six sessions (see agenda, Annex 2):

1. Effective communication toward achievement of management objectives
2. Managing media interviews
3. Message design and fishbowl interviews
4. Press briefings
5. Using social media as a tool for advocacy and lobbying
6. Understand what journalists are looking for and building bridges with the media.

The objectives of the training were:

1. Develop messages that work to promote organisational issues and activities; and lead to better understanding of those issues by local and international audiences
2. Engage the media in effective ways that build bridges, respond to journalists’ needs and that are consistent with organisational policy and practice
3. Develop individual skills to manage an interview effectively and ensure that accurate and relevant messages are transmitted while building credibility (practical skills such as confidence and control in front of a camera are also taught).

The objectives of the media workshop was based on the premise that communication is an increasingly important tool of governments and development organisations for social change, and the media is the key to communicating with a wider public toward advocating and promoting real social, political and economic change. Since this visibility also entails risks, it means greater public scrutiny and misunderstandings about what governments and development organisations are doing. That is why it is imperative that the officials and staff of development programs understand how to work with various types of local and international media so as to communicate their messages effectively.

For the participants, what was most interesting was the training on interview skills and press briefings with respect to freedom of association and collective bargaining. The workshop according to the participants has opened up new avenues to interacting with the media and the general public.