

**The ACFTU / ILO-ACTRAV Seminar on Emerging Trends in
Collective Bargaining – In Times of Crisis (24 – 26 September 2012)
Beijing, China**

Conclusions and Recommendations

The ACFTU / ILO- ACTRAV Seminar on Emerging Trends in Collective Bargaining – In times of Crisis was held in Beijing, China from 24 – 26 September 2012.

Thirty-six participants from eighteen countries in the Asia Pacific region met to share experiences and emerging trends in collective bargaining during times of crisis. Representatives from ACFTU, ITUC-AP, COSATU (South Africa), TUC (United Kingdom), KSBSI (Indonesia), INTUC (India) and the ILO (ACTRAV, DIALOGUE, and DWT Bangkok) were also present at the Seminar.

Objectives

The Asia and the Pacific has the lowest rate of ratification of ILO Conventions No.87 and No.98. (as part of recommendations of the ILO Asia Pacific Regional Meeting). There were comparatively low rates of unionization in many countries in the region and restrictions on the right to collective bargaining, in particular, in the public sector. The crisis has further impacted on policies and practices with a general rollback in support for collective bargaining.

The objectives of the seminar were to share experience and knowledge of emerging trends in collective bargaining practices during times of crisis. The participants discussed the different scenarios and contexts in their respective countries and across the region and ways of strengthening unions and collective bargaining as a crisis response.

Presentations

In his opening remarks, Dan Cunniah (Director, ILO ACTRAV) noted that there could be no effective collective bargaining without the guarantee of unless there was freedom of association. The Government was required to promote and encourage but not interfere with collective bargaining. He highlighted the importance of capacity building and the disclosure of information that was required to make the process effective. Jiang Guangping (National Secretary ACFTU China) noted positive developments in China, including the institutionalization of labour disputes settlement mechanisms, building of tripartite consultation and overall increase in the minimum wage. The objective of collective bargaining is to promote harmonious industrial relations.

A number of presenters shared their experience and knowledge on emerging trends in collective bargaining in times of crisis. Susan Hayter (ILO, Geneva) provided a global overview of trends in different regions, highlighting the ways in which collective bargaining had been used as a crisis response and priorities on the collective bargaining agenda vis-à-vis precarious workers. Other panellists shared experiences from their countries. Sam Gurney (TUC) noted structural changes in the economy that

meant that a larger proportion of employment, accounting for 80 percent, was now in services. With the dramatic rollback in policy support for collective bargaining since the 1970s, wage inequality has increased dramatically. While bargaining takes place at the enterprise level, some bargaining takes place at the central level in the health services, NHS and local teachers. During the crisis, collective bargaining in some companies was focused on freezing wages and preventing job losses.

Bheki Ntshalintshali (COSATU) highlighted the challenge of negotiating in the public sector in a context of fiscal consolidation. South Africa had a number of progressive laws that supported the exercise of collective bargaining rights. Trade unions faced a pressing situation where employers were demanding wage freezes and reductions, an increase in exemptions from bargaining councils and a general erosion of working conditions. Consideration is being given to a national minimum wage and to secure bargaining councils.

Jiang Guangping (ACFTU) noted the primary objective of harmonious relations in China and efforts that had been made to achieve this through collective bargaining. He highlighted “two priorities” campaign, i.e, urging enterprises to set up union organisations and to carry out collective wage bargaining in a comprehensive manner is the heart of collective bargaining. Examples were given of the process carried out prior to the bargaining (collecting information) and examples of regional and sectoral bargaining. Jiang also emphasised that capacity building is fundamental for trade unions to carry out collective bargaining. That’s why ACFTU has been actively engaged in the training and professionalization of negotiations.

Tim Lyons (ACTU) provided an overview of legislative developments in Australia that had opened the way to a more conducive labour relations environment. He stressed the importance of ensuring that there are firm obligations and an enforceable right to bargain and a simple way of getting union registration and recognition. He highlighted efforts in respect of low-paid workers and challenges in respect of precarious and insecure employment. In this regard, their campaign for a “secure jobs” outlined a number of innovative means to improve employment security and secure equal pay for equal work.

Rekson Silaban (KSBSI) highlighted the challenge that around 50% of workers are in precarious and insecure work in Indonesia. Collective bargaining coverage has increased from 9,800 cases in 2002 to 11,000 cases in 2011. An important challenge is trade union fragmentation. Thus the growth in trade union membership and density has not meant that trade unions have broader influence, since fragmentation has weakened them.

General discussion of challenges:

General discussion and presentations highlighted many of the challenges that trade unions experienced. It was clear that the CBA was expanding to address changes of employment relations, the negotiation of flexible work hours, employment security, regularization of precarious work, social security, concession bargaining in times of crisis. A number of challenges were highlighted in the course of the discussions:

- The crisis had been used as a tool for further flexibilization.

- Many highlighted a limitation of the scope of issues that could be the subject of collective bargaining and changes restricting trade union activities. The legislation also explicitly excludes specific groups of workers from collective bargaining. Thresholds of forming trade union are restrictive.
- At an enterprise level in Korea, only registered trade unions had the right to bargaining. Similarly, unions experienced difficulties in gaining recognition of trade union as collective bargaining agents.
- There had been remarkable economic growth in a number of countries but the question of fair redistribution remained.
- In respect of precarious and insecure forms of work, most commented on the rise in the region and the difficulty on the one hand in defining the employee on the one hand and the employer on the other. Fixed-term employment made it difficult to organize these workers.
- Multiplicity of trade unions was also a cause resulting in the fragmentation of labour movement.
- Insufficient information proved to be a challenge in trying to negotiate with companies.
- Rising income inequality between a declining wage share and a dramatic rise in the corporate executives' pay is a cause for concern.
- Public sector workers facing budget cuts are the main target for restructuring and deregulation.
- Lack of legal enforcement of terms of collective agreements and recourse to unfair dismissals (can take 1 – 2 years).
- Severe organizing challenges in MNEs.
- Negative attitude of employers.
- The crisis must be used as an opportunity but not as a setback.

Recommendations from group discussions:

Group 1: Changing trends in law and practice in respect of collective Bargaining:

- a. Having a sound legal framework was a necessary condition, but was not enough. Governments needed to ensure that laws were implemented and enforced. Employers and employers' organizations need to make commitments to rights of collective bargaining.
- b. National conditions in development and in implementation of collective bargaining are different. Dealing with these issues in time of crisis poses additional challenges.
- c. Pay regard to the role of MNEs and supply chains across the region and their HR practices that undermine collective bargaining.
- d. Collective bargaining is new and underdeveloped in some parts of the region. Need to be aware of this.
- e. Purpose of collective bargaining is to see rising level of wages, job security and social security.
- f. Law enforcement is critical.
- g. Respect of collective bargaining and trade unions by governments is critical.
- h. Capacity of trade unions need to be developed.

The following issues highlighted for action:

- a. Ensure the ratification and implementation of International Labour Standards.
- b. Focus on definition of a worker so as many workers have access to protection.
- c. National level programmes for promotion of collective bargaining and for employers to respect it
- d. Effective obligation on employers to bargain. Include legal provisions that support unions to seek relevant information from employers including their organization when engaged in bargaining.
- e. Ensure effective implementation and protection of the right to organize and the right to strike, including solidarity action.
- f. Freedom to bargain on all matters including wages working hours, union security, employment security, and workplace safety.
- g. Collective bargaining at the national, sectoral and / or enterprise level as appropriate.
- h. Appropriate dispute settlement mechanisms including courts and the right to strike
- i. A priority in capacity building amongst unions and this should be the focus of work by ILO, ACTRAV, by national centres, GUFs and ITUC.
- j. Governments need to ensure that both governments and employers respect rights and help to remedy gaps in law.
- k. Information needs to be made available on the company structures.
- l. Unions should focus on issues relating to the role of MNE corporations and supply chains, denial of rights in the public sector, solidarity and support between civil society and trade unions

Group 2: Changing trends in scope and content of collective agreements

- a. Some countries face challenges in interpreting CBA for outsourcing.
- b. Some governments do not enforce minimum provisions of legislation.
- c. Highlighted that in some countries the scope of negotiations is limited by the law.
- d. Unable to enlarge scope of negotiations to outsourced workers and promotions.
- e. In some countries such as Korea, collective bargaining limited to enterprise level and wages and terms and conditions of employment. Precarious workers, which make up 50% of workforce subcontractors and subcontractors cannot belong to trade union.
- f. In Singapore issues of transfer of workers in situations of merger and acquisition.
- g. Singapore has set up units to help contract, casual and migrant workers.
- h. Amendment of employment act to enlarge scope of representation.
- i. Indonesia and Korea, no collective agreement can cover informal workers, not recognized. Yellow unions may delay a negotiating

process.

- j. Lack of knowledge on statistics and reports and need for more knowledge, statistics and overview of practices.

The following issues highlighted for action:

- a. Full involvement of trade unions in policy-making and legal reforms is critical as CBA is downstream.
- b. Trade unions to engage with Government on definition of employee and employment relationship under law including using Employment Relationship Recommendation.
- c. Set up units to help these workers to covered by the existing CBA
- d. Precarious workers and how to deal with it in CBA
- e. Organize precarious group of workers
- f. Equal pay for equal work.
- g. Scope / coverage of collective agreements to be expanded.

Group 3: Changing trends in organizing

- a. Unionisation of workers in informal economies is low ranging from 1% in Thailand to 50% in China.
- b. Problems: divergent and unclear definition of informal economy, restrictive legislation, informal employment characteristic of migratory and geographically scattered employment.
- c. Non-compliance with FOA and CB as ILO C.87 and C.98 are not ratified by many Asian countries.
- d. Prevalence of child labour in the informal economy and agriculture workers as the majority of informal workers make “organising” difficult.
- e. Union leaders provide poor service and leadership, need for capacity building.
- f. Need to enhance commitment with GUFs and implement International Framework Agreements (e.g. Cambodia)

The following issues highlighted for action:

- g. Universal definition and application of informal economy
- h. Labour law reform to allow both freedom of association and collective bargaining.
- h. Commitment, good planning and strategies by union leaders concerning organizing.
- i. There is a need to strengthen trade union representation to be able to negotiate effectively.
- j. Systemic training organizing and education on organizing skills.
- k. Set “organizing” as key priority of trade unions.
- l. Focused approaches with target groups, geography and industrial sectors to be organised.

- m. Generation and allocation of a special fund for organizing activities.
- n. Ratification and compliance of ILO C138, C182, C87, and C 98.

The way forward

National union centres need to build capacity to take up the issues of the employment relationship and of labour law reform with government. They also need to strengthen their policy making ability and organizing skills. There is also a need for enhancing solidarity by sector and region to launch joint campaigns.

The ILO needs to provide support for capacity building, information collection and sharing on good practices and promotion of International Labour Standards, in particular Convention 87 and 98. The ILO needs to build an enabling environment for the tripartite dialogue on labour law reform, which is essential for the realization of these fundamental rights. The ILO needs to provide a more thorough analysis of the labour market and areas where improvements are needed to make better decisions in context of the Decent Work Country Programmes.

For the ILO, as a priority, there is a need to strengthen its technical assistance in the region and to respond to particular country requests for improved employment relationship. There is also a need to strengthen Industrial Relations capacity in the region.

Annex 1 Programme
Annex 2 Participants