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Background information for the parallel thematic discussion on: Promoting national ownership of international labour standards

The global financial and economic crisis, the events in North Africa and the Middle East and more generally, the ongoing need to face the growing challenges of globalization, have demonstrated the continuing relevance of international labour standards. Urgent measures need to be taken to address these concerns including the rights of women, migrant workers, domestic workers, workers living with HIV and AIDS, workers in export-processing zones and the vast number of workers in the informal economy. It is also urgent to address issues relating to child labour, youth unemployment and human trafficking.

In Africa, only 12 ratifications are needed (out of 424) to reach a full regional ratification of the eight fundamental conventions (table 1).

However, the major challenge for Africa remains translating these commitments into effective protection and guarantees, with real enforcement of the relevant provisions.

Table 1. Ratifications of the ILO fundamental Conventions (as of 12 September 2011)

	Forced labour		Freedom of association		Discrimination		Child labour	
	C.29	C.105	C.87	C.98	C.100	C.111	C.138	C.182
No. of ratifying countries *	53	53	48	52	51	53	51	51

* Guinea-Bissau, Kenya, Morocco, Somalia and Sudan have not yet ratified Convention No. 87. Somalia is the only country that has not yet ratified Convention No. 98. Liberia and Sudan have not yet ratified Convention No. 100. Liberia and Somalia have not ratified Convention No. 138. Eritrea and Somalia have not yet ratified Convention No. 182.

Since the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, there has been significant progress towards the universal ratification of the fundamental Conventions, Nos 87 and 98 (freedom of association and collective bargaining); Nos 29 and 105 (forced or compulsory labour); Nos 100 and 111 (non-discrimination); Nos 138 and 182 (child labour).

However, in spite of almost universal ratification levels in the African region, some vulnerable groups of workers are still facing particular difficulties in exercising these fundamental rights, including workers in agriculture and in export-processing zones, migrant and domestic workers and workers in the informal economy. In some countries public service employees are denied by law freedom of assembly and the right to organize.

According to the supervisory bodies, recent years have also witnessed freedom of association in some countries being restricted in the name of national security. Efforts to exert political control over trade unions have resulted in excessive restrictions over their establishment and activities.

Despite the practical difficulties involved in extending the fundamental rights to organize and to bargain collectively to the informal economy, trade unions and employers' organizations are being actively involved in working with and assisting informal economy networks, thus enhancing the legitimacy and standing of local associations and providing a stronger voice for all involved. Above all, however, it is within the prerogatives of governments to create social, legal and political frameworks that cover all citizens of a country.

The ILO supervisory bodies have also noted that, if the practices of slavery or vestiges of slavery still persist in some countries, Governments have taken action on the legislative level to prohibit and criminalize such practices. However, the challenge now lies in the effective implementation of these laws. Efforts must be pursued, especially in respect of awareness raising of the population as well as training of the police and judicial authorities, to allow victims access to justice in order to assert their rights. Action plans in this area can be of great importance, since they provide for the coordination of the activities carried out by different institutions involved in the fight against these practices, taking into account the broader issue of the fight against poverty.

Action plans are also a useful tool in the fight against trafficking in persons. There is a growing new trend towards the adoption of legislation that specifically defines what constitutes the trafficking of persons, both for purposes of exploitation of their work and for sexual exploitation, and which provides for dissuasive penalties to punish perpetrators. Despite this positive development, a number of countries have still not included in their legal system the offence of trafficking in persons. Competent authorities are facing difficulties in relation to both prevention and repression of this complex phenomenon, which affect the most vulnerable workers. The focus needs to be placed on awareness raising, initiation of prosecutions against perpetrators, identifying victims who are generally perceived as illegal migrants rather than victims of labour exploitation, and ensuring their protection.

Both fundamental child labour Conventions (Nos 138 and 182) contain significant programmatic aspects, meaning that their full implementation requires integration of child labour issues into national policies and programmes.

Child labour Conventions are almost ratified by all the countries in the region but the implementation gap remain serious. In sub-Saharan Africa 65 million children, or one in four, are child labourers. Africa is home to the highest proportion of working children and the region where the least progress is being made in reaching the MDGs, especially that of free, compulsory and universal primary education as an estimated one in three children are not in school. Two important issues in the African context highlighted by the supervisory bodies are the vulnerability of HIV/AIDS orphans (and other vulnerable children) to the worst forms of child labour, and the forcible recruitment of children for use in the armed conflicts. While several African states have made significant progress in these two difficult areas, further advancement is needed. Addressing these two topics is essential not only for the eradication of the worst forms of child labour, but also for the achievement of overall development goals.

Experience and lessons learned have confirmed the ongoing challenges facing ILO constituents in addressing discrimination in employment and occupation in Africa and in other regions, such as for example: persistence and long-standing forms of discrimination and the emergence of new forms; the strength of stereotypes; the lack of a common

understanding of key concepts; the frequent absence of coherent national equality policies; and the difficulty of measuring discrimination. The global financial and economic crisis has brought with it widening inequality and increased the marginality of vulnerable groups. The Global Report on discrimination submitted by the Director-General to the 100th Session of the International Labour Conference (Geneva, June 2011) indicates that, despite the high rate of ratification of the two core Conventions on equality in the region¹ and of all the activities undertaken by the ILO and its constituents in that field,² concerns linger about the general level of their implementation; yet discrimination represents a significant barrier to the attainment of decent work for all.

With regard to migration, to date nine of the 53 African member States have ratified the Migration for Employment Convention (Revised), 1949 (No. 97),³ and only seven have ratified the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).⁴ Greater protection for African migrant workers is needed, and the ratification of these two Conventions provides an important source of protection for these workers for both sending and receiving countries.

In addition to the 19 African countries (out of the 53 member States) which have ratified the governance Convention No. 122 (table 2), 18 have ratified the Employment Service Convention, 1948 (No. 88), nine have ratified the Human Resources Development Convention, 1975 (No. 142), and only three have ratified the Private Employment Services Convention, 1997 (No. 181). The Committee of Experts observes that almost all sub-Saharan countries appear to recognize the importance of the goal of employment promotion and have adopted plans or national policies to achieve this.

Table 2. Ratifications of the ILO governance Conventions
(as of 12 September 2011)

	Employment	Labour inspection		Tripartite consultation
	C.122	C.81	C.129	C.144
No. of ratifying countries	19	42	8	37

There is a continued need throughout the African region to strengthen the capacity of labour administration and labour inspection systems to enable them to play their role as key actors in the elaboration and implementation of economic and social policies, including in relation to the informal economy, in line with the governance Conventions

¹ As noted above, Convention No. 111 has been ratified by all ILO 53 African member States and Convention No. 100 is missing the ratifications of Liberia and Somalia.

² This assistance includes the better design and enforcement of legislation; support to the creation of strong institutions and effective mechanisms to ensure enforcement; training of judges, lawyers, labour law professors and labour inspectors on discrimination in general and gender equality in particular; the development of training tools on equal remuneration for men and women; the promotion of a better reconciliation between work and family responsibilities; the promotion of equality with respect to race and ethnicity; indigenous people (on 30 August 2010, the ILO registered the first ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), by an African member State, namely Central African Republic); migrant workers; HIV and AIDS; persons with disabilities; and age discrimination.

³ Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria and Zambia have ratified Convention No. 97. The Convention is also applicable to Zanzibar, United Republic of Tanzania.

⁴ Benin, Burkina Faso, Cameroon, Guinea, Kenya, Togo and Uganda have ratified Convention No. 143.

Nos 81 and 129, as well as the Labour Administration Convention, 1978 (No. 150). In many cases, the resources allocated to labour inspection are insufficient to enable inspection functions to be discharged properly, leading to a vicious cycle of neglect of workers' rights, vulnerability and exploitation which are ultimately costly both in terms of reduced profits to the enterprise and for the economy as a whole.

As reaffirmed in the context of the 2004 Ouagadougou Extraordinary Summit, improving the occupational safety, health and hygiene conditions for all men and women is a significant part of a strategy to fight against poverty.⁵ The modern systems approach to occupational safety and health (OSH), now systematically promoted by the ILO, emphasizes the need to ensure that attention is given to OSH at the highest national policy levels and that coherent national action is taken in this respect.⁶ National awareness of OSH and the development of a national safety and health culture are critical for supporting enterprise-level efforts to enhance working conditions and apply the central OSH standards.⁷

A related aspect is the recently adopted ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), the aim of which is to ensure the ILO's enhanced efforts to achieve social justice and to combat discrimination and stigmatization with regard to HIV and AIDS in all aspects of its work and mandate. It will be recalled that the HIV and AIDS pandemic continues to be a major development challenge for Africa. Although the rate of new infections has decreased, globally 33.3 million people are living with HIV and AIDS – with 22.5 million of these in sub-Saharan Africa. Southern Africa remains the epicentre of the epidemic, where 31 per cent of all new infections and 34 per cent of AIDS-related deaths in 2009 were estimated to have occurred. The new standard provides new opportunities to strengthen the legal and policy frameworks in the world of work, and by so doing addresses the human rights-related barriers to the HIV and AIDS epidemic.

The role of social security in promoting development is critical, since it is a powerful instrument to ensure not only individual welfare but also broad economic growth and development by reducing poverty and improving people's lives. It is essential for several countries of the region to adopt measures with a view to building a social security protection floor within a wider social security system tailored to national circumstances that includes essential health care and income security. The discussion at the ILC in 2012 on a possible Recommendation for a Social Security Floor could help provide a further normative tool to help promote income security and medical care for all.

The current political and social changes could very well act as a catalyst for furthering social progress and for the fuller integration of international labour standards in national policies, as these are being reviewed. These challenges call for a sustainable, post-crisis paradigm which relies on a renewed commitment to upholding international labour standards and empowering labour market institutions.

⁵ Ouagadougou Extraordinary Summit 2004, Plan of Action, Priority Area 2.4.

⁶ Including through its Global Strategy on Occupational Safety and Health, Conclusions adopted by the International Labour Conference at its 91st Session, 2003, and the Plan of Action (2010–16) to achieve widespread ratification and effective implementation of the occupational safety and health instruments (Convention No. 155, its 2002 Protocol and Convention No. 187), adopted by the Governing Body of the ILO at its 307th Session (March 2010).

⁷ Including the Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

Proposed questions for discussion

- (1) The recent crises affecting the region present challenges and opportunities for labour standards. What action should be taken by Governments and the social partners to strengthen rights at work, promote social justice and sustainable enterprises?
- (2) What can be done to extend reach of the labour law to workers in the informal economy?
- (3) What measures should be taken to reduce the implementation gap in respect of the ratified Conventions and in particular the eight fundamental Conventions?
- (4) What kind of technical assistance and capacity building would be required to support the above?