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Report VI

Fundamental principles and rights at work: From commitment to action

*Recurrent discussion under the ILO Declaration on Social Justice
for a Fair Globalization and the follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work*

Sixth item on the agenda

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Contents

	<i>Page</i>
Abbreviations.....	v
Introduction.....	1
Chapter 1. Fundamental principles and rights at work: Rights and enabling conditions	5
Core labour principles and rights	5
FPRW as enabling conditions.....	7
Linking economic and social development	8
FPRW for a fair globalization	9
Chapter 2. Trends and gaps in the realization of fundamental principles and rights at work.....	13
A. Situation with regard to the ratification of the fundamental Conventions.....	13
B. Dynamic global picture by category of FPRW: Main trends	20
1. Freedom of association and the effective recognition of the right to collective bargaining	20
2. The elimination of all forms of forced or compulsory labour	25
3. Effective elimination of child labour.....	27
4. Elimination of discrimination in employment and occupation.....	30
C. Topical issues common to the four categories of FPRW	33
1. Non-standard forms of employment, the employment relationship and access to FPRW	34
2. The informal economy	39
3. Groups and categories of workers at risk	41
4. Workers in export processing zones and export sectors	44
5. Strengthening the enforcement of FPRW at the national level: A crucial challenge.....	46
Chapter 3. Towards a more coordinated use of the ILO's means of action.....	51
A. The current framework for ILO action on FPRW	52
1. Programming and evaluation	52
2. ILO programmes on FPRW	54
3. Annual Reviews	55
4. Resources for ILO action on FPRW.....	56
5. Issues relating to the framework for ILO action on FPRW	60

B.	Technical cooperation	62
1.	Framework for technical cooperation at the national level	62
2.	Drawing lessons from technical cooperation on FPRW	63
3.	Promising avenues for technical cooperation on FPRW	67
4.	Main challenges and opportunities	74
C.	Technical capacity and research	76
D.	Standards-related action	79
1.	Special place of FPRW in ILO standards-related action	80
2.	Realization of FPRW through enhanced integration of the work of the supervisory bodies and technical cooperation and assistance	83
3.	Standards-related action as a means of promoting the contribution of FPRW to decent work	84
4.	Standard-setting in relation to FPRW: Possible elements for consideration	86
Chapter 4.	Initiatives in other frameworks to promote fundamental principles and rights at work.....	91
A.	Contribution of multilateral organizations to the promotion of FPRW.....	92
1.	The United Nations: A system-wide commitment	92
2.	International financial institutions: Developments with regard to FPRW.....	94
3.	ILO efforts to promote policy coherence in the multilateral system in relation to FPRW.....	98
B.	Use of FPRW by ILO Members in trade arrangements.....	100
C.	The role of private voluntary initiatives in promoting FPRW	106
D.	Transnational industrial relations and the promotion of FPRW	108
	Suggested points for discussion by the Conference with a view to the adoption of a plan of action on fundamental principles and rights at work (2012–16)	111

Abbreviations

ACT/EMP	ILO Bureau for Employers' Activities
ACTRAV	ILO Bureau for Workers' Activities
CAFTA–DR	Dominican Republic–Central America–United States Free Trade Agreement
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEB	Chief Executives Board
CFA	Freedom of Association Committee of the Governing Body of the ILO
CSR	corporate social responsibility
DECLARATION	In-Focus Programme for the Promotion of the ILO Declaration on Fundamental Principles and Rights at Work
DIALOGUE	ILO Industrial and Employment Relations Department
DWCPs	Decent Work Country Programmes
DWTs	Decent Work Technical Support Teams
ECOSOC	UN Economic and Social Council
EPZs	export processing zones
FPRW	fundamental principles and rights at work
FTA	Free Trade Agreement
GENDER	ILO Bureau for Gender Equality
GSPs	generalized systems of preferences
IFA	international framework agreement
IFC	International Finance Corporation
IMF	International Monetary Fund
IPEC	International Programme on the Elimination of Child Labour
MNEs	multinational enterprises
NORMES	ILO International Labour Standards Department
OECD	Organisation for Economic Co-operation and Development
PPPs	public–private partnerships
RB	regular budget
RBSA	Regular Budget Supplementary Account
SAP–FL	Special Action Programme to Combat Forced Labour
SPF	Strategic Policy Framework

UNDAFs	United Nations Development Assistance Frameworks
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
WTO	World Trade Organization
XBTC	extra-budgetary technical cooperation

Introduction

1. As a tripartite, values-led, Organization dedicated to the promotion of social justice, the ILO has, throughout its history, recognized and acted upon its responsibility to defend and advance principles and rights at work.
2. Among the extensive body of rights at work set by ILO standards, freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation are recognized by the ILO and the international community as fundamental principles and rights at work. These four categories of principles and rights are embedded in the ILO Constitution. In this respect, the 1944 Declaration of Philadelphia, an annex to the ILO Constitution, played a crucial role by emphasizing the right of all human beings, irrespective of race, creed or sex, to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.
3. These principles and rights have been expressed and developed in eight ILO Conventions recognized as fundamental.¹ The adoption of these eight Conventions, from the Forced Labour Convention, 1930 (No. 29), to the Worst Forms of Child Labour Convention, 1999 (No. 182), spanned seven decades of the ILO's twentieth century history. In that period, the establishment in 1950 of a special procedure to examine complaints of violations of freedom of association even in the absence of ratification – which led to the creation of the Governing Body Committee on Freedom of Association – stands out as early institutional recognition of the constitutional grounds for some categories of principles and rights at work being considered fundamental.
4. But it was not until the 1990s, with the post-cold war dynamics of a world economy embarking with increasing conviction on the path of globalization that the decisive steps were taken for their explicit recognition as a specific category. Following the call by the 1995 World Summit for Social Development in Copenhagen to safeguard and promote “basic workers’ rights” in order to achieve sustained economic growth and sustainable development,² and with the impetus of the commitment by the 1996 Singapore WTO Ministerial Conference to the “observance of internationally recognized

¹ The Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

² United Nations: *Report of the World Summit for Social Development (Copenhagen, 6–12 March 1995)*, “Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development”, A/CONF.166/9, para. 54.

core labour standards”,³ the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up was adopted in 1998 by the International Labour Conference. The 1998 Declaration makes clear that all Members have an obligation arising from the very fact of membership of the ILO 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 the fundamental Conventions. It equally recognizes the obligation on the ILO to assist Members to do so.⁴

5. The corresponding wider obligation of the ILO to assist its Members in their efforts to implement the overall Decent Work Agenda is underlined in the Preface to the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration), adopted by the Conference in 2008. That Declaration says that the commitments and efforts of Members and the Organization to implement the ILO’s constitutional mandate should be based on the ILO’s four equally important strategic objectives,⁵ including “respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all of the strategic objectives”.⁶

6. Thus, it is that the Social Justice Declaration, the 1998 Declaration and its revised follow-up put in place in 2010, spell out the institutional framework and purpose of this report. In general, the annual recurrent discussions at the Conference are aimed at reviewing the trends relating to each strategic objective in order to strengthen the link between the needs of Members and the action taken by the Organization to meet them, on the basis of an objective overview prepared by the International Labour Office. Specifically, according to the revised follow-up to the 1998 Declaration, this report is to provide a dynamic global picture relating to the four categories of fundamental principles and rights at work (FPRW) during the preceding period and to serve as a basis for assessing ILO action and determining priorities. The present report constitutes the first Global Report submitted to the Conference for a recurrent discussion on FPRW in accordance with the revised follow-up to the 1998 Declaration and the Social Justice Declaration.

7. Its structure therefore responds to these dual objectives of providing a reliable knowledge base of what is happening in the world of work in respect of principles and rights and of examining the impact of relevant ILO activities and how it can be improved. The early experiences of recurrent discussions suggest that getting the balance of these two elements right can be a challenge – not least if the expectations of different constituents diverge. It is worth recalling that the preparatory work for the Social Justice Declaration spoke of “a basic change of approach, away from traditional reports that disseminate information to ones that generate action”.⁷

³ World Trade Organization (WTO): “Singapore Ministerial Declaration”, 13 Dec. 1996, WT/MIN(96)/DEC, para. 4.

⁴ ILO: *ILO Declaration on Fundamental Principles and Rights at Work*, ILC, 86th Session, Geneva, 18 June 1998.

⁵ Under the Social Justice Declaration (Part I(A)), there are four equally important strategic objectives of the ILO: (i) promoting employment; (ii) developing and enhancing measures of social protection; (iii) promoting social dialogue and tripartism; and (iv) respecting, promoting and realizing the fundamental principles and rights at work.

⁶ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, Geneva, 10 June 2008.

⁷ ILO: *Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization*, Report V, ILC, 96th Session, Geneva, 2007, para. 27.

8. That appears all the more important because discussion of this report will take place at the same time as, and benefit from, consideration by the Conference of the General Survey by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the eight fundamental Conventions.⁸ Avoiding duplication and ensuring maximum complementarity of these two exercises requires that the distinctive nature of each be respected: the General Survey offers a comprehensive legal analysis; this report is a policy document fulfilling a specific mandate.

9. The structure of the report corresponds closely to that mandate. At the same time, the report addresses the context of accelerating change referred to in the Social Justice Declaration. There has been a remarkable strengthening of consensus around the definition and universality of FPRW, which embody enduring values and obligations. Yet the context in which they are to be respected and promoted is changing at an unprecedented rate. Inevitably, that has implications for the activities of the ILO, which is why attention is given to features of the world of work which are new or growing in significance and which appear important to the exercise of FPRW, as well as to innovative initiatives to address them. In some cases, these may be controversial and the appropriate stance of the ILO unclear. Those are good reasons for taking them up in this report.

10. This first recurrent discussion of FPRW comes at a time of crisis for the world of work, when questions continue to be posed about the future of globalization. It is not the purpose of this report to address these debates. But it cannot either ignore the reality that crisis-induced conditions give rise to circumstances in which freedom of association and collective bargaining, in particular, come under pressure, or where there is greater danger of recourse to child or forced labour, or where the necessary commitment to the ongoing fight to eliminate discrimination in employment is compromised.

11. The 2009 Global Jobs Pact anticipates such eventualities by insisting that respect for FPRW is critical for recovery and development.⁹ It follows that all initiatives to overcome the crisis should be fully consistent with these principles and rights and, indeed, that in conditions of crisis increased vigilance and efforts are required to protect and promote them.

12. It is part of the challenge before the ILO and its constituents to ensure that the crisis does not interrupt progress towards full and universal respect of FPRW and that they are made part of strategies to beat the crisis. Extracting from current dangers and difficulties, the opportunities for further progress is a formidable task. This report provides a basis to harness the combined commitment of the ILO's tripartite constituents and the Organization's own capacities to get that job done.

⁸ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 101st Session, Geneva, 2012.

⁹ ILO: *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 19 June 2009.

Chapter 1

Fundamental principles and rights at work: Rights and enabling conditions

13. Global recognition of the four categories of FPRW was the outcome of a long process, which gathered pace in the 1990s. At the time, against the backdrop of accelerating globalization and trade liberalization, in the context of the GATT Uruguay Round, proposals were advanced that respect for certain international labour standards should be a precondition for participation in the evolving multilateral trade system. The international debate on this proposal was vigorous and controversial. From the perspective of the ILO and its mandate, the question at stake was how to link economic growth and social progress and to define the conditions which were “likely to enable the persons concerned to enjoy an equitable share of the benefits resulting from the liberalization of international trade, each country designing in its own way the content of social protection that would be most appropriate” to its national situation.¹ The four categories of FPRW were identified as constituting these conditions.² A related question was how the ILO might ensure that these principles and rights were universally applied, even in the absence of ratification of the corresponding Conventions.

14. The ILO Declaration on Fundamental Principles and Rights at Work (the 1998 Declaration) and the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration), establish FPRW as core labour principles and rights and enabling conditions for the realization of all the ILO’s strategic objectives. Drawing on these aspects, the international community has recognized that FPRW should play a specific role in the wider debate on fairness in globalization. As this is the first report to cover the four categories of FPRW together, the main features of their particular significance for the discharge of the Organization’s mandate are reviewed below.

Core labour principles and rights

15. FPRW are embodied in the ILO Constitution.³ As emphasized in the preparatory work for the 1998 Declaration, “fundamental rights are not fundamental because the

¹ ILO: *The social dimensions of the liberalization of world trade*, Governing Body, Geneva, Nov. 1994, GB.261/WP/SLD/1, para. 5.

² *ibid.*, para. 28: “the liberalization of trade appears naturally and logically to call at the very least for recognition in the social field of conditions enabling workers to negotiate freely, both individually and collectively, their conditions of work”.

³ ILO: *ILO Declaration on Fundamental Principles and Rights at Work*, ILC, 86th Session, Geneva, 18 June 1998, annex revised 15 June 2010.

Declaration says so; the Declaration says that they are fundamental because they are”.⁴ These rights and principles are classified as fundamental, not to establish hierarchies, nor in disregard of other international labour standards. Rather, as indicated in the Social Justice Declaration, FPRW are instrumental in promoting international labour standards in general, as a key means of achieving all the constitutional objectives of the Organization.⁵

16. FPRW are set out in the eight fundamental Conventions, as well as in a number of other ILO standards.⁶ However, their role and impact transcend the specific obligations deriving from the ratification of these Conventions. As recalled in the 1998 Declaration, all member States, even if they have not ratified these instruments, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize the principles concerning fundamental rights at work, and the ILO has a corresponding obligation to assist its Members in this respect.⁷

17. FPRW are also recognized as human rights in other sources of international law. FPRW are enshrined in the Universal Declaration of Human Rights⁸ and in several core United Nations human rights treaties,⁹ including the International Covenant on Civil and Political Rights¹⁰ and the International Covenant on Economic, Social and Cultural Rights,¹¹ as well as a series of regional instruments.¹² The list of human rights at work recognized in United Nations instruments, and particularly the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, goes beyond FPRW and includes other rights, such as the right to safe and healthy working conditions, the right to social security, the right to a fair remuneration and the right to a reasonable limitation of working hours.¹³

⁴ ILO: *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Report VII, ILC, 86th Session, Geneva, 1998, section II.

⁵ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, Geneva, 10 June 2008.

⁶ See Chapter 3, section D, below.

⁷ ILO: *ILO Declaration on Fundamental Principles and Rights at Work*, op. cit., para. 2.

⁸ Universal Declaration of Human Rights, 1948, Article 4 (prohibition of slavery), Article 20 (freedom of association), Article 23(4) (the right to form and join trade unions), Article 7 (the principle of non-discrimination), Article 23(2) (the right to equal pay for equal work, without any discrimination), Article 25(2) (special protection for children) and Article 26 (the right to education).

⁹ These include the International Convention on the Elimination of All Forms of Racial Discrimination, 1965; the Convention on the Elimination of All Forms of Discrimination against Women, 1979; the Convention on the Rights of the Child, 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; and the Convention on the Rights of Persons with Disabilities, 2006.

¹⁰ International Covenant on Civil and Political Rights, 1966, Article 8 (the prohibition of forced or compulsory labour), Article 22 (recognition of the right to freedom of association, including the right to form and join trade unions) and Article 26 (the right of all persons to receive effective protection against discrimination).

¹¹ International Covenant on Economic, Social and Cultural Rights, 1966, Article 2 (the right to enjoy economic, social and cultural rights without discrimination), Article 6 (the right to freely chosen and accepted work), Article 8 (the right to form trade unions, including the right to strike) and Article 10 (the protection of children from economic and social exploitation).

¹² For example, the African Charter on Human and Peoples' Rights, 1981; the American Convention on Human Rights, 1969; the European Convention on Human Rights, 1950; and the European Social Charter, 1961 (revised in 1996).

¹³ See, in particular, the Universal Declaration of Human Rights, Articles 22–24, and the International Covenant on Economic, Social and Cultural Rights, Article 7.

FPRW as enabling conditions

18. Because they are human rights pertaining to workers and employers, the realization of FPRW stands as a goal in itself. It is the inherent responsibility of the ILO to strive for a world in which there is no child labour, no forced labour and no discrimination, and where all are free to organize and to defend their interests. But the Social Justice Declaration also emphasizes that FPRW are enabling conditions for the full realization of all the ILO's strategic objectives, and that these objectives are inseparable, interrelated and mutually supportive. The preamble to the 1998 Declaration outlines the key aspects of the enabling nature of FPRW: "Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of FPRW is of particular significance in that it enables the persons concerned, to claim freely, and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential."¹⁴ The realization of FPRW, in addition to being an end in itself, is therefore a means of furthering all the ILO's objectives.

19. Emphasis has long been placed by the ILO on the particular importance of freedom of association and the effective recognition of the right of collective bargaining. As highlighted by the General Survey on the eight fundamental Conventions prepared this year by the CEACR, freedom of association and collective bargaining are vital in enabling employers and workers "to establish rules in the field of working conditions, including wages, to pursue more general claims and to reconcile their respective interests".¹⁵ Freedom of association is also important in securing the effective application of labour legislation, as strong and independent employers' and workers' organizations act as watchdogs for the practical respect of labour law and make an important contribution to the effectiveness of labour inspection. The existence of meaningful social dialogue between independent parties makes a crucial contribution to the elaboration of economic and social policies, including those on employment and social protection, that take on board the interests and needs of all actors in the economy.

20. As serious violations of human dignity and personal autonomy, forced labour, discrimination and child labour contribute to the persistence of the cycle of poverty. Child labour can have severe consequences on the education, health and development of its victims.¹⁶ The harmful effects of child labour prejudice the opportunities of young adults to make the transition to decent work and lead in later life to low quality employment, low incomes, social vulnerability and marginalization. Similarly, victims of forced labour and discrimination face great difficulties in gaining access to fair employment opportunities and in developing their occupational skills. They are very badly placed to assert their work-related rights and encounter severe obstacles in achieving meaningful collective representation in social dialogue processes. As a result of these multiple exclusions, which result in significant economic costs for the societies concerned, the realization of the ILO's strategic objectives concerning employment, social protection and social dialogue is seriously prejudiced.

¹⁴ ILO: *ILO Declaration on Fundamental Principles and Rights at Work*, op. cit., preamble.

¹⁵ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 101st Session, Geneva, 2012, para. 51.

¹⁶ "Child labour" means the work performed by children who are under the minimum age legally specified for that kind of work, or work which, because of its detrimental nature or conditions, is considered unacceptable for children and is prohibited.

21. The violation of one category of FPRW therefore has an adverse impact on the respect and realization of the others. This is particularly the case when workers cannot exercise freedom of association and engage in collective bargaining. If they have no collective voice, they are not in a position to seek action to remedy the root causes of their vulnerability. Situations of forced labour, discrimination and child labour are rarely resolved by individuals acting alone. And conversely, the greater the disempowerment caused by these situations, the greater the barriers to the exercise of freedom of association.

22. The emergence of the concept of decent work has led to enhanced recognition of the importance of FPRW for the realization of all the ILO's strategic objectives, and their collective impact in achieving social justice in the context of globalization. The Social Justice Declaration emphasizes the need to promote FPRW as part of the ILO's global and integrated strategy for decent work.¹⁷ The complementarity between FPRW as "rights and enabling conditions" and the integrated strategy for decent work therefore underpins the effective implementation of the ILO's mandate and the advancement of social progress.¹⁸ Accordingly, while the realization of FPRW is not in itself sufficient to secure universal social progress, it is a necessary prerequisite.

Linking economic and social development

23. Economic research has confirmed with empirical evidence that forced labour, child labour and discrimination are major obstacles to economic development and contribute to the persistence of poverty. In 2004, for instance, an ILO–IPEC study demonstrated that the economic benefits of eliminating child labour would be nearly seven times higher than the costs required for its elimination.¹⁹ Similarly, the World Bank has repeatedly emphasized how gender discrimination hinders economic development.²⁰ Moreover, convergent research findings by the ILO and the Organisation for Economic Co-operation and Development (OECD) have highlighted how the implementation of FPRW results in a more balanced distribution of income and the reduction of excessive inequalities, thereby paving the way for sustainable economic growth.²¹

24. It is sometimes nevertheless argued that respect for FPRW may, especially in the short term, constitute a burden for economic efficiency and competitiveness. Such controversies have arisen predominantly in relation to freedom of association and collective bargaining. Along with other international organizations, the ILO has

¹⁷ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, op. cit., Part I(B).

¹⁸ ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context globalization*, Report V, ILC, 96th Session, Geneva, 2007, para. 15: "From the viewpoint of principle, as already implied both by the Declaration of Philadelphia and the 1998 Declaration, this means that the qualitative aspects (including respect for fundamental rights) and quantitative aspects of social progress are indivisible." The report also articulates the elements of the "integrated strategy", namely interdependence of the four strategic objectives, autonomy and solidarity, involvement of the tripartite constituents, non-interference in the autonomy of member States and the relative weight of each of the four strategic objectives in the policy mix. These did not give rise to any particular objections during the discussion.

¹⁹ ILO: *Investing in every child: An economic study of the costs and benefits of eliminating child labour* (Geneva, 2004).

²⁰ World Bank: *Engendering development through gender equality in rights, resources and voice* (Washington, DC, 2001).

²¹ See, for example, OECD: *Divided we stand: Why inequality keeps rising* (Paris, 2011); ILO: *World of Work Report 2008: Income inequalities in the age of globalization* (Geneva, 2008); ILO: *The financial and economic crisis: A decent work response* (Geneva, 2009).

challenged this assumption and emphasized the importance of going beyond an overly narrow focus on labour cost effects. Sustained economic growth, which generates lasting social progress, depends crucially on a range of factors. Only by including consideration of the economic benefits of social stability and legitimacy, the building of human capital, the income distribution effects and the productivity and enterprise performance dividends that stem from the exercise of FPRW can a more accurate assessment be obtained. While short-term benefits may accrue to those willing and allowed to act, contrary to the terms of the 2008 Declaration, to extract competitive advantage from violations of FPRW, evidence shows that such approaches, as well as being contrary to the commitments deriving from membership in the ILO, do not offer long-term benefits for enterprises or for societies. Freedom of association and the right to collective bargaining – by increasing political and social stability – lead to positive long-term economic outcomes.²² For example, foreign direct investment levels tend to be positively influenced by respect for FPRW, contradicting the alleged advantages of a race to the bottom.²³

25. These debates have undoubtedly taken a new shape in light of the current financial and economic crisis. In a series of countries strongly impacted by problems of public debt and competitiveness, structural reforms are targeting collective bargaining mechanisms in order to eliminate what are seen, in some quarters, as rigidities in the labour market. And yet, in other countries, well-coordinated collective bargaining mechanisms have contributed to mitigating the effects of the crisis and accelerating recovery. The crisis, which emerged after decades of increasing inequality, has also served to bring to the fore the role of FPRW in strengthening the link between productivity gains and income from labour, which is key to sustainable economic growth.²⁴ Both the ILO and the International Monetary Fund (IMF) have highlighted the need for a balanced distribution of productivity gains in ensuring a sufficient level of aggregate demand, without which global economic growth and aggregate employment will not reach pre-crisis levels.²⁵ In this regard, according to very recent ILO research, further efforts for the implementation of FPRW would significantly rebalance the distribution of incomes, thereby providing the stimulus that the world economy needs, and which public budgets may not be able to provide under current circumstances.²⁶

FPRW for a fair globalization

26. In large measure, the attention accorded to FPRW since the 1990s has been stimulated by the widely shared perception of the need to establish universally accepted minimum “rules of the game” for the world of work, and by the inherent interest of each

²² See, for instance, P. Auer: *Employment revival in Europe: Labour market success in Austria, Denmark, Ireland and the Netherlands* (Geneva, ILO, 2000).

²³ See, for example, D. Kucera: “Core labour standards and foreign direct investment”, in *International Labour Review*, 141/1-2, 2002.

²⁴ See, for instance, OECD: *Trade, employment and labour standards: A study of core workers’ rights and international trade* (Paris, 1996); OECD: *International trade and core labour standards* (Paris, 2000); ILO: *Global Wage Report 2010/11: Wage policies in times of crisis* (Geneva, 2010).

²⁵ M. Kumhof and R. Ranciere: *Inequality, leverage and crises*, IMF Working Paper No. 10/268 (Washington, DC, IMF, 2010); ILO: *World of Work Report 2011: Making markets work for jobs* (Geneva, 2011); R. Torres: *Wage and the global crisis: Evidence and policy issues*, paper prepared by the International Institute for Labour Studies for the High-level Conference on Wage Trends in Europe, Brussels, 15 Sep. 2011.

²⁶ See ILO: *World of Work Report 2011*, op. cit.

country in seeing other countries achieve a better balance between economic growth and social progress. Without such rules, globalization has been seen as being capable of undermining social progress by allowing economic success to be gained by some at the expense of the social achievements of others. Some initiatives to establish a level playing field for globalization through the universal realization of fundamental rights and principles met with a strong reaction that the real motives at play were to protect home markets from new competition from abroad. This led to the inclusion of paragraph 5 in the 1998 Declaration, which emphasizes that “labour standards should not be used for protectionist trade purposes ... (and that) the comparative advantage of any country should in no way be called into question by this Declaration”. Ten years later, the Social Justice Declaration reiterated the language of the 1998 Declaration in relation to protectionist motives, adding “that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage”.²⁷

27. This formulation is critical in defining the position of the international community on the place and importance of FPRW in an open and globalized international system. Yet the current debate shows that serious concerns remain in respect of two issues in particular. The first has its roots in the continued growth of inequality, both within and between countries. If the realization of FPRW was envisaged as a key mechanism to allow everyone in the world of work to claim a fair share of the benefits of globalization, then by that measure it may be seen to have fallen short. The question is then whether unacceptable levels of inequality can be attributed to any significant degree to the failure to realize FPRW, or if other factors are to blame. Secondly, the current crisis has led to a resurgence of concerns that current arrangements for the realization of FPRW have simply been insufficient to establish the level playing field that some foresaw. It is argued that, despite the efforts made, some are still not playing by the rules of the game and that not enough has been done to make them do so.

28. Both of these issues raise basic questions about the effectiveness of ILO action for the realization of FPRW under the 1998 Declaration and the Social Justice Declaration, as well as about the commitment, role and contribution of other actors. It is not a question of whether or not FPRW should be respected. During the preparatory work for the 1998 Declaration, it was recalled that, by reason of the very nature of the principles and rights in question, realization of FPRW could not be made conditional on levels of national development.²⁸ The question, taking into account the current context, is rather *how* FPRW can best be incorporated into economic and social policies. This issue is of particular relevance both in countries that are facing economic hardship and in those that are striving to ensure that national development is more inclusive and sustainable.

²⁷ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, op. cit., Part I(A)(iv).

²⁸ In a contribution by the Director-General to the G7 Employment Conference in 1996, three reasons were given as to why respect for what were later to be designated FPRW could not be made conditional upon a country's level of development: (i) “For a State, in the name of respect for its choices or preferences, to be able legitimately to reject the international community's intervention with regard to the level and content of its social protection, it must at the very least be possible in that country to make choices or express preferences. Hence the workers' individual and collective freedoms, and in particular freedom of association, must be recognized”; (ii) “... those rights are already recognized as being inherent in human dignity by the Universal Declaration of Human Rights ...”; (iii) “... The prohibition of forced labour and freedom of association are (...) the prerequisites for freedom and transparency in the labour market and may also be seen as the natural extension of free trade in the world market ...”. ILO: *The social dimension of the liberalization of international trade; Contribution to the G7 Employment Conference submitted by the Director-General of the International Labour Office*, G/E.C./1996/2 (Geneva, 1996).

29. It is the core purpose of the present recurrent discussion to address these fundamental matters. In particular, the recurrent discussion offers an opportunity to reinforce the collective commitment to FPRW and to identify the most appropriate ways of translating that commitment into effective action.

Chapter 2

Trends and gaps in the realization of fundamental principles and rights at work

30. This chapter draws on the complementarity of the 1998 Declaration and the Social Justice Declaration and the promotional nature of their respective follow-up mechanisms to provide a brief overview of the situation with regard to the ratification of the fundamental Conventions, and a global picture of the trends and gaps in the action taken for the realization of the four categories of FPRW. It builds on the last four Global Reports issued between 2008 and 2011 and the analysis carried out by the CEACR for this year's General Survey.¹

A. Situation with regard to the ratification of the fundamental Conventions

31. The ratification rate of the fundamental Conventions stands at over 90 per cent. As of 31 December 2011, a total of 1,326 ratifications of the eight fundamental Conventions had been registered, out of a potential total of 1,464 ratifications by the ILO's 183 member States. Since the beginning of the campaign for the ratification of the fundamental Conventions in 1995 (see Chapter 3), their ratification rate has increased by 68 per cent, with a particularly high number of ratifications of the Worst Forms of Child Labour Convention, 1999 (No. 182).

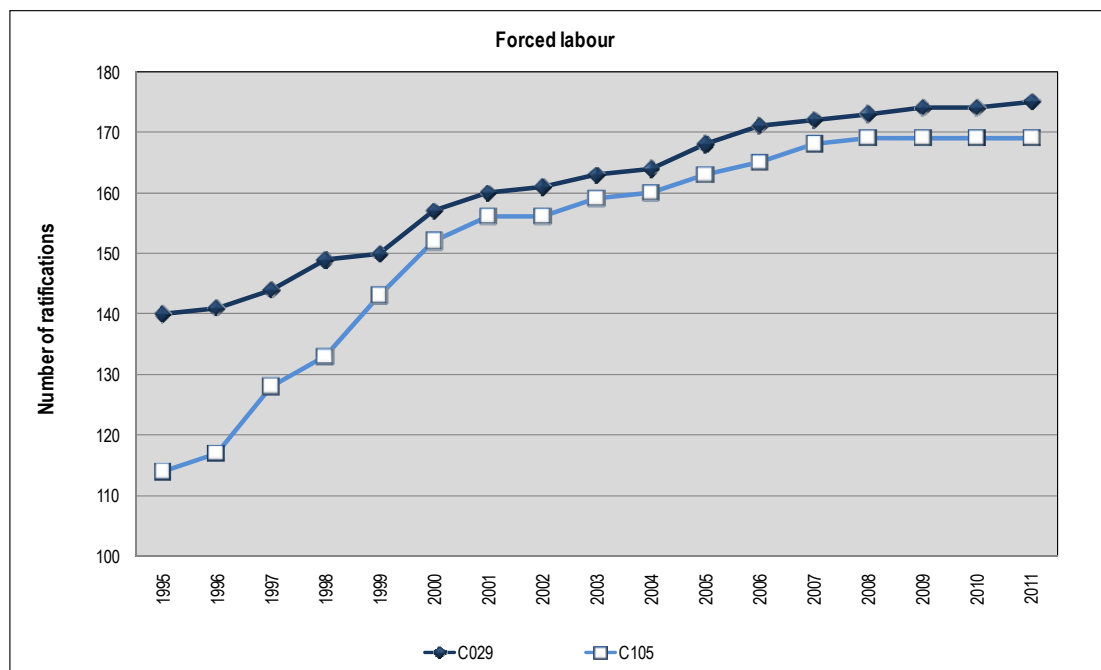
32. To reach the goal of universal ratification, set by the Director-General for 2015, 138 ratifications are still required from 48 member States (see figure 2.2). Conventions Nos 29 and 182 are the most widely ratified fundamental Conventions, with 175 and 174 ratifications, respectively. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), still has the lowest number of ratifications (150) of the fundamental Conventions.

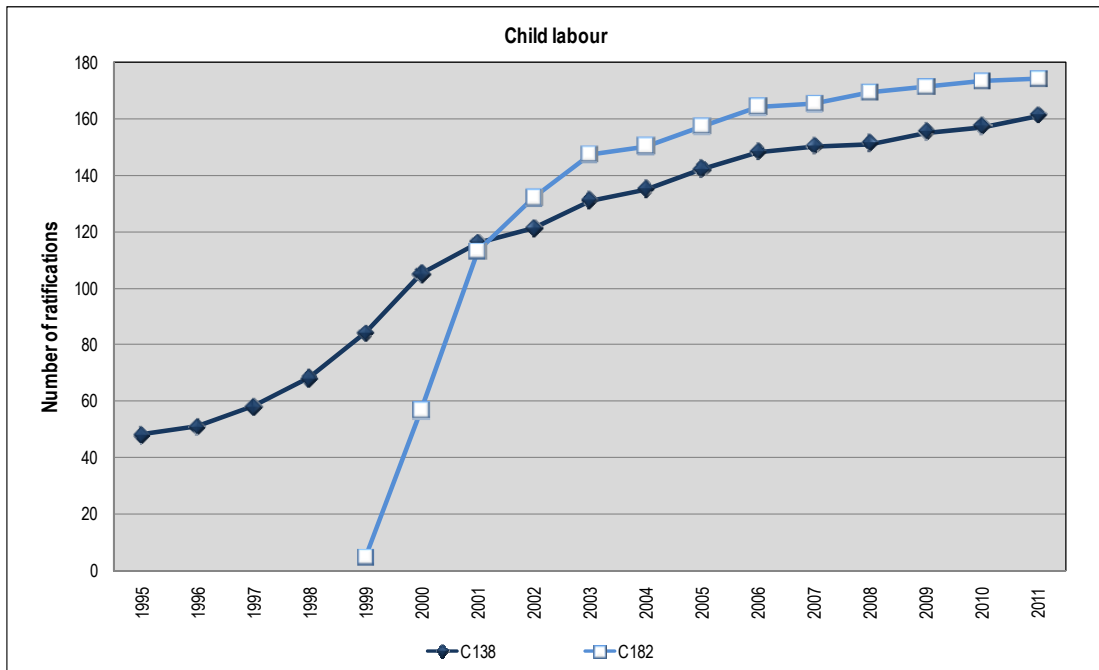
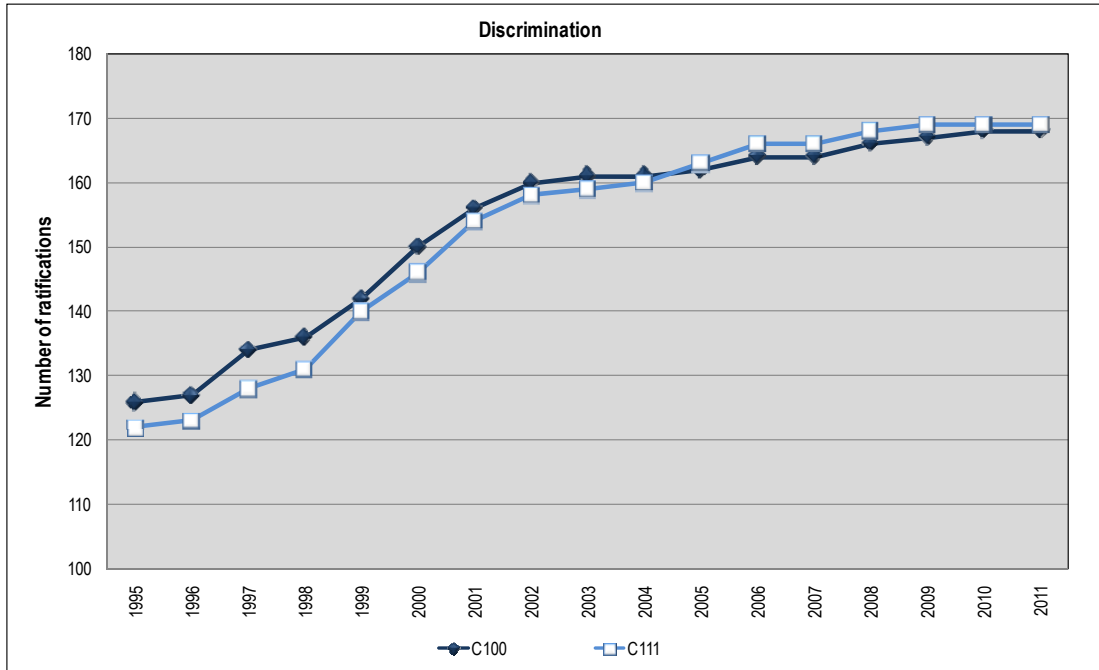
¹ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the ILO Constitution), Report III (Part 1B), ILC, 101st Session, Geneva, 2012.

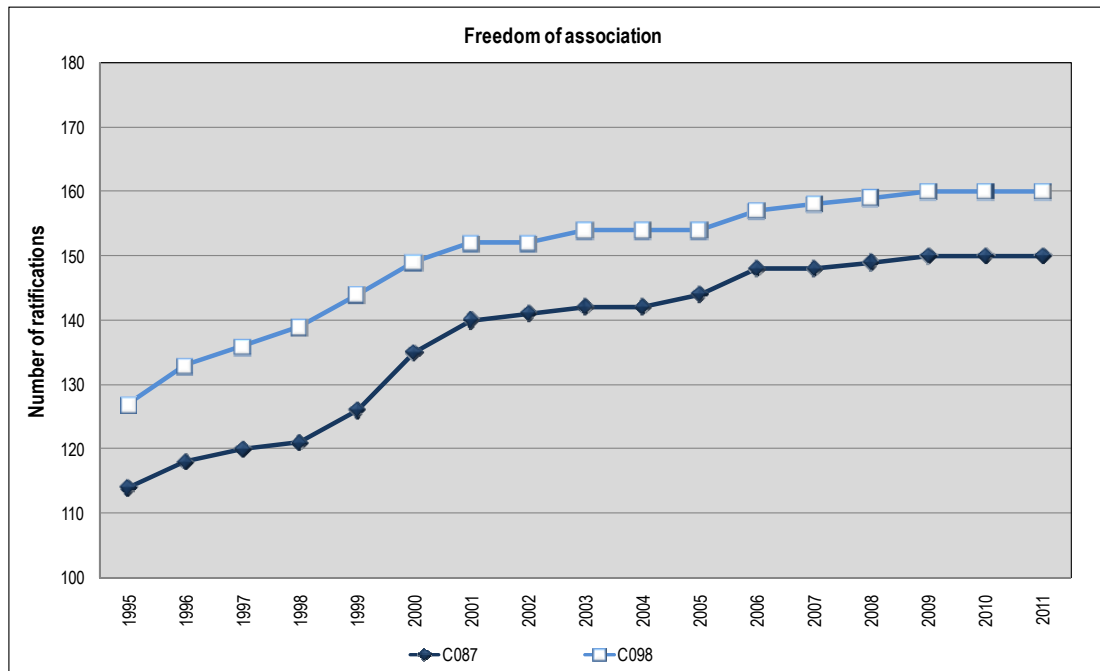
Table 2.1. Ratifications of the fundamental Conventions since 1995

Convention No.	New ratifications since the beginning of the ratification campaign in 1995	Total ratifications at 31 December 2011
C.29	35	175
C.87	36	150
C.98	33	160
C.100	42	168
C.105	55	169
C.111	47	169
C.138	113	161
C.182	174	174
Total	535	1 326

Figure 2.1. Growth in ratifications of the fundamental Conventions since 1995







33. The child labour Conventions have accounted for most ratifications over the past five years. Excluding Conventions Nos 138 and 182, the pace of ratification of the remaining six fundamental Conventions has slowed down considerably since 2007. The universal ratification of these fundamental Conventions remains a major challenge, particularly when it is considered that 11 of the 20 ratifications over the past five years have been from new Members of the Organization. In addition, the application of fundamental Conventions has not been extended to a significant number of non-metropolitan territories (see table 2.2).

Figure 2.2. Total number of ratifications and those still missing by fundamental Conventions

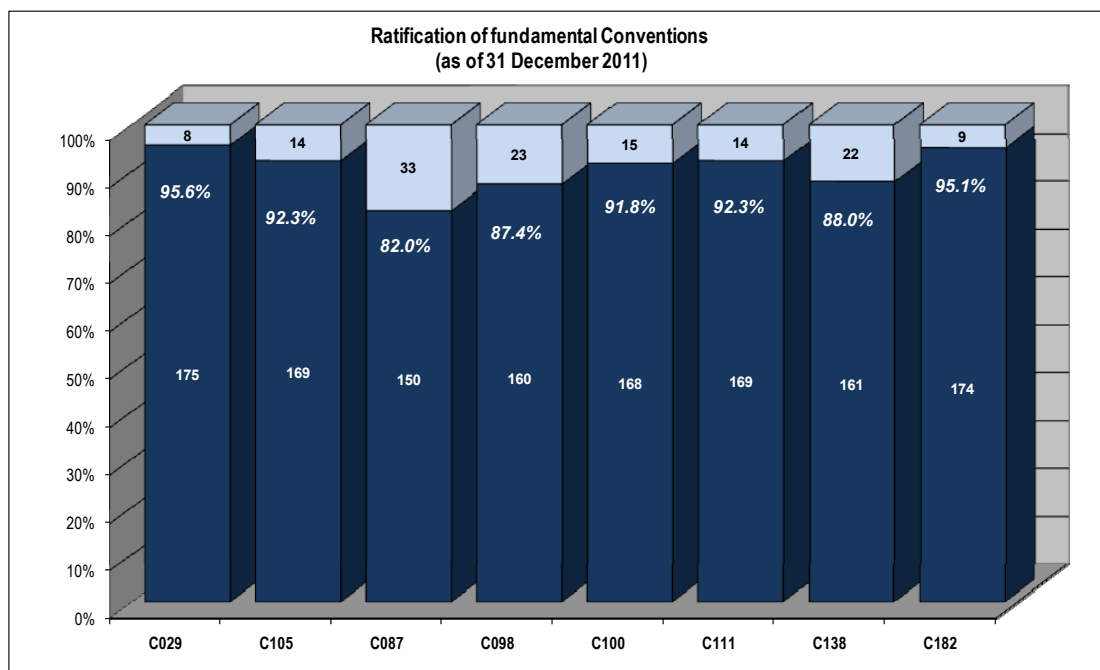


Table 2.2. Status of fundamental Conventions in respect of non-metropolitan territories

Member concerned	Non-metropolitan territory	Ratified Conventions not yet extended
Australia	Norfolk Island	111, 182
China	Hong Kong SAR	100, 111
Denmark	Faeroe Islands	100, 111, 138, 182
	Greenland	98, 100, 111, 138, 182
France	French Polynesia, New Caledonia	138, 182
	French Southern and Antarctic Territories	29, 100, 105, 138, 182
Netherlands	Aruba	98, 100, 111
	Curaçao, Sint Maarten	98, 100, 111, 138, 182
New Zealand	Tokelau	98, 182
United Kingdom	Anguilla, Bermuda, British Virgin Islands, Isle of Man, Jersey, Montserrat	100, 111, 138, 182
	Falkland Islands (Malvinas), Guernsey, St Helena	100, 111, 138
	Gibraltar	111, 138, 182
United States	American Samoa, Guam, Northern Mariana Islands, Puerto Rico, United States Virgin Islands	105, 182

34. Even though the ratification rate of the fundamental Conventions is over 90 per cent, their coverage of the world population is much lower, as some countries that have not ratified the fundamental Conventions have very large populations. Strikingly, over half of the world's population is in countries that have not ratified either of the freedom of association and collective bargaining Conventions. In contrast, the Equal Remuneration Convention, 1951 (No. 100), covers almost 95 per cent of the world population (see table 2.3).

Table 2.3. Percentage of world population covered by the fundamental Conventions ^a

	C.29	C.105	C.87	C.98	C.100	C.111	C.138	C.182
Percentage of world population covered by ratification	74.6%	75.2%	45.9%	49.6%	94.4%	91.3%	70.3%	81%
Countries not covered by ratification of the Convention ^b	<p>Americas: United States</p> <p>Asia: Afghanistan, Brunei Darussalam, China, Republic of Korea, Republic of Maldives, Marshall Islands, Tuvalu</p>	<p>Asia: Brunei Darussalam, China, Japan, Republic of Korea, Lao People's Democratic Republic, <i>Malaysia</i>, Republic of Maldives, Marshall Islands, Myanmar, <i>Singapore</i>, Solomon Islands, Timor-Leste, Tuvalu, Viet Nam</p>	<p>Africa: Guinea-Bissau, Kenya, Morocco, Somalia, Sudan</p> <p>Americas: Brazil, United States</p> <p>Arab States: Bahrain, Iraq, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, United Arab Emirates</p> <p>Asia: Afghanistan, Brunei Darussalam, China, India, Islamic Republic of Iran, Republic of Korea, Lao People's Democratic Republic, Malaysia, Republic of Maldives, Marshall Islands, Nepal, New Zealand, Singapore, Solomon Islands, Thailand, Tuvalu, Viet Nam</p> <p>Europe: Uzbekistan</p>	<p>Africa: Somalia</p> <p>Americas: Canada, Mexico, United States</p> <p>Arab States: Bahrain, Oman, Qatar, Saudi Arabia, United Arab Emirates</p> <p>Asia: Afghanistan, Brunei Darussalam, China, India, Islamic Republic of Iran, Republic of Korea, Lao People's Republic, Republic of Maldives, Marshall Islands, Myanmar, Solomon Islands, Thailand, Tuvalu, Viet Nam</p>	<p>Africa: Liberia, Somalia</p> <p>Americas: Suriname, United States</p> <p>Arab States: Bahrain, Kuwait, Oman, Qatar</p> <p>Asia: Brunei Darussalam, Republic of Maldives, Marshall Islands, Myanmar, Solomon Islands, Timor-Leste, Tuvalu</p>	<p>Americas: Suriname, United States</p> <p>Arab States: Oman</p> <p>Asia: Brunei Darussalam, Japan, Malaysia, Republic of Maldives, Marshall Islands, Myanmar, Singapore, Solomon Islands, Thailand, Timor-Leste, Tuvalu</p> <p>Europe: Turkmenistan</p>	<p>Africa: Liberia, Somalia</p> <p>Americas: Canada, Mexico, Saint Lucia, Suriname, United States</p> <p>Arab States: Bahrain, Saudi Arabia</p> <p>Asia: Australia, Bangladesh, India, Islamic Republic of Iran, Republic of Maldives, Myanmar, Marshall Islands, New Zealand, Solomon Islands, Timor-Leste, Tuvalu, Vanuatu</p>	<p>Africa: Eritrea, Somalia</p> <p>Americas: Cuba</p> <p>Asia: India, Republic of Maldives, Myanmar, Marshall Islands, Solomon Islands, Tuvalu</p>

^a World population figures are taken from *United Nations: World Population Prospects: The 2010 Revision*. Where data were unavailable, other data sources were used for: Antigua and Barbuda (http://en.wikipedia.org/wiki/Antigua_and_Barbuda, estimate May 2010); Dominica (<http://www.state.gov/r/pa/ei/bgn/2295.htm>, estimate 2008); Marshall Islands (<http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Marshall-Islands.html>, estimate 2000); Saint Kitts and Nevis (<http://www.infoplease.com/ipa/A0107930.html>); Tuvalu (<http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/Tuvalu.html>, estimate 2010). The figures are for total population, not the active labour force, and can therefore only be used as an approximation of the number of people potentially not falling within the ambit of a fundamental Convention. The figures do not take into account the population in non-metropolitan territories, or that certain categories of workers are excluded from the scope of some Conventions, or are excluded in accordance with the flexibility provided under certain Conventions.

^b Countries shown in italics, although they had ratified the Convention, have since denounced it.

35. The situation of the 48 member States that have not ratified all of the fundamental Conventions, and their reasons for not doing so, vary widely and are reported to the Governing Body under the follow-up to the 1998 Declaration.² For the 138 cases of non-ratification,³ most of the countries concerned (83 per cent) report the intention to ratify (62 per cent), or that ratification is under consideration (21 per cent). Many of the countries concerned report that they are actively working on ratification (although, in certain cases, this has been reported for a number of years now). Only 14 per cent of the cases of non-ratification of fundamental Conventions are a result of a reported inability or the absence of the intention to ratify. The remaining 3 per cent of missing ratifications concern one member State, which has not indicated its position to the Office concerning the ratification of some fundamental Conventions.⁴

36. Regardless of their intentions, many of the member States concerned report that ratification has been delayed or prevented because their legislation is not in compliance with specific provisions of the Convention(s) in question. Yet, many also indicate that they are actively revising domestic legislation to improve compliance. But for a few countries, certain provisions of the Conventions constitute a major obstacle to ratification. Significant and long-standing examples include the principle of trade union pluralism in Convention No. 87, and the requirement stemming from Convention No. 29 that compulsory military service shall be of a purely military character.⁵ Other countries refer to the views of the ILO supervisory bodies regarding the right to strike and prison labour as obstacles to ratification.⁶

37. Many non-ratifying States report that their national constitutions, laws or regulations recognize the right of freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labour, and the elimination of discrimination in respect of employment and occupation.⁷ Although effective abolition of child labour is not referred to in some national Constitutions, it is recognized in almost all countries in “their policy, legislative and/or regulatory provisions, through the establishment of a compulsory and free education system and minimum ages for admission to employment and work”.⁸

38. However, non-ratifying States also mention challenges with regard to the respect, promotion and realization of FPRW. These commonly consist of a lack of public awareness, the lack of information and data, social and cultural traditions, social and economic circumstances, legal provisions, prevailing employment practices, the lack of capacity of the responsible government institutions, a lack of capacity of employers’ and workers’ organizations, and a lack of social dialogue. Under the follow-up to the 1998

² ILO: Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Governing Body, 310th Session, Geneva, Mar. 2011, GB.310/3. See also ILO: *Giving globalization a human face*, op. cit., Part VI.

³ This figure includes the cases where a fundamental Convention has not been ratified yet (136 cases), as well as the situation where a fundamental Convention, initially ratified, has since been denounced (two cases).

⁴ China, with respect to Conventions Nos 29, 87, 98 and 105.

⁵ Republic of Korea.

⁶ New Zealand (sympathy actions) and Malaysia, respectively.

⁷ ILO: *Giving globalization a human face*, op. cit., Part I, Chapter 2.

⁸ ILO: Review of annual reports under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, op. cit., para. 47; see also paras 24, 37 and 67.

Declaration, the Office has provided technical assistance in these areas, although its action in this respect has been subject to resource constraints (see Chapter 3).

B. Dynamic global picture by category of FPRW: Main trends

1. Freedom of association and the effective recognition of the right to collective bargaining

39. The right of all workers and employers to create and join organizations of their own choosing in order to freely defend their respective interests and to negotiate collectively is an essential foundation of decent work and an indispensable pillar of democracy. This special status, confirmed by the Social Justice Declaration, does not however mean that these principles and rights have achieved universal application. Since the last Global Report on freedom of association in 2008, there have been a series of mixed developments, both with regard to the recognition and protection of these rights, and the extent to which they are exercised.

Freedom of association and civil liberties

40. Freedom of association cannot be fully exercised in a context in which civil liberties are not respected. This means that in situations of widespread denial of basic civil liberties and democratic freedoms, workers and employers frequently face the blanket denial of their basic rights, particularly where there is no tolerance within the prevailing political system of independent organizations or their activities. The history of the ILO shows how intimately connected the struggle for such freedoms is in processes of democratization and how major progress in their observance goes hand in hand with transformational political processes. Latin America, Central and Eastern Europe and Africa provide obvious illustrations from the still recent past. But today the focus has shifted to the Arab world, where the historic changes initiated in Tunisia at the beginning of 2011 have opened major new opportunities. Egypt has de facto set aside decades of legislatively imposed trade union monopoly and independent organizations are being registered for the first time, while a new trade union law, approved by the Cabinet, awaits promulgation. Libya is faced with the task of developing a new industrial relations system compatible with the Conventions it has ratified, and war-torn Iraq has faced the task of dismantling the imposed single union system.

41. Imposed trade union monopolies, now fewer in number, still persist on all continents, depriving very large numbers of workers of the right to form organizations of their choice. And in a still smaller number of countries, all forms of genuine workers' organizations are banned. The Decree leading to the establishment of the General Federation of Oman Trade Unions in February 2010, brought one such situation to an end, and the introduction at the end of 2011 of a new law on labour organizations against a background of major political change in Myanmar offers new prospects of corresponding progress too.

42. Where legislation is not restrictive of organizing, violence and intimidation can still produce the same results. While substantially down on the levels of previous years, the International Trade Union Confederation (ITUC) recorded the murder of 90 union members around the world in 2010,⁹ a figure which has remained stable over the last

⁹ ITUC: Annual survey of violations of trade union rights 2011 (Brussels, 2011).

five years. Some of the worst affected countries have responded with determination to such crimes. In Colombia, the Government has increased the resources for the protection of trade unionists against threats and violence and the investigation and prosecution of those responsible, recognizing that it is essential to end impunity for the perpetrators for such violence.¹⁰ The Government of the Philippines has set up a national tripartite monitoring body to investigate alleged cases of violence against trade unionists, with a view to ensuring that those guilty are punished. The Government has also taken action to raise awareness so as to achieve a climate free from violence. This has included a manifesto signed with the armed forces for a joint and collective effort to promote and protect workers' rights.

Exclusion of certain categories of workers:

Persistent difficulties, promising steps

43. While freedom of association is a universal right for all workers and employers, certain categories, notably public service workers, agricultural workers, workers in export processing zones, migrant workers, especially those in an irregular situation, domestic workers, and the self-employed, are persistently excluded, totally or partially, from the right to associate and bargain collectively in a significant number of countries. Promising steps have been taken in some countries in relation to domestic workers following the adoption of the ILO standards on these workers in 2011.

Anti-union discrimination and adequate protection

from the State: Many concerns, some progress

44. If not effectively prevented and penalized, anti-union discrimination – perceived or real – can render any meaningful exercise of freedom of association ineffective. The frequency of acts of anti-union discrimination and the inadequacy of protection against them is a persistent cause for concern, accounting for 24 per cent of the allegations made between 2007 and 2011 to the Committee on Freedom of Association (CFA). Either because of inappropriate legislative provisions, or because labour inspectorates and labour courts do not have the means or are not trained to handle cases swiftly and effectively, the reality for too many in the world of work is the danger that organizing or activism could bring negative consequences. Important initiatives are, however, being taken, particularly in countries that are reforming their labour dispute settlement machinery and establishing special procedures in relation to alleged violations of freedom of association to ensure faster and more effective protection against discrimination.

Freedom of association and collective

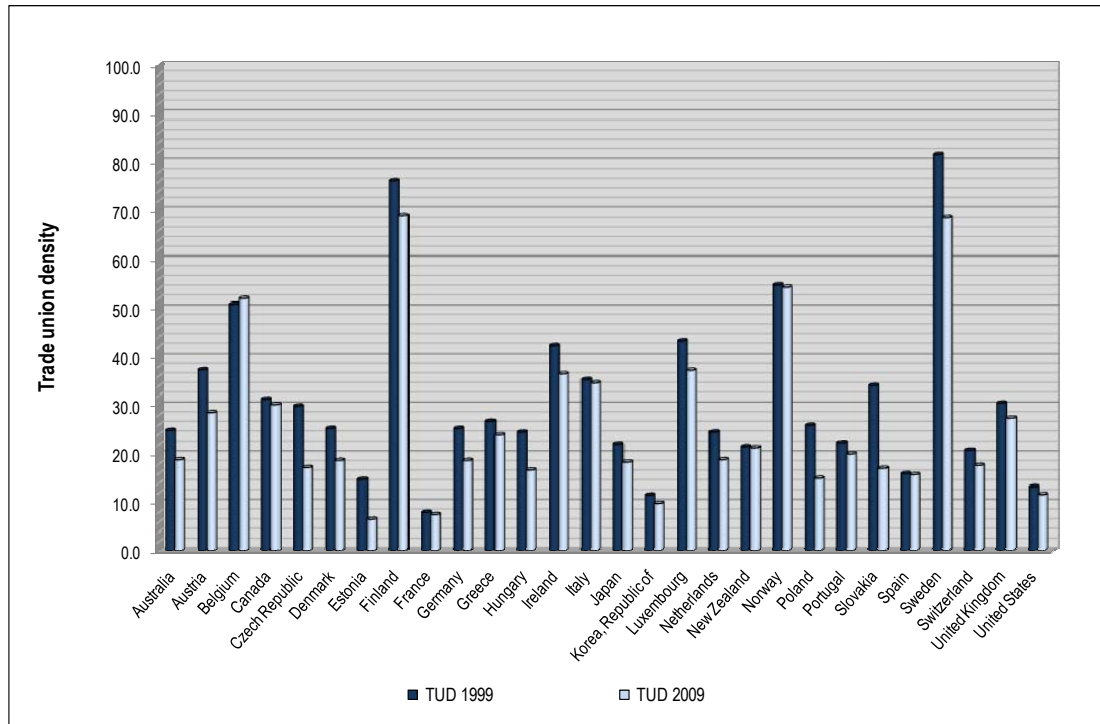
bargaining in practice

45. It is instructive to look at trends in respect of the principles and rights of freedom of association against the background of the extent to which they are exercised in practice. Union affiliation rates and collective bargaining coverage are key data in this respect, and the data available for OECD countries show that membership of trade unions as a proportion of wage earners has fallen in a significant number of countries over the past ten years. Collective bargaining coverage tends to be greater than trade union density in higher-income countries, particularly where multi-employer bargaining takes place at the national or sectoral level and where the practice exists of the extension

¹⁰ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1(A)), ILC, 101st Session, Geneva, 2012, observation, Colombia, Convention No. 87. The comments of the CEACR are also available on the NORMLEX (<http://www.ilo.org/dyn/normlex/en>).

of collective agreements beyond the signatories to the agreement. While collective bargaining coverage has declined in some countries, due largely to deregulation, the decentralization of bargaining and/or a rollback in public policy support for collective bargaining, it has been relatively stable in others, and has been revitalized in yet others.¹¹

Figure 2.3. Trade union density (TUD) in OECD countries, 1999 and 2009



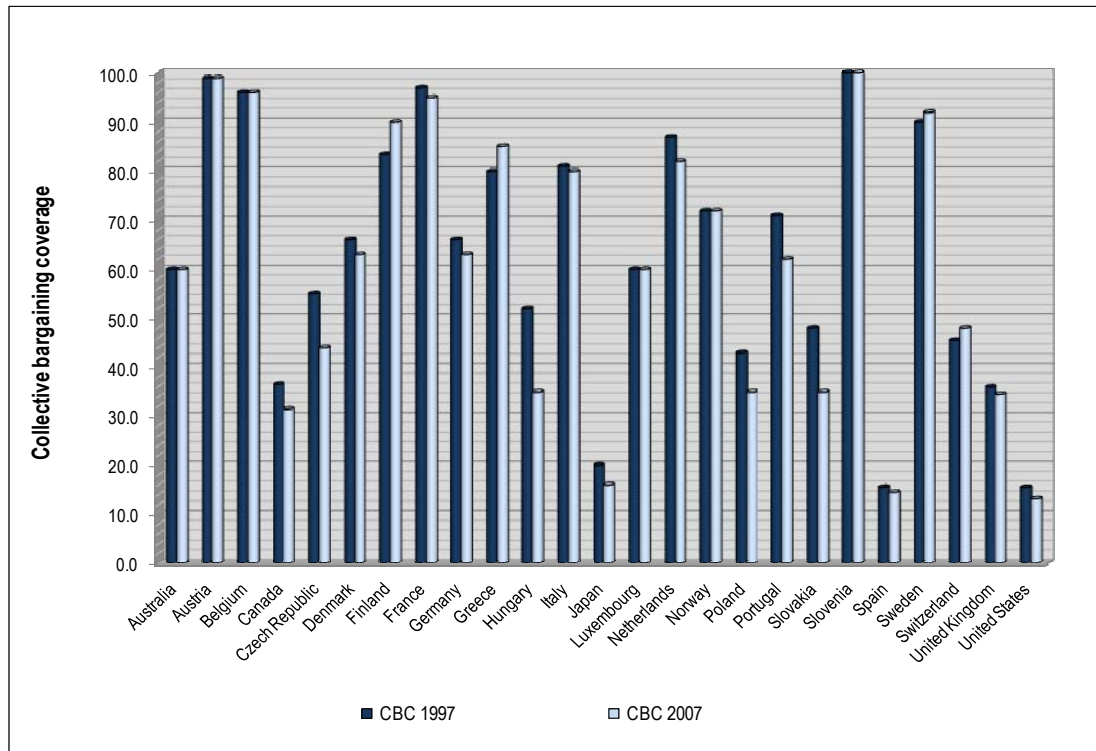
Source: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2007, version 3 (2011).

46. Data are scarce on trends in trade union membership in developing countries. In countries for which statistics are available, there is a significant difference depending on whether trade union membership and collective bargaining are estimated as a proportion of total wage earners, or of the total workforce, including self-employed workers in the informal economy.¹² The large informal economy in many countries significantly reduces the potential coverage of collective agreements.

¹¹ For example, in Argentina and Uruguay.

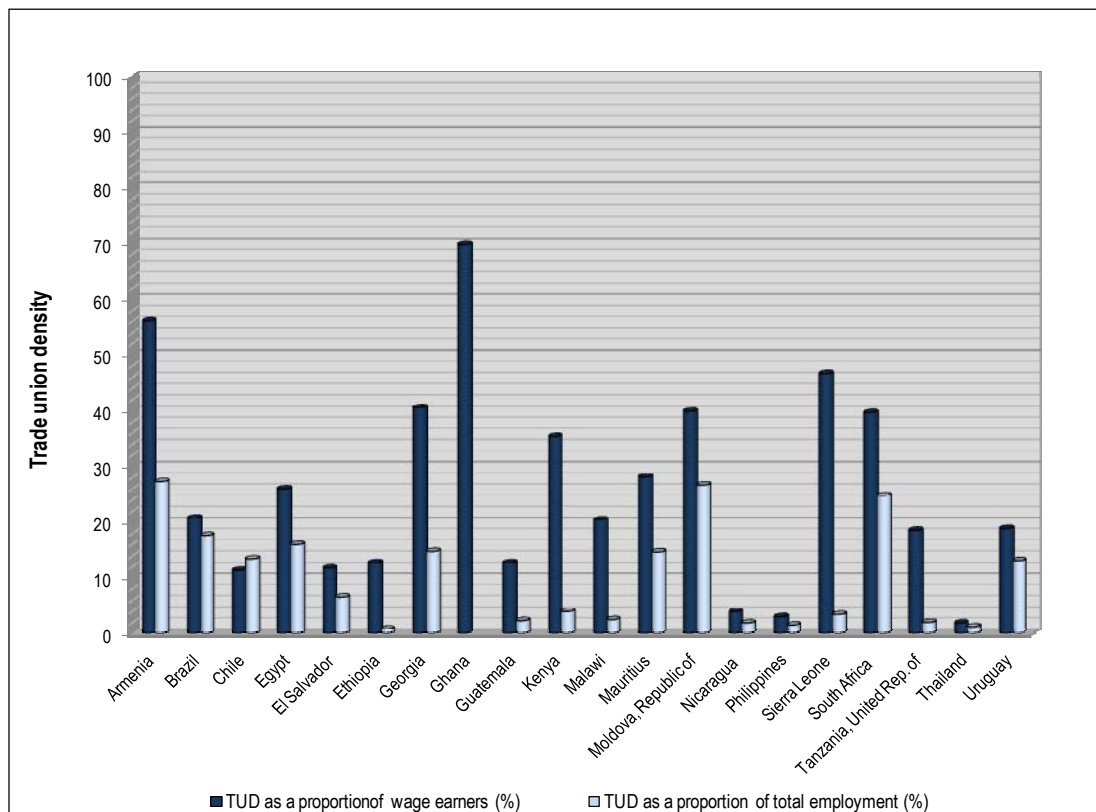
¹² S. Hayter and V. Stoevska: “Social dialogue indicators: Trade union density and collective bargaining coverage”, *Dialogue technical brief* (International Labour Office, Geneva, 2010).

Figure 2.4. Collective bargaining coverage (CBC) in OECD countries, 1997 and 2007



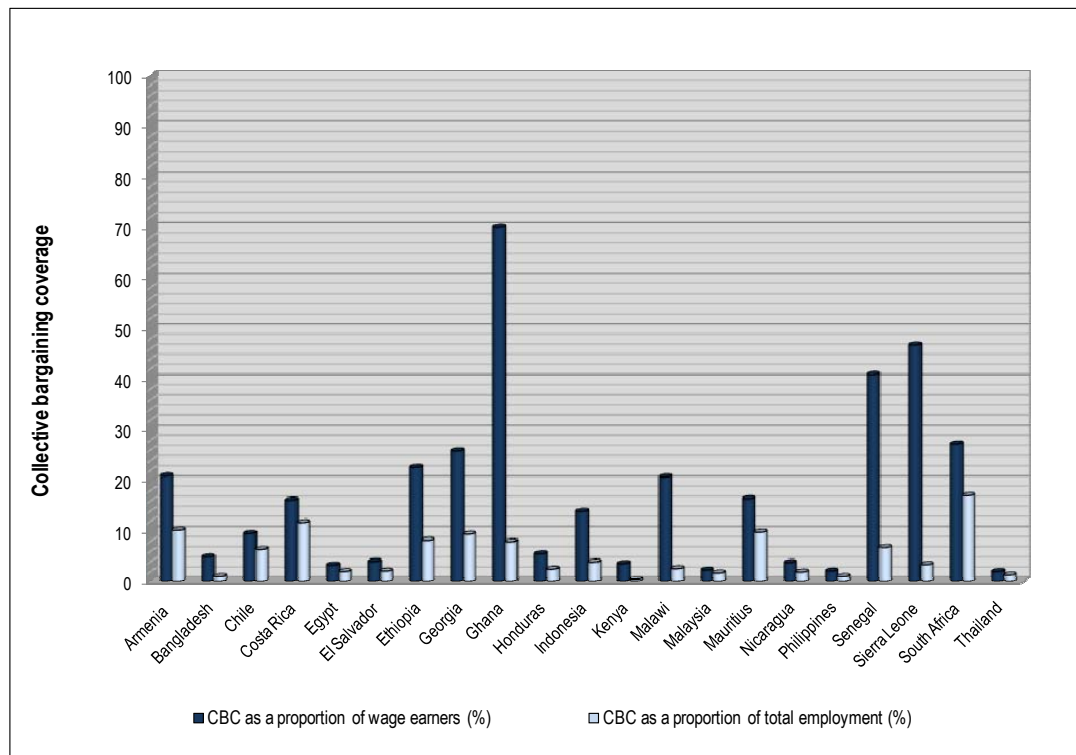
Source: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2007, version 3 (2011).

Figure 2.5. Trade union density (TUD) in developing and transition countries, circa 2007



Note: Kenya – private sector only.

Source: Data from S. Hayter and V. Stoevska (2010).

Figure 2.6. Collective bargaining coverage (CBC) in developing and transition countries, circa 2007

Note: Kenya – private sector only.

Source: Data from S. Hayter and V. Stoevska (2010).

Freedom of association and collective bargaining in times of crisis

47. The onset of the current crisis has had the effect of highlighting a number of key policy questions which were already receiving growing attention in the context of the increasing competitive pressures resulting from globalization. These have focused, in particular, on the economic outcomes – positive or negative – of collective bargaining and their impact on enterprise performance and on income distribution, and have addressed the appropriate degree of centralization of bargaining and the merits of the extension of agreements. All of these issues need to be set against the obligation on member States to promote the effective exercise of collective bargaining and its inherently voluntary character.

48. Collective bargaining has proved to be an important component of negotiated responses to the crisis in many countries.¹³ Through collective bargaining, employers and trade unions, sometimes with State support, were able to negotiate agreements that helped to reduce costs in the short term, saved jobs through short-time work and/or temporary leave and protected earnings. In countries with well-coordinated collective bargaining with significant coverage, this had a counter-cyclical effect and helped to promote balanced recovery.¹⁴ Collective bargaining institutions in a number of countries facilitated more rapid and flexible adjustment to the economic downturn, while also

¹³ V. Glassner and M. Keune: *Negotiating the crisis? Collective bargaining in Europe during the economic downturn*, DIALOGUE Working Paper No. 10 (ILO, Geneva, 2010).

¹⁴ C. Hermann: *Collective bargaining and balanced recovery: The case of Austria*, DIALOGUE Working Paper No. 23 (Geneva, ILO, 2011).

mitigating some of its negative employment effects. Public policies were important in supporting negotiated solutions and preventing competitive wage deflation, for example through the extension of collective agreements.

49. In contrast, established collective bargaining systems and agreements have come under review in a number of countries in Europe, as well as in the United States,¹⁵ with the public sector a particular focus of attention. While the ILO's supervisory bodies have not yet had the opportunity to examine most of these cases, several reforms have involved significant limitations on the scope of bargaining. Where international organizations, such as the IMF, have been involved in such processes through their provision of financial support, cooperation with the ILO is of obvious importance in ensuring the integrity of FPRW (see Chapter 4).

2. The elimination of all forms of forced or compulsory labour

Scope of forced labour

50. In 2005, the ILO estimated that there were at least 12.3 million women, men and child victims of forced labour, of whom around 9.8 million were in the private economy. Annual illicit profits from trafficking for sexual and labour exploitation are estimated at around US\$32 billion, while the victims of forced labour were estimated to lose at least \$21 billion in income due to unpaid wages and recruitment fees every year.¹⁶ The Office is currently preparing new global estimates of forced labour, which will be available for June 2012. The emerging picture points to a reduction in the number of countries where forced labour is imposed by the State, while forced labour in the private economy may be on the increase. There is also an increase in reported cases linked to the internal or cross-border movement of people.

51. The lack of reliable national statistics is an obstacle to the design of effective targeted policies. Much progress has been achieved in the collection and storage of data on identified victims of forced labour and trafficking, but it may only reveal the tip of the iceberg. A number of country pilot surveys carried out since 2005 confirm that little over 1 per cent of cases of forced labour are reported and that forced labour is concentrated in pockets in certain geographical regions and economic sectors. This suggests that, with effective targeted policies and sufficient resources, the elimination of forced labour is in reach in the near future.

52. No solid evidence is yet available to assess the impact of the global economic crisis on the extent and nature of forced labour. However, there is a risk that the crisis will prompt governments to cut back on hard-won prevention, assistance and reintegration services for groups of people who may be at risk of forced labour.

New legislation but inadequate enforcement

53. The CEACR indicates in this year's General Survey that, since 2007, certain legislative provisions have been repealed or amended which allowed the exaction of forced labour for purposes of production or service, as a means of political coercion or education, as a punishment for holding or expressing political views, for various

¹⁵ See, for instance, Greece, Portugal, Romania, Slovakia, Spain and the State of Wisconsin in the United States.

¹⁶ ILO: *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 98th Session, Geneva, 2009.

breaches of labour discipline or for participating in strikes.¹⁷ However, cases still persist of States directly imposing forced or compulsory labour, either for the purposes of production or service, or as a punishment. The abduction of men, women and children in the context of armed conflict also persists, despite recent progress in some countries, such as South Sudan. The exaction of forced labour by national authorities and the military continues to raise concerns in Myanmar, despite long-standing and persistent efforts by the ILO to eliminate such practices.

54. The trend towards more comprehensive legal coverage of forced labour and trafficking offences continues, with countries amending criminal codes or adopting special anti-trafficking or forced labour laws. A report published by the United Nations Office on Drugs and Crime (UNODC) in 2009¹⁸ found that 125 out of 150 countries examined had adopted laws against trafficking in human beings, especially following the entry into force of the Palermo Protocol in 2003.¹⁹ In some cases, however, anti-trafficking laws are still restricted to specific forms of trafficking, such as that of children for sexual exploitation.

55. Since the 2009 Global Report, significant progress has been achieved in the Middle East and the countries of the Gulf Cooperation Council, where almost all countries have now criminalized human trafficking. In the European Union, a new Directive entered into force in April 2011, which criminalizes forced begging, in addition to other forms of exploitation. Most importantly, it establishes enhanced standards for the protection of victims, including specific protection measures for trafficked children.²⁰ New or amended legislation has also been adopted in Asia, such as the Anti-trafficking in Persons Act, 2007 (as amended in 2010), in Malaysia, and the amendment to section 244 of the Criminal Code in China, which increases penalties for forced labour and introduces an offence of recruiting or transporting a person into forced labour.

56. However, despite the new legislation and growing international concern, little progress appears to have been made in the prosecution of forced labour offences. The 2009 Global Report identified a series of factors explaining the low prosecution rates.²¹ For example, many new laws do not provide much detail on specific forced labour offences. Anti-trafficking laws still tend to be used primarily to prosecute sex-related offences, while labour-related cases end up with lighter sanctions or no sanctions at all. This led the United Kingdom to define a specific offence of forced labour and servitude under the Coroners and Justice Act 2009, which has reportedly helped the prosecution of forced labour cases.

57. Another key challenge is the general under-reporting of forced labour, as highlighted by a comprehensive study of trafficking commissioned by the National

¹⁷ This section draws on ILO: *Giving globalization a human face*, op. cit., Part III.

¹⁸ UNODC: *Global Report on Trafficking in Persons: Human trafficking: A crime that shames us all* (Vienna, 2009).

¹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25, 15 Nov. 2000.

²⁰ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

²¹ ILO: *The cost of coercion*, op. cit., paras 164–183.

Prosecuting Authority of South Africa.²² In the absence of well-publicized protection measures, most victims of forced labour do not denounce those who exploit them to the authorities. Operational indicators of forced labour offences are needed to help enforcement agencies, trade unions and other actors identify cases of forced labour in the workplace. Indicators of this type are now being used increasingly by labour inspectors, the police and other enforcement agencies, but further training and awareness raising is required to promote the early identification of victims and support proactive, rather than reactive, enforcement.²³

58. Research by the ILO and other institutions into the nature of modern forced labour has revealed a continuum of exploitation, in which some cases do not meet the high standard of proof required under criminal law. A blend of labour and criminal justice is therefore needed to address the whole spectrum of exploitation and abuse and prevent exploitative labour practices developing into forced labour. The risk of adopting a predominantly criminal justice approach to human trafficking is that the protection required by victims of forced labour may be undermined, as it may not be possible for them to prove that they have been “trafficked”.

3. Effective elimination of child labour

59. Not all work done by children is considered as child labour.²⁴ Children under 18 years of age may legitimately be engaged in employment, which may even be beneficial in preparing them for a productive life as adults. Child labour means work that is prohibited for children of certain age groups. It is work performed by children who are under the minimum age legally specified for that kind of work, or work which, because of its detrimental nature or conditions, is considered unacceptable for children and is prohibited. The following are defined as the worst forms of child labour and require immediate action for their elimination: slavery, trafficking, debt bondage and other forms of forced labour, the forced recruitment of children for use in armed conflict, child prostitution and pornography, illicit activities and any work that is likely to harm the health, safety or morals of a child, either because of its nature or the conditions in which it is carried out (hazardous work).

Data on child labour

60. The 2010 Global Report on child labour emphasized that in overall terms the numbers of children engaged in child labour continued to fall over the past decade.²⁵ However, the rate of decline has slowed and, if this continues, the target date of 2016 set by the ILO for eliminating the worst forms of child labour will not be achieved. The Global Report highlighted the main challenges and emphasized that progress in tackling child labour is inextricably linked to broader development objectives. The existing

²² National Prosecuting Authority: *Tsireledzani: Understanding the dimensions of human trafficking in southern Africa*, research report (South Africa, 2010).

²³ ILO: *Operational indicators of trafficking in human beings: Results from a Delphi survey implemented by the ILO and the European Commission* (Geneva, 2009). An e-learning tool for law enforcement using these indicators will be launched in 2012.

²⁴ United Nations: *Status of the Convention on the Rights of the Child*, Report of the Secretary-General, A/64/172, 27 July 2009, para. 13.

²⁵ This section draws on ILO: *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, paras 16–37. The report contains estimates for the benchmark year 2008 and a trend assessment for the period 2004–08. Estimates for the reference years 2000 and 2004 were published in the 2006 Global Report.

estimates for child labour are those published in the 2010 Global Report, with new global and regional estimates due in 2013. Notwithstanding the increasing number of countries that are collecting data, there are still countries with child labour problems for which no reliable data are available.

61. In 2008, there were some 306 million children aged 5 to 17 working, or “in employment” in the world. A total of 215 million children, or around 70 per cent of all children in employment, were estimated to be in child labour, of whom 115 million were in hazardous work. Between 2000 and 2008, the number of child labourers globally fell by 30 million. Moreover, the incidence rate, which indicates the percentage of children aged 5 to 17 in child labour, fell from 16 to 13.6 per cent. The number of children involved in the worst forms of child labour, proxied by hazardous work, which accounts for the overwhelming majority, fell from 171 million in 2000 to 115 million in 2008. However, both trends slowed in the second half of the period. There has been a rapid decline in the number of younger children between 5 and 14 years engaged in hazardous work, with their number being halved from 111.3 million to 53 million between 2000 and 2008. In contrast, between 2004 and 2008, there was a 20 per cent increase (from 51.9 to 62.4 million) of children (or “adolescents”) in the 15–17 age group, particularly boys, in hazardous work.²⁶

62. From a regional perspective, progress in combating child labour has been greatest in Latin America and Asia. However, certain countries have fallen behind, and child labour has increased in sub-Saharan Africa. In absolute terms, the Asia and Pacific region has most child labourers aged 5 to 17 (113.6 million), compared to 65.1 million in sub-Saharan Africa and 14.1 million in Latin America and the Caribbean. However, the incidence of child labour is highest in sub-Saharan Africa, where one-in-four children work.

63. The available data on the sectoral distribution of child labour suggest that there has been little change over the years. Child labour remains largely a rural problem, with 60 per cent of child labourers globally in the agricultural sector (where hazardous work is highest), 7 per cent in industry and 26 per cent in services. Progress has been slow in agriculture, partly because children there are difficult to reach. The great majority of child labourers (68 per cent) are unpaid family workers.

Policies to combat child labour

64. Considerable attention has been paid to the formulation and implementation of effective policy approaches to combat child labour and strategies to remove children from work and place them in school. There have been important achievements by member States and the social partners, and a strong political commitment to tackling child labour. In view of the close links between poverty and child labour, policies to combat child labour are generally implemented in coherence with national poverty-reduction plans, programmes or strategies. Indeed, the most effective policies to combat child labour are integrated with efforts to reduce poverty and social exclusion. While more isolated measures can have a significant effect on attitudes by demonstrating that child labour can indeed be eliminated, they tend not to be as sustainable as integrated or mainstreamed initiatives.

65. In relation to the worst forms of child labour, a large number of countries have adopted legislation to prohibit children from being engaged in hazardous work and

²⁶ ILO: *Children in hazardous work: What we know: What we need to do*, IPEC (Geneva, 2011), p. 7.

significant progress has been made in the implementation of effective and time-bound measures. Yet, gaps often persist in legislative coverage, particularly in relation to the informal economy, domestic work and agriculture. Support services, protection measures and enforcement in relation to adolescents (aged 15–17) in hazardous work are also limited. In this respect, a key step is the determination of a national list of hazardous types of work prohibited for children, which should be implemented within the context of national occupational safety and health programmes and systems.

66. Around 5.7 million children are in forced and bonded labour, representing around half of all victims. Despite the prohibitions in national law, the problem of child bonded labour persists in practice. Children are also particularly affected by forced labour in the context of domestic work and compulsory labour within the school system (for example, in forced begging in some countries). Children are still being recruited and forced to join national armed forces or illegal armed groups, despite the fact that the large majority of countries have established 18 as the minimum age for compulsory military recruitment. Notwithstanding the progress made in most of the countries concerned, the effective reintegration in society of former child soldiers remains a major challenge. An increasing number of countries have also enacted legislation to prohibit child prostitution and pornography, and have taken measures to combat child sex tourism. Nonetheless, the commercial sexual exploitation of persons under the age of 18 remains an issue of serious concern in several countries, and the enforcement of legislation combating child sex tourism has been difficult, partly due to the transnational nature of this crime. Several countries have also adopted legislative and other measures to prevent the involvement of children in illicit activities, and particularly drug trafficking. Specific measures have also been adopted in most of the countries concerned to address the situation of street children, who are particularly vulnerable to becoming involved in illicit activities. However, some of these measures continue to be inadequate and fail to ensure the rehabilitation and social integration of child victims.

67. In light of the global consensus on the need for free and compulsory basic education for all, measures have been intensified in recent years for the provision of free and accessible education, including cash transfer programmes, resulting in increased school attendance rates at both the primary and secondary levels. Yet basic education is not free in many countries. Although most countries have adopted regulations to harmonize the age of completion of compulsory education with the minimum age for admission to employment or work, many countries still face massive challenges in retaining students to complete basic education, particularly in the case of children from vulnerable groups of the population and those removed from the worst forms of child labour. Despite the progress made, the world is unlikely to achieve the goal of primary education for all children by 2015, and is even further from that of providing secondary education or vocational training for all children between the end of primary education and the minimum age for admission to employment. This is a serious obstacle to the elimination of child labour, as well as to the provision of decent work for youth.

68. An important number of countries have taken measures, provided assistance and concluded agreements at the international, regional and bilateral levels to combat the worst forms of child labour. In particular, a global trend is emerging for States to engage in joint action to combat the sale, trafficking and commercial sexual exploitation of children.

69. The global crisis could slow or even reverse progress in reducing child labour in the countries that are hardest hit.²⁷ Extensive crisis-related data are needed to assess its impact more accurately, as empirical evidence is only slowly becoming available.

4. Elimination of discrimination in employment and occupation

70. As defined in Convention No. 111, discrimination in employment and occupation consists of “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. The Convention allows for additional prohibited grounds of discrimination to be determined after consultation with national workers’ and employers’ organizations. Convention No. 100 sets out the principle of “equal remuneration for men and women workers for work of equal value”.

71. Partly due to the broad nature of the principle and the various existing and emerging manifestations of discrimination, no ILO global or regional estimates exist for discrimination. Although statistics are available to a certain extent on sex-based discrimination and gender equality, aggregate data on discrimination on other grounds, particularly ethnicity and origin, are urgently needed. Indeed, it is not just the lack of empirical evidence which makes it difficult to identify overall trends in discrimination at work. The diverse nature of the problem means that in the absence of all-embracing anti-discrimination strategies it is perfectly possible for specific contextual factors to generate quite divergent trends in discrimination on different grounds in a single country. The emergence of new grounds of discrimination as matters of significant policy concern is a further complication.

72. The 2011 Global Report²⁸ and this year’s General Survey²⁹ document substantial progress in many countries in adopting more comprehensive legislation on equality and non-discrimination, both to prevent and combat discrimination and to promote equality of opportunity and treatment in employment and occupation. Proactive measures mostly address discrimination on the basis of sex, although they are also increasingly tackling discrimination on grounds of race, colour, religion, age, HIV status and disability. Additionally, the new ombudsmans’ offices and equality bodies created in a series of countries are contributing to the improved application of laws and policies against discrimination in employment and occupation. However, as some of these institutions, as well as labour inspectorates, suffer from a shortage of human and financial resources, the effective application and enforcement of non-discrimination legislation in practice often continues to be inadequate. Many countries have still not adopted an overall national equality policy that includes monitoring and enforcement and addresses the many aspects of discrimination on a broad range of grounds.

73. As a result of the global economic crisis and the consequent cuts in public spending, the capacity of institutions to prevent and deal with discrimination complaints may well be further undermined. High levels of unemployment and underemployment worldwide

²⁷ It should be recalled that the recent global financial crisis occurred *after* the surveys on which the estimates in the 2010 Global Report were based.

²⁸ ILO: *Equality at work: The continuing challenge*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 100th Session, Geneva, 2011.

²⁹ ILO: *Giving globalization a human face*, op. cit., Part V.

have had a discernible impact in increasing discrimination in access to jobs, particularly for vulnerable groups. Although research is still pending, anecdotal evidence and experience of past crises suggest that existing structural inequalities will disproportionately affect women, and particularly migrant women and those living in poverty. For example, reduced demand for exports has led to a decrease in textile production, an industry that traditionally employs a large number of women.³⁰

Sex-based discrimination and gender equality

74. Gender inequality continues to be a cause for major concern.³¹ For example, the gap between the labour force participation rates of men and women is 47.2 per cent in the Middle East and over 40 per cent in South Asia. Pay differentials remain one of the most persistent forms of inequality between women and men in the world of work. Factors such as gender stereotypes, occupational segregation, sex-biased job classification systems and pay structures constitute serious obstacles to equal pay for work of equal value and are often poorly understood. A general estimate of the average gap between women's and men's wages was 22.9 per cent in 2008–09.³² Considerable difficulties therefore remain in realizing the principle of equal remuneration for work of equal value in law and practice. Despite the proactive measures taken in many countries to address this issue, at the current rate of progress, another 75 years would be needed to bridge the gender wage gap. Although minimum wage systems help in this respect, there is a tendency to set lower wages for or to exclude female-dominated sectors. Contrary to some assumptions, women's lower educational qualifications, a situation that has already been overcome in certain countries, and their intermittent labour market participation, are not the main reasons for the gender pay gap, which is rather a consequence of deep structural gender discrimination.

75. Other manifestations of gender discrimination include the low representation of women in employers' organizations and in decision-making positions in trade unions, as well as the lower statutory retirement ages that oblige women to retire earlier than men (which are still applicable in approximately 60 countries). Sexual harassment appears to be widespread in the workplace and legislative gaps remain in this respect. There is a lack of understanding in some cases of the various manifestations of sexual harassment, such as a hostile work environment, and the need to go beyond the boundaries of criminal law to address them.³³

76. Although maternity protection legislation has increased worldwide, discrimination against women on the grounds of maternity persists, particularly in relation to dismissal and returning to work following maternity leave, the use of temporary contracts and mandatory pregnancy testing. However, there has also been a recent trend, particularly in European countries, of introducing more family-friendly policies to benefit both women and men in balancing work and family responsibilities.

³⁰ See also ILO: Making the crisis recovery work for women! International Women's Day 2011, Bureau for Gender Equality (Geneva, 2011).

³¹ UNDP: Human Development Report 2010: 20th anniversary edition: *The real wealth of nations: Pathways to human development* (New York, 2010).

³² This section draws on ILO: *A new era of social justice*, Report of the Director-General, Report I(A), ILC, 100th Session, Geneva, 2011, para. 63.

³³ A. Cruz and S. Klinger: *Gender-based violence in the world of work: Overview and selected annotated bibliography*, Bureau for Gender Equality, Working Paper 3/2011 (Geneva, ILO, 2011).

Racial and ethnic discrimination

77. The situation with regard to racial and ethnic discrimination worldwide provides little reason for reassurance. The combined effects of economic crisis, renewed debates about multiculturalism in society, plus the resurgence of intolerance and xenophobic sentiment in too many instances are creating a climate that is not conducive to progress. Evidence from the national level confirms the extent of these problems. The Centre for Equal Opportunities and Opposition to Racism in Belgium reports that 41 per cent of all employment discrimination complaints in 2010 were race-related.³⁴ In New Zealand, the annual review of race relations in 2010 reported that employment and pre-employment were the most common areas for race-related complaints, representing 36 per cent of total complaints.³⁵ Of all the employment discrimination complaints received in France by the former High Authority against Discrimination and for Equality (HALDE) in 2010, 27 per cent were on the grounds of origin.³⁶

78. In the United Kingdom, the Trades Union Congress (TUC) reports that “Black and Asian workers are almost twice as likely to be out of work as white workers”. The TUC analysis of the Labour Force Survey shows a bleak picture “for young people from ethnic minority backgrounds, with the unemployment rate for 18–24 year-olds leaping from 20.1 per cent in 2007 to 30.5 per cent in 2010”.³⁷

79. The World Bank recently found that the current labour market integration of Roma is very poor in Bulgaria, Czech Republic, Romania and Serbia. It indicated that the employment gap between Roma and non-Roma is approximately 26 per cent. Moreover, where Roma have jobs, they earn much less than non-Roma, with an average wage gap of almost 50 per cent, closely related to their lower educational attainment.³⁸

Discrimination based on migrant status

80. Migrant workers make up an increasing proportion of the workforce in a growing number of countries, where their presence is increasingly critical to economic welfare and growth. According to many predictions, international labour and skills mobility are set to rise further in the coming years. Anecdotal evidence and the data available indicate that discrimination against foreign workers and workers perceived to be of foreign origin has increased as a consequence of the continuing global economic and employment crisis. Migrant workers are often discriminated against on the basis of their status as foreigners, as well as on grounds of sex, race, religion, colour, or a combination of grounds (see section C below).

Discrimination based on multiple grounds

81. In recent years, discrimination on multiple grounds has increasingly become recognized as the rule, rather than the exception, with the cumulative effect being to generate situations of potentially extreme disadvantage and exclusion. Examples include the labour and socio-economic situation of indigenous women in Latin America. Challenges in addressing discrimination on multiple grounds arise at all levels and stages

³⁴ Centre pour l'égalité des chances et la lutte contre le racisme: *Discrimination: Diversité*, Rapport Annuel 2010, p. 90.

³⁵ New Zealand Human Rights Commission: *Tūi Tūi Tuituiā: Race relations in 2010* (2011), p. 20.

³⁶ HALDE: Rapport Annuel 2010, p. 21.

³⁷ TUC: Bleak jobs future for young black workers, press release, 8 Apr. 2011.

³⁸ J. de Laat and Ch. Bodewig: “Roma inclusion is smart economics: Illustrations from Bulgaria, Czech Republic, Romania and Serbia”, in *Knowledge Brief, Europe and Central Asia*, World Bank, 39, Apr. 2011.

of the implementation of anti-discrimination measures, including research, data collection, advocacy, judicial interpretation, the development of remedial strategies (including proactive policies) and the formulation of broader social policy initiatives to address structural inequalities at work.

Other grounds of discrimination

82. There is a clear trend for member States to expand the list of prohibited grounds of discrimination in national legislation, particularly to include disability, real or perceived HIV status, sexual orientation, age, nationality and, in some cases, employment status.³⁹

83. Despite recent advances in a number of countries, the situation regarding workers with disabilities remains an area of major concern. Statistics show that the employment rate of persons with disabilities is low compared to non-disabled persons, and that they suffer work-related discrimination in terms of dismissal, wage differentials, access to training and career development. An ILO methodology to place a price tag on the exclusion of persons with disabilities from the world of work, piloted in ten countries, estimated the economic losses related to the high unemployment and lost productivity of persons with disabilities at between 3 and 7 per cent of GDP.⁴⁰

84. HIV-related stigma and discrimination in employment and occupation take various forms: denial of access to employment or to specific occupations,⁴¹ mandatory HIV testing for access to employment, discrimination in terms and conditions of employment, ostracism or exclusion by co-workers, and unfair dismissal. While, in line with the HIV and AIDS Recommendation, 2010 (No. 200), many countries have adopted legislation and policies against discrimination on the basis of real or perceived HIV status, this form of discrimination is still widespread and significant challenges remain in ensuring effective enforcement.⁴²

85. Progress has been made in some countries in including actual or perceived sexual orientation in the list of prohibited grounds of discrimination, which has made it possible, for example, for social benefits to be allocated to same-sex married couples in certain countries. Addressing discrimination based on age has also become an important part of public policy in a number of countries, where discrimination against older workers has been the focus of legislation and action. This has mostly been the case in developed countries, particularly in light of changing demographics.

C. Topical issues common to the four categories of FPRW

86. Since 2000, the ILO's Global Reports under the follow-up to the 1998 Declaration have highlighted many issues common to the four categories of FPRW. The present report offers a first opportunity to focus on some of these from the perspective of all four categories of FPRW. The Social Justice Declaration underlines that global economic

³⁹ ILO: *Giving globalization a human face*, op. cit., Part V, Chapter 3.

⁴⁰ S. Backup: *The price of exclusion: The economic consequences of excluding people with disabilities from the world of work*, Employment Sector Working Paper No. 43 (Geneva, ILO, 2009).

⁴¹ For example, in certain countries, persons living with HIV may be excluded from employment in the police force or the medical profession.

⁴² United Nations: *The protection of human rights in the context of human immunodeficiency (HIV) and acquired immune deficiency syndrome (AIDS)*, Report of the Secretary-General, Human Rights Council, 20 Dec. 2010, A/HRC/16/69, paras 8–14.

integration has helped a number of countries to benefit from high rates of employment creation, but in many parts of the world has also caused “the growth of both unprotected work and the informal economy, which impact on the employment relationship and the protections it can offer”.⁴³ This has had an impact on the application of FPRW, the enjoyment of which remains limited to a minority of workers in many instances. The increase in non-standard forms of employment, the weight of the informal economy, the persistent exclusion of certain categories of workers, and the exposure of export-led sectors to high levels of competition all highlight important challenges in the full application of FPRW to all individuals which require innovative responses. Another crucial aspect common to the four categories of FPRW is their effective enforcement. While there have been significant improvements in compatibility between national legislation and the fundamental Conventions, and indeed in legislative measures furthering FPRW in general, significant difficulties still exist in relation to the functioning of the public institutions responsible for monitoring and guaranteeing practical implementation. Without real enforcement capabilities, these apparent advances may remain a dead letter.

1. Non-standard forms of employment, the employment relationship and access to FPRW

87. Over the past three decades, the growing sophistication of production systems and the increased flexibility of labour markets and legislation have led to the development of a multiplicity of contractual arrangements for workers. The common feature of so-called non-standard forms of employment⁴⁴ is that they differ, in one way or another, from permanent full-time employment with a single and clearly defined employer, considered by most national legislations as the “standard” or “regular” form of employment. “Non-standard” employment is used in this report to refer to: employment relationships in which workers are not employed directly by the user company, but by a subcontractor or private employment agency; various types of short-term contracts; and, finally, part-time work and home work. There are legitimate reasons for these arrangements and they are recognized in several ILO standards.⁴⁵ But non-standard forms of employment and the precariousness that often accompanies them give rise to concerns over their impact on the enjoyment of FPRW and other work-related rights. Similar concerns also relate to the trend for the increased use of civil and commercial contracts for work previously governed by an employment relationship. While in certain cases these forms of self-employment correspond to the reality of the work performed in a given situation, difficulties arise when there is an uncertainty as to the existence of an employment relationship when employment relationships are disguised as self-employment, leaving the workers concerned without proper protection of their employment rights, including FPRW.⁴⁶ Here, as in other cases, the challenge is to distinguish between valid business decisions to have recourse to these arrangements to meet operational needs and situations where they are deliberately used to get around effective guarantees of FPRW.

⁴³ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, op. cit., preamble.

⁴⁴ Other terms, such as “non-regular” or “atypical” forms of employment, are also frequently used to describe the same type of contractual arrangements.

⁴⁵ The Part-Time Work Convention, 1994 (No. 175), the Home Work Convention, 1996 (No. 177), and the Private Employment Agencies Convention, 1997 (No. 181).

⁴⁶ See, in this respect, the Employment Relationship Recommendation, 2006 (No. 198).

88. Several Global Union federations have recently raised these issues with the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises,⁴⁷ arguing that the use of precarious contractual arrangements constitutes a major obstacle to the enjoyment of fundamental human rights.⁴⁸

89. Statistics on non-standard forms of employment remain scarce in many countries,⁴⁹ and their prevalence and character vary widely between regions. Nonetheless, there is sufficient evidence to show that use of these contractual arrangements has increased sharply over the past three decades in both the private and public sectors throughout the world. In many emerging economies, where the proportion of wage earners in the overall workforce has grown over the past two decades, this has mostly been due to the increase in non-standard forms of employment. In the industrialized economies, the job losses caused by the current crisis have particularly affected workers in non-standard employment,⁵⁰ and there are already signs that most newly created jobs are of a non-standard nature.⁵¹

90. By and large, women, young people and foreign and internal migrant workers tend to be over-represented in non standard forms of employment. There is a much higher incidence of low wages among non-standard workers: “Job insecurity, far from being compensated through higher wages, actually tends to go hand in hand with low pay”.⁵² Although, more extensive statistics are required, there is converging evidence of the existence of important wage gaps between non-standard and regular workers, even when they have comparable qualifications and seniority. The Government of the Republic of Korea has reported that, when comparing people from the same workplace, age, seniority and educational background, “male non-regular workers earned 11.6 per cent less than regular workers, while the wage gap was considerably wider for female non-regular workers who earned 19.8 per cent less than regular workers”.⁵³ Moreover, non-standard workers tend to be more exposed to the risk of exclusion from employment protection legislation, certain social security benefits, vocational training and promotion opportunities and, as indicated below, from collective representation.⁵⁴ In addition to challenging the principle of equal remuneration for work of equal value, differences of treatment and opportunities based on employment status also raise the issue of indirect

⁴⁷ International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF): *Precarious work: Undermining human rights*, Geneva, 2010; and International Metalworkers’ Federation (IMF): *Precarious work: Undermining human rights*, submission to the Special Representative of the Secretary-General on Business and Human Rights, Geneva, 2010.

⁴⁸ In his address to a side event at the 99th Session of the ILC in 2010, the Special Representative of the UN Secretary-General on Business and Human Rights, J. Ruggie, emphasized that: “I look to the ILO for guidance on labor rights. One area where further guidance would be helpful is what has come to be known as ‘precarious work’ – the growth in part-time and contract-based work, and its possible implications for workers’ rights.”

⁴⁹ One reason is the absence of an international definition of non-standard or atypical forms of employment.

⁵⁰ IMF: *Cross-cutting themes in employment experiences during the crisis*, Staff Position Note (Washington, DC, 2010), p. 14.

⁵¹ European Foundation for the Improvement of Living and Working Conditions: *Shifts in the job structure in Europe during the great recession* (Dublin, 2011).

⁵² ILO: *Global Wage Report 2010–11: Wage policies in times of crisis* (Geneva, 2010), p. 46.

⁵³ CEACR, observation, Republic of Korea, Convention No. 100, 2009.

⁵⁴ M. Bell: *Strengthening the protection of precarious workers: Part-time workers* (ITCILO, Turin, 2010).

discrimination against groups that are over-represented in non-standard forms of employment, such as women, young people and migrant workers.

91. There are no global data and national statistics are scarce on the unionization rates and collective bargaining coverage of non-standard workers. However, the data that are available for specific countries illustrate the challenges faced by workers in non-standard forms of employment in engaging in collective action. In Peru, for instance, there is a strong correlation between the rapid rise in the use of short-term contracts during the 1990s and the sharp fall in unionization over the same period.⁵⁵

92. In the Republic of Korea, the increase in the share of temporary workers in the total workforce has been seen as one of the main factors in the decline in the unionization rate. According to the Korean Labour and Society Institute, while the overall unionization rate is 9.6 per cent, that of temporary workers, who now represent almost 50 per cent of all employees, is as low as 1.7 per cent.⁵⁶ In Japan, the unionization rate of part-time workers (5.3 per cent) is still far lower than the overall rate (18.5 per cent). However, the concerted efforts by Japanese unions have helped the number of unionized part-time workers to grow significantly compared to 20 years ago.⁵⁷

93. A growing number of complaints to the CFA are related to the situation of self-employed workers and of non-standard workers in both the private and public sectors. The reports of the CFA confirm that these forms of employment can pose complex challenges to the collective organization of workers and that, when not adequately regulated and monitored, they may be used to circumvent or undermine the right to freedom of association and collective bargaining.⁵⁸ A common aspect of several cases examined by the CFA concerns the difficulties faced by self-employed workers in creating or joining unions, and related attempts to disguise the existence of an employment relationship. Another issue is that anti-union discrimination can manifest itself in a less visible, but more prejudicial manner when there is no permanent or direct contractual relationship between the user company and the worker. Several other CFA cases highlight the “impasse” faced by subcontracted workers and workers employed by private employment agencies in certain countries when trying to bargain collectively. Resolving these situations can prove particularly difficult if the applicable industrial relations legislation is basically designed to address permanent, full-time and bilateral employment relationships.

94. While the overwhelming majority of workers engaged in non-standard forms of employment are not subject to forced labour, the instability of their employment status and particularly the intervention of intermediaries in their employment relationship, when not properly regulated and monitored, can aggravate situations of vulnerability and facilitate the emergence of forced labour practices. In certain sectors, such as the garment industry, forced labour may arise in the context of complex subcontracting pyramids covering both the formal and informal economies. In several countries, special

⁵⁵ F.C. Luque and C. Sanchez: “Efectos de la política del fomento del empleo temporal en la actividad textil exportadora en Perú”, in *Actualidad Laboral Andina*, 21 Feb. 2008.

⁵⁶ K. So-youn: “Union membership falls below 10 pct”, in *The Hankyoreh*, 17 Nov. 2011.

⁵⁷ K. Hamaguchi and N. Ogino: *Non-regular work: Trends, labour law policy, and industrial relations development: The case of Japan*, Industrial and Employment Relations Department, Working Paper No. 29 (ILO, Geneva, 2011, p. 29).

⁵⁸ See, in particular, Cases Nos 2083, 2430 and 2433 (Canada), 2051 and 2556 (Colombia), 1615, 1865 and 2602 (Republic of Korea) and 2675, 2687 and 2757 (Peru).

short-term contractual arrangements that prevent migrant workers from changing employment and bind them to their employers offer striking examples of how the regulation of the employment relationship can have significant consequences on the occurrence of forced labour.

95. A growing number of countries are taking action to improve the regulation of the employment relationship and are adopting initiatives to specify the legal regime governing non-standard forms of employment and to regulate their use. Although they are not all focused directly on FPRW, these measures can contribute significantly to creating the conditions for their effective realization.

96. In line with the guidance set out in the Employment Relationship Recommendation, 2006 (No. 198), the action taken has included measures to clarify the distinction between employed and self-employed workers, and to combat disguised employment relationships. In this context, criteria have been set to determine the existence of an employment relationship,⁵⁹ specific bodies established to issue general recommendations and settle disputes,⁶⁰ and labour inspection campaigns undertaken to eliminate practices of false self-employment in certain sectors.⁶¹ Ensuring that workers involved in an employment relationship are recognized as such is key to guaranteeing effective access to freedom of association and collective bargaining, as is the explicit recognition of the right of genuine self-employed workers to join unions, create their own representative organizations and bargain collectively.⁶²

97. Many countries are adopting a dual approach to non-standard forms of employment; firstly by ensuring that recourse to such arrangements is justified, for instance, by guaranteeing that short-term contracts are only used for tasks that are temporary in nature;⁶³ and, secondly, by recognizing that workers in non-standard forms of employment have the right to the same or similar employment conditions as regular workers performing the same or similar tasks, including the benefits set out in sectoral or company collective agreements.⁶⁴ In such cases, the principles of equality of treatment and the promotion of collective bargaining become mutually reinforcing. These measures can also have the effect of preventing the abuse of non-standard forms of employment for anti-union purposes. It should be noted in this respect that several countries have recently included employment status among prohibited grounds of discrimination.⁶⁵

98. The increasing attention paid by the social partners to the regulation of non-standard forms of employment is giving rise to a series of agreements at the international and national levels that also address the issue of FPRW. In the European Union, the adoption of the part-time work and fixed-term work Directives was the result

⁵⁹ See, for example, South Africa, “Code of Good Practice: Who is an employee”, Notice 1774 of 2006, *Government Gazette*, 1 Dec. 2006.

⁶⁰ For instance, Belgium, “Commission de règlement de la relation de travail”, created by the Loi-programme (I), of 27 Dec. 2006, Title XIII.

⁶¹ For Brazil, see R.R. Pires: “Governing regulatory discretion: Innovation and accountability in two models of labour inspection work”, in *Regulating for decent work: New directions in labour market regulations* (Geneva, ILO, 2011). S. Lee and D. McCann (eds).

⁶² See Spain, Act No. 20/2007.

⁶³ For example, France, Labour Code, section L1242-2.

⁶⁴ For example, Argentina, Decree No. 1694/2006; China, Employment Contract Law, 2008.

⁶⁵ For example, in Austria, Republic of Korea, Netherlands and Poland.

of the respective framework agreements concluded by the European social partners.⁶⁶ In October 2008, the members of the International Confederation of Private Employment Agencies (CIETT) and the UNI Global Union signed a Memorandum of Understanding (MoU) on temporary agency work in 2008. The MoU highlights the role of FPRW in ensuring decent working conditions for temporary agency workers, the need for solid national regulatory frameworks to prevent potential abuses and the relevance of sectoral social dialogue in negotiating the working conditions of temporary agency workers and the conditions for the use of temporary agency work. National collective agreements are also being concluded which promote employment security and equal pay and treatment for workers in non-standard forms of employment. In countries with multi-employer bargaining structures, protections and entitlements are also being extended to non-standard workers.⁶⁷

99. International trade union initiatives in this field have included the Global Union Principles on Temporary Work Agencies adopted by the Council of Global Unions in 2010. These provide that workers supplied by temporary work agencies must be granted equal treatment and opportunities, including equal pay for equal work, compared to regular and permanent employees. Governments are called upon to take genuine and concrete measures to ensure that workers dispatched by temporary work agencies are able to exercise effectively their right to join or form trade unions, including the right to be part of a bargaining unit comprising direct employees of the user enterprise, and to be covered by all collective bargaining agreements applying to the user enterprise.

**IUF complaint to the OECD regarding
the Khanewal tea factory**

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) launched an international solidarity campaign and filed a complaint to the United Kingdom National Contact Point of the *OECD Guidelines for Multinational Enterprises* concerning the Khanewal tea factory in Pakistan, operated by a British-registered multinational enterprise. The IUF indicated that over 95 per cent of the workers in the factory were casual employees from labour-hire agencies and that the massive recourse to casual workers was a strategy to impede the possibility of collective bargaining. As a result of the complaint, a mediator was appointed and a direct settlement between the IUF and the multinational company was reached in 2010:

- ❑ The agreement calls for a tenfold increase in the number of permanent and direct workers.
- ❑ The new permanent and direct workers will primarily be recruited from among the members of the Action Committee, the organization representing casual workers in the plant.
- ❑ Both the multinational company and the Action Committee members are committed to a process of ongoing dialogue.
- ❑ The IUF and its affiliates will be entitled to exercise full representational functions in the plant, within the pertinent legal framework.

⁶⁶ Council Directive 97/81/EC of 15 Dec. 1997 concerning the Framework agreement on part-time work concluded by UNICE, CEEP and ETUC; and Council Directive 1999/70/EC of 28 June 1999 concerning the Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

⁶⁷ For an analysis of a series of examples, see S. Hayter, T. Fashoyin and T.A. Kochan: "Collective bargaining for the 21st Century", in *Journal of Industrial Relations*, 53(2), pp. 225–247.

2. The informal economy

100. Most informal workers – the majority of workers in the world – do not benefit from FPRW. This stark, if frequently forgotten, reality is an unparalleled challenge to the promotion of FPRW, not least in Africa and South Asia where the proportion of the workforce in the informal economy is as high as 90 per cent.⁶⁸

101. According to the ILO definition,⁶⁹ the “informal economy” refers to all economic activities by workers and economic units that are not covered, or are inadequately covered, in law or in practice, by formal arrangements. Informal workers either operate outside the formal reach of the law, or the law for some reason is not enforced to protect them. The informal economy therefore covers both the so-called informal sector and informal employment in formal sector establishments. This implies that, when certain non-standard forms of employment are not sufficiently regulated by domestic legislation, the workers concerned may fall into conditions of informality. Indeed in many countries, including industrialized countries, the increase in informality has been high in the formal sector due, inter alia, to a weakening of the employment relationship and to difficulties in monitoring and enforcing labour legislation.⁷⁰

102. The informal economy is very diverse with respect to the sectors involved, the types of informality (informal sector versus informal employment) and the forms of employment status of the workers concerned, with wage earners often being a minority. Even though agriculture is clearly the most affected, especially in developing countries, informality cuts across sectors and can be found, for example, in electronics, construction, textiles, tourism, transport and household services. In this respect, there is growing recognition of the continuum and close linkages, especially in global production chains, between formal and informal employment.⁷¹

103. Nevertheless, an important common trait is the vulnerability of most informal workers in terms of both their rights and their economic situation. As the informal economy is characterized by the absence of the rule of law, the overwhelming majority of informal economy workers are not able to enjoy, exercise or defend their fundamental rights at work, and the most severe violations of these rights often occur in the informal economy. Unionization rates of informal workers are extremely low in the majority of countries, and this is usually compounded by the absence of any effective possibility to bargain collectively. Child labour, particularly its worst forms, and forced labour tend to be found disproportionately in the informal economy, and discrimination is more widespread: “People who face direct or indirect discrimination and do not enjoy equality of opportunity and treatment – whether in terms of access to education and training, to resources or to formal jobs – end up in the informal economy, normally at the bottom end in the worst jobs”.⁷² In both industrialized and developing countries, the concentration of youth, women and migrant workers in the informal economy is also

⁶⁸ ILO: Statistical update on employment in the informal economy (Geneva, ILO, 2011).

⁶⁹ ILO: Conclusions concerning decent work and the informal economy, ILC, 90th Session, Geneva, 2002, para. 3.

⁷⁰ J. Jutting and J.R. De Laiglesia (eds): *Is informal normal? Towards more and better jobs in developing countries* (Paris, OECD, 2009). An OECD Development Centre Perspective, Development Centre Studies.

⁷¹ A. Trebilcock: “Using development approaches to address the challenge of the informal economy for labour law”, in G. Davidov and B. Langille (eds): *Boundaries and frontiers of labour law: Goals and means in the regulation of work* (Oxford and Portland, Hart Publishing, 2006), pp. 63–86.

⁷² ILO: *Decent work and the informal economy*, Report VI, ILC, 90th Session, Geneva, 2002, p. 40.

striking, with the earnings gap between formal and informal workers being larger for women than for men.

104. The best approaches to address informality and its adverse consequences are still being debated, and it is understandable that the progress made has not been impressive when set against the scale of the problem. It is not disputed that determined formalization efforts are key to achieving the universal application of FPRW, which cannot be effectively applied in the absence of the rule of law. At the same time FPRW, as both rights and enabling conditions, constitute an important element of the formalization process. This is especially true with respect to freedom of association. As the Director-General indicated to the Conference in 1991, “it is only through forming and joining organizations of their own choosing that those employed in the informal sector will be able to generate sufficient pressure to bring about the necessary changes in policies, attitudes and procedures that hamper the development of the sector and the improvement of working conditions in it”.⁷³ Despite the many barriers, legal and practical, new strategies for self-organization have begun to offer a collective voice to some of the most vulnerable workers in the global labour market. For example, the Ghana Union of Traders’ Associations, an informal organization of self-employed workers, in consultation with the Government, succeeded in developing trading and taxation policies that are more responsive to the needs of the informal economy. The union has also improved access to training, and is currently developing a social protection scheme for its members.⁷⁴ Another remarkable example of the organization of informal workers is the Self-Employed Women’s Association in India, probably the best known trade union in the informal economy.⁷⁵ These examples, still too isolated, highlight the need to promote organizing in the informal economy, as well as the synergies between FPRW and the ILO’s other strategic objectives.

105. As poverty is a root cause of informality, and therefore of the associated violations of FPRW, targeted social protection and employment initiatives can have an important effect in reducing vulnerability to child and forced labour and in addressing discrimination against informal workers and their families. Examples include social transfer programmes explicitly targeting child labour, such as the *Familias en Acción* programme in Colombia, Nicaragua’s *Red de Protección Social* and the *Bono de Desarrollo Humano* in Ecuador.⁷⁶ In the case of public employment programmes, a study on the National Rural Employment Guarantee Scheme (NREGS) in India found that, as a result of the programme paying equal wages to men and women, women’s participation in NREGS was higher, leading to the expectation that there would be upward pressure on women’s agricultural wages generally and a reduction of the gender wage gap.⁷⁷

⁷³ ILO: *The dilemma of the informal sector*, Report of the Director-General, ILC, 78th Session, Geneva, 1991, p. 39.

⁷⁴ ILO: *Freedom of association and development* (Geneva, ILO, 2011), pp. 18–20.

⁷⁵ <http://www.sewa.org>.

⁷⁶ ILO–Social Security Department: *Effects of non-contributory social transfers in developing countries: A compendium*, Working Paper (Geneva, 2010), p. 13.

⁷⁷ S. Dasgupta and R.M. Sudarshan: *Issues in labour market inequality and women’s participation in India’s National Rural Employment Guarantee Programme*, Policy Integration Department, Working Paper No. 98 (Geneva, ILO, 2011).

3. Groups and categories of workers at risk

106. Certain population groups and categories of workers are clearly more exposed to violations of FPRW than others. The most at risk groups usually have limited access to state protection and collective action, may suffer from multiple forms of discrimination, and be trapped in a vicious circle of informality and poverty. This section of the report focuses on three such groups – migrant workers, rural workers and indigenous peoples⁷⁸ – as well as a specific occupational category, domestic workers.

107. Despite the lack of precise statistics, especially concerning the situation of indigenous peoples and migrant workers, and the significant differences between countries, the ILO has gathered clear evidence of the vulnerability of these workers in relation to all the categories of FPRW.⁷⁹ Domestic workers, 83 per cent of whom are women, often from a migrant, indigenous or rural background, suffer from acute pay discrimination, with their work being among the lowest paid in any labour market. Some 40 per cent of domestic workers worldwide work in countries where the law sets a minimum wage for admission to employment or work, but excludes domestic work from its application.⁸⁰ Unionization levels are generally low among these groups, and domestic workers are covered by collective agreements in fewer than 5 per cent of ILO member States. Migrant workers, indigenous peoples and rural inhabitants are among those most affected by forced labour and trafficking.⁸¹ In important economic sectors in certain countries, over 80 per cent of working children are indigenous.⁸² ILO studies have found that candidates for jobs who are immigrants usually have to submit three to five times more applications than other applicants to obtain a positive response. Migrant workers are also often the first to be retrenched in an economic downturn.⁸³

108. Each group has special characteristics and inherent vulnerabilities. As an occupational category, domestic workers suffer in particular from the isolation of their work and from the prejudices attached to tasks considered to be “women’s” work, rather than a professional occupation. Indigenous people are widely affected by structural discrimination. Their way of living, including their traditional occupations and the use of their land, are often not recognized as part of the “normal” economic system, and their participation in public decision-making is often limited. Migrant workers may be over-exposed to risks of exploitation arising from the manner in which they are recruited, and from the precarity or irregularity of their status in their country of employment. In

⁷⁸ There are over 370 million self-identified indigenous peoples in some 70 countries around the world. Indigenous peoples form about 5,000 distinct groups and occupy about 20 per cent of the earth’s territory. See <http://www.ifad.org/english/indigenous/index.htm>.

⁷⁹ ILO: *Decent work for domestic workers*, Report IV(1), ILC, 99th Session, Geneva, 2010; ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2007); ILO: *Guidelines for combating child labour among indigenous and tribal peoples* (Geneva, 2006); ILO: *International labour migration: A rights-based approach* (Geneva, 2010); ILO: *Promotion of rural employment for poverty reduction*, Report IV, ILC, 97th Session, Geneva, 2008.

⁸⁰ ILO: *Coverage of domestic workers by key working conditions laws*, Domestic Work Policy Brief No. 5 (Geneva, 2011).

⁸¹ ILO: *The cost of coercion*, op. cit., paras 63–100.

⁸² Dhobighat-Naya Bato, Lalitpur, *Social exclusion and child labour in nepal: With special reference to Janajatis (Indigenous Nationalities)*, ILO Project on Sustainable Elimination of Bonded Labour in Nepal, International Labour Organization, Kathmandu, Nepal.

⁸³ L. Simeone, P. Taran and A. Gächter: *Situation-testing: Discrimination in access to employment based on ILO Methodology* (Geneva, ILO, 2007) (updated in Mar. 2010), p. 4; and I. Awad: *The global economic crisis and migrant workers: Impact and response*, 2nd edition (Geneva, ILO, 2009).

certain countries, rural areas are particularly affected by the absence of state policies addressing their specific needs.

109. Over and above these specificities, the different groups are largely subject to common obstacles in the application of the four categories of FPRW. These include: difficulties in gaining access to state institutions and consequent weak enforcement of labour legislation; lack of awareness of their fundamental rights; the absence of a strong collective voice preventing them from defending their rights and interests effectively; and, last but not least, high levels of poverty. Significant initiatives are being taken by certain constituents in relation to each of these obstacles. As domestic workers, indigenous people, migrant and rural workers are highly exposed to informality, the measures taken for each group offer tangible responses to the challenges arising in relation to FPRW in the informal economy.

Legislative coverage

110. In many countries, these vulnerable workers are also disadvantaged by legislative exclusions which leave them without adequate legal protection in relation to FPRW. This is particularly the case in respect of freedom of association and collective bargaining for domestic workers, migrant and agricultural workers. Similar exclusions also exist in relation to non-discrimination and the minimum age for employment in domestic work and agriculture. They may also suffer from broader legislative gaps which have a significant impact on equality in employment and occupation. Domestic and rural workers are sometimes not adequately covered by labour legislation regulating core elements of the employment relationship, such as minimum wages and working time. Over half of domestic workers worldwide have no statutory limitation on their normal weekly hours of work.⁸⁴ In the case of indigenous peoples, there is often little or no legal protection for their traditional occupations and of the land they occupy,⁸⁵ resulting in significant risks of direct or indirect discrimination based on the origin of the persons concerned.

111. Certain countries have recently adopted reforms to extend the right to freedom of association and collective bargaining to agricultural workers, domestic workers or foreign workers. More broadly, concerns relating to the protection of domestic workers led to the adoption in June 2011 of the Domestic Workers Convention, 2011 (No. 189), and Recommendation No. 201, which offer a major new opportunity for progress worldwide. A significant number of countries, including Argentina, Chile, India, Portugal, South Africa and Trinidad and Tobago, have extended important aspects of their labour and social security legislation to domestic workers.

Protection against possible violations of FPRW

112. Domestic workers, indigenous people, migrant and rural workers often face significant difficulties in gaining access to effective monitoring and enforcement mechanisms. This is particularly the case for rural workers in remote areas, who tend to be more affected than other groups by the lack of resources for labour inspection, labour

⁸⁴ ILO: *Coverage of domestic workers by key working conditions laws*, op. cit.

⁸⁵ African Commission on Human and Peoples' Rights: *Report of the Working Group of Experts on Indigenous Populations/Communities*; submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" adopted by the African Commission on Human and People's Rights at its 28th ordinary session (Banjul, 2005); R.D. Roy: "Occupations and economy in transition: A case study of the Chittagong Hill Tracts", in ILO: *Traditional occupations of indigenous and tribal peoples: Emerging trends* (Geneva, 2000), pp. 73–119.

courts and other enforcement institutions.⁸⁶ Moreover, their work may be particularly difficult to monitor and may require innovative approaches. This is the case, for example, of domestic workers in private households. Finally, the high level of informality and precarity of these groups, combined with a lack of awareness regarding their own rights, represent major obstacles for them to assert their rights in courts of law. In particular, migrant workers in an irregular situation, or those covered by bilateral sponsorship agreements, may not denounce the violations they suffer out of a fear of being deported.

113. Faced with these difficulties, some States have decided to allocate more resources to protecting the labour rights of certain at-risk groups. For example, in Jordan, the number of labour inspectors covering the export sector, where migrant workers represent an important share of the workforce, has been substantially increased and specific training provided on trafficking issues. In other countries, monitoring and enforcement mechanisms are being adapted to the specificities of various categories of workers at risk. In the United Kingdom, a special institution, the Gangmaster Licensing Authority, has been created to control intermediaries operating in the agricultural sector, where trafficking and other forms of abuse occur.⁸⁷ Taking into account both the inviolability of the private household and the need to monitor the labour conditions of domestic workers, Uruguay has adopted a legal provision allowing home inspections when there is a presumed violation of labour or social security provisions. In order to remedy the lack of knowledge by both domestic workers and their employers of legal processes, some countries, such as Argentina and South Africa, have developed simplified labour dispute settlement procedures that facilitate the giving of oral evidence and conciliation, which have become widely used. Indeed, recent research has found that the proportion of claims filed by domestic workers with the South African Commission for Mediation, Conciliation and Arbitration is higher than their share in the country's labour force.⁸⁸

114. Granting at-risk workers adequate protection through monitoring and enforcement measures is not only a pressing need in many countries, but also an evolving challenge. For example, initiatives consisting of joint action by the labour inspectorate and the police to address undeclared work and irregular migration raise concerns regarding their impact on the labour protection of irregular migrant workers. Attention should therefore be drawn to the need in these types of joint action to safeguard the labour rights of migrant workers in an irregular situation and to ensure that their ability to turn for protection to the competent labour authorities is not affected.

Absence of collective voice: A key factor

115. These groups generally face formidable obstacles in organizing and taking collective action, and it is this very absence of voice, visibility and influence that lays them open to abuse in respect of FPRW.

116. Workers' and employers' organizations can denounce violations and negotiate solutions to such situations collectively and lobby in favour of political decisions and legal and institutional initiatives for the protection of the groups concerned. Many recent reforms to end exclusions respecting domestic workers in labour laws have occurred in countries where domestic workers have been able to establish their own organizations and gain the support of other trade unions. There are also telling examples of trade

⁸⁶ ILO: *Labour administration and labour inspection*, Report V, ILC, 100th Session, Geneva, 2011, para. 267.

⁸⁷ ILO: *The cost of coercion*, op. cit., paras 165 and 177.

⁸⁸ ILO: *Decent work for domestic workers*, op. cit., paras 253–257.

unions and employers' organizations playing a key role in the elimination of child labour in the rural sector through the organization of local workers and employers. For example, in the Indian States of Tamil Nadu and Madhya Pradesh, trade unions and their recently organized rural members are implementing the concept of child labour-free villages through dialogue with local leaders and employers, and collective agreements are being concluded that target child labour. Similarly, the Federation of Uganda Employers has set up child labour monitoring committees at the local level, especially in the coffee, tea, rice and sugar sectors. Collaboration and alliances are also being formed between trade unions and representative organizations of indigenous people, especially in Latin America, to ensure that their specific needs are taken into account. In certain countries, this has led to the inclusion of indigenous organizations in national tripartite committees on the prevention and elimination of child labour.

117. Some governments and social partners have taken important initiatives to overcome legal and practical obstacles to unionization and collective bargaining for these groups and categories. In Uruguay, the creation of a board to negotiate the wages and other conditions of domestic workers has strengthened workers' and employers' organizations in the sector. The Housewives' League of Uruguay agreed to act as the employers' representatives on the board, while the Inter-Union Assembly of Workers–National Convention of Workers (PIT–CNT) agreed that the National Confederation of Domestic Workers, which at that time had not yet been registered as a union, could negotiate on its behalf. Cooperation agreements between trade unions in the countries of destination and of origin of migrant workers have been signed in several countries with the support of the ITUC with a view, inter alia, to improving their access to freedom of association and collective bargaining. But problems of attitude and inertia remain, as illustrated by the reluctance of the legislative authorities and the judiciary in a number of countries to recognize the right of domestic workers to bargain collectively.

Poverty

118. Certain countries have launched economic and social policies intended to foster synergies between poverty reduction and the extension of FPRW to at-risk groups. In South Africa, the decision in 2002 to extend the minimum wage to domestic workers is considered to have reduced their overall poverty level, as well as the gender pay gap, even if difficulties persist in its implementation in practice. In India, the Government has adopted a “convergence approach” which includes the elimination of child labour and forced labour in a broader poverty reduction and rural development strategy through a mix of social security measures, public work programmes and free compulsory education.

119. Nevertheless, the situation of domestic workers, indigenous people, migrant and rural workers with regard to FPRW is a matter that requires urgent and decisive action. The action taken so far, although often fragmented, demonstrates the potential for focusing on the realization of freedom of association and the synergies between poverty reduction and the promotion of FPRW, especially in sectors affected by high levels of informality.

4. Workers in export processing zones and export sectors

120. The ILO defines export processing zones (EPZs) as “industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some

degree of processing before being (re)exported".⁸⁹ According to ILO estimates, there were 3,500 EPZs or similar types of zones in 130 countries in 2006, accounting for over 66 million direct jobs, of which 40 million were in China alone.⁹⁰ EPZs can offer important opportunities for access to formal employment for groups of workers in otherwise difficult circumstances in the labour market, such as young women and the low-skilled. But some of them remain a source of ongoing concern in terms of the quality of the jobs created and respect for FPRW, particularly freedom of association and collective bargaining.

121. An ILO study, based on the comments of the supervisory bodies, has highlighted the obstacles preventing EPZ workers in a significant number of countries from exercising freedom of association and collective bargaining.⁹¹ These include prohibitions or restrictions imposed in some cases by legislation, acts of anti-union discrimination, sometimes involving recourse to violence to deter unionization initiatives, and the very weak level of law enforcement. Research conducted in some countries has also emphasized the increasing casualization of the EPZ workforce, with the substitution of standard employment contracts by short-term or agency contracts, impacting on freedom of association and collective bargaining.⁹²

122. In a context of weak law enforcement and the frequent absence of unions, difficulties may also arise in EPZs in relation to equality in employment and occupation and forced labour. Cases of forced labour identified in EPZs mostly relate to the recruitment of migrant workers through abusive practices by private employment agencies and, in some instances, recourse to compulsory and sometimes unpaid overtime beyond the legally prescribed limits.⁹³

123. Countries such as Jordan have made substantial efforts to improve labour inspection in EPZs, and a higher presence of trade unions in EPZs has recently been noted in Togo and Sri Lanka.⁹⁴ However, the available information shows little progress in most countries where problems relating to EPZs have been identified. Between 2008 and 2011, the CEACR expressed its concern regarding the freedom of association and collective bargaining rights of workers in EPZs in 23 countries that have ratified Conventions Nos 87 and 98. Most of these countries were not able to provide the information requested by the CEACR on the unionization rate in EPZs, or the existence of collective agreements.

124. In certain countries, these difficulties go beyond EPZs as such and extend to export sectors as a whole. Strong and sometimes violent labour protests have occurred in recent years in some EPZs and export sectors where there is no genuine negotiating

⁸⁹ See ILO: *Labour and social issues relating to export processing zones* (Geneva, 1998), TMEPZ/1998, p. 3 (as in GB.301/ESP/5).

⁹⁰ W. Milberg and M. Amengual: *Economic development and working conditions in export processing zones: A survey of trends*, Working Paper No. 3 (Geneva, ILO, 2008), p. 4.

⁹¹ R. Gopalakrishnan: *Freedom of association and collective bargaining in export processing zones: The role of the ILO supervisory mechanisms*, Working Paper, International Labour Standards Department (Geneva, ILO, 2007), p. 1.

⁹² J.K. McCallum: *Export processing zones: Comparative data from China, Honduras, Nicaragua and South Africa*, DIALOGUE Working Paper No. 21 (Geneva, ILO, 2011), p. 12.

⁹³ CEACR, observation, Guatemala, 2009, Forced Labour Convention, 1930 (No. 29).

⁹⁴ CEACR, observations, Jordan, 2009, Labour Inspection Convention, 1947 (No. 81); and Togo, 2011, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

machinery.⁹⁵ This underlines the importance of governments and all actors in global supply chains increasing efforts to promote and realize all four categories of FPRW. In this respect, the international framework agreement⁹⁶ signed in 2007 by the fashion and textile group Inditex and the International Textile, Garment and Leather Workers Federation (ITLGWF), the first agreement of its type in the textile, garment and footwear sectors, offers one positive example of what could be done. The agreement recognizes the “central role of freedom of association and the right to bargain collectively as set out in ILO Conventions Nos 87, 98, 135 and Recommendation No. 143 as the key to ensuring the sustainable and long-term observance of all other international labour standards throughout the Inditex supply chain because they provide workers with the mechanisms to monitor and enforce their rights at work”.⁹⁷

5. Strengthening the enforcement of FPRW at the national level: A crucial challenge

125. Appropriate national legislation needs to be accompanied by effective institutions and mechanisms of enforcement as an essential precondition for the full realization of FPRW. But, according to the ILO supervisory bodies and the social partners,⁹⁸ this remains a real challenge in many countries for all four categories of FPRW.

126. Major practical difficulties continue to be encountered in preventing and redressing violations of FPRW. The vulnerability of victims often prevents them from asserting their rights. State institutions experience difficulties in reaching many workplaces or areas where violations occur. The complexity and diversity of situations often go beyond the traditional boundaries of labour law and require new strategies involving a broad range of state institutions. Some economic activities have also become more complex to monitor. The high numbers of workers in the informal economy in many countries, as well as practices such as outsourcing and employment agencies, have made it more difficult to determine the existence of an employment relationship and to identify the real employer. The absence of strong unions and employers’ organizations in certain sectors constitutes an additional difficulty, as “employers’ and workers’ organizations can make significant contributions towards improving compliance at the workplace, particularly through advocacy and awareness raising among their members. They can also contribute as strategic partners in shaping the priorities and activities of the labour inspectorates through sound cooperation”.⁹⁹

127. It would appear from the available data and the comments of the ILO supervisory bodies that a high number of labour ministries, labour inspectorates and labour courts

⁹⁵ For example, the Mahallah strike in the Egyptian cotton-exporting sector in 2008 or the strikes that started in 2010 in southern China in several electronic and car factories.

⁹⁶ For a definition of international framework agreements, see Chapter 4.

⁹⁷ Several studies note the positive impacts that this agreement may already have produced in the Inditex supply chain with respect to freedom of association and collective bargaining. See K. Gregoratti and D. Miller, “International framework agreements for workers’ rights? Insights from River Rich Cambodia”, in *Global Labour Journal*, 2(2), May 2011. At the same time, the existence of an IFA does not mean in itself the elimination of all risk of violations of FPRW, as shown by the difficulties encountered with some Inditex suppliers in Brazil.

⁹⁸ ILO: *Giving globalization a human face*, op. cit. A significant number of comments by the social partners in reply to the article 19 questionnaire refer to the lack of effectiveness of FPRW enforcement mechanisms.

⁹⁹ This section draws on ILO: *Labour administration and labour inspection*, Report V, ILC, 100th Session, Geneva, 2011, p. viii, and paras 250–258 and 294; and *The cost of coercion*, op. cit., para. 198.

face major resource constraints when addressing these challenges.¹⁰⁰ With some significant exceptions, this long-standing problem has further deteriorated in recent decades. For example, an ILO project in Central America and the Dominican Republic found that, in spite of recent efforts, the level of resources allocated to labour ministries ranged between 0.11 and 0.3 per cent of national budgets in 2009.

128. Concrete evidence of severe implementation gaps with regard to labour law at large, and FPRW in particular, include the substantial level of informal employment found in the formal economy in many countries, as well as the emergence in some export sectors of private social auditors financed by multinational enterprises (MNEs) in order to remedy the absence or weakness of state labour inspectorates. These difficulties may also be reflected in the very limited number of countries that provide information and statistics to the ILO supervisory bodies on the implementation of FPRW in practice and on the action taken by labour inspectors and domestic courts in this regard.

Table 2.4. Proportion of reports received by the CEACR on the fundamental Conventions containing information on labour inspection actions or other statistics (2010)

Child labour %	Discrimination %	Forced labour %	Freedom of association %	All fundamental %
58.8	31.5	13.3	4.5	25.4

Table 2.5. Proportion of reports received by the CEACR on the fundamental Conventions containing information on court decisions (2010)

Child labour %	Discrimination %	Forced labour %	Freedom of association %	All fundamental %
1.5	8	7.8	5.8	6

129. Some countries have demonstrated their determination to address these challenges and to improve the application in practice of the four categories of FPRW. For example, there is an increasing trend for labour administrations and labour inspectorates to pay greater attention to FPRW, and particularly child labour, forced labour and discrimination in employment and occupation. For example, in the Plurinational State of Bolivia and Peru, special departments for the realization of FPRW have recently been created in the ministries of labour. In several countries, the scope of action of the labour inspectorate has been extended to encompass forced labour and child labour, often through the creation of special units dealing specifically with these issues, such as in Brazil, and the appointment of labour inspectors as focal points in Morocco. This is an important breakthrough, as child labour and forced labour are often outside the scope of labour inspection, even though it offers key comparative advantages in combating these phenomena. Discrimination in general, and gender discrimination in particular, are the subject of more specific attention by a series of labour inspectorates, for example in

¹⁰⁰ ILO: *Labour inspection*, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), Report III (Part 1B), ILC, 95th Session, Geneva, 2006, paras 209–210.

Kenya and Ukraine, which have included these issues in their inspection checklists. In other countries, such as Costa Rica and Spain, substantial inspection campaigns have recently been implemented to prevent and punish gender discrimination.

130. A second relevant trend in many countries is the growing range of public institutions involved in combating child labour, forced labour and discrimination in employment and occupation, and the articulation of their respective actions. For example, State institutions with responsibility for prosecuting criminal activities are becoming increasingly engaged in combating human trafficking, including trafficking for labour exploitation. In countries such as the United States and Ukraine, special prosecuting units have been created, leading to a substantial increase in criminal convictions for forced labour. The establishment of new human rights bodies can also contribute to the enforcement and practical realization of FPRW. This is particularly the case of specialized equality bodies, which are often responsible for both promoting and enforcing the principle of non-discrimination. A significant proportion of their cases relate to discrimination in employment and occupation. For instance, around 50 per cent of the complaints lodged in France with HALDE between its inception in 2005 and 2010 were related to employment issues. These bodies have played a valuable role in raising public awareness of the relevance of equality in employment and occupation and in issuing practical recommendations for its implementation. Moreover, the flexible and less formal enforcement procedures that they normally offer are more easily accessible than traditional courts. Finally, the involvement, especially in rural areas, of local bodies in monitoring forced labour and child labour, such as the district village committees in South Asia, the community vigilance groups in West Africa and the child labour monitoring committees in Nepal and Uganda, constitutes another very interesting development in several countries, particularly in view of the difficulties frequently experienced by law enforcement bodies in covering rural areas adequately.

**The Office of the State Labour Prosecutor
(*Ministerio público do trabalho*)**

The Office of the State Labour Prosecutor (MPT) is an autonomous public body, independent of the executive, legislative and judicial authorities. Created by the 1988 Brazilian Constitution, its function is to protect fundamental labour rights.

The MPT has seven main areas of action, including the four categories of FPRW. Labour prosecutors are high-level civil servants at both the federal and regional levels who cannot be removed from office. The MPT is empowered to take a wide variety of action to promote, prevent and redress violations of FPRW, such as launching investigations in companies or the public administration, making recommendations, resolving situations of violation directly with the enterprises concerned, initiating legal action in labour courts, or intervening in the judicial debate on labour cases.

The MPT has created specific structures to coordinate its action with respect to each category of FPRW: *Coordinfancia* (child labour), *Conaete* (forced labour), *Coordigualdade* (equality in employment and occupation) and *Conalis* (freedom of association and collective bargaining). It has also established a series of strong partnerships with other public institutions, such as the Labour Ministry and the labour inspectorate, the State institutions competent for employment and social security matters, labour courts, the federal police and local authorities. It collaborates closely with unions and employers' organizations.

Through initiatives such as the National Pact against Forced Labour, the MPT has built broad alliances with other State institutions, the social partners and civil society to address the root causes of violations of FPRW.

131. A third trend concerns the efforts made in a series of countries to improve the effectiveness of labour dispute settlement machinery. Examples include the labour court

reforms implemented during the last decade by six South American countries,¹⁰¹ where there were enormous delays in labour cases. The main objective of these reforms, in relation to labour law in general, is to improve radically the rapidity of procedures through the use of oral rather than written proceedings and the introduction of shorter deadlines. In most of these countries, the specialization of labour courts and tribunals has also been strengthened. In this respect, Chile dramatically raised the number of labour tribunals from 20 to 81. In countries that have devoted significant resources to implementing reforms, there has been a strong impact in terms of the average length of judicial proceedings. In addition, several countries have established special proceedings for FPRW, either for all of them or for freedom of association. The common goal of these reforms is to ensure immediate and effective protection of fundamental rights through shorter proceedings and deadlines than those applicable to labour rights in general. Moreover, several reforms include additional measures to strengthen the judicial protection of FPRW, such as the shifting of the burden of proof, the possibility for courts to order immediate temporary protective measures and impose remedies, such as reinstatement, that guarantee the re-establishment in practice of the infringed fundamental right. These measures are particularly relevant in the case of freedom of association.

132. Over the past decade, Cambodia, China, Indonesia, Japan and Portugal have also adopted legislation introducing judicial or labour dispute settlement reforms that may have an impact on FPRW. China undertook a substantial reform of its labour dispute settlement procedures in 2008 to ensure the effective application of the new labour legislation adopted that year.¹⁰² Although they are not solely applicable to the four categories of FPRW, several measures in the Chinese reform improve access to labour rights in general, such as procedures that are free of cost, the shifting of the burden of proof to the employer in certain circumstances and the role granted to unions.¹⁰³ The reform seems to be facing a series of implementation challenges, such as the need for additional resources, the lack of specialization of labour arbitrators and judges and the limited reliance by workers on official unions. Nonetheless, it illustrates the importance in labour law and FPRW compliance strategies of accessible and rapid labour dispute settlement mechanisms that can grant effective remedies.

133. Finally, there is a growing understanding that punishing infringements alone does not secure the realization of FPRW. Broader action is needed for this purpose, including the promotion of rights, awareness raising, preventive measures and support for victims of violations. Monitoring and enforcement institutions in several countries are increasingly investing resources and effort in reaching out to workers and employers, and informing them of the relevance of FPRW. By and large, many actions of a promotional nature are reported to the ILO in relation to child labour, forced labour and equality in employment and occupation, often in close collaboration with employers' and workers' organizations. However, such action appears to be much less frequent in relation to freedom of association and collective bargaining. With a view to the protection of victims, important initiatives are being taken in the field of forced labour.

¹⁰¹ Chile, Colombia, Ecuador, Peru, Uruguay and Bolivarian Republic of Venezuela. Two Central American countries, Costa Rica and Nicaragua, have embarked in similar reforms. See A. Ciudad Reynaud: "Las reformas procesales emprendidas en América Latina", in *Revista de Derecho Procesal*, 3–4, 2010.

¹⁰² Labour Dispute Mediation and Arbitration Law, 1 May 2008.

¹⁰³ See F. Lee Cooke: "The enactment of three new labour laws in China: Unintended consequences and the emergence of 'new actors' in employment relations", in S. Lee and D. McCann (eds): *Regulating for decent work, new directions in labour market regulation* (Geneva, ILO, 2011), pp. 180–205.

These include the 2011 European Directive on preventing and combating trafficking in human beings and protecting its victims¹⁰⁴ and the project *Resgatando a Cidadania*, launched by the Brazilian *Ministério Público do Trabalho*, with the aim of providing employment opportunities and vocational training to victims of forced labour and members of their families.

134. The different initiatives outlined above offers important guidance for national compliance strategies for FPRW. However, many of the innovative measures described appear to be directed more at child labour, forced labour and equality, than at freedom of association and collective bargaining. Moreover, the significant lack of resources allocated for supervision and enforcement remains a key issue in many countries.

¹⁰⁴ Directive 2011/36/EU, op. cit.

Chapter 3

Towards a more coordinated use of the ILO's means of action

135. This review of the support provided to constituents for the realization of FPRW focuses on the ILO's current capacity and performance, through the efficient use of all of its means of action, to address the realities and needs of its Members, as outlined in the previous chapter. In light of the Social Justice Declaration, the purpose of this review is to inform programme, budget and other governance decisions, with a view to mobilizing, in a more organized and systematic way, the whole range of the ILO's means of action to give effect to its priorities. As emphasized in the preparatory work for the Social Justice Declaration, although "coordination of these means of action is, to a certain extent, achieved through the programme and budget", it could "be much more effective and gain greater legitimacy if it was based on the wishes of the tripartite constituents, expressed after an in-depth discussion at the international level of trends, priorities for action and means to mobilize policies".¹

136. As this is the first recurrent item discussion covering all four categories of FPRW, there is as yet no common action plan covering all the FPRW that would offer a comprehensive basis for the present review. The chapter therefore starts by recalling briefly the current framework for programming ILO action in this area, including the mechanisms for evaluating its impact. It then reviews the principal means of action identified by the Social Justice Declaration to promote the achievement of FPRW, namely technical cooperation, the Office's technical and research capacity and standards-related action.²

137. One of the main issues that arises in this respect is how to strike an appropriate balance between, on the one hand, promoting each specific category of FPRW and, on the other, promoting FPRW in an integrated manner based on the interrelationships between the four categories of FPRW and between FPRW and the ILO's other strategic objectives. Up to now, ILO action in this field has mainly been designed to promote each category of FPRW individually. Indeed, there are noticeable differences between the action in relation to each of the four categories of FPRW. Nevertheless, a number of significant, although isolated, efforts have been made recently to promote FPRW in an integrated manner, particularly through technical cooperation and standards-related action, which have enhanced the impact of the action taken.

¹ ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, Report V, ILC, 96th Session, Geneva, 2007, para. 25.

² ILO: *ILO Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, Geneva, 10 June 2008, Annex, II(B)(i).

A. The current framework for ILO action on FPRW

1. Programming and evaluation

138. In recent years, the framework for the programming and evaluation of ILO action on FPRW has mainly consisted of: the ILO Strategic Policy Framework and the related programme and budget documents; the action plans on each category of FPRW, endorsed by the Governing Body following discussion by the Conference of the Global Reports hitherto presented under the follow-up to the 1998 Declaration; and the various evaluation tools.

Strategic Policy Framework 2010–15 and related programme and budget documents

139. The Strategic Policy Framework (SPF) is the ILO's medium-term planning tool. The current SPF 2010–15 focuses on essential priorities in the world of work, captured in 19 outcomes.³ For the first time, the four categories of FPRW are each reflected in the SPF 2010–15 in a specific outcome, with the corresponding indicators and targets: Outcome 14 (Freedom of association and the right to collective bargaining); Outcome 15 (Forced labour); Outcome 16 (Child labour); and Outcome 17 (Discrimination at work). In addition, the elimination of discrimination in employment is mainstreamed in all outcomes, since gender equality and non-discrimination are identified as cross-cutting themes in the SPF 2010–15. The Social Justice Declaration guided the preparation of the SPF 2010–15 which, in view of the need for an integrated approach to decent work, emphasizes that each outcome, although broadly associated with one of the four strategic objectives, contributes to the achievement of all of them.

140. Outcome 18 (International labour standards) is also relevant to the promotion of FPRW in view of their inherent linkage with the fundamental Conventions. More broadly, the current Programme and Budget 2012–13 emphasizes that the promotion of FPRW under the 1998 Declaration and the International Programme on the Elimination of Child Labour (IPEC) needs to be carried out in synergy with the standards-related agenda.⁴ In addition, ILO standards-related action has been guided by the standards strategy and its corresponding interim plan of action adopted by the Governing Body in 2005 and 2007, which place emphasis on a better integration between standards-related action, including the comments of the ILO supervisory bodies, and technical cooperation to help member States ratify Conventions and address gaps in their implementation. This emphasis on assistance to member States is convergent with the promotional approach of the 1998 Declaration.

Action plans for each category of FPRW

141. Prior to the revision of the follow-up to the 1998 Declaration in June 2010, Global Reports on each category of FPRW were submitted to the Conference. Based on the Conference discussion, the Governing Body examined and approved an action plan of activities in relation to the corresponding category of FPRW. These action plans determine for each category of FPRW the priorities over the next four years. Three full cycles of Global Reports were completed with the most recent one on discrimination in

³ ILO: *Strategic Policy Framework 2010–15: Making decent work happen*, Governing Body, 304th Session, Geneva, Mar. 2009, GB.304/PFA/2(Rev.), paras 63–74.

⁴ ILO: *Programme and Budget for the biennium 2012–13* (Geneva, 2011), para. 250.

2011. The different action plans have varied in length and detail, and have not tended to address synergies between the different categories of FPRW, or linkages with the other strategic objectives.

142. The current situation concerning the action plans is as follows:

- for freedom of association and collective bargaining, the action plan covers the period 2008–12;⁵
- for forced labour, the 2009 action plan was adopted for a four-year period,⁶ but acknowledges that the global alliance against forced labour called for by the Director-General, with a view to eliminating all forms of forced labour worldwide by 2015, will continue to be the umbrella for the activities of the Special Action Programme to Combat Forced Labour (SAP-FL);
- for child labour, the 2006 global action plan remains the framework guiding ILO action until 2016, the target date for eliminating the worst forms of child labour: it was endorsed again by the Governing Body in 2010, alongside the 2010 action plan, to which was appended the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016, approved by the Global Child Labour Conference 2010 in The Hague;⁷ and
- the action plan on non-discrimination was endorsed by the Governing Body in November 2011 to guide the work of the Office for the next four years, subject to the outcome of the present recurrent discussion.⁸

ILO evaluation mechanisms

143. This review of ILO action on FPRW draws on several evaluation mechanisms, including programme implementation reports, which provide an overview of the ILO's performance and programme implementation each biennium, with detailed reporting and analysis under each outcome, focusing on the results achieved,⁹ and the latest IPEC implementation report.¹⁰ Valuable information is also contained in the independent evaluations of country programmes and strategies carried out in accordance with the evaluation policy adopted by the Governing Body in November 2005.¹¹ The only

⁵ ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plans regarding freedom of association and effective recognition of the right to collective bargaining*, Governing Body, 303rd Session, Geneva, Nov. 2008, GB.303/TC/3.

⁶ ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plan regarding the elimination of forced labour*, Governing Body, 306th Session, Geneva, Nov. 2009, GB.306/TC/3.

⁷ ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plan regarding abolition of child labour*, Governing Body, 309th Session, Geneva, Nov. 2010, GB.309/TC/3.

⁸ ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plan regarding the elimination of discrimination in employment and occupation*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/POL/12.

⁹ ILO: *ILO programme implementation 2008–09*, Report I(A), ILC, 99th Session, Geneva, 2010.

¹⁰ ILO: *IPEC action against child labour: Highlights 2010* (Geneva, 2011).

¹¹ ILO: *Evaluation: A new policy and strategic framework for evaluation at the ILO*, Governing Body, 294th Session, Geneva, Nov. 2005, GB.294/PFA/8/4. In March 2011, the evaluation policy was extended for another five years, with certain adjustments to address some of the shortcomings identified by an independent external evaluation carried out in 2010, which found that the evaluation policy is generally sound, but that a stronger link is required between evaluation and decision-making.

independent evaluations undertaken recently in relation to the four categories of FPRW were the 2011 evaluation of the ILO strategy for the elimination of discrimination in employment and occupation considered by the Governing Body in November 2011¹² and the evaluation of SAP–FL undertaken in 2010.¹³

2. ILO programmes on FPRW

144. The ILO programmes with primary responsibility for promoting FPRW are: the Programme for the Promotion of the ILO Declaration on Fundamental Principles and Rights at Work (DECLARATION), established in October 1999 following the adoption of the 1998 Declaration; IPEC, established in 1992; and the International Labour Standards Department (NORMES), where four teams are responsible for supporting the work of the supervisory bodies relating to the application of the fundamental Conventions and for carrying out related promotional and technical assistance activities. These programmes are all located in the Standards and Fundamental Principles and Rights at Work Sector. The current Office structure was put in place in 1999 to reflect the process of strategic budgeting centred on the ILO's four strategic objectives.

145. DECLARATION provides assistance to member States through action that includes the entire range of ILO advocacy, promotional work, assistance and technical cooperation, to promote freedom of association and collective bargaining, the elimination of forced labour and non-discrimination in employment and occupation.

146. Freedom of association and collective bargaining are promoted through a wide range of activities, mainly by DECLARATION and NORMES, but also by other departments in the Social Dialogue Sector, and particularly the Bureaus for Employers' Activities (ACT/EMP) and for Workers' Activities (ACTRAV). An important component of this action is capacity building and training for the tripartite constituents, and in certain cases for other actors, such as members of the judiciary, parliamentarians, prosecutors and academics. Other activities include the dissemination of information, assistance with legislative reforms, awareness raising and the collection of information on national industrial relations systems and law and practice. Experience shows that achieving full respect for the right to organize and bargain collectively calls for strong political commitment and sometimes a change in the mindset and approach governing labour relations. This requires long-term commitment and support from the Office, often going beyond a single biennium.

147. For forced labour, the SAP–FL was established within DECLARATION in November 2001, following the first Global Report on the topic. Depending on the country concerned, SAP–FL activities have pursued a range of objectives: building a solid knowledge base on the nature and scale of forced labour; ensuring that law and government policies are appropriate and consistent with a multi-agency approach to forced labour; supporting law enforcement; promoting the role of trade unions in defending workers against forced labour; assisting employers' organizations and businesses to adopt measures to stop forced labour; influencing recruitment procedures to promote safe migration; and supporting programmes to assist people who are released from forced labour.

¹² ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation* (Geneva, 2011); *Discussions of high-level evaluations: Strategies and Decent Work Country Programmes*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/PFA/9.

¹³ J. Walker: *Evaluation of the ILO special action programme to combat forced labour: From 2006–09* (Geneva, ILO, 2010).

148. In view of the cross-cutting nature of discrimination, the respective ILO action is not centralized in a single programme, and many ILO sectors and departments, including DECLARATION, have carried out technical cooperation in this field. While the independent evaluation of the ILO's strategy for non-discrimination found that "the ILO's non-discrimination activities have made significant contributions to the efforts of national constituents to address discrimination in employment and occupation", it recognized that "the coordination and implementation of the strategy for Outcome 17 is challenged by the tendency to compartmentalize the Office's work," which can hamper "more coherent programme planning, implementation and reporting".¹⁴ ILO action has mainly resulted in the development of tools to achieve non-discrimination in employment and occupation, for example by promoting the relevant international labour standards, supporting better enforcement of legislation and advancing equal remuneration. Training and awareness-raising activities have played a major role in this respect. Many programmes, such as those on gender, HIV and AIDS, migrant workers and workers with disabilities have included activities aimed at promoting the principle of non-discrimination, typically within larger programmes and objectives. In this context, the ILO Bureau for Gender Equality (GENDER) assists and advises with gender mainstreaming in the design, implementation and evaluation phases of ILO technical cooperation projects. In collaboration with NORMES and DECLARATION, it has also promoted the enforcement of gender equality principles at the national level through advisory services, technical cooperation programmes and technical staff in the field. In this context, assistance has been provided to address gender wage inequalities using an approach based on sharing scientifically sound tools and capacity building for a better understanding of the pay gap.

149. In relation to child labour, IPEC's work consists not only of direct technical assistance to constituents, but also awareness raising, research and data collection, and the promotion of the relevant instruments. IPEC has adopted a three-pronged strategy in support of the efforts of member States and the social partners to eliminate child labour: supporting national responses to child labour, particularly through the effective mainstreaming of child labour concerns in national development and policy frameworks; deepening and strengthening the worldwide movement against child labour; and promoting the further integration of child labour concerns within overall ILO activities. Of the four categories of FPRW, technical cooperation to combat child labour is by far the most developed in terms of its size, scope and the experience accumulated over 20 years of IPEC activities. To support its advocacy efforts, IPEC has since 2002 organized the annual World Day against Child labour, which is an ILO initiative generating great media attention.

3. Annual Reviews

150. DECLARATION is also responsible for the annual follow-up concerning non-ratified fundamental Conventions, known as the "Annual Reviews", under the 1998 Declaration. The Annual Reviews, which cover the four categories of FPRW, are based on reports requested from Members under article 19(5)(e), of the Constitution, and the respective observations made by employers' and workers' organizations. Over the years, the Annual Reviews have been simplified and have focused on developing a baseline for each of the non-ratifying countries concerned, which is updated regularly.

¹⁴ ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation*, op. cit., pp. 42 and xii, para. 9.

151. The overview of the follow-up to the 1998 Declaration, submitted to the Conference in 2010,¹⁵ indicated that the Annual Reviews have generated a body of quite detailed information on virtually each case of non-ratification, which should be kept up to date and made available, including to the Governing Body, and a more analytical review of the trends and measures taken could then be included in the recurrent item reports. The purpose of the Annual Reviews is not solely to promote ratification, but also to examine situations of non-ratification and review the efforts made by the member States concerned, although in practice rather general information is provided, which is often duplicated in the replies to the ratification campaign. Moreover, there has never been much discussion on Annual Reviews in the Governing Body and, despite the special arrangements put in place to turn the Governing Body into a committee of the whole in the event that a non-member of the Governing Body wishes to intervene, there has been no request to resort to this format.¹⁶

152. During the discussions in 2010, the constituents emphasized the importance of the Annual Reviews and the Conference decided to continue them under the revised follow-up to the 1998 Declaration.

4. Resources for ILO action on FPRW

153. Resources for ILO action on FPRW are provided under the regular budget (RB), extra-budgetary technical cooperation (XBTC) and the Regular Budget Supplementary Account (RBSA). While the programme implementation report for 2010–11 addresses the division of resources per outcome, this section focuses on the two main ILO programmes concerned with the promotion of FPRW, namely DECLARATION and IPEC. Since their inception, almost all their activities have been financed through XBTC resources. The lack of funding, and heavy reliance on extra-budgetary resources, has constituted a long-standing challenge for technical cooperation on FPRW. Figures 3.1 to 3.4 below demonstrate the evolution of the expenditure of XBTC resources on the promotion of each of the four categories of FPRW by both programmes by region between 2000 and 2011.

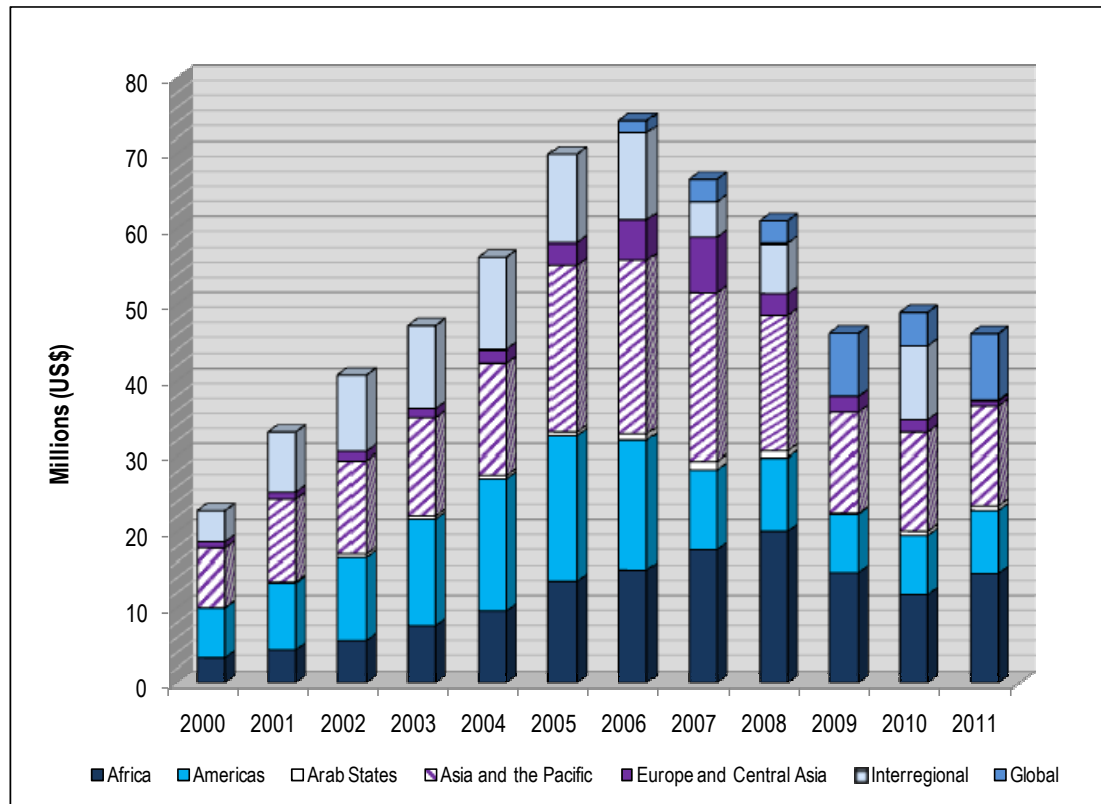
154. Following the adoption of Convention No. 182, many donor countries made resources available for technical cooperation work to abolish child labour. This support quickly overshadowed technical resources provided for the other FPRW. IPEC relies almost exclusively on extra-budgetary funding, with its largest donors being the United States, the United Kingdom, followed by the Netherlands. Yet since 2009, IPEC has suffered a significant drop in donor funding, resulting in the closure of certain large field projects. In comparison with the previous biennium, IPEC's share of the ILO's total technical cooperation programme dropped this biennium from 23 per cent in 2008–09 to 18.3 per cent of extra-budgetary approvals for 2010–11. This particular fall was more significant in 2011 (see figure 3.1). Funding is largely allocated for projects for the direct provision of services and, to a lesser extent, for projects targeting policy or systemic changes. The 2010 Global Report observed that IPEC's current funding modalities in effect constrain its "capacity to extend the scope of its programmes to the most neglected regions, economic sectors and worst forms of child labour".¹⁷

¹⁵ ILO: *Review of the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work*, Report VII, ILC, 99th Session, Geneva, 2010.

¹⁶ *ibid.*, paras 21–37.

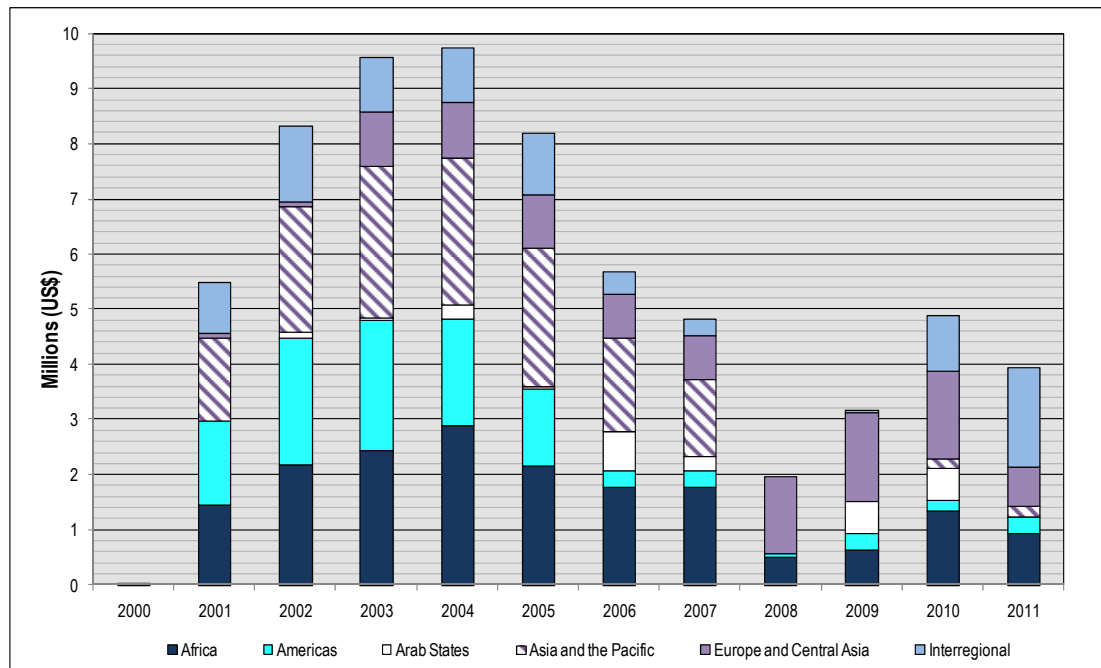
¹⁷ ILO: *Accelerating action against child labour*, Global Report under the follow-up to the Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, para. 295.

Figure 3.1. Delivery of IPEC technical cooperation resources by region, 2000–11
(US\$ million)



155. The 2008 Global Report indicated that donor support for the promotion of freedom of association and collective bargaining had significantly decreased from when DECLARATION was first established. However, since 2008, DECLARATION has seen an increase in donor funding for projects related to freedom of association and collective bargaining. In 2011, and in addition to expenditure on activities directly related to freedom of association and collective bargaining of over \$3.8 million (see figure 3.2), DECLARATION received funding of \$24.4 million for activities on this category of FPRW, which are currently being programmed for future years. This is the highest amount received in any given year since the Programme was established.

Figure 3.2. Delivery of DECLARATION technical cooperation resources relating to the promotion of freedom of association and the effective recognition of collective bargaining, 2000–11 (US\$ million)



156. Until 2011, SAP–FL was entirely dependent on extra-budgetary contributions. Since its creation in 2001, SAP–FL has received about \$15 million in core funding (global and interregional funds not earmarked for any specific country) from Ireland, the Netherlands and the United Kingdom. These funds have essentially been used for research, training, global advocacy and for providing seed funding for project development in various countries. The majority of funds for country projects were spent in Asia, where forced labour is most prevalent. Since 2009, SAP–FL has experienced a significant drop in funding (see figure 3.3) which has reduced its capacity to reach out to and deliver on the ground. As of 2012, for the first time, SAP–FL received some regular budget funding in an effort to make the programme more sustainable.

157. Despite the almost universal ratification of the two Conventions relating to non-discrimination in employment and occupation, there has been a significant lack of extra-budgetary resources to assist member States in their implementation. The available technical cooperation resources for activities by DECLARATION relating to non-discrimination peaked in 2004, but in 2011 were at the same level as in 2000 (see figure 3.4).¹⁸ Otherwise, resources provided by donors for technical cooperation support for non-discrimination has mainly been made available allocated to GENDER for gender equality in the world of work. The extra-budgetary amounts received for non-discrimination (see figure 3.5) corresponds to only 2 per cent of the expenditure of XBTC resources between 2000–11 by DECLARATION and IPEC.

¹⁸ This funding was for one project in Africa; the Support Programme for the Implementation of the Declaration on Fundamental Principles and Rights at Work (PAMODEC).

Figure 3.3. Delivery of DECLARATION technical cooperation resources relating to forced labour (SAP-FL) by region, 2000–11 (US\$ million)

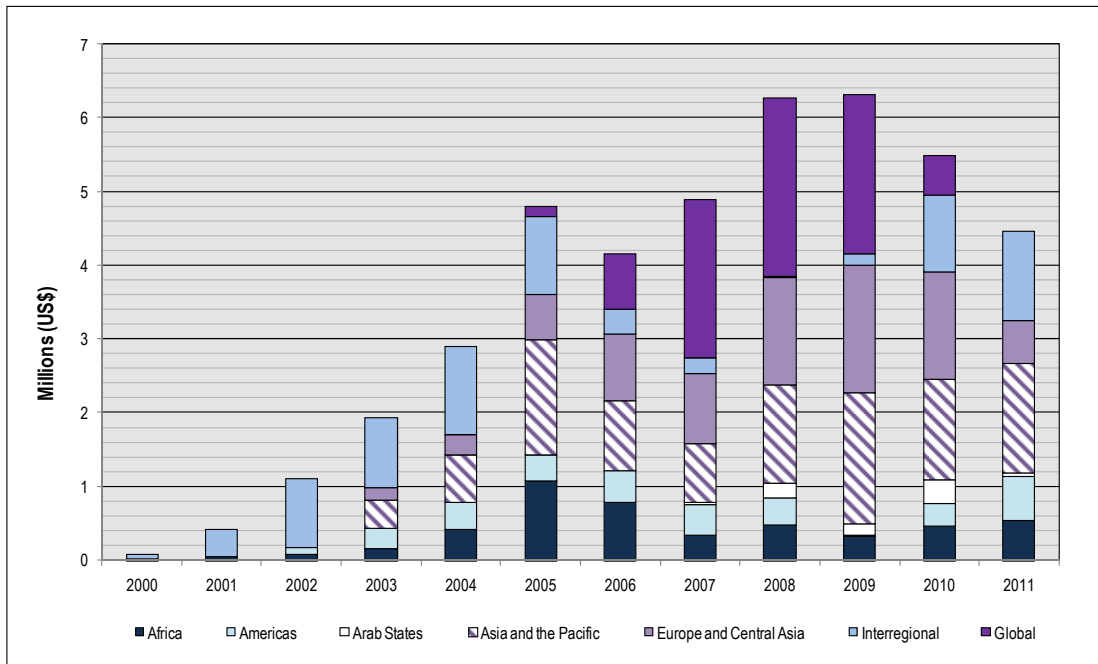


Figure 3.4. Delivery of DECLARATION technical cooperation resources relating to non-discrimination by region, 2000–11 (US\$ million)

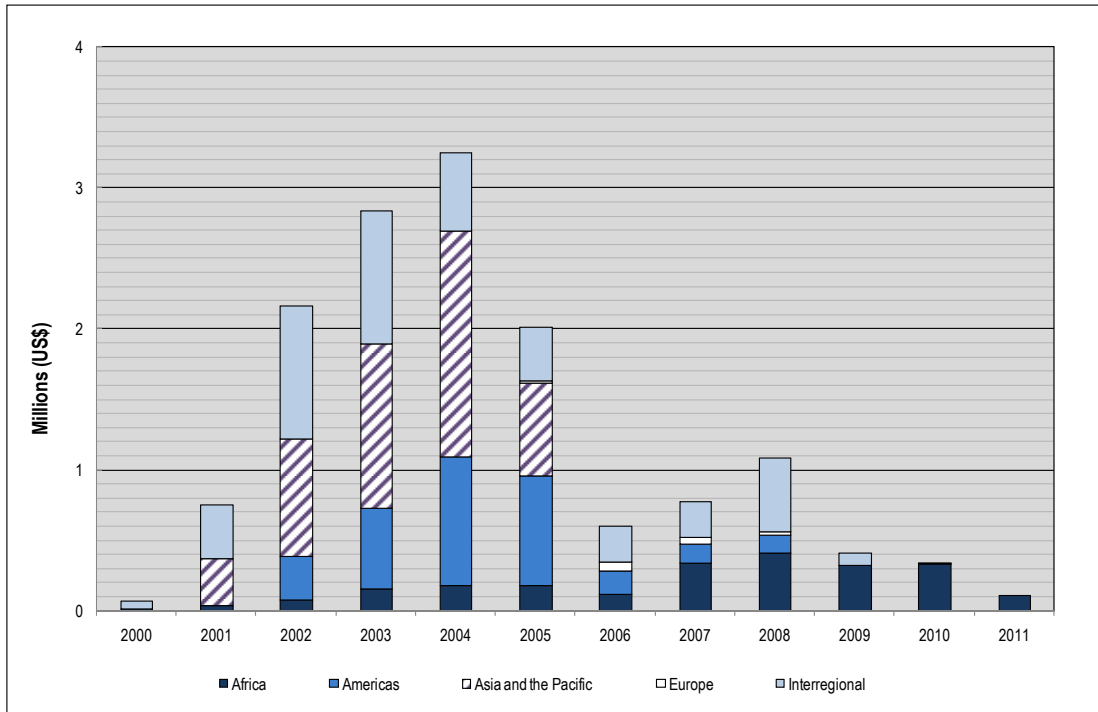
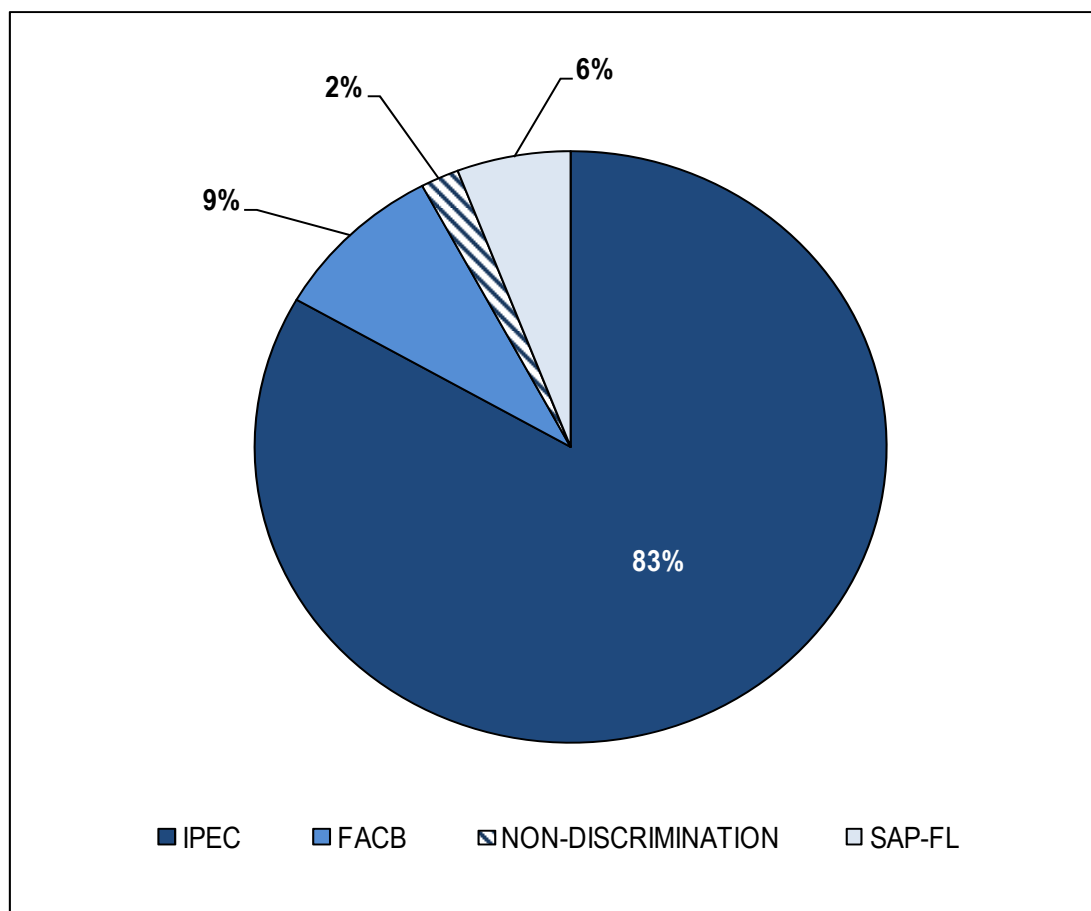


Figure 3.5. Expenditure by DECLARATION and IPEC, 2000–11



5. Issues relating to the framework for ILO action on FPRW

Strategic and programming framework

158. As regards the different components of the framework for ILO action on FPRW, a number of issues deserve attention. As well as ensuring adequate linkages between the separate FPRW outcomes to strengthen coherence, the question arises as to whether this framework properly takes into account the specific contribution of FPRW to decent work as both rights and enabling conditions. This is particularly significant in the current context of resource reductions in view of the reliance of FPRW activities on extra-budgetary resources.

159. A related question is that, in contrast with the cross-cutting nature of gender equality and non-discrimination, which is captured in the SPF 2010–15 and in the corresponding programme and budget documents, this is not the case for the other categories of FPRW. Even though the SPF acknowledges the particular importance of freedom of association and collective bargaining for the attainment of all the ILO’s strategic objectives, it does not operationalize this, nor the specific role of FPRW as a whole as both rights and enabling conditions necessary for the full realization of the ILO’s strategic objectives.

160. With regard to the specific treatment accorded to non-discrimination in employment and occupation as a cross-cutting issue, the independent evaluation recalled that gender equality and non-discrimination have been addressed separately at the

institutional level. Gender equality has been promoted through GENDER at both headquarters and in the field, and resource mobilization efforts have been undertaken for this purpose. However non-discrimination has been promoted mainly through DECLARATION and other units. Since non-discrimination is subject to an outcome and is at the same time a cross-cutting issue, the evaluation recommended more effective and efficient teamwork and cooperative methods across the Office to improve service delivery. “In order to reinforce the cross-cutting nature of Outcome 17, the strategy should provide more guidance on synergies to be found between discrimination based on different grounds. ... A case could equally be made for translating the Outcome 17 strategy into an action plan for mainstreaming non-discrimination into all strategic outcomes, similar to the approach taken for gender equality”.¹⁹

Annual Reviews

161. Despite the slowing rate of ratification of the fundamental Conventions (except for those on child labour), the majority of non-ratifying countries report the intention to ratify. Given the importance attached by the Governing Body and the Conference to Annual Reviews under the follow-up to the 1998 Declaration, the question arises of whether the current mechanism should be strengthened to provide more specific information on cases of non-ratification and to guide the Office more effectively with regard to the assistance to be provided to the countries concerned.²⁰

Resource allocation

162. In view of the heavy dependency of technical cooperation on FPRW on extra-budgetary resources, albeit with major differences between the four categories of FPRW, the unpredictability of voluntary contributions and the persistent concern regarding the availability of resources has had a considerable impact on the quantity and quality of the assistance provided. Experience shows that FPRW projects need to be of a certain size, duration and design to ensure their impact and usefulness to member States. The uncertainty of funding makes it difficult to plan strategically, with the low-level and dispersed sources of available funding sometimes resulting in fragmented activities. Moreover, demand has consistently exceeded the ILO's response capacity, for both ratifying and non-ratifying countries.²¹

163. Non-regular budget funding is critical for the sustainable promotion of FPRW. However, some of the conditions placed by donors on the scope, targets and regional focus of projects (earmarked funds) are not necessarily optimal for addressing the need to ensure the relevance, coherence and impact of the respective technical cooperation programmes and projects. An additional difficulty concerns the open bidding approach, in which the role of the social partners may not always be fully understood. A third challenge identified relates to the inefficiency of a fragmented approach by donors to funding.

164. This situation therefore raises two related issues concerning the promotion of FPRW: how resource allocations for FPRW (Outcomes 14 to 17), with particular reference to regular budget and RBSA resources, can ensure the high impact, quality and

¹⁹ ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation*, op. cit., pp. 46–47.

²⁰ This seems all the more necessary as, under the reform package recently adopted by the Governing Body, it will only examine and discuss documents requiring a decision. The current documents relating to Annual Reviews submitted to the Governing Body provide only general information.

²¹ For IPEC, see ILO: *IPEC action against child labour: Highlights 2010*, op. cit., para. 72.

sustainability of the assistance provided through technical cooperation projects that are of adequate size and duration; and the development of a coherent and integrated resource mobilization strategy to address all four categories of FPRW, including the holding of discussions with donors, to enhance the relevance, coherence and impact of technical cooperation programmes and projects on FPRW.

B. Technical cooperation

1. Framework for technical cooperation at the national level

165. Decent Work Country Programmes (DWCPs) are the main instrument for ILO technical cooperation at the country level. DWCPs are intended to focus on a small number of country programme priorities (normally a maximum of three), which are determined by the government and the social partners in close collaboration with the Office. The content of DWCPs therefore varies from country to country, based on national circumstances and the priorities of individual member States, which clearly affects the choices made in respect of resources and programme activities, including in relation to FPRW. Although ILO technical assistance on FPRW is increasingly provided in the context of DWCPs, this is not always the case, as not every country receiving such technical assistance has a DWCP.

166. There is reason to suppose that, where they touch upon sensitive or controversial matters, member States may not identify FPRW as priorities for the purpose of DWCPs and may opt instead for technical themes on which consensus is more easily found. Approximately 20 per cent of all DWCPs refer explicitly to FPRW, or at least to one category of FPRW. Four DWCPs mention FPRW as a whole in their country programme priorities,²² nine DWCPs include the elimination of the worst forms of child labour among their priorities, and two include non-discrimination.²³

167. Even though the inclusion of FPRW specifically among DWCP country priorities is fairly weak, many DWCPs nevertheless include activities that are related to the promotion of FPRW. For example, around 30 per cent of DWCPs include as a priority the protection of workers' rights, labour law reform or the application of international labour standards, which in most cases include activities on FPRW.²⁴ FPRW may also be included indirectly in DWCPs as an outcome for a priority relating to another strategic objective (each country programme priority includes several outcomes). In such cases, FPRW may be more or less complementary to other priorities, and may therefore be considered as being treated as "rights and enabling conditions". For example, when included, the principle of freedom of association and collective bargaining is mostly integrated in DWCPs as part of the priority to strengthen social dialogue and/or industrial relations. Similarly, many country programme priorities on employment and social protection address the principle of non-discrimination in employment and occupation through specific reference to women and men, young persons, vulnerable

²² Bangladesh, Plurinational State of Bolivia, Madagascar and South Africa. The DWCP for China (2006–10) includes as a priority "Promoting workers rights and fundamental labour principles and rights".

²³ Mauritius (all forms of discrimination) and Zimbabwe (gender discrimination).

²⁴ Other examples of DWCP priorities reflecting the importance of FPRW without explicitly mentioning them are those of Indonesia ("Stopping exploitation at work") and India ("Unacceptable forms of work are progressively eliminated").

groups, persons with disabilities and/or migrants. Additionally, many DWCPs which do not specify the elimination of child labour as a country programme priority include activities in this area as an outcome under the priority of employment promotion.

168. Nevertheless, in overall terms, the integration of FPRW in DWCPs is uneven. This is of particular significance, not only because of the role of DWCPs in ILO technical assistance at the country level, but also because they are the vehicle through which the Office manages its cooperation with other United Nations agencies and partners in the context of United Nations Development Assistance Frameworks (UNDAFs). Close collaboration with the United Nations strengthens work at the local level and helps to ensure the coherence and sustainability of projects and programmes in the long term. As UNDAFs are the framework for United Nations action at the country level, it is key for the ILO to participate actively in their design and implementation. Clearly, where FPRW are included in DWCPs as country programme priorities, their importance is more likely to be reflected in UNDAFs. UNDAFs include FPRW to some extent. While some make only passing reference to the 1998 Declaration, others include specific action on all four categories of FPRW.²⁵ However, most UNDAFs, especially in the Asia and the Pacific and European regions, focus exclusively on the elimination of child labour and leave aside the other FPRW.

2. Drawing lessons from technical cooperation on FPRW

169. As reflected by the inclusion of the elimination of child labour in DWCPs and UNDAFs and the size of IPEC, technical cooperation on child labour is by far the most developed. In 2010–11, IPEC implemented technical cooperation projects in 88 countries and provided advisory services/technical assistance to over 103 countries in all five regions of the world. With regard to forced labour, at the end of 2011 SAP–FL had 19 projects, including one joint programme with IPEC, one with the International Migration Programme (MIGRANT) and two global projects, covering a total of 17 countries. With regard to freedom of association and collective bargaining, 14 projects are currently being implemented by DECLARATION, including two global projects, covering ten countries. In relation to non-discrimination, in addition to PAMODEC (see below), two DECLARATION projects are being carried out in cooperation with NORMES. All the remaining technical cooperation projects on non-discrimination are being undertaken by GENDER or programmes in other sectors.

170. As technical cooperation has taken on increased importance in promoting the universal application of FPRW, a number of lessons have emerged on how to improve its effectiveness. These include the importance of building a knowledge base, of involving the social partners and of training and capacity building.

2.1. *The knowledge base*

171. Accurate qualitative and quantitative information is essential to ensure that ILO technical cooperation and national policies address priority FPRW challenges effectively. ILO technical cooperation on child labour is based on solid and systematic data gathering. The Statistical Information and Monitoring Programme on Child Labour (SIMPOC) carries out national surveys which guide IPEC technical assistance. It also provides support to countries for the collection, documentation, processing and analysis

²⁵ See, for example, the UNDAF for Burkina Faso (2006–10), which includes in its outcomes strengthened freedom of association and the prevention of child labour through the adoption of an effective legal framework (pursuant to Conventions Nos 138 and 182).

of child labour data. As a result, the capacity of a significant number of countries has been enhanced to conduct sound national child labour surveys.²⁶

172. Although with fewer resources, SAP-FL has also set as a priority the collection of information on the nature and scale of forced labour. For this purpose, the ILO has developed methodological guidelines to assist member States to collect better data on forced labour.²⁷ Empirical surveys, either on a national or a sectoral basis,²⁸ have proved to be valuable in focusing the attention of governments and the social partners on the existence of forced labour in their countries, and in persuading them of the need for action. In Zambia, for example, the Government adopted comprehensive new legislation following ILO assistance to determine the extent of forced labour.

173. With regard to freedom of association and collective bargaining, the findings and comments of both the CEACR and the CFA constitute a strong legal basis for determining technical cooperation priorities. Although, due to resource constraints, there are only limited possibilities for the Office to supplement this information through quantitative and qualitative data gathering, emphasis has been placed, in a project funded by Sweden, on carrying out studies to establish a deeper understanding of needs and obstacles in the exercise of freedom of association and collective bargaining in the rural and export processing sectors.

**Promoting freedom of association and collective bargaining
in the rural and export processing sectors: Building
global diagnostic tools**

In an ambitious global project funded by the Swedish International Development Cooperation Agency (SIDA) in 2010–11, international and national research studies were prepared on gaps and opportunities in law and practice in relation to freedom of association and collective bargaining rights in Bangladesh, El Salvador and the Philippines (in the export processing sector) and in Kenya, Morocco and South Africa (in the rural sector). Based on these studies, draft tools for assessing and remedying gaps on freedom of association were developed and the diagnostic component has been pilot-tested in Bangladesh, South Africa, Philippines and Kenya. This process included national meetings with the tripartite constituents in the respective sectors and enterprise visits and meetings with employers, workers and their representatives. The diagnostic process is aimed at identifying the needs and concerns of constituents as a basis for developing national plans of action setting out tripartite priorities and remedial responses in the short and medium term. ILO support will be provided for their implementation. A second phase of the project in 2012–13 will allow further refinement of the tools, and particularly the development of methods to ensure that the benefits of freedom of association and collective bargaining in the rural and export processing sectors are better understood, and extended to other countries and to domestic workers.

174. With respect to discrimination, while ILO technical assistance is usually based on specific empirical research, the independent evaluation of the ILO strategy in this field found that a more articulated knowledge strategy linking the individual studies carried

²⁶ ILO: *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, para. 106.

²⁷ ILO: *Hard to see, harder to count: Survey guidelines to estimate forced labour of adults and children* (Geneva, 2011).

²⁸ ILO: *The cost of coercion*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 98th Session, Geneva, 2009, paras 51–57.

out across the ILO on equality issues would result in significant economies of effort and funds, and might also facilitate the integration of DWCP outcomes into UNDAFs.²⁹

175. It is clear that an adequate knowledge base is essential for the development of successful FPRW technical cooperation strategies. Those currently in place in the ILO vary, both because of the nature of the principles and rights concerned and the resources that have been invested in them. As the ILO works on its new knowledge management strategy, cooperation on FPRW can benefit from the overall effort to strengthen the Organization's knowledge base so that it is not simply dependent on what can be done through individual projects.

2.2. *Involvement of the social partners*

176. The involvement of the social partners allows broad-based action and ensures sustainability of ILO technical cooperation. Strengthening the capacities of the social partners to maximize the benefits of their involvement is a long-term development objective, which requires sustainable approaches and the active participation of ACTRAV and ACT/EMP. The involvement of the social partners in technical cooperation relating to FPRW can take many forms and occur at different levels, ranging from monitoring the workplace, to engaging in awareness-raising campaigns and promotion. It also varies according to each category of FPRW. Employers' and workers' organizations are the direct recipients of freedom of association and collective bargaining projects and, in many instances, of those on non-discrimination. For example, the *Autoreforma sindical* project supports the strengthening of national trade union structures and policies in the Americas, in particular by improving the implementation of Conventions Nos 87 and 98.

177. The involvement of the social partners offers them an opportunity to raise awareness of FPRW through their networks. For instance, at the ITUC, through its partnership with SAP-FL, has established a worldwide network of some 150 trade union focal points to combat forced labour and trafficking, some of which are directly involved in trade union action on the ground. Another example is a project on trafficking in China, in which the involvement of the women entrepreneurs' association made it possible to reach out to and influence many more entrepreneurs than would otherwise have been possible. In Uganda and Zambia, employers' and workers' organizations were associated with a project to raise awareness and mainstream the issues of child labour and HIV and AIDS into their programmes and activities. Other projects have had a direct influence on the adoption by employers' organizations and businesses of measures to stop forced labour. For example, in Brazil, the ILO has supported the business initiative against forced labour, which has led to the adoption of a National Pact to eradicate "slave labour".³⁰ The Pact has been supplemented by a code of conduct, which has been backed by 220 companies, business organizations, trade unions and civil society organizations. In Mexico, a project has focused on reinforcing social dialogue mechanisms and enhancing the capacity of employers' and workers' organizations to fulfil their respective roles more effectively in combating child labour. In an IPEC project in Côte d'Ivoire and Ghana, the social partners play an important role in

²⁹ ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation*, op. cit., p. 42.

³⁰ Some questions have been raised by individuals and companies accused of exacting forced labour about what is considered "slave labour" in Brazil, which could raise a certain confusion when compared with the precise terms used in the forced labour Conventions "forced or compulsory labour".

advocating child protection systems, undertaking permanent monitoring of the workplace where they are present.

178. The participation of the social partners in ILO initiatives relating to FPRW is especially promising in relation to groups at risk, such as domestic, migrant and rural workers and, more broadly, informal workers. Strengthening their collective organization can have a direct effect on their enjoyment of all four categories of FPRW. Several ILO initiatives and projects on migrant³¹ and domestic workers³² have placed specific emphasis on ensuring that their fundamental rights at work are fully integrated in the agendas of trade unions and on strengthening their capacity to organize. Moreover, as child and forced labour are predominantly found in the informal economy, there is also a trend in both IPEC and SAP-FL to support efforts by employers and workers to organize in the informal economy. For example, the project to stop debt bondage in Tamil Nadu in India proved successful because the employers concerned were willing to form an organization of their own, while various national trade union organizations “took an interest in the situation of bonded workers and were willing to work with others” to address this issue.³³ More specifically, trade unions can make a critical contribution to identifying cases of forced and child labour, and to strengthening the capacities of unorganized workers to protect themselves and defend their rights. In both India and Peru, ILO forced labour projects have involved trade unions providing support and training to unorganized victims of forced labour. As a result, for example, indigenous workers subjected to forced labour in the forestry sector in the Ucayali region of Peru joined and received support from the National Federation of Workers in the Timber and Allied Industries (FENATIMAP). In India, IPEC successfully supported the organization of 1,200 informal economy workers by one of the main national trade union confederations (Hind Mazdoor Sabha).

179. It is important to involve the social partners in promoting FPRW right from the design stage of technical cooperation projects. Failure to include one or other of the social partners fully may be detrimental to the perception and ultimately the impact of a project. For example, the evaluation of the IPEC project in El Salvador indicated that, while collaboration with the business sector was key to the success of the project, it was equally important to ensure a balanced involvement of both employers’ and workers’ organizations.

2.3. *Training*

180. Training is key to raising awareness and building the capacity of constituents and others on FPRW. The ILO, through the specialists in the Decent Work Technical Support Teams (DWTs) and technical cooperation projects, organizes a significant number of workshops and seminars. It also seeks to ensure the sustainability of its action through the Turin Centre, which plays an important role in designing and implementing training activities and training materials on FPRW. The Turin Centre’s training programme on international labour standards and FPRW each year provides 40 courses, mostly tripartite, with more than 1,000 participants, and includes training activities for judges, lawyers, law professors and media professionals. In addition, its gender and non-discrimination programme offers around 900 participants every year a broad range

³¹ See, for instance, Tripartite Action to Protect Migrants within and from the [Greater Mekong Subregion] from Labour Exploitation (TRIANGLE Project).

³² ILO: *Decent work for domestic workers*, Report IV(1), ILC, 99th Session, Geneva, 2010, paras 311–314.

³³ M. Dottridge, *Good practice in stopping the use of forced labour* (Geneva, ILO, forthcoming), p. 40.

of courses on gender-equality mainstreaming, rights-based development planning and practical tools to promote equality and non-discrimination at work.

181. The Turin Centre's training on FPRW benefits from the fact that it mostly covers all four categories of FPRW and is designed on the basis of an objective analysis of needs drawing on the comments of the ILO supervisory bodies, information from DWCPs and consultation with constituents. The Centre has developed strategies to promote the sustainability of capacity building, including partnerships with universities and judicial schools and on-line learning modules. It also provides training at the subregional, regional and interregional levels, which facilitates the sharing of experience and dissemination of good practices.

182. However, further attention could be devoted to enhancing the impact of training on the realization of FPRW. The training provided by the ILO on FPRW is still fragmented. For example, the independent evaluation of the ILO strategy on non-discrimination noted that the "large number of training and capacity-building activities developed as products of non-discrimination interventions are not systematically recorded or disseminated for further use".³⁴ More generally, difficulties can arise in ensuring coordination between the various technical cooperation projects and field initiatives with a training component. The need for greater coordination encompasses not only delivery, but also the preparation, monitoring and evaluation of FPRW training activities. Moreover, these various phases of the training cycle are often not budgeted as such in projects, which has an impact on the quality and coherence of the training provided. Finally, training could also help to ensure that FPRW are taken into account in technical cooperation activities focusing on other strategic objectives. A flexible training module, emphasizing the enabling nature of the FPRW, illustrated by specific examples, could be designed for this purpose.

3. Promising avenues for technical cooperation on FPRW

3.1. *Promoting linkages between the different categories of FPRW*

183. As the violation of one category of FPRW can strongly impair the possibility of enjoying the others, particularly where workers and employers do not enjoy the right to freedom of association and collective bargaining, and as some groups of workers at risk are particularly exposed to multiple violations of FPRW, the question arises of the extent to which technical cooperation on FPRW has taken into account the interlinkages between the four categories of rights and principles. Although ILO technical cooperation on FPRW has tended to take an individual approach to each category of FPRW, there have been some developments in the integration of all four categories of FPRW, for example in the case of the Project to support the implementation of the 1998 Declaration (PAMODEC).

³⁴ ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation*, op. cit., para. 172.

PAMODEC

This project, funded by the Government of France, began in 2000 with six countries. It is now in its third phase and has been expanded to over 21 countries. PAMODEC's strategy to ensure the effective application of the four FPRW includes research and analysis to inform labour law reform, capacity building, awareness raising and knowledge sharing. The project's impact consists of strengthened social dialogue and tripartite negotiations, the advancement of the situation of women at the workplace and the commitment of the various key actors (governments, the social partners, journalists and civil society). The evaluation of the second phase of the Project pointed out that PAMODEC could be strengthened to take fuller account of the situation of FPRW in the informal economy.

184. The programme to promote the Indigenous and Tribal Peoples Convention, 1989 (No. 169) (PRO 169), is one of the ILO's main projects focusing on a particular group at risk. Experience shows that it is nearly impossible for indigenous peoples to enjoy FPRW in a country that fails to recognize them or to protect their specific rights. Promoting the ratification and observance of Convention No. 169 therefore helps to create an environment in which FPRW can be guaranteed for indigenous peoples. Each year PRO 169 trains at least 2,000 government officials, indigenous people and social partners on the protection of the rights of indigenous peoples. It includes child labour, forced labour and discrimination as key themes in all its materials, modules and tools. It also compiles the recommendations and observations of the ILO supervisory bodies with a view to supporting their implementation at the country level through dialogue between governments and the social partners.

185. Many technical cooperation projects on specific categories of FPRW also take into account to some extent the interrelationship between the four categories of FPRW. In view of the particularly close links between child labour and forced labour, synergies between these two categories of FPRW are often found in practice. Examples include SAP-FL activities in Brazil, in which its action is coordinated with IPEC where there is an incidence of child labour. Another former IPEC project in South America offers an interesting approach to combining child labour, forced labour and discrimination by paying "special attention to situations of forced child labour, and to child labour as a consequence of racial discrimination and social exclusion, including both afro-descendants and indigenous peoples".³⁵ Child labour can also offer an entry point for addressing forced labour issues. For example, IPEC's role on child labour issues opened the door to addressing certain aspects of forced labour in China. Conversely, IPEC has relied on lessons learnt from SAP-FL projects and activities in Latin America, especially in Brazil, Plurinational State of Bolivia, Peru and Paraguay, as well as the specific SAP-FL training tools targeting employers,³⁶ labour inspectors,³⁷ and judges and other law enforcement agencies.³⁸

186. In general, cooperation between SAP-FL and IPEC has tended to be on an ad-hoc basis. However, important developments have taken place in 2011. Thus, they worked

³⁵ "Combating the worst forms of child labour through horizontal cooperation in South America" (RLA/09/52/USA).

³⁶ ILO: *Combating forced labour: A handbook for employers and business* (Geneva, 2008).

³⁷ B. Andrees: *Forced labour and human trafficking: A handbook for labour inspectors* (Geneva, ILO, 2008).

³⁸ ILO: *Forced labour and human trafficking: Casebook of court decisions: A training manual for judges, prosecutors and legal practitioners* (Geneva, 2009).

together strategically on the IPEC project proposal concerning the shrimp industry in Thailand.³⁹ Issues of both child labour and forced labour arise in the industry, particularly in view of the significant presence of migrant workers, many of whom are in an irregular situation and therefore fear expulsion or other sanctions. A further promising initiative, a newly approved Global Action Programme to combat child and forced labour (\$15 million), will be implemented jointly by IPEC and SAP-FL and will cover around 40 countries through research, legislative and policy-related action.

187. Projects on forced labour and child labour include a component on non-discrimination, as vulnerable populations are those most at risk of abuse. For instance, the IPEC and SAP-FL projects in the Andean countries mostly target indigenous people, who are at risks of multiple forms of discrimination. With respect to gender discrimination, IPEC has taken into account the special situation of girls in its projects and has acquired extensive experience of including the gender dimension.

188. There are also notable examples of projects that combine the promotion of freedom of association and collective bargaining with action to combat forced labour. In Jordan, the DECLARATION projects on freedom of association and on forced labour and trafficking built synergies through training for labour inspectors, based on a cost-sharing arrangement. This collaboration increased project sustainability as, following completion of the forced labour and trafficking project, training continued for labour inspectors under the freedom of association project.

3.2. *Holistic approaches and links with other strategic objectives*

189. While action to promote FPRW makes a major contribution to the attainment of all the ILO's strategic objectives, it is equally true that technical cooperation projects focusing on other strategic objectives can contribute decisively to promoting FPRW. Hence, action to promote employment, social protection and social dialogue are critical avenues for poverty reduction and can promote the effective realization of FPRW. Where jobs are available, social protection in place and social dialogue a reality, the prospects for the exercise of FPRW are much stronger.

190. Direct assistance to families and children, and building local capacity, has been central to IPEC since its inception, not only for the good of the beneficiaries, but also to gain and refine experience. But direct action alone is insufficient to bring about systemic change in the targeted countries or sectors, and IPEC has paid increased attention to policies addressing the root and deeply entrenched causes of child labour. This approach has involved equal attention being given to direct action and to promoting an enabling environment, with the integration and mainstreaming of child labour policies into national development frameworks as the final stage. In terms of project design, this has involved IPEC defining its projects as "support" for national efforts, and shifting its strategy at the community level towards an "Integrated Area-Based" (IAB) approach. Several new projects have been designed to achieve "child labour free" zones by ensuring that action for the withdrawal, rehabilitation and protection of child workers is closely integrated with a range of employment, social protection, educational and organizational initiatives aimed at empowering vulnerable families and local communities. Projects of this type are currently being implemented in El Salvador, the cocoa growing communities of Côte d'Ivoire and Ghana, and the shrimp and seafood processing areas of Thailand.

³⁹ "Combating the worst forms of child labour in shrimp and seafood processing areas in Thailand" (THA/10/50/USA).

191. A similar approach has been applied by SAP–FL in a pilot project in Tamil Nadu. Since July 2008, in close collaboration with the Indian federal Government and the state Government, the ILO has supported the development and implementation of the so-called “convergence-based” approach, which focuses on tackling the root causes of debt bondage with a view to preventing and reducing vulnerability to it in the brick kiln and rice mill sectors. This consists of mobilizing locally available resources to lift workers permanently out of the cycle of poverty and indebtedness, and ensuring in the process that government development programmes reach the right target groups. The approach includes facilitating access to various social security schemes for informal workers, as well as to other state subsidies for families below the poverty line. These actions converge to reduce family expenditure and increase incomes, thereby addressing the root causes of debt bondage. The strategy is combined with a component to empower workers to organize and bargain collectively, and support for an active social dialogue process among the tripartite partners to improve working conditions, including regulating the payment of wages and advances. The beneficiaries include nearly 6,000 families who work in brick kilns and 3,000 workers who work in rice mills.

192. Similarly, with respect to the elimination of gender discrimination, an important lesson learned is that “one-off” interventions alone do not achieve gender equality. A holistic approach is essential to change societal attitudes and individual behaviour, while at the same time addressing structural challenges and specific work issues. Although the adoption and effective enforcement of anti-discrimination law is a fundamental step, it is insufficient in itself to eliminate discrimination. The collection of statistics, gender analysis, inclusive active labour market policies, sound enterprise-level human resources policies and committed social partners are just as important. This logic naturally extends to technical cooperation projects on all forms of discrimination.

193. Technical cooperation projects in the field of freedom of association and collective bargaining have adopted a broad approach, which may include labour law reform, building the capacity of labour administrations, dispute prevention and settlement, as well as various means of strengthening social dialogue. Moreover, through the global project funded by Norway (2010–11), a promotional publication and other tools have been developed, based on case studies, addressing the manner in which freedom of association and collective bargaining contribute to democracy, social justice and competitive economic growth.⁴⁰ This could pave the way for further initiatives linking projects on freedom of association and collective bargaining with employment and social protection.

194. The Social Justice Declaration appears to have resulted in an increasing number of technical cooperation activities that adopt an integrated approach to FPRW, with evaluations consistently finding that they achieve greater impact. For instance, technical cooperation aimed at the extension of social security contributes to the realization of FPRW. Support to establish a Social Protection Floor helps to prevent poverty and destitution, which are the breeding grounds for forced labour and child labour, and contributes to promoting equal opportunities. ILO occupational safety and health projects have strengthened trade union networks and promoted effective dialogue and collective bargaining between workers and employers. Guidance to governments on the regulation of private employment agencies has emphasized the active role that they can play in combating forced labour and human trafficking. Social finance initiatives have provided vulnerable workers with alternatives to earn their way out of debt bondage and

⁴⁰ ILO: *Freedom of association and development* (Geneva, 2011).

have contributed to a reduction in child labour by increasing socio-economic welfare through income generation. However, there are clear variations in the way in which the different categories of FPRW are promoted under other strategic objectives. While there is a well-established link between technical cooperation on employment and social protection and the elimination of child labour, links are uncommon, for instance, between the promotion of employment and freedom of association and collective bargaining.

195. The box below presents concrete examples of projects on other strategic objectives that include a dimension on FPRW. Many of these projects concern specific categories of workers at risk, such as migrant, domestic and informal economy workers, reflecting the particular need for an integrated approach to the promotion of FPRW.

Examples of technical cooperation projects adopting an integrated approach with an FPRW dimension

Promoting Gender Equality in the Workplace (BASIC)	Project activities focus on the elimination of gender-based discrimination in employment and occupation through research, training and technical assistance, for example in Angola, Brazil, China, India and South Africa. Through a process of social dialogue, the project examines compliance with existing obligations and ways of improving implementation. For instance, in China policies are being developed to harmonize the retirement age of women and men, a new national policy on domestic workers has been developed, including the regulation of domestic service agencies, and enterprises are required to provide maternity insurance under a new Social Insurance Law.
MDG-F Joint Programme: Protecting and promoting the rights of China's vulnerable young migrants	The programme focuses on ensuring that rural youth migrating to urban areas have access to decent employment opportunities and are not victims of trafficking or exploitation. Its activities include capacity building for public and private employment services, awareness-raising for young migrants, pre-employment vocational training and business start-up training.
COOP Africa	The project has included awareness-raising for cooperative members and the development of support structures to combat child labour, as well as activities to promote women's cooperatives, for example in the United Republic of Tanzania. A programme to prevent discrimination based on HIV and AIDS was developed with cooperative and informal organizations in five countries (Benin, Cameroon, Ethiopia, Mozambique and United Republic of Tanzania).
Sustaining Competitive and Responsible Enterprises (SCORE)	As a practical and integrated training and workplace improvement programme for small and medium-sized enterprises (SMEs), SCORE makes the business case (for example, in China, Colombia, Ghana, India, Indonesia, South Africa and Viet Nam) for investing in responsible workplace practices and respect for FPRW to enhance enterprise competitiveness. Since 2009, training has been provided for over 350 managers and workers from around 100 SMEs, as well as trainers.
Women's Entrepreneurship Development and Gender Equality (WEDGE)	The project supports the elimination of child labour in Cambodia by reaching out to women in rural families through training, access to finance and collective organization, to help the families to improve their businesses and earnings. It supports the organization of rural entrepreneurs into self-help groups to improve their access to financing and markets. It also promotes non-discrimination in government ministries through gender mainstreaming action plans.
SYNDICOOP	The project focuses on: strengthening the capacity of trade unions and cooperatives to organize unprotected informal economy workers; reducing poverty among informal workers and creating decent job opportunities for young women and men; and developing more inclusive and participatory Poverty Reduction Strategy Papers (PRSPs) for the informal economy.
Technical assistance to reform the social protection and social security system	A joint study in Chile concluded that an integrated social protection system has an important impact on child labour through the provision of financial and psychosocial resources to families and incentives for children to remain in

Examples of technical cooperation projects adopting an integrated approach with an FPRW dimension

Better Work	The ILO suggested a number of improvements with a view to eliminating child labour through <i>Chile Solidario</i> , which provides support in return for a commitment to ensure that children remain in school.
Microfinance for decent work	The programme brings together governments, employers, workers and international buyers to improve compliance with labour standards and promote competitiveness in global supply chains, particularly in the apparel industry. Programme interventions in Cambodia, Haiti, Indonesia, Jordan, Lesotho, Nicaragua and Viet Nam, include the promotion and realization of FPRW, offering evidence that better implementation of FPRW leads to improvements in employment and working conditions (see Chapter 4).
Upgrading informal apprenticeship	Initiatives to combat child labour have been included in microfinance activities in several countries. These include training to improve safety in agriculture and raise awareness of child labour issues in Mali, micro-health insurance products in Pakistan to reduce health-related economic shocks within families, which can push children into child labour, and financial products in Nigeria to support school attendance by children.
Verification of the implementation of the White Paper recommendations	Based on IPEC advice, projects to upgrade informal apprenticeship systems, which account for 90 per cent of national training provision, have reduced gender-based occupational segregation by broadening apprenticeship opportunities for young women and improving awareness of and respect for FPRW, for example in Benin, Burkina Faso and Zimbabwe. Informal apprenticeships have also been used to reintegrate children formerly associated with armed forces or groups.
Verification of the implementation of the White Paper recommendations	Support has been provided to Central American countries and the Dominican Republic to assist with legislative reforms and to strengthen the capacities of the labour administration and labour courts, with a focus on freedom of association and collective bargaining, non-discrimination in employment and occupation and the elimination of child labour.

3.3. *Partnerships*

196. The ILO recognizes the importance of developing and deepening the partnership between technical cooperation on FPRW and the broader international development agenda, particularly through UNDAFs. It has built on and benefited from close collaboration with other international organizations, particularly within the United Nations system, for the promotion of certain categories of FPRW. This collaboration offers the opportunity to mobilize and combine expertise, raise resources and respond to donor interests, within the context of the United Nations reform process to improve the delivery of the United Nations agencies as one at the country level.

197. Partnerships at the global policy level are key to developing cooperation at the country level. Significant global policy partnerships on child labour include the inter-agency programme on Understanding Children's Work (UCW), the Global Task Force on Child Labour and Education for All (GTF) and the International Partnership for Cooperation on Child Labour in Agriculture (IPCLA). With respect to forced labour, since 2003 collaboration has intensified between the ILO and other United Nations agencies working on trafficking, as well as with the International Organization for Migration (IOM), notably through the Inter-agency Coordination Group against Trafficking in Persons (ICAT) and the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). Mention should also be made of the United Nations Indigenous Peoples Partnership (UNIPP) launched in May 2011. This is a joint rights-based initiative between the ILO, the Office of the High Commissioner for Human Rights, the United Nations Development Programme (UNDP) and the United Nations Children's

Fund (UNICEF). The UNIPP Technical Secretariat is hosted by the ILO through its Programme to promote the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Although the ILO has recently entered into partnership with the United Nations on gender issues,⁴¹ increased inter-agency collaboration in relation to other grounds of discrimination in employment and occupation, and on freedom of association and collective bargaining, could open important new avenues for ILO technical cooperation.

198. At the country level, inter-agency cooperation on child labour has increased markedly in recent years. IPEC has generally sought to coordinate its interventions with those of other international organizations working in the same, or in related fields, in order to foster synergies and avoid overlaps. Many IPEC projects have benefited from close coordination with other international actors, such as UNICEF and UNESCO, particularly in relation to the role of education in eliminating child labour.

199. There are also several noteworthy examples of partnerships to combat forced labour and human trafficking. In the DECLARATION project in Tajikistan, the combination of ILO technical expertise, the implementation capacity of the IOM and UNDP's field presence has proved successful. In the Plurinational State of Bolivia, after the ILO raised the issue of forced labour in an inter-agency coordination group on indigenous peoples, a number of United Nations agencies have participated in efforts for its eradication, resulting in strengthened interventions, resource mobilization and awareness raising. Through a DECLARATION project in Armenia, Azerbaijan and Georgia, the ILO led a consortium of four international organizations to strengthen national responses to combat trafficking.

200. In addition to building partnerships with other international organizations, IPEC has also developed considerable experience in forming public-private partnerships (PPPs). Most PPPs on FPRW concern child labour projects. The main focus of interest by MNEs has so far been in funding IPEC projects to help combat child labour in their own supply chains. However, certain companies with a longer term view of the sustainability of these supply chains are increasingly interested in funding IPEC projects that go beyond direct interventions and adopt broad approaches to the eradication of child labour.

201. South-South cooperation on child labour has become an increasingly important dimension of IPEC's work. Article 8 of Convention No. 182 encourages international solidarity in combating the worst forms of child labour,⁴² with the aim of fostering horizontal cooperation between countries by sharing successful experiences. Recent South-South initiatives in this respect are based on the recognition that every country is different, but that solutions to child labour ultimately lie with governments and their policy choices. For example, from being one of the first beneficiaries of IPEC technical support, Brazil has in recent years become a provider of assistance to other countries through a South-South initiative that began with Portuguese-speaking countries in Africa and has since been extended to other countries. Such cooperation often occurs within regional groups, such as the Andean Pact, MERCOSUR (the Southern Cone Common Market), the India-Brazil-South Africa (IBSA) Trilateral (established in 2003 to promote South-South cooperation and exchanges between the three countries) and

⁴¹ Memorandum of Understanding between the United Nations Entity for Gender Equality and the Empowerment of Women and the International Labour Organization, Geneva, 13 June 2011.

⁴² "Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education."

groups of countries united by a common language. While South–South cooperation is much more advanced in relation to child labour, there is potential for similar initiatives on forced labour.

4. Main challenges and opportunities

4.1. *Interlinkages between FPRW and the other strategic objectives*

202. Experience has shown that drawing on synergies between the different categories of FPRW, on the one hand, and between FPRW and the other strategic objectives, on the other, improves the impact of technical cooperation. Although one or both of these dimensions are reflected in an increasing number of activities, this has mostly occurred on an ad hoc basis, and has depended largely on national circumstances and on funding modalities. This points to the advantages of developing a common understanding and approach to the role of FPRW in the realization of decent work.

203. In this respect, the commonalities identified in technical cooperation activities on the four categories of FPRW, with particular reference to the knowledge base, the involvement of the social partners, training and capacity building and integrated approaches addressing the root causes of violations, should be strengthened by drawing on the interlinkages between FPRW. Clearly, however, such interlinkages should only be promoted where relevant, and may not always include all four categories of FPRW. Moreover, the cross-fertilization of technical cooperation experience would contribute to improving the overall impact of ILO action on FPRW. IPEC and DECLARATION have acquired a wealth of knowledge, skills and know-how in relation to technical cooperation projects which is valuable in promoting FPRW.

204. In this regard, two main challenges may be identified. First, projects that adopt an integrated approach require a certain level of funding and duration, which have not always been forthcoming. Second, there is a need for specialists working on a specific strategic objective to gain greater exposure to ILO activities in other areas so that they are more able to identify the needs and opportunities for an integrated approach. In this light, a number of specific practical suggestions may be put forward with a view to improving the integration of ILO technical cooperation activities and optimizing the use of resources and the outcomes achieved. While these proposals are reviewed primarily from the perspective of the promotion of FPRW, they may also be applicable more generally across the ILO.

205. In the first place, at the level of the Office, a systematic analysis could be undertaken with a view to identifying opportunities for an integrated approach. The Office could prepare a good practice guide as a basis for developing a methodology for this approach to the promotion of FPRW in technical cooperation projects. In this regard, the design stage of projects is a crucial entry point. The methodology could also address the operational planning process and ensure that an integrated approach is taken into account in reviewing and evaluating projects.

206. A systematic analysis of this type could also stimulate joint work, convergence and coordination between ILO sectors and departments. Coordination between specialists in the field and at headquarters could be strengthened to ensure the integration of FPRW in technical cooperation projects and coherence between technical cooperation activities and global objectives in the implementation of FPRW. The Office could also organize training on FPRW, for example through the NORMES/Turin Centre training course for staff on international labour standards launched in 2012, and regular in-house meetings for specialists from the different sectors to improve understanding of FPRW and

promote wider knowledge of the four categories of FPRW. Conversely, FPRW specialists could improve their knowledge of the other strategic objectives in order to identify areas of possible collaboration. At the level of the regional and country offices, methods should be found to improve exchanges and collaboration between technical specialists and technical cooperation coordinators. Increased coordination between ILO field and headquarters specialists should be supported by the decent work country team, particularly in relation to the design of new DWCPs, based on the active participation of all the technical specialists concerned.

4.2. *Inclusion of FPRW in DWCPs and UNDAFs*

207. During the preparatory work for the Social Justice Declaration, the Office emphasized the potential of DWCPs as a tool to encourage member States to pursue an integrated approach to the four strategic objectives.⁴³ However, the uneven integration of FPRW in DWCPs (see section 1 above) in practice has two main consequences. The first concerns resource allocation, as DWCP priorities provide the framework for resource allocation. This may therefore lead to inconsistencies between the ILO's global priorities, as approved by constituents in the SPF and the programme and budget, and national needs in relation to FPRW. Second, failure to identify FPRW as priorities in DWCPs, with particular reference to freedom of association and collective bargaining, may hinder the integration of FPRW into activities to achieve the other strategic objectives.

208. In this light, it seems important to strengthen the FPRW dimension in DWCPs. The newly developed guidebook for ILO managers and staff involved in the development and implementation of DWCPs can contribute to this objective. The guidebook states that the commitments of member States arising from ratified international labour Conventions, and from gaps in the implementation of such obligations and any observations made by the supervisory bodies, are to be reflected in the DWCP for that country. Moreover, "the ILO's unique tripartite nature and responsibilities in terms of addressing [FPRW] must always figure in DWCPs, even if they are not reflected in an UNDAF or similar instrument".⁴⁴ It may also be of advantage, in the current context, to develop more general guidance and a practical framework for the integration of FPRW into DWCPs. Preliminary work has been carried out on the development of a manual on this subject, which should be finalized to improve understanding of FPRW and their specific interlinkages with the other strategic objectives. The manual could contribute significantly to improving the programming outcomes of DWCPs and developing a consolidated approach among those engaged in the DWCP process. Decent work country scan methodology covering all the strategic objectives could provide an important additional opportunity to make the linkages between FPRW and employment and social protection policy. It is anticipated that this methodology will be used to inform the next generation of DWCPs.

209. A more significant approach that might be considered by constituents would be simply to respond to the key role of FPRW as enabling conditions for the full realization of all ILO strategic objectives, by including their promotion as a mandatory component of each DWCP, on the understanding that the specific content of this component would take fully into account national conditions and circumstances.

⁴³ ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, op. cit., para. 66.

⁴⁴ ILO: *Decent Work Country Programmes: A guidebook*, version 3 (Geneva, 2011), pp. 7 and 9.

210. In cases where a DWCP does not adequately reflect national needs in relation to FPRW, it is more difficult to incorporate the ILO agenda on FPRW into UNDAFs. Experience also points to three further challenges in this regard. First, the integration of all FPRW, especially freedom of association and collective bargaining, is challenging due to a lack of knowledge of their content outside the ILO, and sometimes in light of the prevailing political environment. Second, the United Nations agencies leading the drafting process do not always seem to be fully aware of the relevance of tripartism and the added value of the involvement of workers' and employers' organizations in policy dialogue. Third, the inclusion of FPRW in UNDAFs is more difficult in countries without a DWCP, but is facilitated where the ILO has a presence at the national level.

211. In this respect, it is important to make use of the Chief Executives Board (CEB) *Toolkit for mainstreaming employment and decent work* for the coordination of action by the ILO and other United Nations agencies at the country level.⁴⁵ Based on the newly developed technical guidance on UNDAFs (2010), which includes extensive information on FPRW,⁴⁶ a more systematic strategy of communication and exchange of information on the ground is needed to raise understanding of the relevance of FPRW within the United Nations system, at both the global and national levels. The ILO could also explore entry points for the promotion of FPRW in the policies and programmes of other United Nations agencies, such as the UNDP concept of "good governance", and further deepen others, such as the human rights-based approach. The inclusion of FPRW in UNDAFs is much easier where an inter-agency framework for collaboration that targets FPRW exists at the global level. It would also be greatly facilitated by the involvement of workers' and employers' organizations in UNDAF development and implementation committees at the national level.

C. Technical capacity and research

212. In accordance with the Social Justice Declaration, the Office is seeking to enhance its technical and research capacities with a view to helping member States in their efforts to achieve their decent work objectives. In this context, the main goal of the ILO's Knowledge Strategy is to improve the quality and policy relevance of ILO work. The Strategy consists of two interrelated outcomes: strengthening evidence-based analysis to support the Decent Work Agenda through a more integrated global research agenda and new country-level decent work scans; and improving the dissemination of ILO knowledge through a central gateway. In particular, it calls for a dedicated effort to compile information on the rights at work pillar of the Decent Work Agenda and the communication of this knowledge to support progress towards decent work for all.⁴⁷ This means assisting in effectively identifying the needs of constituents by developing a comprehensive knowledge base, establishing appropriate indicators to monitor and evaluate the progress made regarding the strategic objectives, and understanding how these interact with each other. This section provides a brief overview of these three

⁴⁵ ILO: *Toolkit for mainstreaming employment and decent work*, United Nations Chief Executives Board for Coordination (Geneva, 2007).

⁴⁶ United Nations Development Group: *How to prepare an UNDAF: (Part II) Technical guidance for UN Country Teams* (2010). The document makes extensive reference to the 1998 Declaration and the eight fundamental Conventions. In addition, it refers to the findings and recommendations of the ILO supervisory bodies for guidance.

⁴⁷ ILO: *Results-based strategies 2010–15: Knowledge strategy – Strengthening capacity to deliver decent work and the Global Jobs Pact*, Governing Body, 306th Session, Geneva, Nov. 2009, GB.306/PFA/12/3.

aspects concerning FPRW and outlines areas in which research and technical capacity could be strengthened.

Developing a comprehensive knowledge base on each category of FPRW

213. While data gathering is of importance in defining priorities for ILO technical cooperation and action by member States, policy-oriented research is needed for the identification of appropriate measures for the realization of FPRW. The Office provides substantial support to constituents in both these areas. However, largely due to the uneven availability of resources, its research capacities have mainly been developed in the fields of child and forced labour, as well as on gender issues.

214. With regard to *child labour*, as a direct consequence of the methodological and operational progress made by SIMPOC, IPEC has been successful in enhancing the capacities of countries to conduct national surveys of child labour. As a result of this action at the national level, it is now possible to produce global child labour estimates every four years, with the next due in 2013. In terms of policy research, IPEC has developed an impact assessment framework to determine the effectiveness of a wide range of public policies on the elimination of child labour, including social protection and employment initiatives. A new \$2.5 million project on global evaluation and monitoring is designed to accelerate progress in combating child labour by increasing the knowledge base of effective interventions that can be replicated and upscaled within and across countries. The project will build on the manuals developed and the experience gained since 2000, including in current IPEC projects. Going forward, the continued expansion of the knowledge base on child labour is indispensable to refine policy responses, and further efforts are planned, for example to improve understanding of the effect of child labour on education, health and youth employment outcomes.

215. Similarly, the ILO contributes to filling knowledge gaps through the development of statistical indicators of *forced labour*, which are now widely used in national surveys and studies.⁴⁸ One of the most visible achievements in this regard is the ILO's capacity to provide global estimates of the number of victims of forced labour and the cost of forced labour, with the second set of estimates due in time for the present discussion. A central finding in this respect is that over half of human trafficking worldwide is for the purpose of labour exploitation. The global data gathered by SAP-FL are key inputs for policy-makers and law enforcement agencies. An important challenge in the years to come is to ensure the sustainability of the knowledge and research capacities of SAP-FL, which are totally reliant on extra-budgetary resources.

216. With regard to *non-discrimination*, a significant body of data and knowledge is also being produced concerning gender equality. For this purpose, GENDER makes full use of the cross-cutting nature of gender issues to produce statistics and policy research, with the support of the relevant ILO units, on gender and employment,⁴⁹ gender and social protection, and gender and social dialogue. Moreover, as in its joint work with the FAO and IFAD on the gender dimensions of agricultural and rural employment,⁵⁰ and

⁴⁸ ILO: *The cost of coercion*, op. cit., paras 51–57.

⁴⁹ ILO: *Global employment trends for women* (Geneva, 2009) (also available for 2004, 2007 and 2008). See also ILO: *Global economic crisis, gender and work: Key policy challenges and options*, Global Jobs Pact Policy Brief No. 15 (Geneva, 2010).

⁵⁰ FAO, IFAD, ILO: *Gender dimensions of agricultural and rural employment: Differentiated pathways out of poverty: Status, trends and gaps* (Rome, 2010).

with UNDP on balancing work and family responsibilities,⁵¹ the ILO is building important research partnerships on gender-related issues. Systematic research on other grounds of discrimination is more limited. Steps have been taken within the framework of the Programme and Budget 2012–13 to remedy the situation.⁵² Evidence-based research can have an important impact on awareness raising and policy-making, as shown by the employment discrimination testing undertaken in France, Italy, Spain and Sweden,⁵³ and the research documents published in the context of the preparatory work for the new ILO standards on domestic workers. As indicated by the independent evaluation on non-discrimination, and as illustrated in the case of gender issues, research carried out in cooperation with other international organizations, particularly within the United Nations system, offers a promising avenue in this field.

217. With regard to *freedom of association and collective bargaining*, important publications on collective bargaining and working papers on the impact of non-standard forms of employment on industrial relations have been issued recently by the Industrial and Employment Relations Department (DIALOGUE).⁵⁴ Similarly, ILO flagship publications, such as the World of Work Reports and Global Wages Reports, have contributed to a better understanding of the effects of collective bargaining. However, the possibilities for the Office to strengthen its knowledge base on freedom of association and collective bargaining, in particular at the national level, through empirical and policy research has been particularly affected by resource fluctuations. Bearing this in mind, the findings and comments of the ILO supervisory bodies can help in identifying research priorities for the future.

Monitoring progress in the application of FPRW

218. Two operational tools, currently being developed by the Office, may be singled out in relation to the efforts to support constituents to monitor and evaluate progress towards the application of FPRW: the measuring decent work initiative and the gateway to the findings of the ILO supervisory bodies. The comprehensive approach to the measurement of decent work is a potentially valuable tool for constituents to assess progress towards the integrated application of FPRW. Following a tripartite meeting of experts in 2008, quantitative and legal indicators regarding ten thematic areas, including the four categories of FPRW, have been defined with a view to compiling Decent Work Country Profiles. Several profiles have been published so far, with the support of an ILO/European Union project, Monitoring and Assessing Progress on Decent Work (MAP). The Office is currently finalizing a reference guide for the decent work indicators, as well as model drafting guidelines for the development of Decent Work Country Profiles. By covering all the aspects of decent work and integrating legal information, these indicators go beyond the scope of traditional labour statistics and may encourage integrated and coherent policy decisions that fully integrate FPRW. Supplemented by a specific *gateway* to the findings of the ILO supervisory bodies on the

⁵¹ ILO, UNDP: *Work and family: Towards new forms of reconciliation with social co-responsibility* (Santiago de Chile, 2009).

⁵² ILO: *Independent evaluation of the ILO's strategy for the elimination of discrimination in employment and occupation*, op. cit., p. 45.

⁵³ L. Simeone, P. Taran and A. Gächter: "Situation testing": *Discrimination in access to employment based on ILO methodology* (ILO, 2007, updated in 2010).

⁵⁴ S. Hayter (ed.): *The role of collective bargaining in the global economy: Negotiating for social justice* (Geneva, ILO, 2011).

application of FPRW (see below), they give constituents an opportunity to better assess their efforts for the realization of the four categories of FPRW.

219. The Governing Body also requested the Office to establish a system to document and monitor progress towards the application of FPRW. The method is based on coding the findings of the ILO supervisory system, with a view to compiling and providing this information in a readily accessible and concise manner. It sets up a gateway that facilitates access to a large quantity of ILO reports and the comments of the ILO supervisory bodies could provide an important stimulus to dialogue and targeted assistance with member States. The objective is to further support countries in monitoring progress and identifying gaps and areas of improvement towards the application of FPRW, as well as to facilitate the evaluation of technical cooperation needs at the country level. It provides a compilation of information that already exists but is dispersed. It strengthens the knowledge base of the ILO and its supervisory bodies, and could stimulate the provision of more complete information. By enhancing the transparency of the ILO's information base on FPRW, it should also encourage constituents to provide further accurate and up-to-date information, thereby constantly improving its quality. It is envisaged that the approach developed by the project will in due course be integrated in the newly developed NORMLEX, which will be the legal component of the ILO's information system.

Understanding the relationship between FPRW and the other strategic objectives

220. Following the orientations of the Social Justice Declaration, a significant number of ILO publications explore how social dialogue, employment policies and social security measures can be part of strategies to eliminate child labour and promote gender equality. In addition, recent ILO research and publications have contributed to a better understanding of the role of the four categories of FPRW in strengthening the links between social progress and economic development. ILO flagship publications, such as those mentioned above, have since 2008 analysed the impact of collective bargaining on wage equality, poverty and the effectiveness of employment policies, as well as the interrelationships between minimum wage policies and equality in employment and occupation. In the context of the current economic crisis, the International Institute for Labour Studies has undertaken research on the effects of improved implementation of FPRW on aggregate demand and economic growth.

221. In light of the orientations set out in Chapter 1, these initiatives could be further strengthened and developed. Future research should address inter alia the question of how to operationalize the inclusion of FPRW into economic and social policies, particularly in times of economic constraints based on national country experiences. This research could also support the development of promotional tools to enhance understanding of the enabling nature of FPRW and their function in strengthening the links between economic development and social progress. Greater knowledge, understanding and visibility of the role and impact of FPRW in this respect would be instrumental in their promotion, particularly by reaching out to actors not normally covered by the ILO's means of action, but which are increasingly making use of FPRW (see Chapter 4).

D. Standards-related action

222. The 1998 Declaration recalls that FPRW “have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental

both inside and outside the Organization”.⁵⁵ Direct standards-related action therefore occupies a central place in ILO activities on FPRW. And it is also true that FPRW weigh very heavily in the overall body of the ILO’s work on standards.

1. Special place of FPRW in ILO standards-related action

223. While the eight fundamental Conventions define FPRW, other ILO standards are very relevant for their realization. Some Conventions and Recommendations complement the fundamental Conventions by focusing on certain aspects of FPRW.⁵⁶ Other standards address the difficulties faced by certain groups of workers in enjoying FPRW.⁵⁷ Finally, others relate to the national institutional framework and supporting environment conducive to the full exercise of FPRW.⁵⁸

Campaign to promote the ratification of the fundamental Conventions

224. The ongoing campaign for the ratification of the fundamental Conventions was launched in May 1995 by the Director-General as a follow-up to the commitments made at the United Nations World Summit for Social Development in Copenhagen. The campaign included the Director-General sending annual letters to the governments of countries that have not ratified all the fundamental Conventions asking them to indicate their position with regard to these Conventions, the difficulties that they are encountering in ratifying them and their technical assistance needs.

225. The emphasis placed on the ratification of the fundamental Conventions was given further impetus by the 1998 Declaration, the Social Justice Declaration and, most recently, the Global Jobs Pact, which acknowledges the fundamental Conventions as important elements in the strategy for recovering from the crisis.⁵⁹ In 2008, the Director-General once again drew the attention of the Conference to the importance of accelerating the ratification of the fundamental Conventions and proposed the goal of universal ratification by 2015.⁶⁰

226. The adoption of the two Declarations has made necessary a streamlining of the arrangements to promote the ratification of the fundamental Conventions. There has been duplication between the Annual Review follow-up mechanism to the 1998 Declaration and the ratification campaign for the fundamental Conventions since, as “the comments and data received through the annual reports largely focus on issues related to ratification prospects, they tend to duplicate what is reported through the ratification campaign”.⁶¹ In light of the recurrent report on FPRW and the General Survey presented

⁵⁵ ILO: *ILO Declaration on Fundamental Principles and Rights at Work*, op. cit., para. 1(b).

⁵⁶ For example, the Workers’ Representatives Convention, 1971 (No. 135), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183).

⁵⁷ For example, the Rural Workers’ Organisations Convention, 1975 (No. 141), the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

⁵⁸ The Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Administration Convention, 1978 (No. 150).

⁵⁹ ILO: *Recovering from the crisis: A Global Jobs Pact*, op. cit.

⁶⁰ ILO: *Decent work: Some strategic challenges ahead*, Report of the Director-General, Report I(C), ILC, 97th Session, Geneva, 2008, para. 94.

⁶¹ ILO: *Review of the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work*, op. cit., para. 33.

to this Conference on the fundamental Conventions, it was decided this year to discontinue the annual letters requesting information on developments in the ratification of the fundamental Conventions.⁶² The report submitted to the Governing Body on the Annual Reviews under the follow-up to the 1998 Declaration will consolidate the new information received.

Long-standing emphasis on FPRW in the supervisory system

227. Initially, the approach followed by the Conference and the Governing Body was largely to treat all standards in a uniform manner, whatever the rights in question. The first major distinction made under the supervisory system in relation to FPRW consisted of the establishment in 1950 of the special procedure for the examination of infringements of trade union rights. The second distinction arose in relation to the streamlining of reporting arrangements on ratified Conventions under article 22 of the Constitution. In this respect, the Governing Body has always accorded special attention to the fundamental Conventions through the adoption of shorter reporting intervals for ratified fundamental Conventions than for technical Conventions.

228. Each year, a certain number of individual cases concerning the application of ratified Conventions, based on the observations of the CEACR, are discussed by the Conference Committee on the Application of Standards. Between 2007 and 2011, 77 per cent of the individual cases discussed by the Conference Committee concerned the fundamental Conventions, with 48 per cent relating to freedom of association and collective bargaining. This situation has even led to some concern that the fundamental Conventions are crowding out the examination of technical Conventions.

229. Similarly, constituents have predominantly made use of the special supervisory procedures provided for in the ILO Constitution in relation to the fundamental Conventions. Over 50 per cent of the representations made under article 24 of the ILO Constitution and 80 per cent of the complaints made under article 26 have been related to the observance of fundamental Conventions. All the Commissions of Inquiry that have so far been established to investigate complaints under article 26 (a total of 12) have concerned fundamental Conventions, although never those on child labour. Around half of the representations and the majority of the complaints made have been on the freedom of association Conventions.

230. Over and above the tripartite composition of many of the ILO supervisory bodies, employers' and workers' organizations play a vital role in the functioning of the supervisory system through the comments that they submit to the CEACR and their ability to initiate special supervisory procedures. Both employers' and workers' organizations are submitting increasing numbers of comments on the application of ratified fundamental Conventions. The number of comments on the eight fundamental Conventions made to the CEACR by employers' and workers' organizations increased by 12 per cent in 2008-11 compared with 2004-07, confirming a trend initiated in the 1980s. While the comments made by workers' organizations continued to increase between 2008 and 2011 (by 7 per cent) compared with 2004-07, and represent the large majority of all comments made by the social partners (85 per cent), those from employers' organizations relating to the eight fundamental Conventions have also increased sharply (by 56 per cent).

⁶² The letters sent out by the Director-General now cover the ratification of the "governance" Conventions, to which the campaign has been extended.

231. Similarly, the number of new cases submitted to the CFA has continued to rise over the same period. The CFA received 242 new cases between 2004 and 2007 (already an upward trend at the time), and this rose to 266 between 2008 and 2011. This increase was also reflected in the number of cases examined by the CFA over the same period, with a total of 400 cases being examined between 2004 and 2007, and 431 cases between 2008 and 2011.

232. The increased use of these mechanisms by constituents, combined with the sharp growth in the ratification of fundamental Conventions since 1995, has resulted in an unprecedented increase in the workload of the ILO supervisory bodies and their secretariat.

Impact of the ILO supervisory system on the realization of FPRW

233. In assessing the impact of the supervisory system with regard to the fundamental Conventions, it is important to consider the “cases of progress” in which the CEACR notes with “satisfaction” or “interest” changes in law and practice that improve the application of ratified fundamental Conventions.⁶³ Cases of progress are also one of the measurement criteria for the FPRW outcomes in the programme and budget (except for Outcome 14 on freedom of association and collective bargaining).⁶⁴ However, the CEACR has recalled that the “expression of interest or satisfaction is not a reflection of the overall compliance with the Convention by the country in question. Therefore, in the same comment, the Committee may express satisfaction or interest on a particular issue, while expressing regret on important issues which in its view have not been addressed in a satisfactory manner”.⁶⁵ In total, during the period 2004–11, the CEACR noted 1,178 cases of progress in the application of fundamental Conventions (out of a total of 3,097 cases of progress). Many of the cases of progress during this period relate to Convention No. 182 (26 per cent)⁶⁶ and Convention No. 111 (19 per cent).

234. The total number of cases in which the CFA has noted with interest or satisfaction the steps taken to give effect to its recommendations has increased significantly over the past decade, from a little over 50 cases of progress between 1991 and 2000 to 241 cases during the period 2001–10.⁶⁷ This increase is more significant than the growth in the

⁶³ “The Committee expresses satisfaction in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions”. “In general, cases of interest cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.” ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1(A)), ILC, 99th Session, Geneva, 2010, General Report, paras 59 and 62.

⁶⁴ ILO: *Programme and Budget for the biennium 2012–13*, op. cit., pp. 66–78. The measurement criteria for Outcomes 16 and 17 include “The ILO supervisory bodies have noted with satisfaction or interest progress in the application of the relevant Conventions”. The measurement indicators of Outcome 18 include the same criterion, but for all ILO Conventions.

⁶⁵ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., General Report, para. 58(4).

⁶⁶ See ILO: *IPEC action against child labour: Highlights 2010*, op. cit., para. 47: “While these cases of progress and interest formally noted by the CEACR are very positive it will be important for the member States to reinforce their advances and achievements under the other measurement criteria of this indicator in order to deepen progress.”

⁶⁷ ILO: *Reports of the Committee on Freedom of Association: 360th Report of the Committee of Freedom of Association*, Governing Body, 311th Session, Geneva, June 2011, GB.311/4/1, paras 18 and 19.

number of cases submitted to the Committee. However, the number of cases of progress fell slightly between 2006 and 2010 in comparison with the period 2001–05.

235. A valuable illustration of the growing legal impact of the comments of the ILO supervisory bodies is to be found in the increasing number of domestic courts,⁶⁸ and particularly supreme and constitutional courts, as well as regional human rights courts,⁶⁹ that are taking them into account, either explicitly or implicitly. In several countries, this trend can be seen to be contributing significantly to compliance with the fundamental Conventions.

2. Realization of FPRW through enhanced integration of the work of the supervisory bodies and technical cooperation and assistance

236. The adoption of the 1998 Declaration gave new impetus to ILO efforts for the effective coordination of technical cooperation and standards-related action. Another influential factor has been the success of Convention No. 182 and its promotion through a major technical cooperation programme, with a demonstrable impact in terms of ratifications.

237. The standards strategy and its interim plan of action establish an operational strategy for standards-related technical cooperation.⁷⁰ One of the main underlying ideas is that the promotion and implementation of standards contribute to the broader internationally agreed development objectives of promoting human rights, democracy, good governance and poverty reduction, and should therefore be a crucial and integrated element of country-level programming and technical cooperation. The other key idea is that ILO standards-related activities, including the comments and guidance provided by the supervisory bodies, offer a strategic resource that can inform and facilitate the development of technical cooperation strategies and programmes by the ILO, its tripartite constituents and donor agencies, including development banks.

238. With a view to playing their role more fully in the standards-related technical cooperation strategy, for the past seven years the CEACR and the Conference Committee on the Application of Standards have made more systematic reference in their comments to the need for technical cooperation and assistance to address gaps in the implementation of standards. In this respect, it should be recalled that the linkages between the work of the supervisory bodies and technical cooperation and assistance depend largely on the information contained in government reports on the application in practice of the fundamental Conventions. Based on this information, the ILO supervisory bodies can suggest technical cooperation and assistance measures to address both legislative and practical obstacles to the achievement of FPRW. However, a considerable proportion of Government reports on ratified fundamental Conventions contain little or no information in this respect.

⁶⁸ X. Beaudonnet : “La utilización del derecho internacional del trabajo por los tribunales nacionales: Noticias de una evolución en marcha”, in *Derecho Laboral*, LIII(238), Apr.–June 2010, pp. 245–270.

⁶⁹ F. Ebert and M. Oelz: *Bridging the gap between labour rights and human rights: The role of ILO law in regional human rights courts*, International Institute for Labour Studies, Discussion Paper No. 12 (Geneva, ILO, 2012).

⁷⁰ ILO: *Improvements in the standards-related activities of the ILO: Possible implications of the Declaration on Social Justice for a Fair Globalization on the standards strategy and update on the implementation of the interim plan of action*, Governing Body, 303rd Session, Geneva, Nov. 2008, GB.303/LILS/4/1.

239. In approximately 70 per cent of the cases concerning the application of ratified fundamental Conventions that it has discussed over the past two years (2010 and 2011), the Conference Committee on the Application of Standards called for technical cooperation and assistance. A recent publication on the impact of the Conference Committee describes the results achieved in specific cases relating to fundamental Conventions.⁷¹ To supplement this initiative, since 2008 the CEACR has highlighted in its report 286 cases in which it considers that technical cooperation and assistance would be particularly useful to address implementation gaps in law and in practice. Of these cases, more than 50 per cent (149) relate to the application of fundamental Conventions. There is a broad range of areas in relation to which a need for technical assistance has been identified by the two Committees concerning the application of fundamental Conventions, mainly for legislative reform, the development of policies or implementing programmes, capacity building and data collection. Among the fundamental Conventions, freedom of association and collective bargaining is the area in which most technical assistance has been called for.

3. Standards-related action as a means of promoting the contribution of FPRW to decent work

240. Prior to the adoption of the Social Justice Declaration, two initiatives were approved by the Governing Body to support and enhance the role of standards in the realization of decent work. The first was the implementation of an integrated approach to standards-related activities, approved on a trial basis in 2000. The aim was for better integration between the various standards and with other means of action, with a view to achieving the greatest possible efficiency in the attainment of the ILO's constitutional objectives, and greater impact in practice. The second was the adoption of the standards strategy and its related interim plan of action. The standards strategy builds on the interlinkages between all the components of the standards system in support of the realization of the ILO's objectives.

241. ILO standards-related action combines the promotion of each category of FPRW with an integrated approach to the four categories of FPRW taken together. This approach has also been reflected in ILO standard setting since, in addition to Convention No. 182 in 1999, the standards adopted over the past 15 years have paid significant attention to FPRW in line with the integrated strategy for decent work set out in the Social Justice Declaration. A series of instruments, mostly relating to specific groups of workers or forms of employment, have integrated all four categories of FPRW.⁷² For example, the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), highlights the relevance of FPRW to "enhance the creation of quality employment in small and medium-sized enterprises".

242. The Maternity Protection Convention, 2000 (No. 183), and Maternity Protection Recommendation, 2000 (No. 191), and the HIV and AIDS Recommendation, 2010 (No. 200), supplement the international legal framework for the elimination of discrimination in employment and occupation and emphasize the links between social security and equality at work. The Domestic Workers Convention (No. 189) and

⁷¹ ILO: *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, 2011).

⁷² For example, the Private Employment Agencies Convention, 1997 (No. 181), the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Maritime Labour Convention, 2006, the Employment Relationship Recommendation, 2006 (No. 198), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189).

Recommendation No. 201 (2011), set out a comprehensive decent work strategy based on the realization of the four categories of FPRW as a basis for the employment and social protection policies applicable to domestic workers. They also outline specific approaches to overcoming the particular difficulties faced by domestic workers in relation to FPRW, including prevention and rehabilitation measures where necessary.

243. However, the Maritime Labour Convention, 2006 (MLC, 2006), is the instrument that has so far gone furthest in integrating FPRW in an instrument covering the most global of sectors. It articulates FPRW not only as rights and principles, but also as the enabling conditions for all the other rights set out in the Convention. Article III of the MLC, 2006, concerning fundamental rights and principles, was introduced on the understanding that seafarers' employment and social rights, as set out in the Convention, can only be meaningfully achieved in a context where FPRW are respected, promoted and realized. In a legal opinion concerning the reference to FPRW in Article III of the Convention, the ILO Legal Adviser indicated that each member State that ratifies the MLC, 2006 "will be obliged, in accordance with Article III, to satisfy itself that its legislation respects, in the context of this Convention, the four categories of fundamental rights".⁷³

244. In terms of the supervisory bodies, the work of both the CEACR and the Conference Committee on the Application of Standards focuses on the application of specific Conventions individually in law and practice. However, there have been initiatives and attempts to foster greater coherence in the supervision of ratified Conventions relating to the same subject.⁷⁴ These initiatives raise the question of how to balance, on the one hand, supervision by Convention, which is key to assessing the application of specific provisions in law and practice and, on the other, supervision which addresses the linkages between Conventions and issues of common interest. This is of particular relevance to the application of fundamental Conventions in light of their interrelationship and mutually reinforcing nature, as well as their linkages with the governance and technical Conventions, and particularly those on labour inspection.

⁷³ ILO: *Report of Committee No. 1*, Preparatory Technical Maritime Conference, Geneva, 13–24 Sep. 2004; *Adoption of an instrument to consolidate maritime labour standards*, Report I(1A), ILC, 94th (Maritime) Session, Geneva, 2006; and *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006* (Geneva, 2009). The Guidelines indicate that the seriousness of a breach leading to the detention of a ship could be particularly relevant in the case of the violation of fundamental rights and principles under Article III of the Maritime Labour Convention, 2006.

⁷⁴ In 2001, the Governing Body approved a grouping of Conventions by subject for reporting purposes. The aims of this grouping included fostering greater consistency in the analysis of reports and providing a more comprehensive view of the application of Conventions in a particular area. An evaluation presented to the Governing Body in November 2009 indicated that it was widely considered that the grouping of Conventions had contributed to some extent to greater coherence between comments on the application of the various Conventions on the same subject. However, the impact of the grouping on compliance and the identification of gaps in law and practice was less clear. A proposal was made by the Office in 2007 to further improve this coherence through the implementation of a country-based approach to the supervision of Conventions. The Office considered that this approach could result in a more coherent and integrated analysis by the CEACR, which would provide a comprehensive overview of the implementation of a country's entire standards-related obligations. Combined with the grouping of Conventions by subject, this would make it possible to identify issues that need to be raised in relation to any particular Convention and to present a coherent view of issues common to more than one Convention. The Governing Body did not approve this approach.

4. Standard-setting in relation to FPRW: Possible elements for consideration

245. Consideration of whether any new standard-setting is desirable in relation to FPRW takes place against the background of the on-going discussions in the Governing Body concerning the establishment of a standards review mechanism.⁷⁵ In this context, certain issues that have been discussed in recent years may be recalled, it being understood that it is ultimately for the Governing Body to decide what standards-setting items to include on the agenda of the Conference.

Complementing the fundamental Conventions?

246. As recognized by the Cartier Working Party on Policy regarding the Revision of Standards in the 1990s, there is universal consensus on the enduring relevance of the eight fundamental Conventions. Yet, in its 2007 General Survey on forced labour, while emphasizing the key importance of Convention No. 29 and the need to work towards its universal ratification, the CEACR recalled that “it is important to ensure that there is no room for misinterpretation of Articles 3 to 24 of Convention No. 29, which contain provisions that were applicable during a transitional period. The Committee notes that this period expired long ago, and that the provisions in question are therefore no longer applicable. It accordingly recommends that consideration be given to the adoption of a protocol to Convention No. 29 that would have the effect of revoking the Articles in question”.⁷⁶ This recommendation was not retained by the Conference, as the inapplicability of Articles 3 to 24 was considered to be generally accepted.

247. In 1996, in its Special Survey on Equality in Employment and Occupation, the CEACR raised the possibility of adopting an additional protocol to Convention No. 111 to include additional grounds of discrimination that are not already set out in Article 1 of the Convention.⁷⁷ The Conference did not discuss this possibility at the time, and the reports submitted by constituents for the General Survey on the fundamental Conventions this year do not raise the issue. It should be noted that the application of Article 1(1)(b) of Convention No. 111 has ensured flexibility in the coverage of other emerging prohibited grounds of discrimination. If such a protocol were to be adopted, it would be important for it to cover all the additional grounds of discrimination that are increasingly being recognized both in international instruments and national legislation.

Consolidating related instruments?

248. In its conclusions, as adopted by the Governing Body, the Cartier Working Party identified a certain number of instruments as being in need of revision, or in relation to which additional information should be requested on the possible need for revision or consolidation. A proposal to consolidate a number of instruments on night work and the medical examination of children and young persons, groups covered by Conventions

⁷⁵ ILO: Legal Issues and International Labour Standards Section, Provisional report, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/LILS/PR, para. 63.

⁷⁶ ILO: *Eradication of forced labour*, General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), ILC, 96th Session, Geneva, 2007, para. 196.

⁷⁷ ILO: *Special Survey on equality in employment and occupation in respect of Convention No. 111*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 83rd Session, Geneva, 1996, paras 294, 297 and 298.

Nos 138 and 182,⁷⁸ was last presented to the Governing Body in November 2007.⁷⁹ The situation of young persons is also related to youth employment issues. This issue was raised again in a paper submitted to the Governing Body in November 2011 on possible items for the 102nd Session of the Conference in 2013. Noting that the 101st Session of the Conference (in June 2012) would discuss FPRW in the recurrent discussion and the youth employment crisis in a general discussion, the Office indicated that guidance would be needed on this matter from the two Conference discussions, as well as in the discussions in the Governing Body on the standards review mechanism.⁸⁰ The Governing Body did not discuss the matter. Before any decision is taken, it might be useful to consider undertaking an expert review to analyse in detail the level of protection afforded under this group of instruments, and to make recommendations on whether there is a need for additional standard-setting in these areas to protect this group of workers, or whether existing standards, supplemented by technical advice, are sufficient to ensure up-to-date protection. Clearly, the question could also be examined within the framework of the proposed standards review mechanism.

New standards on emerging issues relating to FPRW?

249. As indicated in Chapter 2, new forms of forced labour have emerged in recent decades, especially those associated with human trafficking. Following the adoption of the Palermo Protocol,⁸¹ increased international action is being taken against human trafficking. However, this mainly involves a law enforcement-based approach, which may address symptoms, to the exclusion of the root causes of the problem, and may underestimate the importance of the labour market and of labour institutions, as well as the role of the social partners in addressing the different manifestations of forced labour.

250. Over the years, the comments of the CEACR and the technical cooperation carried out by the ILO have provided guidance to member States on the development of a comprehensive response to forced labour, which includes not only the prosecution of those exacting forced labour, but also encompasses the prevention and protection of victims. Many ILO member States have established systems for the early identification of victims of trafficking and their referral to NGOs or other organizations for assistance

⁷⁸ Supplemented by their respective Recommendations and the up-to-date Night Work Convention, 1990 (No. 171).

⁷⁹ See ILO: *Agenda of the International Labour Conference: (b) Proposals for the agenda of the 99th Session (2010) of the Conference*, Governing Body, 300th Session, Geneva, Nov. 2007, GB.300/2/2, paras 61–67. The proposed consolidation of instruments covered three Conventions and two Recommendations on night work of young persons: the Night Work of Young Persons (Industry) Convention, 1919 (No. 6); the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79), and Recommendation (No. 80); and the Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14); as well as the three Conventions and two Recommendations on medical examination of young persons (industry, non-industrial occupations, underground work) and conditions of employment of young persons (underground work): the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124); the Medical Examination of Young Persons Recommendation, 1946 (No. 79); and the Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125). These instruments provide for specific protection from night work for young workers above the minimum age, that is who are legally permitted to work, but still under 18.

⁸⁰ ILO: *Agenda of the International Labour Conference: Agenda of the 102nd Session (2013) of the Conference*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/INS/2/1, paras 7 and 8.

⁸¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, General Assembly Resolution 55/25, 15 Nov. 2000.

and support. However, in cases where trafficking cannot be proved by the criminal justice system, victims are usually denied access to assistance measures, such as state compensation funds or temporary residence permits for migrant workers. Where prosecutions are brought under labour law, there is a greater risk of them failing or resulting in lighter sanctions, and of leaving victims without adequate remedies. The question therefore arises as to whether the adoption of an instrument focusing on prevention and proposing integrated policies would help to gain momentum in the fight against forced labour, and particularly human trafficking for labour exploitation.

251. In this respect, a comparison between the applicable provisions of Convention No. 29,⁸² adopted in 1930, and those of the instruments on the worst forms of child labour, adopted 69 years later, may be instructive. While Convention No. 29 defines the concept of forced labour, and requires States to impose and strictly enforce adequate penal sanctions for its exaction, Convention No. 182 and Recommendation No. 190 go far beyond the issues of definition and sanctions. They require and set the guidelines for a holistic and comprehensive approach to combating the worst forms of child labour, including broad preventive initiatives, interinstitutional and international cooperation, action in the fields of education and employment, and the protection of victims. They call for a combination of legislative, policy and practical measures. If there was an interest in pursuing the prevention and protection of victims of forced labour through standard-setting action, the question of the revocation of Articles 3 to 24 of Convention No. 29 could also be revisited.

252. Although not confined to FPRW, as highlighted in Chapter 2, an accessible, swift and effective system of labour dispute settlement is a key pillar of any FPRW compliance strategy. As already indicated, a series of countries have recently embarked upon labour court reforms, including specific measures to resolve disputes relating to FPRW. The ILO has supported some of these reforms through technical cooperation and legal advice. However, its legitimacy and capacity to be influential in this respect may be limited by the absence of an ILO instrument dealing specifically with labour courts. Indeed, despite the great relevance of these institutions in achieving the effective implementation of labour law as a whole, and FPRW in particular, no international labour standard deals specifically with the judicial enforcement of labour law nor, more broadly, with the settlement of individual labour disputes beyond the company level.⁸³ This is in sharp contrast with labour inspection, the other pillar of labour law and of the monitoring and enforcement of FPRW, which is covered by Conventions Nos 81 and 129, which are categorized as governance Conventions and considered as the authoritative normative framework for labour inspectorates. The discussion of a standard on the settlement of individual labour disputes, including a specific focus on FPRW, could offer an opportunity for the sharing and replication of good practice and encourage more countries to give priority to this issue in their national agenda.⁸⁴

⁸² Convention No. 29 is supplemented by the Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), an up-to-date instrument containing provisions that are particularly relevant to the protection from forced labour of vulnerable groups, such as rural, indigenous and migrant workers.

⁸³ The Examination of Grievances Recommendation, 1967 (No. 130), only mentions very succinctly the various labour dispute settlement mechanisms that could be made available when a dispute is not resolved within the undertaking.

⁸⁴ A proposed item on new trends in the prevention and resolution of industrial disputes was submitted to the Governing Body in November 2011 for general discussion by the Conference in 2013. The proposal sought to examine recent trends in labour disputes, different approaches to the prevention and resolution of disputes and the role that voluntary conciliation, arbitration and mediation services can play in this regard, as well as the role of

253. Finally, as indicated in Chapter 2, in cases in which national legislation does not adequately regulate non-standard forms of employment, the workers concerned may face serious difficulties in their enjoyment of FPRW, particularly in relation to freedom of association, collective bargaining and equality in employment. Certain international labour standards have been adopted that recall inter alia the application of this group of rights in respect of part-time workers,⁸⁵ home workers⁸⁶ and workers engaged by private employment agencies.⁸⁷ However, the instruments concerned do not cover all non-standard forms of employment, nor do they provide similar levels of protection, especially concerning the issue of equal or comparable treatment between non-standard and standard workers performing the same or similar tasks. Additionally, while the standards mentioned do, in accordance with Conventions Nos 87 and 98, recognize the right of the concerned workers to have full access to freedom of association and collective bargaining, they provide little guidance on how member States could effectively overcome certain practical obstacles or challenges in this respect. Bearing in mind the difficulties involved, but also the solutions found through standard-setting on issues related to the employment relationship and its non-standard forms, consideration could be given to these matters with a view to further consolidating the balance between the legitimate need for flexible contractual arrangements and the need to provide effective protection for workers' rights, particularly with respect to FPRW.

the social partners and strengthening the prevention and resolution of disputes through voluntary means. The proposal was not retained by the Governing Body, although it would appear that the discussion was intended to focus mainly on *collective* labour disputes. ILO: *Agenda of the International Labour Conference: Agenda of the 102nd Session (2013) of the Conference*, op. cit., para. 10.

⁸⁵ The Part-Time Work Convention, 1994 (No. 175), and the Part-Time Work Recommendation, 1994 (No. 182).

⁸⁶ The Home Work Convention, 1996 (No. 177), and the Home Work Recommendation, 1996 (No. 184).

⁸⁷ The Private Employment Agencies Convention, 1997 (No. 181), and the Private Employment Agencies Recommendation, 1997 (No. 188).

Chapter 4

Initiatives in other frameworks to promote fundamental principles and rights at work

254. While the activities undertaken by the ILO and its constituents, described in Chapters 2 and 3, are of primary importance, in recent years there has been considerable growth of initiatives in other frameworks, with varying degrees of ILO involvement. This Chapter reviews these developments with a view to assessing their potential for the promotion of FPRW and how, if at all, the ILO should contribute to them. This is done bearing in mind that the fundamental Conventions and the 1998 Declaration are frequently acknowledged by these initiatives as essential reference points.

255. These circumstances provide the ILO with new opportunities to build on the growing international consensus regarding the importance of FPRW in the context of globalization. The ILO will need to gather and review further information on the effectiveness of these initiatives and their impact on national social and economic policies and on compliance with international commitments by member States, with a view to refining its position with respect to them. While the recognition of FPRW by other actors is in itself important and encouraging, significant issues do arise from the activities undertaken which require critical examination.

256. The 1998 Declaration and the Social Justice Declaration provide important guidance on the promotion of a coherent approach to FPRW as rights and enabling conditions, particularly in light of the increasing global interdependence of economic and social objectives. The Social Justice Declaration calls on the ILO to strengthen existing partnerships and develop new ones, in consultation with representative national and international organizations of workers and employers, with non-state entities and economic actors, such as MNEs and trade unions operating at the global sectoral level. It also encourages the ILO, upon request, to provide assistance to Members wishing to promote the strategic objectives within the framework of bilateral or multilateral agreements.¹

257. As this framework for ILO action is relatively recent, it may be recalled, first, that the aim is for the ILO to make effective use of its means of persuasion, which derive “from the legitimacy and authority of its tripartite structure”, not by trying to impose its views, but by convincing others “that its actions in the pursuit of its own objectives are compatible” with their interests.² Second, ILO Members are called upon by the Social

¹ ILO: *ILO Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, Geneva, 10 June 2008, Part II(A)(iv) and (v) and (C).

² ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, Report V, ILC, 96th Session, Geneva, 2007, para. 94.

Justice Declaration to take steps for an adequate coordination of their positions in the ILO and in other international forums of which they are members. They are also invited to request assistance from the ILO in promoting the strategic objectives under bilateral and multilateral agreements, subject to their compatibility with ILO obligations.³ Third, ILO cooperation with other international organizations is a well-established institutional mechanism envisaged in article 12 of the Constitution, on the basis of which the ILO has concluded a series of cooperation agreements within and beyond the United Nations system. The Social Justice Declaration recalls in this respect that other international and regional organizations with mandates in closely related fields can have an important contribution to make to the promotion of ILO objectives.⁴ The strengthening of relations with these organizations, even in the absence of a formal agreement, takes on new significance in a global context of interdependence and crisis. Fourth, with respect to national and transnational enterprises, the aim is to promote “cooperation so as to contribute to the strengthening of state capacity to discharge its responsibilities, rather than weakening it or seeking substitutes”.⁵

A. Contribution of multilateral organizations to the promotion of FPRW

258. In view of the universal values in which FPRW are embedded, and their status under international law, other multilateral organizations can be expected to recognize FPRW, or at least not to interfere with their universal application.⁶ In principle, there is congruence between the founding principles and aims of the various international organizations. International law requires them to interpret their mandates, insofar as possible, in harmony with the mandates of other organizations and in line with the goals that they have in common.⁷ However, in practice, several factors have come into play in this respect, and particularly the manner in which each organization has perceived the relevance of FPRW to its mandate. A number of examples suggest that there is an overall trend towards a growing and more coherent integration of FPRW in the activities of other multilateral organizations, even if some difficulties persist.

1. The United Nations: A system-wide commitment

259. The long-standing contribution of the United Nations to the promotion of FPRW includes partnerships at the global policy level and the strengthening of action at the country level. As recalled in Chapter 1, FPRW are enshrined in many United Nations instruments.⁸ As a result, cooperation and coordination has been established between the

³ ILO: *Declaration on Social Justice for a Fair Globalization*, op. cit., Part II(A)(iv) and (B)(iv).

⁴ *ibid.*, Part II(C).

⁵ ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, op. cit., para. 124.

⁶ ILO: *A fair globalization: Creating opportunities for all*, Report of the World Commission on the Social Dimension of Globalization (Geneva, 2004), para. 426: “... all relevant international institutions should assume their part in promoting the [FPRW ...]. They should ensure that no aspect of their policies or programmes impedes implementation of these rights.”

⁷ *ibid.*, para. 603.

⁸ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, *Report of the Committee of Experts on the Application of Conventions and Recommendations* (articles 19, 22 and 35 of the Constitution), Report III (Part 1(B)), ILC, 101st Session, Geneva, 2012, Chapter 3.

respective monitoring bodies, namely the United Nations human rights treaty bodies and the ILO CEACR.

260. Important policy support for FPRW has been provided by the United Nations, particularly through the 1995 World Summit for Social Development and the 2005 World Summit, which endorsed fair globalization and the goals of full and productive employment and decent work for all.⁹ Furthermore, recognition of the importance of decent work and FPRW by the Economic and Social Council (ECOSOC) has paved the way for its inclusion in United Nations inter-governmental and inter-agency processes. In 2008, ECOSOC called on governments as a matter of priority to continue efforts to ratify and implement the fundamental Conventions in full,¹⁰ and has repeated this endorsement in subsequent resolutions, most recently in July 2011.¹¹ The outcome document of United Nations Summit on the Millennium Development Goals of September 2010 includes a number of references to decent work, in contrast with the omission of the ILO's role from the Declaration of the 2000 Summit which set the MDGs.¹²

261. The increased support for FPRW by ECOSOC is important in view of its role within the United Nations in making "recommendations for the coordination of the policies and activities of the specialized agencies".¹³ It may be recalled that the ILO was the first organization to be accorded the status of specialized agency by the United Nations in 1946.¹⁴ Seventeen agencies have agreements with the United Nations, including the World Bank and the IMF. The latter two agreements, dating from 1947, differ from that of the ILO in that they recognize the two Bretton Woods institutions as specialized agencies which, by reason of the nature of their international responsibilities and Articles of Agreement, are "required to function as an independent international organization".¹⁵ The WTO, like its predecessor the GATT, also has a somewhat different relationship with the United Nations by virtue of "the contractual nature of the World Trade Organization". It is termed "a related agency" and participates de facto in ECOSOC alongside the specialized agencies.¹⁶ At the operational level, the WTO and the Bretton Woods institutions are members of the United Nations system CEB, which in

⁹ United Nations: *2005 World Summit Outcome*, General Assembly Resolution A/RES/60/1, adopted on 24 Oct. 2005 (New York, 2005), para. 47.

¹⁰ ECOSOC: *Promoting full employment and decent work for all*, Resolution 2008/18, para. 3.

¹¹ ECOSOC: *Recovering from the world financial and economic crisis: A Global Jobs Pact*, Resolution 2011/37, para 4.

¹² United Nations: *Keeping the promise: United to achieve the Millennium Development Goals*, General Assembly Resolution A/RES/65/1, para. 72(d). For the first time, the elimination of the worst forms of child labour is linked with MDG 1 (Eradicate extreme poverty and hunger), while under MDG 3 (Promote gender equality and empower women), States are committed to accelerating progress, including through "Ensuring that women benefit from policy measures to generate full and productive employment and decent work for all, in accordance with commitments by States to International Labour Organization Conventions".

¹³ United Nations: *Charter of the United Nations and Statute of the International Court of Justice* (San Francisco, 1945), Art. 58. See also Art. 57–63.

¹⁴ ILO: "Agreement between the United Nations and the International Labour Organization", 30 May 1946, in *Constitution of the International Labour Organization and selected texts* (Geneva, 2010).

¹⁵ Agreement between the United Nations and the International Monetary Fund, 1947, Art. 1.2.

¹⁶ WTO: *Arrangements for effective cooperation with other intergovernmental organizations: Relations between the WTO and the United Nations*, General Council, 15 Nov. 1995, WT/GC/W/10.

2007 adopted the CEB *Toolkit for mainstreaming employment and decent work*.¹⁷ The Toolkit has been used extensively by the ILO in coordinating its work at the national level with the other agencies in the context of the UNDAFs (see Chapter 3).

2. International financial institutions: Developments with regard to FPRW

262. While cooperation with the Bretton Woods institutions takes place through intensified policy dialogue, as well as in relation to projects and programmes, and agreements have been concluded to that effect. Neither the World Bank nor the IMF has concluded an inter-organizational agreement with the ILO to reinforce institutional cooperation. Their recognition and promotion of FPRW depend on their evolving interpretation of their mandates and international legal obligations, as well as the consideration given to the obligations of their member States. In this respect, it may be recalled that the preambles to their constituent instruments refer, *inter alia*, to raising the standard of living and conditions of labour (International Bank for Reconstruction and Development (IBRD))¹⁸ and the promotion and maintenance of high levels of employment and real income (IMF),¹⁹ which are relevant to the promotion of FPRW.

263. For many years, the World Bank took the view that its constituent texts prevented it from taking a rights-based approach: these texts state that “only economic considerations shall be relevant” to the decisions of the organizations and their officers,²⁰ and that the latter “shall not interfere in the political affairs of any member” nor shall they “be influenced in their decisions by the political character of the member or members concerned”.²¹ However, more recently, the wording of these fundamental texts has progressively been the subject of a less restrictive interpretation,²² and parts of the World Bank Group have taken measures to ensure that its operations take FPRW into account. For example, in April 2007, the World Bank revised its Standard Bidding Documents for the Procurement of Works (SBDW) to refer, in addition to child labour and forced labour, to workers’ organizations and to non-discrimination and equal opportunity.²³

264. In 2006, the lending requirements of the International Finance Corporation (IFC) were revised to better integrate certain FPRW, with the Multilateral Investment

¹⁷ United Nations system Chief Executives Board for Coordination (CEB)/ILO: *Toolkit for mainstreaming employment and decent work* (Geneva, 2007).

¹⁸ IBRD: Articles of Agreement, Art. 1(iii).

¹⁹ IMF: Articles of Agreement, Art. 1(ii).

²⁰ IBRD: Articles of Agreement, Art. IV, Section 10.

²¹ IDA Articles of Agreement, Art. V, Section 6; IFC Articles of Agreement, Art. III, Section 9; Convention Establishing the Multilateral Investment Guarantee Agency, Art. 34.

²² On the evolution in interpretation of the IBRD’s Articles of Agreement concerning human rights, see, for example, I. Shihata: “The World Bank and human rights”, in F. Tschofen and A. Parra (eds): *The World Bank in a changing world* (London, Martinus Nijhoff Publishers, 1991); and R. Dañino: “The legal aspects of the World Bank’s work on human rights: Some preliminary thoughts”, in P. Alston and M. Robinson (eds): *Human rights and development. Toward mutual reinforcement* (Oxford University Press, 2005).

²³ World Bank: *Standard Bidding Documents: Procurement of works and user’s guide* (Washington, DC, 2006). Under Section VII, General Conditions, two clauses were added “Workers’ organizations” (6.23) and “Non-discrimination and equal opportunity” (6.24). However, these changes have not yet been included in the “harmonized” Master SBDW used by all the multilateral development banks and international financial institutions. The Master SBDW reflects what are considered to be “best practices” intended for use as a model by these organizations to issue a harmonized bidding or proposal document for each institution.

Guarantee Agency (MIGA) following suit in 2007 (the IFC and the MIGA together form the private arm of the World Bank Group). The most noteworthy recent development is the revision by the IFC of its Performance Standards, which reaffirm the importance for borrowing companies to respect and improve their coherence with FPRW, particularly with regard to non-discrimination, child labour and forced labour.²⁴ The new IFC Performance Standard on labour and working conditions may have a positive effect on the regional development banks, which have used IFC Performance Standards as models for the development of their own social policies.²⁵ Beyond the inclusion of FPRW in its lending requirements, the IFC has also operationalized its commitment to FPRW through a joint partnership with the ILO. The Better Work programme aims to improve compliance with labour standards and promote competitiveness in global supply chains.

Better Work: A joint ILO/International Finance Corporation (IFC) programme

Better Work is a unique technical cooperation programme that is a joint initiative between the ILO and the World Bank (IFC) and strengthens partnership with the private sector. Since 2007, Better Work has been bringing together governments, employers, workers and international buyers to improve compliance with labour standards and promote competitiveness in global supply chains, particularly in the apparel industry. The programme strategy is based on:

- ❑ independent monitoring and reporting in factories on the basis of FPRW and national law, with the objective of working in a complementary manner with national labour administrations;
- ❑ assistance to factories to improve their working conditions and labour–management relations through the provision of advisory and training services to ensure a transparent and continuous cycle of improvement and to facilitate workplace cooperation for the improvement of working conditions;
- ❑ the promotion of dialogue between the social partners, national stakeholders and international buyers to ensure a transparent and continuous cycle of improvement.

The promotion and realization of FPRW are integrated in programme interventions.

Partnership with the IFC takes the form of resource sharing, the contribution of staff and the provision of technical expertise by the IFC for the development of a sustainability strategy for country programmes, trigger and target indicators to measure the efficiency of Better Work interventions and the development of an environmental component. This ILO/IFC partnership represents an opportunity to put FPRW more prominently on the international development agenda, including within the World Bank Group.

265. Nevertheless, within the World Bank Group, references to and the inclusion of FPRW vary widely. This can be explained partly by the fact that the Group is composed of a private and a public sector component. The IFC and the MIGA have made real efforts to align their operations with FPRW, not only through their Performance Standards and their participation in the Better Work programme, but also by providing staff capacity building to ensure effective internal adherence to labour provisions.²⁶ On

²⁴ IFC: *Guidance Note 2: Labor and Working Conditions*, 31 July 2007. The new Performance Standards 2 also expand the scope for labour and supply chains to include non-employee workers contracted directly by the client. The Guidance Note recommends clients to consult the work of the ILO supervisory bodies in this respect.

²⁵ The IFC Performance Standards are also the basis of the Equator Principles (a key standard in private project finance with labour as a key concern), OECD export credit agencies and many company codes. See also: F. Ebert and A. Posthuma: *Labour standards and development finance institutions: A review of current policies and activities* (Geneva, ILO, 2010), p. 5.

²⁶ ILO: Research Conference on Key Lessons from the Crisis and Way Forward, 16–17 Feb. 2011, Geneva; Session 5, F. Ebert and A. Posthuma: “The role of international labour standards in rebalancing globalization:

the other hand, for the public sector arm of the World Bank (the IBRD and the IDA), certain difficulties continue to arise in the development of a coherent approach between the four categories of FPRW. The World Bank has engaged in direct collaboration with the ILO on child labour issues,²⁷ but the principles of freedom of association and collective bargaining have been approached cautiously, with reference instead being made more generally to “workers’ organizations” and national law. The World Bank Independent Evaluation Group has underlined the inconsistency of practices across the World Bank Group in this regard, indicating that there is “no obvious reason to presume that community and labor impacts are not relevant to the World Bank’s portfolio”.²⁸ The current revision of the World Bank’s Operational Safeguard Policies (due to be finalized by 2013), following the IFC’s revision of its Performance Standards, may offer another opportunity to enhance coordination and achieve further coherence in promoting development consistent with FPRW. It should also be noted that relations between trade unions and the World Bank have evolved considerably, and that an engagement process with the Global Unions was formalized in 2002 with the adoption of a protocol. In addition, the International Labour Office is undertaking close consultations with the World Bank team preparing the next World Development Report 2013, which will focus on jobs, in order to convey the importance of the Decent Work Agenda and its bedrock of FPRW.

266. The ILO has concluded cooperation agreements with several regional development banks, namely the African Development Bank, the Asian Development Bank and the Caribbean Development Bank. The Asian Development Bank is taking measures to support the promotion of FPRW, even though provisions similar to the World Bank’s Articles of Agreement are found in its constituent instruments.²⁹ The 2004 cooperation agreement with the African Development Bank and the African Development Fund calls for “the development of policies and procedures including those concerned with employment promotion, international labour standards and fundamental principles and rights at work”.³⁰ The European Investment Bank (EIB) took further steps in 2009 and 2010 to ensure full observance of the ILO’s fundamental Conventions in its projects and has emphasized that, in screening labour issues, its main aim “is to ensure the adherence to the principles and application of the Core Labour Standards of the International Labour Organization (ILO)”.³¹ Similarly, the European Bank for Reconstruction and Development (EBRD) “requires companies which it funds directly or via Financial Intermediaries to abide by national labour laws and internationally recognized standards

Aligning private sector investment and labour standards? The case of policies of development finance institutions,” pp. 9–10.

²⁷ Most notably through “Understanding children’s work: An inter-agency research cooperation programme” and the Global Task Force on Child Labour and Education for All (GTF).

²⁸ A. Dani, A. Freeman and V. Thomas: *Evaluative directions for the World Bank Group’s safeguards and sustainability policies*, Evaluation Brief 15, Independent Evaluation Group (IEG), World Bank/IFC/MIGA (Washington, DC, World Bank, 2011), p. 10.

²⁹ ADB/ILO: *Core labor standards handbook* (Manila, 2006).

³⁰ ILO: Cooperation Agreement between the International Labour Organization and the African Development Bank and the African Development Fund, 2004, Art. 1(c).

³¹ EIB: *Environmental and social practices handbook* (2010). Compliance with FPRW and monitoring of compliance can be made a condition for lending by the EIB, which has close institutional links with the European Union.

on labour rights and occupational health and safety”.³² It explicitly refers to the 1998 Declaration and FPRW and indicates that the ILO is the key reference body on labour practices.

267. Policy dialogue between the IMF and the ILO has intensified in recent years in the framework of multilateral coordination to address the impact of the crisis, and in the context of the G20.³³ It has focused on social dialogue concerning policies for growth and employment, particularly at the ILO–IMF Oslo Conference.³⁴ This has provided an opportunity to emphasize the importance of effective institutions for tripartite consultation and collective bargaining based on respect for freedom of association and the right to bargain collectively. Although FPRW are not included in its policy documents, the IMF is showing awareness of the need to pay greater attention in designing its support programmes to the obligations of countries deriving from ILO standards.

268. Important examples of the way in which FPRW are becoming part of the ILO’s dialogue with the IMF include their work at the country level to address the impact of the crisis, particularly in Romania and Greece. Following a joint meeting in Romania in January 2011, the ILO, in conjunction with the IMF, and in cooperation with the Government and the social partners, has been addressing “the promotion of sound collective bargaining and social dialogue” as one of the four broad areas of follow-up action.³⁵ Moreover, following the conclusions on the application by Greece of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), adopted by the Committee on the Application of Standards at the Conference in June 2011, a high-level ILO mission visited the country in September 2011. The Conference extended the mission’s mandate to include discussions with the IMF and the European Union with a view to understanding the situation and the possible impact of the support measures proposed by these organizations on Greece’s international obligations, with particular reference to freedom of association and collective bargaining.³⁶ Collaboration between the ILO and the IMF could build on this pilot cooperation to enhance the promotion of FPRW and the effectiveness of the IMF’s surveillance mandate.³⁷

³² ILO: *Official Bulletin*, Vol. LXXV, 1992, Series A, No. 3, “Agreement between the European Bank for Reconstruction and Development and the International Labour Organization”, 1992.

³³ On 23 March 2009, during the 304th Session of the Governing Body, a High-level Tripartite Meeting on the Current Global Financial and Economic Crisis was held. The Managing Director of the IMF, Dominique Strauss-Kahn, participated in the Meeting and called for increased cooperation between the IMF and the ILO. In September 2010, a joint ILO–IMF conference was organized in Oslo in cooperation with the Office of the Prime Minister of Norway on The Challenges of Growth, Employment and Social Cohesion. In March 2011, during a meeting in Vienna, the international trade union movement, the IMF and the ILO reaffirmed their commitment to economic recovery built on growth with employment.

³⁴ In a joint press statement at the close of the ILO–IMF Oslo Conference on the Challenges of Growth, Employment and Social Cohesion (Sep. 2010), the IMF Managing Director and the ILO Director-General agreed “on the central role that effective social dialogue can play in building the consensus needed to tackle the difficult adjustment challenges created by the crisis, and to ensure that the social consequences of crisis and its aftermath are taken fully into account”. See: <http://www.osloconference2010.org/>.

³⁵ ILO: *Recovering from global crisis: Social dialogue and adjustment in Romania: Progress report on ILO cooperation with constituents and the International Monetary Fund*, Governing Body, 310th Session, Geneva, Mar. 2011, GB.310/WP/SDG/2/2, para. 16.

³⁶ ILO: *Report on the High-level Mission To Greece* (Athens, 19–23 Sep. 2011) (Geneva, 2011).

³⁷ On IMF surveillance, see: <http://www.imf.org/external/np/exr/facts/surv.htm>.

3. ILO efforts to promote policy coherence in the multilateral system in relation to FPRW

269. One of the major challenges for the ILO in promoting FPRW is to persuade other actors in the multilateral system that it is in their interests, as well as their responsibility to integrate respect for FPRW into their policies and activities. This is integral to the ILO's overall effort to promote policy coherence in the multilateral system. "For the ILO, the aim of policy coherence is to develop and strengthen mutually reinforcing economic and social policies that advance social justice through decent work, both within countries and globally".³⁸ Clearly, FPRW have a key role to play in this respect as a link between social progress and economic growth. In general terms, the concept of decent work implies general coherence between economic and social objectives. The origin of the ILO's recent work in this area is the report of the World Commission on the Social Dimension of Globalization.³⁹ An outcome on policy coherence was introduced in the Strategic Policy Framework for 2010–15, and is reflected in the Programme and Budget for 2010–11 and for 2012–13.⁴⁰

270. Following the recurrent discussion on employment in June 2010, and the subsequent discussions in the Governing Body, the Officers of the 100th Session of the Conference in June 2011 issued a Declaration on policy coherence. The Declaration noted "the wide degree of convergence among the constituents on the strategic importance of policy coherence, and the need for greater cooperation within the multilateral system and for the ILO to make a contribution to policy coherence debates on key elements within its mandate". It also recalled the high degree of consensus on the 1998 Declaration, the Social Justice Declaration and the Global Jobs Pact.⁴¹ In November 2011, the Governing Body emphasized the urgent need for policy coherence and the need for a framework for ILO action for this purpose. It "requested the Director-General to take appropriate action, including preparing a further discussion on policy coherence in the multilateral system in the Governing Body in 2012".⁴²

271. The current focus of the ILO's work in this area is the need to place decent work at the heart of coordinated policies for recovery from the current global financial crisis. The ILO was invited to support the work of the G20 and the Director-General has attended the Pittsburgh and three subsequent G20 Summits. While the major themes of the G20 have been financial reform and fiscal policy, employment and decent work have figured

³⁸ ILO: *Policy coherence in the multilateral system*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/HL/1, para. 6. See also ILO–OECD: *Promoting policy coherence for decent work and full, productive employment*, A policy note for the G20 Meeting of Labour and Employment Ministers, Paris, 26–27 Sep. 2011, prepared by the ILO in collaboration with the OECD. The ILO and the OECD signed a Memorandum of Understanding (MoU) in May 2011 recognizing the need to increase policy coherence among public international organizations and agreeing to strengthen their coordination and collaboration in fields of common interest and activities. See: http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/genericdocument/wcms_155848.pdf.

³⁹ ILO: *A fair globalization: Creating opportunities for all*, Report of the World Commission on the Social Dimension of Globalization (Geneva, 2004), para. 603.

⁴⁰ ILO: *Strategic Policy Framework 2010–15: Making decent work happen*, Governing Body, 304th Session, Geneva, Mar. 2009, GB.304/PF/2(Rev.), paras 74–75; *Programme and Budget for the biennium 2010–11* (Geneva, 2009), paras 361–371; *Programme and Budget for the biennium 2012–13* (Geneva, 2011), paras 298–307.

⁴¹ ILO: *Provisional Record* No. 32, ILC, 100th Session, Geneva, 2011, p. 32/17.

⁴² ILO: *Provisional report: High-Level Section*, Governing Body, 312th Session, Geneva, Nov. 2011, GB.312/HL/PR, para. 38.

prominently in Summit Declarations, which also endorsed the conclusions of two meetings of Employment and Labour Ministers. These Declarations and conclusions have mentioned the role of FPRW. Most recently, at the Cannes Summit in 2011, the G20 leaders undertook “to promote and ensure full respect of the fundamental principles and rights at work” and indicated that they “welcome and encourage the ILO to continue promoting ratification and implementation of the eight ILO fundamental Conventions”.⁴³ They accordingly reaffirmed the importance of FPRW in efforts to rebalance globalization and called on the WTO, OECD, World Bank Group, IMF and the ILO for greater coherence of multilateral action to strengthen the social dimension of globalization.

272. In preparation for the meeting of the Employment and Labour Ministers of the G20 in September 2011, the Office, in collaboration with the OECD, prepared a note on policy coherence, which addresses the role of FPRW. The note refers to FPRW as an element of the intersection between trade and employment policies and recalls that the Social Justice Declaration “highlights the importance of internationally recognized labour standards in creating a level playing field in an open trading system”, while emphasizing that “the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and ... labour standards should not be used for protectionist trade purposes”. In relation to sustainable growth, social dialogue and international labour standards, the note refers to the need for a renewed effort to ratify and improve the application of the Conventions concerning FPRW, which “would send a clear signal of the relevance of these instruments to shaping a fair globalization as well as addressing the rebalancing of national and global economies”. It makes reference to the preamble to the 1998 Declaration concerning the specific function of FPRW as enabling conditions.⁴⁴ After discussing the note, the Ministers accepted several recommendations, including that in “carrying out our national policies to promote development and growth, we intend to promote decent jobs that respect” FPRW.⁴⁵

273. Since the adoption of the 1998 Declaration, important progress has been made in integrating respect for FPRW into the economic agenda of the multilateral system. However, much remains to be done and there is often a contrast between statements at international events and the experience of constituents at the national level. In this regard, it should be borne in mind that, as in the case of decent work and employment, the inclusion of FPRW into sustainable recovery policies cannot be taken for granted and “determined advocacy, supported by solid, evidence-based analysis and research”⁴⁶ by the ILO are needed to effectively persuade other multilateral organizations to strengthen their contribution to the promotion of FPRW. Key to that is the provision, through solid research work, of concrete evidence to substantiate the particular significance of FPRW as rights and enabling conditions (see also Chapters 1 and 3). This could open the way to enhanced cooperation between the ILO and the international financial and economic organizations to operationalize the recognition and promotion of FPRW and strengthen synergies between their respective development activities.

⁴³ G20 Cannes Summit Final Declaration, “Building our common future: Renewed collective action for the benefit of all”, Nov. 2011, para. 5.

⁴⁴ ILO–OECD: *Promoting policy coherence for decent work and full, productive employment*, op. cit., paras 27 and 35.

⁴⁵ G20 Labour and Employment Ministers’ Conclusions, Paris, 26–27 Sep. 2011, para. 21.

⁴⁶ ILO: *Programme and Budget for the biennium 2012–13*, op. cit., para. 299.

B. Use of FPRW by ILO Members in trade arrangements

274. There has been no consensus at the multilateral level on whether, and how, to link the liberalization of international trade to labour issues. However, the discussion continues, and many trading partners have been including labour provisions in unilateral, bilateral and regional trade arrangements and referring to them in their trade policies. The controversy has not been about whether or not to respect FPRW: it has been, and continues to be, about the extent to which trade policies should be an instrument to this end.

275. The unilateral trade arrangements of the European Union and the United States in the form of generalized systems of preferences (GSPs) are most developed and both refer to the FPRW. The fundamental Conventions are specifically mentioned in the European Union's GSP. Respect for them has been assessed on the basis of the conclusions of the ILO's supervisory mechanism.⁴⁷ Trade preferences were withdrawn from Myanmar in 1997 in view of the use of forced labour and in 2006 from Belarus with reference to the ILO freedom of association Conventions. Considering the linkage between the withdrawal of trade preferences and the conclusions of the ILO supervisory bodies, the restoration of these preferences calls for progress in compliance with the relevant Conventions recognized by the ILO's supervisory bodies. The United States has also on occasion withdrawn preferences on grounds of non-observance of FPRW. The United States' GSP system was established in 1984, before the adoption of the 1998 Declaration, and refers to all FPRW, with the exception of the elimination of discrimination in employment and occupation. It also refers to minimum working conditions, minimum wages and occupational safety and health.

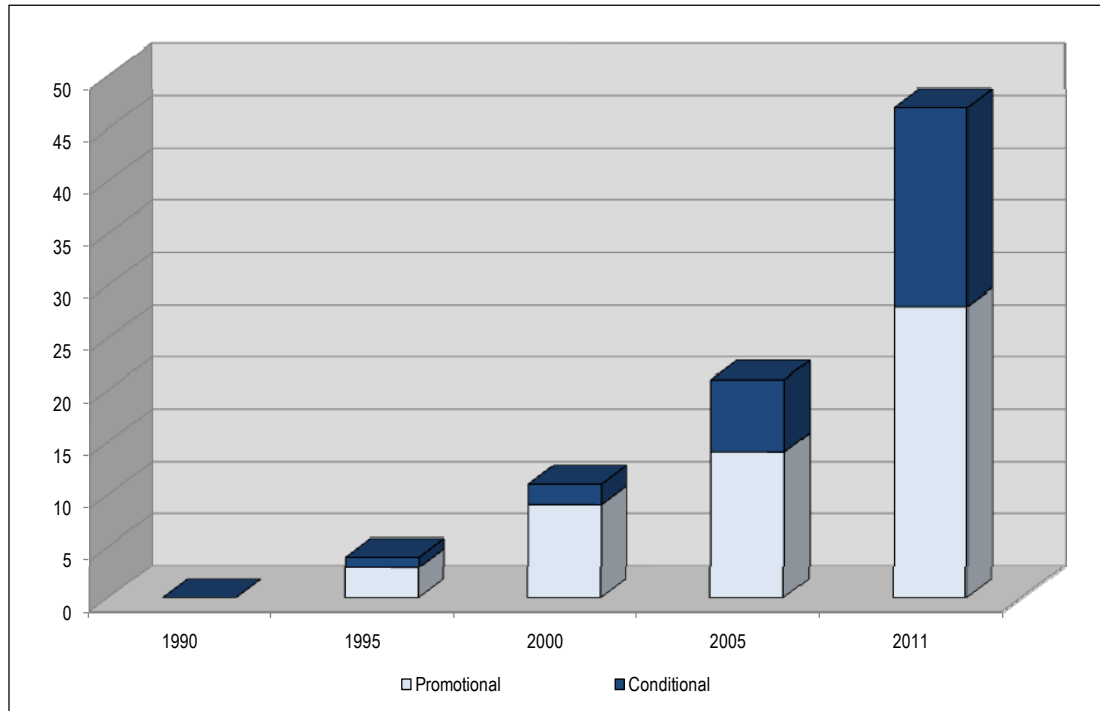
276. The majority of ILO member States are involved in bilateral and regional trade agreements which include labour provisions. Labour provisions in trade agreements can contain conditional and/or promotional elements. Those that have a conditional dimension can lead to economic consequences in the event of: non-compliance with FPRW; lack of the effective enforcement of national labour law; and/or the weakening of domestic labour law with a view to encouraging trade or investment. These labour provisions generally provide for mechanisms for the resolution of disputes concerning alleged violations, which may as a last resort result in sanctions. Promotional labour provisions set out commitments regarding labour standards, but without legal implications in the case of non-compliance. Their modus operandi is based on either dialogue or cooperation. While the majority of labour provisions are of a strictly promotional nature, over the past decade those with a conditional dimension have grown more rapidly than those focusing on promotional elements. Interestingly, both kinds of mechanisms can lead to an increased use of technical cooperation to resolve deficiencies concerning respect for labour standards.

277. The number of trade agreements with labour provisions that have entered into force and been notified to the WTO rose from zero in 1990 to 47 in 2011. More than two-thirds of labour provisions in these trade agreements deal with the four categories of FPRW. Only 4 per cent of all trade agreements that entered into force between 1995 and 1999 included labour provisions. This figure rose to about one third of all trade

⁴⁷ Council Regulation (EC) No. 732/2008 of 22 July 2008 applying a scheme of generalized tariff preferences, art. 15(1)(a). The period covered by this regulation has been extended until 31 December 2013 under the Regulation (EU) No. 512/2011 of the European Parliament and the Council of 11 May 2011.

agreements that came into force between 2005 and 2011.⁴⁸ Over 120 countries are currently covered by at least one such trade agreement, and more than 50 countries are covered by at least two. Approximately 20 of these countries are covered by trade agreements with labour provisions that involve trade measures. Such provisions may either be a part of the agreement itself, or contained in a side-agreement, which generally also stipulates their follow-up.

Figure 4.1. The evolution of bilateral and regional trade agreements containing labour provisions between 1990 and 2011



Source: ILS estimates based on the WTO Regional Trade Agreements Information System and information from national governments.

278. Most of the current agreements containing labour provisions reflect the trade policies of certain OECD countries and particularly the European Union and North American countries. However, increasingly, such provisions are also being included in bilateral and regional agreements between developing economies, although their rate of increase has been considerably slower than that of agreements between industrialized and developing countries. By October 2011, a total of 15 trade agreements including labour provisions had been concluded between developing economies, with the focus almost exclusively on promotional provisions.

⁴⁸ This figure refers to “integrated” trade agreements, in which the parts on goods and services, respectively, are counted as one trade agreement. Where labour provisions were added to a trade agreement after its entry into force, the figure refers to the date of entry into force of the agreement. The earlier Accession Agreements concluded by the European Union as well as its agreements with overseas territories of European Union Member States, are not included in these figures.

Table 4.1. Number of countries and other entities covered by trade agreements containing labour provisions by the end of 2011

Total number of countries uncovered	Countries covered by labour provisions providing for trade measures	Countries covered by other labour provisions	Countries covered by more than one trade agreement containing labour provisions
125	23	102	57

Source: ILS estimates based on the WTO Regional Trade Agreements Information System and information from national governments.

How do labour provisions in trade agreements take FPRW into account?

279. Around two-thirds of the labour provisions included in the trade agreements in force in 2011 refer to ILO instruments. Of these, 80 per cent make reference to the 1998 Declaration, either encompassing all four categories of the FPRW, or focusing on some of them:⁴⁹ 17 per cent of these provisions refer to the fundamental Conventions as the main standard of reference, and 3 per cent to ILO Conventions in general.⁵⁰ When labour provisions in trade agreements include a legal obligation to comply with labour standards, or to enforce domestic labour law, the four categories of FPRW, or some of them, are generally included. The nature of the references to FPRW in trade agreements varies considerably. While most agreements concluded by the United States refer to the 1998 Declaration, the legally enforceable parts of many of their labour provisions do not include the elimination of discrimination in employment and discrimination and relate to the application of domestic labour laws.⁵¹ However, the most recent trade agreements concluded by the United States require the parties, in addition to applying national labour law effectively, to respect all four categories of FPRW.⁵² In the trade agreement between the United States and Colombia, the parties agreed on a ten-point action plan in April 2011 to address compliance issues in Colombia, including the protection of trade unionists and the strengthening of labour institutions.⁵³ Similarly, while the labour provisions in earlier Canadian trade agreements focused mainly on the application of national labour law in certain areas, recent labour provisions also require the parties to comply with FPRW as set out in the 1998 Declaration.⁵⁴ The labour provisions contained in trade agreements concluded by the United States and Canada also establish complaint mechanisms and, as a last resort, arbitral dispute settlement and sanction mechanisms.

⁴⁹ Of these, about half also refer to the Worst Forms of Child Labour Convention, 1999 (No. 182), although only in relation to technical cooperation.

⁵⁰ Ten trade agreements, including most of those concluded by the United States and the two most recent agreements concluded by Canada, also refer to Convention No. 182 in relation to cooperation activities.

⁵¹ This is the case of the United States trade agreements with Jordan (2001), Chile (2004), Singapore (2004), Australia (2005), Morocco (2006), Bahrain (2006), Central America – Dominican Republic (CAFTA–DR) (2006) and Oman (2009).

⁵² See the agreement between the United States and Peru (2009), as well as those between the United States and Panama, Colombia and the Republic of Korea, which are yet to enter into force.

⁵³ Office of the United States Trade Representative: Colombian Action Plan Related to Labor Rights, 7 Apr. 2011.

⁵⁴ This is the case for the labour side agreements to the Canada–Peru (2009) and the most recent Canada–Colombia (2011) trade agreements.

280. The labour provisions in the trade agreements concluded by the European Union have evolved from affirmations of political commitment to and the promotion of FPRW to more specific obligations to respect them and apply the related national law. Violations of these commitments are not usually subject to sanctions. Other labour provisions, particularly relating to New Zealand's trade agreements, as well as those concluded by Chile and other emerging economies, typically contain a policy commitment to respect and cooperate on FPRW.⁵⁵

The role of the social partners in relation to labour provisions in trade agreements

281. The majority of labour provisions in trade agreements envisage some role for the social partners. The trade agreements concluded by the United States and Canada allow interested stakeholders to file complaints alleging non-compliance by the parties with labour provisions. The parties may also establish or make use of an existing advisory committee, usually including worker and employer representatives, to hold consultations on matters related to labour provisions at the domestic and bilateral levels.⁵⁶ However, the national authorities retain considerable discretion. Agreements that do not provide for sanctions, such as most South–South trade agreements, often allow civil society actors, including employers and workers to provide their views on the application of labour provisions.⁵⁷ While the labour provisions in early European Union trade agreements focused on dialogue and cooperation between governments, more recent agreements, such as those concluded with CARIFORUM, the Republic of Korea, Peru and Colombia, have created a comprehensive institutional framework for the involvement of the social partners and other stakeholders in the implementation of labour provisions.⁵⁸

The application in practice of labour provisions in trade agreements

282. It is too early to draw definitive conclusions on the practical operation of labour provisions in trade agreements. It would appear that, particularly in the context of the North American Agreement on Labor Cooperation (NAALC), linked to the 1994 North American Free Trade Agreement (NAFTA), the application of the complaint-based labour provisions has had a limited impact.⁵⁹ The parties have generally been reluctant to make use of the full range of enforcement mechanisms envisaged. This may be due to a number of context-specific reasons, including a lack of knowledge or understanding of the labour provisions and distrust of their effectiveness.

283. Many complaint mechanisms have not, or have only recently been used. Apart from NAALC/NAFTA, no complaints were lodged under the mechanisms established in the trade agreements concluded by the United States until 2008, since when four

⁵⁵ See, for example, P. Lazo: *Trade agreements and their relation to labour standards: The current situation*, Issue Paper No. 3 (Geneva, ICTSD, 2009); and F. Ebert and A. Posthuma: *Labour provisions in trade arrangements: Current trends and perspectives* (Geneva, ILO, 2011).

⁵⁶ Only a few conditional labour provisions, such as those contained in the Japan–Philippines and the Japan–Switzerland trade agreements, do not involve domestic social partners or civil society.

⁵⁷ Examples include the labour provisions in Chile's Memoranda of Understanding relating to its trade agreements with Peru, Colombia, Panama and Turkey.

⁵⁸ As these arrangements are very recent, most of the corresponding mechanisms have not yet been activated.

⁵⁹ See, for example, R.G. Finbow: *The limits of regionalism: NAFTA's labour accord* (Hampshire/Burlington, Ashgate, 2006).

complaints have been made by trade unions, all relating to freedom of association and collective bargaining. The first such complaint, filed in 2008 under the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), concerned the alleged failure of Guatemala to enforce its labour laws effectively, in particular regarding trade union rights. This case led to formal consultations in 2010 and a request to establish an arbitral panel in 2011.⁶⁰ A second case under the CAFTA–DR was filed against Costa Rica in 2010 relating to state interference in union affairs, but was withdrawn after the issue had been partly resolved.⁶¹ Two more cases were filed in 2010 and 2011 under the United States trade agreements with Peru and Bahrain. While the Peruvian case concerns the alleged failure of a state authority to enforce national labour law relating to collective bargaining, that of Bahrain alleges anti-union actions taken following the extensive demonstrations and the Government countermeasures in the first half of 2011.

284. Cooperation activities carried out under labour provisions in trade agreements often seem to have had a more significant role and impact than complaints. A large share of the cooperation activities on labour standards have been under United States and Canadian trade agreements. While, under the NAALC, they have consisted mainly of conferences, workshops and research activities, under subsequent trade agreements concluded by the United States a more comprehensive approach has been adopted focusing on capacity building. An important example is the CAFTA–DR, under which capacity-building activities amounting to around \$142 million between 2005 and 2010 have covered a variety of labour standards issues, including FPRW. Special emphasis has also been placed on strengthening national labour institutions and improving the application of labour law, including the creation of a culture of compliance with labour law by companies, capacity development for labour ministries and the modernization of the labour judiciary. Similarly, cooperation activities under the Canada–Costa Rica Agreement on Labour Cooperation (ALC) focus on developing labour institutions, including the strengthening of labour inspection and alternative labour dispute settlement procedures. The labour provisions in other trade agreements, including those concluded by the European Union, have so far given rise to fewer concrete arrangements for cooperation for the realization of FPRW. However, a more comprehensive analysis would also need to take into account the variety of technical cooperation activities which are not formally linked to any agreed or contemplated trade agreement, but which address the same issues.

ILO assistance to member States in relation to bilateral and regional trade agreements

285. At the regional and national levels, the Office has occasionally, at the request of constituents, held seminars on the relation between labour standards and trade agreements. It has also been involved in technical cooperation activities, including the monitoring of recommendations on labour standards and labour law implementation adopted in the context of the CAFTA–DR and the implementation of projects under the Canada–Costa Rica ALC. In addition, it has participated in labour-related activities carried out in the context of regional integration agreements, and has concluded Memoranda of Understanding on labour cooperation with many of these regional

⁶⁰ Office of the United States Trade Representative: *US Trade Representative Ron Kirk announces next step in labor rights enforcement case against Guatemala*, Press release, 9 Aug. 2011.

⁶¹ *Inside US Trade: DOL closes Costa Rica labor case after union withdraws petition*, 6 May 2011.

organizations.⁶² Assistance has been provided for the development of common labour policies and proposed projects in certain areas in the framework of African regional integration agreements and the Association of South-East Asian Nations (ASEAN). The ILO has sometimes also been involved, at the request of the parties, in cooperation activities under labour provisions even where there is no explicit reference to its instruments or procedures.

286. The Office has built up a knowledge base on labour provisions in trade arrangements and carried out research on their impact.⁶³ A comprehensive mapping of existing labour provisions was undertaken by the International Institute for Labour Studies (IILS) in 2009,⁶⁴ and is being followed by a project to assess the effectiveness of FTA-based labour provisions. A portal has been established containing the texts and background information on labour provisions in trade agreements.⁶⁵ Developments are occurring at a rapid pace and it appears essential for the ILO to maintain an accurate understanding of their significance in relation to the realization of its objectives. Further research is clearly required on the impact of labour provisions in trade agreements, particularly as certain of their positive effects may be of a more indirect nature, such as the development of transnational labour advocacy networks or the building of a culture of compliance through labour cooperation.

287. The question also arises of possible ILO involvement in the settlement of disputes on the application of labour provisions. Indeed, in addition to referring to FPRW and ILO instruments, some recent agreements explicitly envisage such a role for the ILO. A number of labour provisions contained in United States, Canadian and European Union trade agreements envisage the possibility of seeking ILO support for their implementation,⁶⁶ or more specifically allow for the conclusion of cooperation agreements with the ILO.⁶⁷ Some labour provisions also envisage ILO involvement in the event of disputes regarding their application. For example, the EC–CARIFORUM trade agreement expressly allows the parties, in the consultation phase of a dispute, to seek the ILO’s advice on issues relating to the dispute. A number of agreements on labour cooperation related to trade agreements concluded by Canada provide that, in the event of a dispute on labour provisions, the parties shall request the ILO Director-General to appoint the chairperson of the arbitral panel if there is no agreement between the parties in this regard. Even where the labour provisions do not expressly envisage a role for the ILO, the parties to a dispute may turn to the ILO for advice, particularly where the labour provisions refer to the 1998 Declaration and other ILO instruments. So far no formal approach has been made to the ILO for such direct advice or assistance.

⁶² For example, the East African Community (2001), the Economic Community of West African States (2005) and the Southern African Development Community (1998).

⁶³ C. Häberli, M. Jansen and J.A. Monteiro: *References to domestic labour market regulation in regional trade agreements*, NCCR Trade Regulation Working Paper 2011/35 (NCCR, 2011).

⁶⁴ ILO: *World of Work Report 2009: The global jobs crisis and beyond* (Geneva, 2009), Chapter 3.

⁶⁵ <http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang--en/index.htm>.

⁶⁶ See, for example, CAFTA–DR, the United States–Colombia agreement (not yet in force), the agreements on labour cooperation related to the Canada–Peru and Canada–Colombia agreements, and the European Union–CARIFORUM agreement.

⁶⁷ See, for example, the agreements on labour cooperation related to the Canada–Peru agreement, the Canada–Colombia agreement and the future trade agreement between Canada and Jordan, respectively.

C. The role of private voluntary initiatives in promoting FPRW

288. The years since the adoption of the 1998 Declaration have seen the multiplication of private voluntary initiatives, often grouped under the heading of corporate social responsibility (CSR). They vary widely in form, including instruments promoted by public organizations and multi-stakeholder initiatives, which may include but not be restricted to ILO constituents, industry association codes and company codes. The value attributed to such initiatives by different observers tends to vary, but many have as a stated objective the promotion of FPRW.

289. Because the ILO's established means of action, particularly in respect of international labour standards, are based on obligations voluntarily contracted by States which are responsible for their observance, the rapid growth of CSR has confronted the ILO with a number of important new questions. What, in general, should be the respective responsibilities of the State and of private actors in the issues covered by CSR, and specifically with regard to FPRW? And how should the ILO intervene in respect of them?

290. What should be clear is that CSR does not dispense any actor from respecting national legislation, including that put in place by ILO member States to meet obligations under the 1998 Declaration to respect, to promote and to realize FPRW and that deriving from ratified ILO Conventions. Equally clearly, it is not for private actors to define the minimum standards of behaviour by which they are bound in respect of FPRW; they must be those set by the ILO.

291. The added value of CSR is where private actors can, and do, exceed the requirements of national law and practice and of ILO standards. Conceptually, that can be envisaged in two types of situation: when enterprises act voluntarily to respect FPRW in States which fail to require or ensure their observance; and where enterprises operating in States which do meet their obligations in respect of FPRW go beyond the minimum required standards of behaviour. Two additional factors may intervene to challenge enterprises which are committed to respect fully and promote FPRW in all their operations: situations where for reasons of national policy or practice it is impossible for an enterprise to do so; and situations where they are dependent on extended cross-border supply chains which they are not in a position to oversee effectively.

292. Reservations have been expressed over CSR initiatives from a number of perspectives. There has been a general concern that the proliferation of CSR might serve as a pretext for private initiatives to undertake what is properly the duty of the State and so to undermine the case for appropriate public regulation, or to displace proper industrial relations processes to the detriment of the rights and principles which underpin them. Additionally, specific initiatives have been criticized for being no more than unilateral statements of purported intent with no real substance; public relations exercises designed to mislead rather than real commitments to good practice. It may be significant that of all the enterprises which joined the United Nations Global Compact, thus undertaking to observe a set of ten principles in the fields of human rights, environment and anti-corruption, as well as FPRW, more than 2,000, or one quarter have had to be "delisted" because they have failed to provide reports documenting any action

taken to that end.⁶⁸ It would appear to be essential to the reputation and effectiveness of CSR as a whole that safeguards are in place to ensure that individual initiatives are credible.

293. An important development in the consideration by the multilateral system of the respective roles of private actors and of the State in relation to human rights was the endorsement by the Human Rights Council of the Guiding Principles on Business and Human Rights in June 2011. These consist of three interdependent principles: the duty of the State to protect against human rights abuses by third parties, including business enterprises; the corporate responsibility to respect human rights; and the need for more effective access to remedies.⁶⁹ The Council also decided to establish a Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises to promote the Guiding Principles and will develop regular dialogue with relevant actors, including the ILO. A Forum on Business and Human Rights has also been established under the guidance of the Working Group to discuss trends and challenges in the implementation of the Guiding Principles. The Forum will be open to participation by the ILO and its tripartite constituency.⁷⁰

294. The ILO's involvement stems from its 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as amended in 2000. That Declaration, like the OECD Guidelines for Multinational Enterprises, originally adopted in 1976, belong to a different generation than the current wave of CSR initiatives. They differ from them too in that, while non-binding, they constitute an expression of the expectations of the international community with regard to the behaviour of multinationals, rather than a voluntary assumption of responsibilities by those enterprises themselves.⁷¹

295. But beyond this, what other types of involvement in CSR should the ILO develop in the light of the call by the Social Justice Declaration to develop "new partnerships with non-state entities and economic actors, such as multinational enterprises"?⁷²

296. To date, the ILO has played an active role in the Global Compact, as the partner Organization with specific responsibility for labour standards. It also concluded a Memorandum of Understanding with the International Organization of Standardization in 2005 for the purpose of ensuring that the ISO 26000 Guidance on Social Responsibility standard was consistent with and complementary to international labour standards.⁷³ In the case of the Global Reporting Initiative, companies are encouraged to

⁶⁸ United Nations Global Compact Office: *United Nations Global Compact: Annual Review, 2010* (New York, 2011), p. 18.

⁶⁹ United Nations: *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, J. Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Human Rights Council, 21 Mar. 2011, A/HRC/17/31.

⁷⁰ United Nations: *Human rights and transnational corporations and other business enterprises*, Human Rights Council Resolution AHRC/RES/17/4, 6 July 2011.

⁷¹ For example, the renewed European Union strategy for CSR for 2011–14, adopted in 2011, emphasizes that respect for the applicable legislation and for collective agreements between the social partners is a prerequisite for enterprises to meet the responsibility of enterprises for their impact on society. It invites all European-based multinational enterprises to make a commitment by 2014 to respect the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

⁷² ILO: *ILO Declaration on Social Justice for a Fair Globalization*, op. cit., Part II(A)(v).

⁷³ Memorandum of Understanding between the International Labour Organization and the International Organization for Standardization in the field of social responsibility, 4 Mar. 2005, Art. 1.1.

draw on the reports of the ILO supervisory bodies to identify risks of FPRW violations.⁷⁴

297. In addition, a number of services are provided directly to individual enterprises, notably through the Helpdesk for Business on International Labour Standards launched in 2009, as well as through webinars on FPRW for companies and the development of training modules for business schools. Beyond this type of advisory service, the ILO has accepted funding from companies in a limited number of cases in the context of public–private partnerships, mostly addressing child labour, on condition that they are consistent with FPRW. Such involvement has stopped short of general involvement in CSR strategies. In this regard, the Better Work programme, a public–private partnership bringing together governments, employers, workers and international buyers to improve compliance with FPRW and national labour law in global supply chains is a significant exception (see also the box in section A above). Better Work aims to provide sustainable answers to the limitations of the CSR auditing model. Under this programme, and as part of a broader compliance strategy, the ILO is directly involved in monitoring and reporting on enterprise performance. Are there lessons to be learned from the success of Better Work? Would there be advantage in the ILO pursuing new partnerships with business which might involve more widespread engagement in monitoring and verification? Could Better Work provide useful avenues to ensure that, in line with the relevant ILO governance Conventions,⁷⁵ private initiatives complement and do not undermine the State’s enforcement responsibilities?

298. In the context of its current review of the follow-up to the MNE Declaration and in light of the recent developments in the United Nations on business and human rights, the ILO could also respond to the general lack of empirical evidence and research concerning the impact of CSR initiatives on the realization of FPRW. For example, it might undertake research on the effectiveness of reporting and monitoring in improving working conditions under such initiatives, and the extent to which these initiatives are based on a sound approach to industrial relations, action to address the root causes of labour violations, capacity building to improve workplace conditions and worker involvement.

D. Transnational industrial relations and the promotion of FPRW

299. The Social Justice Declaration calls for the development of partnerships with multinational enterprises and trade unions operating at the global sectoral level. In this regard, new structures and mechanisms of cross-border industrial relations have emerged in the context of the increasing transnationalization of the economy and companies. In addition to global and regional union federations representing workers by sector of activity (e.g. Global Union federations and European industry federations), cross-border employee representation is ensured through European and World Works Councils,⁷⁶ as

⁷⁴ Global Reporting Initiative: *Indicator protocols set on human rights* (HR), 2011, p. 7.

⁷⁵ See the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129).

⁷⁶ European Work Councils (EWCs) and World Work Councils (WWCs) are bodies composed of employee representatives for the exchange of information and dialogue with central management, with the costs being borne by the company.

well as international trade union alliances (for example, between the maritime unions Nautilus UK and Nautilus NL).

300. Increasing numbers of international framework agreements (IFAs) are being negotiated between MNEs and Global Union federations in order to promote a minimum level of labour standards and practices and organize a common labour relations framework across the worldwide operations of specific MNEs. European framework agreements (EFAs) are concluded between the central or European management of MNEs and a variety of actors representing their employees, such as European Works Councils, European industry federations, national trade unions and company-level employee representation structures. By mid-2011, there were over 80 IFAs, covering approximately 6.3 million workers, excluding suppliers and subcontractors (compared to 61 IFAs in December 2007), of which 14 were concluded in companies based outside Europe. Together, EFAs and IFAs cover over 8 million workers around the world. It should be noted that, while about one third of IFAs provide that compliance by suppliers is mandatory, their real effect on working conditions in the supply chain has not been demonstrated conclusively.⁷⁷

301. Nevertheless, by promoting international social dialogue, good practice and the resolution of labour–management disputes,⁷⁸ IFAs can make a positive contribution to respect for FPRW, particularly as they all mention FPRW and the vast majority of them refer directly to ILO instruments. Although the overall content of IFAs varies, their common denominator is their emphasis on the four categories of FPRW,⁷⁹ with particular reference to freedom of association and collective bargaining, and also frequently to the Workers’ Representatives Convention, 1971 (No. 135).⁸⁰ A few IFAs go further, by explicitly prohibiting discrimination against elected workers’ representatives in the enterprise, upholding their right of access to all workplaces and requiring neutrality clauses in union organization campaigns.

302. Clearly, IFAs and EFAs are closer to traditional approaches to industrial relations, collective bargaining and dispute prevention than the CSR initiatives with which they are sometimes linked. They promote interaction across national borders in a way which has been seen by some as a first step towards the globalization of industrial relations.

303. Recent ILO research on the impact of IFAs shows that, despite their increasing numbers, major challenges persist in their adoption and implementation.⁸¹ The mere existence of an IFA does not necessarily imply its uncontested recognition and application in countries where value chains are located, irrespective of the origin of the MNE. As voluntary self-regulatory instruments, IFAs cannot replace national legislation or managerial cultures, yet they are dependent on domestic law for any legal effect. For

⁷⁷ K. Papadakis: *Shaping global industrial relations; The impact of international framework agreements* (Basingstoke, Palgrave Macmillan, 2011), pp. 1–18.

⁷⁸ K. Papadakis: “Globalizing industrial relations: What role for international framework agreements”, in S. Hayter (ed.): *The role of collective bargaining in the global economy: Negotiating for social justice* (Cheltenham, ILO/Edward Elgar, 2011), pp. 295–296.

⁷⁹ IFAs have also included extensive prohibitions and action against child labour; see: ILO: *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, paras 151–155.

⁸⁰ Some IFAs explicitly recognize the ILO Conventions on forced labour, equality of opportunity and treatment, equal pay and the elimination of child labour.

⁸¹ K. Papadakis: “Globalizing industrial relations: What role for international framework agreements”, op. cit., pp. 277–304.

unions, the primary issue in relation to the effectiveness of IFAs concerns the recognition of trade unions and their role in collective bargaining. Experience to date would indicate that some important challenges remain if the full potential of IFAs is to be realized to promote FPRW. This includes building the capacity of the actors concerned and the institutional framework to give them the greatest practical legitimacy and application along global supply chains.

304. Can the ILO usefully and appropriately assist in this regard? So far, the Office has mostly focused on strengthening its knowledge base through empirical research and collaboration with research institutions, practitioners, the European Commission,⁸² international workers' and employers' organizations, and MNEs. ACTRAV has recently used the MNE Declaration to build up regional networks of national centres and sectoral unions interested in developing cross-border industrial relations in Latin America, Africa and the Arab States, and will extend this process to Central and Eastern Europe and Asia in 2012–13.⁸³ The broader role that the ILO should play in this regard might more appropriately be taken up in next year's recurrent report on social dialogue. But for the purpose of the present discussion, monitoring of the manner in which FPRW and international labour standards have been integrated in such initiatives and the provision of technical assistance might be considered appropriate. The development of partnerships with global actors engaged in cross-border industrial relations could also be explored with a view to the provision of expert advice.

⁸² The ILO is a member of the European Union Expert Group on Transnational Company Agreements.

⁸³ For this purpose, use is made of ILO: *The ILO MNEs Declaration: What's in it for workers?* (Geneva, 2011).

Suggested points for discussion by the Conference with a view to the adoption of a plan of action on fundamental principles and rights at work (2012–16)

1. The aim of the recurrent discussion is to generate action. The purpose of reviewing each of the strategic objectives in turn includes enabling the Conference to “guide the Governing Body and the Office in their responsibilities”,¹ in particular by assessing “the results of the ILO’s activities with a view to informing programme, budget and other governance decisions”.² The discussion of the present report is intended to afford constituents the opportunity to discuss, supplement and review its contents with a view to the adoption of a plan of action on FPRW. To that end, suggested points for discussion are identified below.³

2. In this context, the following elements might usefully be recalled. The next recurrent discussion on FPRW is expected to take place at the 105th Session of the Conference in June 2016. The plan of action to be adopted by the present session of the Conference would therefore cover the period 2012–16. Hence this plan of action would provide the benchmark against which ILO action on FPRW and its impact will be assessed by the Conference in 2016. The plan of action would operate mostly under the Strategic Policy Framework (SPF) 2010–15 and, at least for the first half of its duration, within the context of the Programme and Budget for 2012–13. At the same time, it would inform the preparation of the programme and budget for the biennium 2014–15, which will start in 2012 after the Conference. The manner in which the plan of action would impact the ongoing action plans relating to each category of FPRW will have to be determined having particular regard to the issues raised in Chapter 3, section A. That is one of the issues on which the Conference may wish to provide guidance to the Governing Body, which adopted the existing action plans relating to each category of FPRW following the discussion of the respective Global Reports in the context of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (1998 Declaration).

Point No. 1: Fundamental principles and rights at work and a fair globalization (Chapters 1 and 4)

The universal realization of FPRW has been recognized by the international community as a key component of a fair globalization. Yet important challenges remain.

¹ ILO: *Declaration on Social Justice for a Fair Globalization*, ILC, 97th Session, Geneva, 10 June 2008, Part II(A)(i).

² Social Justice Declaration, *op. cit.*, Annex, II(B)(ii).

³ During tripartite consultations held on the preparation of the report, the wish was expressed that the Office should identify a maximum of six points for discussion.

In light of past experience and the current global crisis, are additional initiatives called for to give further effect to the collective commitment to FPRW at both the global and national levels? In particular, having regard to the Social Justice Declaration and the 1998 Declaration, should such initiatives include efforts to promote the contribution of FPRW to progress towards the realization of social, economic and development objectives? What should be the priorities for the ILO in the next four years?

Point No. 2: Universal ratification of the eight fundamental Conventions and promotion of the universal application of fundamental principles and rights at work (Chapters 2(A) and 3(A) and (D))

While the ratification campaign of the eight fundamental Conventions, initiated in 1995, has brought important results, the pace of new ratifications has significantly slowed in recent years (with the exception of the child labour Conventions) and a significant proportion of the world population remains outside the protection of certain fundamental Conventions. Should the universal ratification of the eight fundamental Conventions continue to be a priority objective for the ILO? If so, what further steps would be appropriate to give new impetus to the ratification campaign and to include it in a broader initiative aimed at promoting the universal application of FPRW?

Point No. 3: Effective realization of fundamental principles and rights at work at the national level (Chapter 2(B) and (C))

Despite improved levels of ratification, there are still major questions regarding access to and the enforcement of FPRW at the national level. In light of the terms of the Social Justice Declaration and the 1998 Declaration, what measures should be taken by governments to strengthen the effective realization of FPRW for all and to address the challenges arising from recent developments in labour markets as well as those related to specific vulnerable groups? What should be the respective roles of employers' and workers' organizations in contributing to the effective realization of FPRW at the national level? What should be the priorities for the ILO in assisting member States' efforts in this regard?

Point No. 4: Enhanced mobilization and coordination of ILO means of action regarding the realization of fundamental principles and right at work (Chapter 3)

In light of the information set out in Chapter 3 and the debate on the other suggested points for discussion, how can ILO action to promote FPRW be improved, taking into account the impact of its past activities, the specific aspects of each category of principles and rights, the interrelationships between the four categories and the interlinkages between FPRW and the other strategic objectives? In this respect, what should be the ILO priorities regarding standards-related action, technical cooperation and capacity building, strengthening of comprehensive and transparent knowledge bases, and the research agenda on FPRW?

Point No. 5: Other initiatives to promote fundamental principles and rights at work (Chapter 4)

FPRW are increasingly addressed in a wide range of initiatives outside the ILO. Taking fully into account the ILO's constitutional mandate, as well as the terms of the Social Justice Declaration and the 1998 Declaration, and mindful of its limited resources, should the ILO be more systematically involved in such initiatives and, if so, how can best use be made of its various means of action?