



International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores

**REPORT OF THE 320TH SESSION OF THE ILO GOVERNING BODY
(13-27 MARCH 2014)**

APRIL 2014

■ INTRODUCTION

The 320th Session of the ILO Governing Body (GB) saw intense debate on issues of high relevance for the future of the Organization. With the ILO Director-General (DG) having completed more than one year of his mandate, pressure exerted during this period appeared to have resulted in some important points for discussion. Four topics in particular could be considered especially relevant:

- **A) The future engagement of the ILO with enterprises.** This followed a prior proposal by the Employers' Group for a discussion on the ILO's approach to public-private partnerships (PPPs), and the priority placed on the private sector by the DG through the "enterprise initiative" to address individual companies. The discussion centred on how and under what conditions the ILO should manage this.
- **B) The improvement of the supervisory system of ILO Conventions** debate also merited the full attention of the Constituents for its significance vis-à-vis the credibility and impact of the Organization. The content of informal talks between Employers and Workers on this issue, as well as possible ways forward, was presented for discussion and a proposal was made by the DG at the beginning of the GB after consultations.
- **C) The debate on the eight areas of critical importance (ACIs)** suggested by the DG (and approved by the March 2013 GB), and how these new priorities interact with the existing outcomes of the Decent Work Strategic Policy Framework was becoming progressively problematic. It raised important issues of internal coherence and good governance within the ILO, as well as uncertainty as to the content of the ACIs. Several points of special concern for the Employers were, among others, the definition of unacceptable forms of work and a lack of reference to the sustainable enterprise approach. Two of these ACIs were discussed for the first time (productivity and working conditions in SMEs and jobs and skills for youth).
- **D) The internal ILO reform** undertaken by the DG during the last year raised a discussion on the **new research department** aimed at better coordinating and gathering the ILO's research capacities. The Employers' main concern was to assure proper governance of ILO research activities. **A reform of the field structure was also underway** even though it was still uncertain how, when and with which approach this would be tackled. No clarity was provided on it during the GB.

Other relevant items have been included in this report where **particular consideration will be required** by the Group. With some sixty items on the agenda, the Secretariat has exercised its discretion in selecting items for inclusion.

A) ILO ENGAGEMENT WITH THE PRIVATE SECTOR [GB.320/INS. 5]

An intense debate took place on how and under which conditions the ILO should handle cooperation with individual companies. **Employers continued to underline the need for the ILO to understand the constitutional role of the Employers' Group and the employers' organisations representing the entire business community** as critical for the good governance of the ILO and the success of this new approach. They also stressed the relevance of a coherent and organised framework to channel engagement.

The Employers especially underlined the **role that ACT/EMP should have as an entry point** when a company addressed the ILO, before being referred to other competent departments. It was argued that this was not incompatible but rather optimised resources. The Enterprise Department should focus both on enterprise policy issues (such as an enabling environment for enterprise development, sustainable enterprise, among others) and on ensuring coherence between the ILO and other UN organisations, and other international organisations' company initiatives.

The document submitted was **disappointing for the Employers because even though it recognised ACT/EMP's role as the first point of engagement, in practical terms it denied this role.** The Group felt that it was contradictory and counter-productive to refer to the Enterprise Department as the "technical lead" coordinator department.

Therefore, Employers made a very strong point that this focus did not respond to the elements clearly outlined in their previous statements, where they **had clearly underlined that such an approach would be a red line for their engagement in the ILO.**

After intense informal talks with the ILO Office at the highest level, this issue was deferred to the June GB. The DG finally recognised informally that an enterprise initiative without the Employers' support was bound to fail. The Office will commence informal consultations with the IOE shortly to identify a way forward.

B) STANDARDS INITIATIVE [GB.320/LILS.4]

As stated in the GB highlights, the so-called Swiss Chalet process did not end with specific proposals, mainly due to the reluctance of Workers' representatives to enter into the approach suggested by Mr. Maupain (a former ILO legal advisor who provided a new basis to overcome the ILO Standards supervisory system crisis). The fact that Governments were not participating in these informal talks had also raised some concerns from their side which led to the process coming to a close last October.

At the October GB, and since that time, the DG had expressed his wish to consult all Groups and look at solutions before the GB in March. It was not until mid-January that the IOE was

informally addressed by an ILO officer commissioned by the DG to identify the way forward and all the issues at stake. As Secretariat to the Group, the IOE had provided feedback with the clear understanding that the aim was to help the Office prepare a background document for discussion.

At the same time, **new wording was included in the Committee of Experts' general report with the intention of addressing the Employers' concerns related to the non-legally binding nature of the Experts' opinions and guidance.** This wording reads as follows (paragraph 31 of the English version) and recognises that “***[i]ts opinions and recommendations are non-binding, being intended to guide the actions of national authorities***”.

The new wording, even with its limitations, **was accepted by Employers** as it addressed the concerns over the lack of clarity surrounding the nature of the Experts' opinions and guidance. The Employers asked the Experts to consolidate the new wording in all their reports.

The Employers also asked all Constituents and the Office to **engage seriously in the improvement of the ILO supervisory machinery as a whole.** This means successfully dealing with other issues apart from the clarification of the wording of the Experts, such as: the way the list of cases is drawn up; the way the “architecture” of the system works (claims presented under Articles 24 and 26); as well as the proposal to create an ad hoc body or “tribunal” to deal with interpretation issues of ILO Conventions.

Most Governments supported the need to ensure objective criteria in the selection of the annual list of cases (notably GRULAC and IMAC countries) and many of them (GRULAC, France, Switzerland, among others) also supported the need to seriously engage in the improvement of the system as a whole and resume the Standard Review Mechanism to update ILO Conventions. The Workers maintained a much more conservative approach and showed reluctance to change the methodology to make the list. They also insisted on the creation of an ad-hoc ILO tribunal as a way to resolve disputes on interpretation of ILO Conventions. The point of decision was approved and, among other action, a specific proposal on improving some elements of the system will be made to the GB in November.

C) AREAS OF CRITICAL IMPORTANCE (ACIS)

i) Strategic Policy Framework (SPF) [GB.320/PFA/3]

One of the main issues in the Programme and Finance segment (PFA) was the discussion of a new Strategic Policy Framework (SPF) which will follow the current SPF after it concludes in 2015. The SPF is a results framework which establishes outcome indicators for the ILO's work, against which targets are set. Essentially, the SPF determines the ILO's policy approaches.

The Office proposed the development of a four-year SPF for the period 2018-2021 so that it can align itself with the UN quadrennial comprehensive policy review (QCPR) planning and reporting cycle. For the 2016-2017 interim, the Office proposed a transitional Programme and Budget (P&B) based on a new transitional strategic framework as a bridge to the four-year SPF 2018 -2021.

Whilst there was widespread agreement in the GB on the proposal to have a transitional strategic framework, there were different approaches on how to design it. Most governments saw merit in the Office's proposal to use the eight ACIs as the basis for the new SPF, but only after adapting them. The Workers proposed a new set of outcomes, in order to focus the work of the Organization, with a related performance measurement framework based on the Social Justice Declaration. The Employers suggested keeping the existing 19 Outcomes for the transitional SPF, provided that during this period the SPF would be completely revised.

The Office will now develop a proposal for the SPF based on the eight revised ACIs, which may be extended to ten. The IOE Secretariat will draft a proposal on how such areas could look as soon as possible and circulate it to members for comment. **It is of the utmost importance to the Employers that the 10 ACIs sufficiently prioritise job creation and the establishment of an enabling business environment.** Moreover, it is important that Outcome 9 of the current SPF (*Employers have strong, independent and representative organisations*) be maintained as a distinct outcome to ensure that institutional capacity building which responds directly to the needs and priorities of employers' organisations can be properly addressed. The Office will discuss a first draft of the SPF 2016/17 in informal consultations during the ILC in June 2014.

ii) Area of Critical Importance (ACI) on Jobs and Skills for Youth [GB.320/POL/1]

The Employers' Group highlighted in the discussion the importance of an enabling environment for sustainable enterprises (ESEE) in order to create decent and productive jobs for youth as well as to foster entrepreneurship. The Group also recalled the need for action following the tripartite consensus achieved on the 2007 Resolution on Sustainable Enterprises by using it to guide the work of this ACI.

The Office assured the GB that the **concept of sustainable enterprise was key and relevant to all the ACIs**, especially the one on more and better jobs. In addition to the proposal by the Office regarding the work of this ACI, the Employers' Group asked to include other points critical for youth employment, such as encouraging innovations skills for youth, strengthening the links between the educational systems and the labour market, promoting transitions to the formal economy or encouraging the use of flexible forms of work.

The Workers' Group mainly focused on the need for more effort to enhance the qualitative aspects of jobs for youth and proposed linking this ACI to unacceptable forms of work, which was accepted by the Office.

iii) Area of Critical Importance (ACI) on Productivity and Working Conditions in Small and Medium-Sized Enterprises [GB.320/POL/2]

The Employers' Group stressed that the current approach proposed by the Office with regard to this ACI was narrowly focused at enterprise level, based on the assumption that good working conditions lead to increased productivity. This **approach** did not take into account the macro framework, the potential for the reverse relationship (enhancing productivity to improve working conditions) and did not properly assess the nature of the relationship (correlation versus causation).

The Employers once again urged for an enabling environment for sustainable enterprises (ESEE) to be properly articulated and explicitly used to guide the work of this ACI, as sustainable enterprises are enablers of decent work and should never be sidelined. The Employers highlighted the need for action on the tripartite consensus achieved in the 2007 Resolution on Sustainable Enterprises.

The Workers' Group regretted that other variables such as collective bargaining and freedom of association were not included in this ACI arguing that these factors could be more relevant in improving working conditions in SMEs.

The Employers' and Workers' Groups agreed that the framework for this ACI should be based on enterprise development, productivity and decent employment. While the Office took note of the points made, it recalled the need to stay focused with respect to the ACIs and to avoid duplications that would detract from efficiency.

D) INTERNAL ILO REFORM

i) Dissolution of the International Institute for Labour Studies & establishment of the Central Research Department [GB.320/INS.14/2]

The discussion of the document submitted by the Office on the dissolution of the International Institute for Labour Studies and the establishment of the Central Research Department was much shorter than anticipated.

Despite the Employers' reservations in October 2013 about the governance of the new ILO Central Research Department and the desirability for the Constituents to retain some ownership of the Department's activities through a mechanism similar to the Board of the Institute, the Workers' Group and, more surprisingly, virtually all Governments, supported the DG's proposal without reservation.

The Employers believe that this is a major shift in ILO research policy which threatens the shared objective of developing neutral and universally recognised research on social and labour issues.

ii) Improving the functioning of the International Labour Conference (ILC) [GB.320/WP/GBC/1]

The reform of the International Labour Conference (ILC) was also dealt with in some depth following proposals by the special working party created for this purpose. A two-week ILC appeared now to have attracted sufficient consensus and the upcoming ILC in 2014 would provide the opportunity for a trial. After considerable debate over a number of GB Sessions, an **agreement was reached to the effect that the ILO would trial a two-week Conference in 2015 instead of the traditional three weeks**. While modalities are yet to be finalised, and would be discussed again in November, this session saw a **big step forward in achieving a more focused and relevant Conference** of a length that favoured fuller participation.

OTHER RELEVANT ITEMS

i) ILO MNE Declaration [GB.320/POL/9]

The GB discussed an implementation strategy for the follow-up mechanism of the ILO MNE Declaration, comprising promotional activities and an information gathering system. In the past, the Employers' Group's support for the promotion of the ILO MNE Declaration had been contingent upon there being no conditionality (for instance with regard to PPPs); that the promotion focus equally on all issues of the Declaration; and that the **Declaration not be misused as an entry point for other ILO activities** (such as the promotion of International Framework Agreements etc.).

During the discussion, the Employers' Group stressed that the proposed implementation strategy for the Declaration must be seen in connection with the wider debate on the Office's engagement with the private sector, which was discussed in parallel. **The implementation strategy must not jeopardise ACT/EMP's role as the focal point for private sector contacts in the ILO**. Under this condition, the Employers' Group supported the implementation strategy and especially the newly proposed information-gathering system as an alternative to the follow-up of the ILO MNE Declaration. The Office will now develop focal points in the national and regional ILO Offices to promote the Declaration to constituents. Follow-up surveys concerning the implementation of the Declaration will be conducted in relation to ILO regional meetings, in addition to information collection through the new information gathering system. For the Employers' Group, the importance of this exercise was that the benefits of FDI (Foreign Direct Investment) and the business activities of MNEs for workers and societies as a whole be illustrated by highly reputable organisations.

ii) ILO Technical Cooperation in Fragile States [GB.320/POL/9]

The paper presented reviewed the role of the ILO in helping fragile states to address peace building and stabilisation and to embark on a reconstruction process. The Employers called

on the ILO to focus on areas where it had a comparative advantage as it was not a relief agency. Of particular importance was the need to build the sustainable capacity of constituents in order to deal with the challenges. While the Group appreciated the ILO's longstanding expertise in labour intensive projects and infrastructure development, it felt that more **emphasis should be placed on creating an enabling environment for enterprise creation and development.**

On the way forward:

The Group called on the ILO to “*make organisational arrangements, such as establishing a fragile states task team across the Office to raise awareness and develop a strategy related to fragility, to coordinate ILO operations and inputs into joint UN responses in order to rapidly respond to emergencies in fragile settings*”. Moreover, the best knowledge of these countries could be found at regional/country level and it was essential that these task teams be sufficiently familiar with the specific contexts/situations/challenges of the countries concerned. In the current institutional set up and experience, it was important to ensure the comprehensive involvement and cooperation of the Decent Work Teams and relevant country offices. Task teams should involve employer and worker specialists to develop response strategies. The Group supported the point for decision calling for a **resource mobilisation strategy for fragile states.**

iii) **Follow-up to the Tripartite Meeting of Experts on International Labour Migration [GB.320/POL/3]**

The Tripartite Technical Meeting on Labour Migration was an important milestone in the ILO's renewed commitment to the issue of international labour migration. This followed the ILO's participation at the UN High-Level Dialogue and the election of the DG as the chair of the Global Migration Group (GMG).

The Employers felt that the tripartite meeting had come up with **important and well balanced conclusions.** There were a number of disagreements on the type of contribution the ILO should make in the area of labour migration. While the Workers preferred an approach based on the promotion of workers' rights or a “rights-based” approach, the Employers were of the view that the ILO should promote migration policies and practices that took into account labour market needs.

The conclusions called on the ILO to focus on its global mandate in the area of labour migration: the protection of the rights of migrant workers, meeting labour market needs (including skills development based on skills shortages, skills recognition and skills matching) and the governance of labour migration.

However, the Employer's Group insisted on the need for the ILO to:

- develop best practices to facilitate safe, orderly and regular labour migration;
- promote positive public perception of migrant workers while combatting xenophobic attitudes;
- further work towards the recognition of labour mobility as a factor of sustainable growth;

- promote comprehensive, consistent and transparent policies to effectively manage labour migration.

A point for decision was adopted that called on the Office to include International Labour Migration in the November 2014 Governing Body discussion as a possible agenda item for a general discussion at a future International Labour Conference. This would give the issue much needed visibility.

iv) Update on the Better Work programme [GB.320/POL/6]

Better Work is a growing ILO technical cooperation programme with increasing influence not just at the level of companies and their supply chains, but also in the entire labour relations systems of many countries, especially in Asia.

This agenda item was requested by the IOE with the purpose of providing policy-oriented direction for Better Work in order for it to engage more effectively with employers at all levels and to address the complex issues identified in the programme. This programme is partly supported financially by multinational companies and there is a shared interest to preserve the programme and improve its efficiency.

With the intention of seeing Better Work succeed and its positive impacts on the ground sustained, the Employers' Group outlined some of the key challenges of the programme, such as a weak business case, lack of transferability of knowledge to the local community, lack of equal involvement of local social partners, etc. The Group proposed synergy between Better Work and the ILO Enterprise Department in order to work on EESE. This point was well-received by the Office.

The Employers also emphasised that Better Work was not a substitute for government and national laws and that the Better Work team should not be involved in the politics of industrial relations in participating countries.

The main point of contention was the proposal by the Employers to amend the point for decision to have Better Work included in the agenda of the March 2015 Governing Body.

Employers believe that the policy impacts of this programme deserved proper follow-up by the GB. While the Workers shared the idea, the proposal to amend the point for decision did not gain outright support. The Employers agreed to adopt the Office's proposed point for decision but reserved the right to propose that this item be included in the GB agenda in future if necessary.

v) Situation of trade union rights in Bangladesh [GB.320/INS/14/3]

The Employers' Group acknowledged all the developments made to date and encouraged the Government of Bangladesh to continue building on the steps taken and strengthening social dialogue.

Three main points were highlighted by the Group:

- The Better Work programme in Bangladesh was not a substitute for the Decent Work Country Programme in Bangladesh, nor a substitute for government or national laws.
- The importance of ensuring **inclusive and constructive engagement of local workers, employers and the government of Bangladesh** in any initiatives related to Bangladesh.
- The need to avoid the ambiguous participation of the International Labour “Organization”, which is a tripartite body, in initiatives without prior consultation with its constituents.

The Workers were of the opinion that many unresolved issues remained regarding freedom of association and the right to organise and requested more analysis by the Office.

The Government of Bangladesh announced an increase in the minimum wage in the ready-made garment (RMG) sector by 76% since December 2013. It also announced that two databases would be made publicly accessible, one on trade union information and the other on factory compliance. The Government requested ILO technical support for legal reforms.

The Office echoed the importance of tripartite involvement in initiatives related to Bangladesh and highlighted the compensation issue as one of the main current challenges.

vi) Developments in Relation to the Agreement between the ILO and the International Organization for Standardization, including in the Field of Occupational Safety & Health [GB.320/INS/14/4]

The work of ISO was progressing in the field of developing occupational health and safety management systems requirements and would not be concluded until 2016. A one-year ILO pilot involvement beginning in August 2013 had been agreed under a memorandum of understanding. The GB agreed that the ILO must remain involved in the work of this particular ISO technical committee until drafting was complete, otherwise their credibility and expertise would be compromised. However, it was stressed that this arrangement was not to be extrapolated as a general rule for ILO involvement in other ISO work. Each project should be considered on its own merit and relevance for ILO involvement.

vii) Bahrain [GB.320/INS/15]

In February/March 2011 political demonstrations in Bahrain called for a change in the Government. Certain workers in the public and private sector joined these demonstrations and did not attend work. Consequently, both public and private employers began suspension and dismissal actions against workers who did not go to work. The Workers submitted a complaint in 2011 alleging Bahrain’s non-compliance with ILO Convention 111 on discrimination in order to put international pressure on the Government.

Since then, with ILO support and incredible Government and Employer goodwill, the dismissals have been resolved. With the signing of a 2014 Tripartite Agreement, Workers, Employers and Governments agreed to the closure of the Article 26 complaint.

At this session, **the GB welcomed the Agreement reached by the Government, the GFBTU and the BCCI which addressed all the issues** contained in the complaint, provided for measures to settle all remaining matters; and decided that the complaint called for no further action on its part.

viii) Guatemala [GB.320/INS/9]

The Worker delegates to the June 2012 ILC submitted a complaint concerning Guatemala's non-observance of ILO C 87, alleging murders and death threats towards trade unionists. A Memorandum of Understanding was concluded in March 2013 between the Workers' Group and the Government of Guatemala to improve the situation of trade unionists. A Special Representative of the ILO Director-General in Guatemala was appointed in July 2013. In September 2013 an ILO high-level tripartite mission visited Guatemala in order to inform the GB of the progress made in the implementation of the Memorandum of Understanding. In its conclusions, the high-level tripartite mission "*noted that there had been some specific actions taken to implement the Memorandum of Understanding, particularly with respect to the investigation of the murders of trade union members*". The mission noted, however, that the implementation of the Memorandum required the Government and other State institutions to take further action. In November 2013, the GB took note of the roadmap adopted by the Government of Guatemala in consultation with the social partners with a view to accelerating the implementation of the Memorandum of Understanding.

At this GB session, the Employers highlighted the Government's goodwill and the progress achieved so far in investigating the cases of violence not only against trade unionists but against society as a whole. The Employers also highlighted the need to reinforce tripartite dialogue in the implementation of the Memorandum of Understanding. In light of the discussion, **the Governing Body decided to defer the decision on the appointment of a commission of inquiry** to its 322nd Session (November 2014) and to place this item on the agenda of its 322nd Session.

ix) Fiji [GB.320/INS/10&11]

The Workers' complaint against Fiji concerned the assault, harassment, intimidation and arrest of senior trade union officials. The DG had encouraged the Government to confirm dates that would enable an ILO direct contacts mission to the country. The Prime Minister of Fiji had asked for the direct contacts mission to visit the country only after the elections on 30 September 2014 and for an ILO senior official to visit the country before that date to start organising the mission.



In light of the outstanding serious and urgent matters in relation to freedom of association, **the GB called on the Government to accept the ILO direct contacts mission** and if mission does not take place in time for a report to the November 2014 GB, then the GB will appoint a Commission of Inquiry under Article 26 in November 2014.

x) Relevant new items for upcoming ILCs (2015 and 2016)

The Employers were successful in pushing for a discussion item in 2015 on small and medium-sized enterprises and decent and productive employment creation. This would be an occasion to deal with the business environment and the sustainable enterprise approach as a means for employment creation.

Follow-up of the Social Justice Declaration (2008) was foreseen for 2016 as well as a discussion on supply chains and their impact on labour conditions. A revision of the recommendation on decent work for peace, security and disaster resilience (1944) would also be tackled.

ANNEX: List of pending CFA cases