

104th Session of the International Labour Conference

1 – 13 June 2015

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IOE REPORT

International Organisation of Employers

INTRODUCTION

This was the first International Labour Conference (ILC) following the reforms adopted by the ILO Governing Body (GB) for a **shorter and more productive Conference**. The Employers' positive assessment was shared by the other constituents, despite the Workers' initial reluctance to accept the **two-week format** and the important challenges in terms of time constraints. **The success**, including relevant conclusions to the discussions, was due to many factors, but especially to highly disciplined time-keeping. An early process will now look at possible improvements, and assess further assistance and support needs for the 2016 ILC.

Last year, serious difficulties arose in the Committee on the Application of Standards (CAS) as no conclusions were agreed in most of the individual cases on the list. Underlying this situation was the crisis in the supervisory system for international labour standards (ILS). Following serious efforts by all parties throughout the year culminating in the GB in March 2015, a common understanding was reached on a way forward. As a result, **the 2015 CAS operated in a spirit of constructive collaboration, and achieved important outcomes**. Concrete conclusions were agreed on all the cases and a process began to improve the supervisory system, including the review of existing ILS through the Standards Review Mechanism (SRM).

The adoption of a **Recommendation on facilitating transition from the informal to the formal economy** is an important milestone for the ILO as the first international instrument to address the scope of informality in its entirety. This item was proposed by the Employers. The final Recommendation can be considered satisfactory as it includes **key guidance to constituents in highly relevant areas**, including on ways to improve the business environment, to encourage entrepreneurship, access to education, access to financial services, investment in infrastructure, and the need to remove unnecessary administrative and fiscal barriers to formality, among others.

Also highly useful are the conclusions of the general discussion, requested by the Employers, on **SMEs**, which **built on the approach to sustainable enterprises adopted in 2007**. It aimed to explore how the ILO can improve the business environment to create employment. A key recommendation stresses the importance of simplifying overly complex regulations.

The real challenge now is to transform the guidance from these discussions into policies and practices. The International Labour Office (ILO) and the three constituents need to use it intelligently and to push for effective action.

The goal of recurrent discussions, initiated as follow-up to the 2008 ILO Social Justice Declaration, is to identify the extent to which actions by the ILO and its constituents in one of four specific areas (in turn) have been successful, based on the experiences of both the ILO and the constituents, with a view to building on them for future action. This year's recurrent discussion, on **labour protection**, dealt with some contentious issues, including working time, health and safety, maternity leave, and wage policies, among others. At times, the Employers had to firmly steer the discussion so that it remained practical and based on real lessons from concrete experiences. **But the constituents managed to work constructively and to reach consensus on difficult areas**.

Finally, the Report of the ILO Director-General presented the **Future of Work initiative** as a key area of focus in guiding future ILO activities. Some of the ideas and language in the report are useful, and the Employers and business organisations will have to remain actively involved in the process which the Report set in motion.

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS (CAS)

The CAS allows representatives of governments, employers and workers to review the implementation in national law and practice by Member States of ratified Conventions. This review is undertaken through the General Discussion and the analysis of the individual cases. The discussion on the General Survey also provides the opportunity to understand the difficulties related to the ratification of specific Conventions.

The CAS completed the two-week work programme in a constructive and open atmosphere. While divergences of views among the tripartite constituents on substantial issues remain, these were voiced in a spirit of mutual respect and understanding. The CAS thus reaffirmed its role as the cornerstone of the ILS supervisory system, based on the preparatory technical work of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

During the General Discussion, the Employers' Group, led as last year by spokesperson Sonia Regenbogen (Canada), highlighted a number of positive elements in the 2015 CEACR Report and suggested further improvements for the work of the Experts

The Group welcomed the CEACR's clarification of its "Mandate" which is contained in paragraph 29, and trust it will be reproduced at a visible place in all future CEACR reports. The reference clearly mentions the "non-binding" nature of the opinions and recommendations of the CEACR. **It is critically important that Employers' Organizations now actively use this reference when a change of regulation is foreseen, or when domestic jurisdictions refer to these recommendations as the only source of interpretation of ILO instruments.**

Despite these very positive elements, the Employers continued to express objection at the Experts' interpretations of the "right to strike" in the context of C. 87. The preoccupation of the Group also related to the growing number of Experts' requests (in 30 out of 45 observations on C. 87, and in almost all 45 direct requests on C. 87) that governments bring their law and practice into line with these interpretations.

Nevertheless, a new paragraph was inserted in the CAS report (at the beginning of the section on individual cases) stating that: **"CAS has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from Governments to apply ratified conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. CAS has adopted conclusions on the basis of consensus. CAS has only reached conclusions that fall within the scope of the convention being examined. If the employers, workers and/or governments have divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions"**. As a consequence, controversial issues or fundamental disagreements, such as whether C.87 contains a right to strike, are not reflected in the conclusions. On several occasions during the discussion, **the Employers' spokespersons reiterated that their views on the right to strike differed from that of the Experts**. The final plenary statement of Sonia Regenbogen can be accessed via [this link](#).

The **discussion of the 24 individual cases** was conducted successfully. For the first time, Workers and Employers played an active role in the drafting of the conclusions for individual cases. The adopted conclusions were short, clear and straightforward, requesting Governments to take concrete measures to ensure compliance with ratified Conventions.

The **General Survey** related to the freedom of association and collective bargaining of rural workers. The Group underlined that rural workers were often not able to enjoy full freedom of association rights. Most obstacles to implementation of the instruments were, however, not legal, but related to the nature of the rural economy: its geographical isolation, lack of access to technology and means of communication, lack of capacity in the labour inspectorate, low levels of skills and education, and high incidences of child labour, forced labour, and discrimination. Reference was also made to the need for an overall strategy to include measures to promote investment, entrepreneurship, modernization of means and methods of production, which ensure the conditions of an enabling environment for agricultural enterprises. The Standards Review Mechanism (SRM) could help in understanding the barriers to ratification of those Conventions that are relevant for rural workers.

Information and Reports on the application of Conventions and Recommendations – please click [here](#) for **Report of the CAS (Part I)**, and [here](#) for **Report of the CAS (Part II)**

REPORT OF THE COMMITTEE ON THE TRANSITION FROM THE INFORMAL TO THE FORMAL ECONOMY

The Committee on the Transition from the Informal to the Formal Economy met for the second year under the double discussion procedure to review and adopt a draft Recommendation. As last year, the Employers' Group spokesperson was Mr. Alex Frimpong (Ghana). Judging by the overwhelming support the Recommendation received during the formal voting (484 votes in favour, one against and five abstentions) a consensus instrument was adopted that guides Member States in implementing practical measures to support the transition from the informal to the formal economy.

Although the Committee experienced difficulties on how to address informality in supply chain and subcontracting arrangements, and with the issue of minimum living wage, **(the Employers were able to keep out references to the living wage)** there was agreement with the Employer view that for the transition to be effective, Member States had to undertake the following key relevant actions, among others:

- ***Establish an inclusive growth strategy that promotes the expansion of the formal economy and the creation of decent and productive employment.*** This is critical as, despite the proof of experience, there remains great reluctance to recognise that sound economic growth is a main driver for transition to formality. The Workers' argument for a "rights based" approach, i.e. one which merely recognises that workers in the informal economy have social rights, often ignores the importance of sustainable economic growth as a premise.
- ***Promote a conducive business and investment environment.*** Crucially, reference was made to the need to remove legal and regulatory barriers that make formalization of economic units in the informal sector less attractive; to the need for access to financial services and business development services, to markets, infrastructure and technology; to provide incentives for growth to MSMEs; to harness and develop the entrepreneurial spirit of informal economy operators, and to promote access to education, lifelong learning and skills development.

These actions are closely related to the sustainable enterprises framework which the Employers have been strongly pushing for in the ILO as a basis for creating decent and productive jobs. It is important that IOE members pay special attention to the implementation of this Recommendation going forward particularly at national and regional levels. The Recommendation has provided for adequate flexibility in order to take into account national and regional circumstances of informality by giving Member States and social partners the leeway to identify areas where priority actions are required.

Please click [here](#) for the **ILO Recommendation concerning the Transition from the Informal to the Formal Economy, adopted by the Conference at its 104th Session, 12 June, 2015**

REPORT OF THE COMMITTEE ON THE RECURRENT DISCUSSION ON LABOUR PROTECTION

While it remains difficult for the Office and some Constituents to understand the intended purpose of a recurrent discussion, i.e. a performance assessment of the ILO, the Committee had a very constructive discussion on labour protection. The Employers' Group was led by Ms Victoria Giulietti (Argentina).

With a focus on wage policies, working time, occupational safety and health, and maternity protection, the discussion considered three key areas in order to identify gaps in coverage, level and compliance.

It was underlined that **level of protection should not excessively increase the costs of employment**, which would likely have a detrimental effect on employment levels. Lifting employment, including in flexible work arrangements, was the best means to ensure protection. Compliance was also linked to reasonable levels and extents of coverage.

Overall, the Employers' Group was clear that there could be no "one size fits all" measure, and that an approach was needed that took into account regional specificities, and other factors, in the spirit of the 2008 Social Justice Declaration, which called for practical and realistic measures that were appropriate to diverse realities.

A particularly time consuming point for discussion was collective bargaining, which the Workers insisted on presenting as the panacea for all problems. They even went so far as to demand the extension of collective bargaining agreements to all enterprises, which ultimately delegitimizes collective bargaining at the enterprise level. Thankfully, this proposal for inclusion in the conclusions was not accepted.

Public procurement policies proved another area of contention. The problem here arose from the fact that the initial paragraph of the Office's preparatory document borrowed language from public procurement C.94, but in a way that put pressure on the receiving countries (of labour) to offer similar working conditions and wages through public procurement clauses. Government support was essential in amending the problematic paragraph.

On a positive note, **the conclusions called for the constituents to work together in addressing the challenges to ensuring adequate labour protection to those who needed it**, and in appropriate and innovative ways that reflect the changing nature of the world of work.

Please click [here](#) for the **Reports of the Committee for the Recurrent Discussion on Social Protection (Labour Protection) – Resolution & Conclusions submitted for adoption**

REPORT OF THE COMMITTEE ON SMEs AND EMPLOYMENT CREATION

The Employers' Group had proposed this general discussion on "Small and medium-sized enterprises and decent and productive employment creation" in view of the crucial contribution of SMEs to job creation and income generation worldwide. The aim was to generate a better understanding of the diverse realities and needs of ILO constituents in this area and to respond accordingly by confirming or adjusting ILO priorities. The Employers' Spokesperson was Ms Garance Pineau (France).

The Employers' Group set out to achieve short and concrete conclusions that would enhance the ILO's credibility on this topic, to scale-up the work of the Office on the Enabling Environment for Sustainable Enterprises (EESE) tool, to reaffirm the 2007 sustainable enterprise resolution for the policy work of the Office and to establish a "think-small-first-approach" by which ILO policies were tested regarding their impact on SMEs before being launched.

The Employers' objectives were achieved in conclusions which:

- Stress the importance of an **enabling environment for new enterprise formation and sustainability**.
- Recognise the **value of the Enabling Environment for Sustainable Enterprises (EESE) tool and its potential as a basis for reforms**. The conclusions establish that the EESE programme should be evaluated with a view to expansion.
- Call on governments to **simplify overly complex regulations**. New rules and regulations should be designed with their possible effects on SMEs and the well-being of workers in SMEs in mind, before their introduction. The conclusions particularly demand due consideration by the ILO to the specific needs of SMEs and their workers in developing policies and guidance.
- Stress the **important role Employers' Organisations can play in helping SMEs to overcome constraints** and call on the ILO to provide capacity building.
- Recognize that there are **insufficient data on the job quality in SMEs and ask governments to collect and report data** on qualitative and quantitative aspects of SME development and employment.

The Office will launch an action plan to implement the conclusions, which will be discussed and adopted by the GB at its November 2015 session.

Please click [here](#) for the **Reports of the Committee on SMEs and Employment Creation: Resolution & Conclusions submitted for adoption**

REPORT OF THE CREDENTIALS COMMITTEE

As part of its work, the Credentials Committee examines:

- **Complaints** of the non-respect by governments of their obligations under the terms of article 13.2(a) of the ILO Constitution, which require Member States to pay the travel and subsistence expenses of their delegates and technical advisers and
- **Objections** to the non-respect by governments of the provisions of article 3.5 of the ILO Constitution which oblige Member States to designate non-governmental delegates and technical advisers in agreement with the most representative professional employers' and workers' organisations.

At the 2015 ILC, the Credentials Committee examined five cases brought by Employers: two complaints (Congo and Democratic Republic of Congo) and three objections (Guinea, Togo and Somalia). The Employers' spokesperson was Ms Lidija Horvatic (Croatia).

In response to the two complaints of non-payment of travel and subsistence expenses of employer delegates by the governments of Congo and the Democratic Republic of Congo, the Committee reminded the governments concerned of their obligations and requested that they respect them.

In the Guinea and Togo cases, the governments concerned had unilaterally replaced the employer delegation members that had been proposed by the respective organisations with persons of the respective government's own choice.

The Committee reminded these governments of their obligations under article 3.5 of the Constitution and expressed the hope that in the future these designations would be made in a spirit of cooperation between all the parties concerned.

The Somali government had, quite simply, ignored the Somali Employers' Federation (SEF), a member of the IOE, and had designated to the Conference a delegation composed of representatives of a chamber of commerce which was financed by the government and to which affiliation was obligatory, thus ignoring the official recognition by the Ministry of Labour of SEF as the representative employers' organisation.

Moreover, the government had attempted without success to obtain from the SEF (and from the main workers' union, FESTU) financial support for the Ministry of Labour's participation in the Conference, which might have facilitated its inclusion in the Employers' delegation.

The Committee roundly criticised this attitude of the government and invited it to proceed to appropriate and due consultations with the most representative and free organisations that were independent of state authorities.

Please click [here](#) for **Report I of the Credentials Committee (4 June 2015)**, and [here](#) for **Report II of the Credentials Committee (12 June 2015)**

NOTE

Please note that the IOE resources prepared in advance and during the 2015 ILC: guidance notes, speaking notes, news on the progress in the discussions, etc. remain accessible on the IOE microsite for the Conference at www.ioe-ilc.org.

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