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Promoting social dialogue and respecting and realizing fundamental principles and rights at work

Introduction

The ILO is built on the principle that 'there can be no lasting peace without social justice'. This is the basis for the ILO's Declaration on Fundamental Principles and Rights at Work, for the main Conventions and Recommendations on these subjects, and for the concept of Decent Work which this seminar is convened to explore.

Without the effective enforcement of fundamental rights at work people will not be able to achieve sustainable development and escape from poverty, however wealthy the national economy may be. In particular, phenomena such as forced labour, child labour, and discrimination are both a product of poverty, and at the same time contribute to the perpetuation of poverty and injustice. The fourth fundamental right under the Declaration and the ILO Constitution is the right to freedom of association and collective bargaining, which is also the ILO's main tool to achieve social dialogue – one of the essential pillars of the Decent Work agenda in itself. The participation of employers' and workers' organizations in shaping national development policy in the social sphere and poverty reduction strategies helps ensure that these policies are appropriate and sustainable.

Drawing inspiration from the 2008 Declaration on Social Justice for a Fair Globalization, this paper also explores some of the implications of the ILO's 'governance Conventions' – those intended to assist governments in crucial aspects of managing the national economy with full respect for workers' and employers' rights and building national consensus on these questions.

It is productive to consider these questions from a rights perspective, which is what follows in this paper. It is equally valid, however, to view them from a point of view of economic efficiency and productivity. An economy in which these fundamental rights and principles are respected is one that is better run, more productive and more sustainable.

Human rights Conventions

Relations between subjects. Each of the categories of fundamental rights, as well as other important ILO instruments, will be explored below, with the purpose of stimulating

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discussion and possible action during or following this seminar. It should be kept in mind that even if a situation is raised under one set of Conventions, it may also be fully relevant to others. For instance, a possibility of the imposition of forced or compulsory labour is made more likely if one belongs to a category of persons who may be subject to discrimination –such as women, ethnic or religious minorities, or migrant workers. Lack of freedom of association and the right to bargain collectively contributes to problems of many kinds, both under the fundamental human rights instruments and even in relation to safety and health at work and labour inspection. All these are components of the Decent Work agenda, and all are closely interrelated.

Forced or Compulsory Labour

This is probably the oldest international human rights subject, beginning with international agreements to end the slave trade in the early 19th century. Today it is underpinned by two ILO Conventions, the Forced Labour Convention, 1930 (No. 29), ratified by 175 countries; and the Abolition of Forced Labour Convention, 1957 (No. 105), ratified by 169 countries. Qatar has ratified both of these fundamental Conventions.

Forced or compulsory labour is not a simple concept in modern times, in most countries. It is understood not to deal only with classic forms of forced labour such as slavery, but also to extend to many more modern manifestations of the problem that arise with a changing world economic situation. Problems of forced or compulsory labour are found in all economic systems and all regions of the world, including several of the countries in the Gulf region

Forced or compulsory labour is defined in Convention No. 29 as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” This means that a broad range of restrictions on freedom to work, or to leave work, may be included under this definition.

One of these problems is a prohibition on different categories of workers – with attention particularly to government officials and migrant workers - leaving their jobs without permission, which is considered by the ILO supervisory bodies to be incompatible with Convention No. 29. This illustrates the principle that even if one enters employment voluntarily, that employment can become forced labour by an inability to leave the job. This is a problem that has been encountered in a number of countries where skills for particular kinds of jobs are not widely available, and where governments feel the need to ensure the continued service of government officials. Nevertheless, the Convention requires that all workers, including government officials, be able to leave their jobs on the sole condition of an appropriate notice period being respected. As it stated in its General Survey on forced labour in 2007, ‘the Committee has considered that the effect of statutory provisions preventing termination of employment of indefinite duration by means of notice of reasonable length is to turn a contractual relationship based on the will

of the parties into service by compulsion of law, and is thus incompatible with the Convention.'

Trafficking in persons has become a growing problem in many regions, including for countries in the Gulf region. Countries may be involved in trafficking in three different ways: as countries of origin, countries of destination, or countries of transit. Governments in the region have reported on legislation and policies to combat this problem, and the Committee of Experts has asked for information on how these laws are applied it in practice. This is a request that the Committee of Experts makes under all ILO Conventions, because ILO standards require active implementation as well as the adoption of legislation and regulations.

Countries which have large migrant populations are particularly susceptible to this phenomenon, through practices undertaken by unscrupulous employment agencies and others who take advantage of labour shortages in Gulf States combined with high pressure in many countries of origin to seek employment abroad. These Governments might consider Convention No. 181, the Private Employment Agencies Convention of 1997, which indicates the steps needed to regulate the activities of these agencies. It is also recommended that bilateral agreements be signed with countries from which migrant workers, and adequate measures be taken to address the conditions under which they work.

Of course, governments respond in time to such situations, as in Qatar where in March 2011, the Cabinet approved an anti-trafficking law that had been pending since 2006. The implementation of this law should, it is hoped, address the problems encountered by migrant workers. The Government, and the Committee of Experts, will examine how this situation develops with the implementation of this new legislation.

The large number of migrant workers in Gulf States has meant that these workers are often dependent on their employers in ways that can lead to abuses. When passports are withheld, this in itself is an abuse that amounts to forced or compulsory labour. There are several States around the world that put into the hands of 'sponsors' of migrant workers the power to cancel workers' residency permits, deny workers' ability to change employers, report a worker as "absconded" to police authorities, and deny permission to leave the country. As a result, sponsors that have this kind of power may restrict workers' movements. In addition, when the imposition of harsh conditions of work do not correspond with a worker's prior understanding of a job this may, when combined with other practices, amount to forced or compulsory labour as understood in Convention No. 29. Whether or not these practices actually occur in practice, it is required under Convention No. 29 that the potential for such abuses be removed.

Domestic workers are even more vulnerable to such treatment. Attention should be drawn to the Domestic Workers Convention (No. 189) and Recommendation (No. 201) adopted earlier this year by the International Labour Conference, which illustrate both the extent

and nature of the problems faced by domestic workers and of the solutions available to resolve such problems. All the Conference delegates from Qatar voted in favour of the adoption of these instruments, which may help lay the foundation for further consideration at the national level.

Even when complaints systems are in place, they often do not offer easy access, and do not always respond adequately to abuses that are uncovered. Because of their vulnerability to dismissal, workers may be afraid to report abuses or claim their rights, which contribute to their situation falling under the definition of forced or compulsory labor. Even when the labour inspectorate has uncovered and corrected a number of abuses with relation to the conditions of work of migrant workers, when there are also indications that such abuses continue it is necessary to continue and even to intensify such action.

Another form of forced and compulsory labour comes under Convention No. 105 when those convicted for expressing political views or views ideologically opposed to the political, social or economic system are required to perform labour as part of their sentences. This is another problem that arises in several States in the Gulf, as well as in other regions. The 2007 General Survey emphasized that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. However, sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision.

It would appear that the correction of the problems outlined above under these two Conventions would not in most cases require major adjustments to national law and practice, but could be implemented reasonably quickly either through the amendment of legislation or by changing the way in which laws and regulations are implemented in practice and the activities of law-enforcement agencies including the labour inspectorate. Other problems may require greater reflection, but it would not seem that their resolution is out of reach.

Child Labour

The existence of child labour in the wake of the Industrial Revolution was one of the abuses that called the ILO into existence in 1919, and it has been a concern of the ILO from its first Conference in 1919. The two main Conventions on the subject are the Minimum Age Convention, 1973 (No. 138), ratified by 161 countries; and the Worst Forms of Child Labour Convention, 1989 (No. 182), ratified by 174 countries. Qatar has ratified both instruments.

One of the problems that arises in several States is a gap between the age of compulsory schooling and the minimum age for beginning to work, which creates problems in a number of countries. For instance, schooling may be compulsory until the age of 15 but young people are allowed enter into a working relationship only at the age of 16. This gap has been found in many countries to raise problems because of the inability of young persons to enter work when they are no longer required to attend school. In addition, activities such as apprenticeship and other forms of vocational training are covered under the ILO Conventions, but in some countries there has been not regulation of the age at which they may enter such training, or the conditions under which this combination of training and work may be performed by those under the age of entry into regular employment.

One problem that arises in a number of countries is that there may be no coverage under the labour law of young workers who are not in an employment relationship but who are in fact working. These Conventions apply to employment *or work*, meaning that they cover all forms of economic activity by children, even when they are not employed. It is, of course, possible to exclude work in certain sectors and occupations from the coverage of the Conventions, for instance in family-owned businesses that do not hire other workers, as long as this work does not take place in sectors such as manufacturing, and is not hazardous.

Questions such as these need to be addressed even when a country is not facing problems of practice with regard to child labour. Where this is the case, it should be relatively simple to bring the law and regulations into compliance with these two Conventions in order to ensure full respect for their provisions.

Equality and Non-Discrimination

The principle of equality and non-discrimination underlies all modern expression of human rights. While the notion permeates all ILO standards, the two main Conventions are the Equal Remuneration Convention, 1952 No. 100), with 168 ratifications; and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has 169 ratifications. Qatar has ratified Convention No. 111, but is among the four States in the Arab region that have not ratified Convention No. 100.

A certain number of questions need to be addressed under this subject, according to both the ILO standards and other international human rights law. The first is the question of discrimination based on sex. The right of women to be paid equally when their work is of equal value to that of men, is covered by Convention No. 100. While this right is acknowledged in theory almost everywhere, in practice women are paid at a lower rate in all countries, making this a principle to be pursued as a priority. One the problems of understanding that often arises under Convention No. 100 is that national legislation requires that the principle of ‘equal pay for equal work’ be respected, but this goes only part of the way to respond to the problem, even when the principle is in fact respected. In

practice, men and women often do different kinds of work, with men more often carrying out either management tasks from which women may be barred in practice, though not in law; or heavy manual work, where women are more likely to work in care-giving and clerical activities. Such differences are due to societal expectations and training and not, except in a very few instances, to physical or mental capacities based on the sex of the persons concerned. In fact, in a growing number of countries, women are obtaining higher educational degrees at a much higher rate than men, which will in time put increasing pressure on job markets. This increases the urgency of addressing seriously differences in the ways in which the work of men and women is valued and compensated.

Convention No. 111 is the ILO's basic instrument on discrimination, and in fact was the basis for the broader human rights instruments adopted later by the United Nations and other international organizations. It is worth looking at the basic definition of discrimination under Article 1 of this Convention:

> 1. For the purpose of this Convention the term ***discrimination*** includes--
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> (a) 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;
> (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
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> 2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
>
> 3. For the purpose of this Convention the terms ***employment*** and ***occupation*** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

One of the problems sometimes encountered in the application of Convention No. 111 is that the coverage of the national law is narrower than that of the Convention. There are several countries, inside and outside the region, in which the legislation does not cover discrimination based on such factors as political opinion, national extraction and social origin. The question of political opinion in particular is related to the concerns mentioned above under Convention No. 105, and where such problems occur, a careful process of national dialogue may be able to achieve some movement toward greater respect for this aspect of both Conventions. In addition, legislation may not cover a prohibition of

discrimination in all areas of employment and work, but only in employment and not in other kinds of economic activity.

Access to work as well as conditions of work are covered. A problem sometimes encountered is that employers advertise for employees in ways that are in themselves based on stereotyped assumptions, such as saying that they are seeking a *"female secretary"* or a *"male accountant"*, or other terms which indicate a preference for persons of a particular gender or ethnic background. Governments have sometimes informed the Committee of Experts that it does not consider that such advertisements constitute discrimination because they were based on the employer's evaluation of the most suitable applicant for a specific post, based on expertise and gender, or the perceived characteristics of other parts of the population. The Committee has stated *"that stereotyped assumptions regarding women's capabilities and "suitability" for certain jobs contribute to discrimination in hiring"*. Similar views have been expressed on other grounds of discrimination that are often practiced. This is related to the provision of the Convention that only a "distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof" is acceptable under the Convention (Art. 1, paragraph 2). Where such a situation exists, it should be handled, in this case as well, by a process of national dialogue and awareness raising, in a way that will both increase respect for women's and minorities' rights in the country, and expand the availability of scarce human resources from among the national population. Experience in many countries and in all regions of the world has demonstrated that concerns over the suitability of women and other groups for most jobs are not based in fact, and may be addressed through full respect for their rights and in the light of demonstrated abilities.

As has already been remarked, the situation and treatment of migrant workers is a matter of concern throughout this region, in which migrants make up the largest number of workers in a number of countries. The Committee of Experts has referred under Convention No. 111 in particular to concern about the working conditions and rights of migrant workers in the construction-related industries, and of domestic workers, in particular.

Convention No. 111, as well as the ILO's two principal migrant workers Conventions (Nos. 97 and 143) and the United Nations Convention on The Protection of All Migrant Workers and Members of Their Families, provide that migrant workers should be treated equally with national workers in most respects. Even if a country has not ratified some of these Conventions, they may nevertheless form a foundation for pursuing national reflection on the rights of migrant workers and their conditions of work. The ILO would certainly be glad to assist in such reflections.

Freedom of Association and Protection of Collective Bargaining

This set of human rights is essential to the workings of the ILO, and to the concept of social dialogue; and they are of course are necessary to the achievement of Decent Work.

The right of both workers and employers to join and form organizations of their choosing, and to participate in collective bargaining, is a basic tenet of the ILO Constitution, and is emphasized in the Declarations adopted in 1998 and 2008. As is the case for other categories of rights a number of Conventions have been adopted on this subject, but the most important are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by 150 countries; and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has gathered 160 ratifications. Qatar has ratified neither of these Conventions, compared to 3 countries in the region that have ratified C. 87 and 6 that have ratified C. 98.

A number of countries in the Gulf region have encountered problems in both implementing the rights to freedom of association and collective bargaining, and in ratifying these fundamental Conventions. The principal question here is the fact that workers often do not have the right to join and form their own organizations, as is required by the ILO Constitution and these Conventions. Even if some workers' organizations are permitted the law may provide for only one workers' organization. In countries in which some organizational rights have been allowed, the organizations concerned do not have some of the essential characteristics of trade unions. In addition, the rights that do exist are in some cases restricted to citizens, whereas they should be extended to all the workers in the country, who have the right to freedom of association under the international standards. Those working in the government sector are also often prohibited from joining a union, even though they should be allowed to do so, albeit with the possibility of certain restrictions.

In addition, the right to take industrial action, including strikes, is often very severely restricted at the national level. Civil servants and domestic workers may not be able to strike, and strikes are not allowed at public utilities or at health or security service facilities. These restrictions go beyond those that are allowable under the ILO Constitution and in the Conventions concerned, even though some restrictions on the right to strike are allowed in certain well-defined ways. In particular, the right to strike is subject to restriction for some categories of workers, particularly those in 'essential services', which means those whose interruption would endanger the life, safety or health of all or part of the national population.

There is nothing new in what has been outlined here. The questions are well understood, and there have been a number of discussions between the ILO and the governments of the region in this respect. Even where some progress has been achieved, the time has probably come to take these discussions further and to explore how to move forward toward greater respect for the fundamental right of both workers and employers to establish organisations of their own choosing and to bargain collectively.

Governance Conventions

Ten years after it adopted the *Declaration on Fundamental Principles and Rights at Work* in 1998, the International Labour Conference adopted the *Declaration on Social Justice for a Fair Globalization.* The 2008 Declaration reaffirmed the dedication of ILO Member States to the four categories of fundamental principles and rights at work, but went further when it called attention to the so-called 'governance instruments' of the ILO, that provide for the conditions under which other international labour standards can best be applied. Following the adoption of this Declaration, a ratification campaign has been undertaken in respect of these four instruments. The governance Conventions are comprised of the two labour inspection Conventions (Nos. 81 and 129), ratified respectively by 142 and by 51 countries – Qatar has ratified Convention No. 81, as have most of countries in the Arab region, though only one country in the region has ratified Convention No. 129. The Employment Policy Convention, 1964 (No. 122) has been ratified by 104 countries, including four countries in the region; and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) has been ratified by 132 countries, including five countries in the region, but Qatar has ratified neither of these.

The importance of labour inspection to respect for workers' rights and for the construction of Decent Work, cannot be overstated. Conventions Nos. 81 and 129 provide for the organization of labour inspectorates, the rights and duties of the inspectors, including the possibility for workers to make complaints in conditions of confidentiality, and for the publication of the results of inspections. One of the problems encountered most regularly is the failure of governments to ensure the regular publication of reports of the labour inspectorate, and to ensure that a wide variety of information is gathered and disseminated.

Convention No. 144 reflects one of the ILO's basic concerns, which is that representatives of both workers and employers should share in the national efforts toward greater respect for international labour standards, including participation in decisions on whether or not to ratify these instruments and in reporting on their implementation. It is an extremely flexible instrument, which allows for consultations undertaken under it to be carried out in many forms, adapted to the national situation and circumstances. While it is obviously difficult to apply this Convention in the absence of full respect for the principle of freedom of association, some movement toward the implementation of this principle might be possible.

The Employment Policy Convention, 1964 (No. 122) is an essential tool in the construction of national decent work policies and programmes. It requires simply that the creation of full, productive and freely chosen employment be made a priority in national development plans. This corresponds closely to the priorities already in place in most countries of the region, and a closer examination of this Convention may be helpful in bringing these policies closer to conformity with the principles of Convention No. 122, and perhaps even allowing its ratification in the fairly near future.

Concluding remarks

Social dialogue and respect for fundamental principles and rights at work are important goals to which all member States of the ILO should aspire. While some of the points addressed above may require reflection before they can be implemented fully, it is evident that some can be addressed relatively quickly and easily. Even those that require more profound reflection are well within reach through a process of national dialogue and with the assistance of the ILO to pursue greater respect for these closely linked goals. None of these questions is new, and reflection has already taken place on most of them. Perhaps the discussion and questions that follow the presentation of this paper may help to lay a foundation for further consideration.