

LABOUR LAW HARMONISATION FROM THE ILO'S STANDPOINT

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I ILO TECHNICAL EXPERTISE IN THE AREA OF LABOUR LAW

- (1) Article 10 (2)(b) of the Constitution: "...the Office shall accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection..."
- (2) The process: national experts, hired international consultants, multidisciplinary teams/MDTs and HQ expertise (GLLAD & technical units)
- (3) The strategy: emphasis on social dialogue and participation of the social partners (and other civil society groups) in the elaboration process
- (4) The outputs: Labour Codes; Acts concerning Employment Rights, Equality, Trade Unions and Employer Organisations, Industrial Relations, Child Labour, Labour Courts, Occupational Safety and Health; Regulations; Rules; Orders; Codes of Practice/Conduct (Number of countries where reforms have been completed since 1/1/2000 = 21)
- (5) Other services: on invitation, attendance at parliamentary sessions introducing the bill; follow-up training of labour administrations and other structures expected to implement the laws, as well as employers and workers' organisations e.g. Seminars on new workplace equality issues: Continuing Professional Development for Judges (Harare and Port-of-Spain 1999; Addis Abeba 2001); technical support to European Labour Court Judges and links to other professional bodies
- (6) Tools to assist in drafting labour laws, both techniques and substance:
 - NATLEX/ILOLEX databases
 - "Comparative study on contents of civil service laws" Geneva, 2001
 - "Labour Legislation Guidelines", Geneva 2001 (CD-ROM available during Congress)
 - "Termination of Employment Digest", ILO, Geneva, 2000
 - General Surveys of the ILO supervisory bodies
 - future website portal "International Observatory on Labour Law"

II RATIONALE FOR LABOUR LAW REVISIONS

The following list is, obviously, only indicative:

- to remove archaic, obsolete laws and outmoded practices
- to remove uncertainties, or duplication, in texts
- to introduce user-friendly wording and streamlined presentation
- to introduce gender-neutral language
- to codify various diverse texts thus avoiding a plethora of sub-texts and amendments
- to introduce areas that might never have been treated in past labour laws, such as discrimination at work based on HIV/AIDS
- to respond to new constitutional values following democratization or the end of repressive regimes
- to legislate into law new national policies, for instance a National Child Labour Policy
- to achieve balance between rights and responsibilities when outside contexts have changed, for example due to globalization pressures
- to ensure a just industrial relations climate that promotes efficiency and productivity
- to comply with ratified ILO Conventions, the 1998 ILO Declaration on Fundamental Rights and Freedoms at Work, and regional standards, such as the CARICOM & EAC examples
- to pave the way for future ratifications.

III THE ILO'S TECHNICAL ADVICE ON CONTENTS

- (1) Ratified ILO Conventions (links to other international treaties to which the member State is a party), being minimum labour standards
- (2) 1998 Declaration on Fundamental Principles and Rights at Work
- (3) Unratified Conventions and Recommendations of relevance
- (4) Comparative labour law approaches, including relevant regional instruments (CARICOM, SADC, MERCOSUR, EAC, NAFTA)
- (5) Workable, balanced texts, workable in the national context
- (6) Gender-inclusive, plain language, user-friendly accessibility in presentation
- (7) Constitutionality issues

IV EMERGING LABOUR LAW TRENDS

Substance

- (1) Inclusion of fundamental ILO principles, sometimes with specific copying of wording
- (2) Balance between flexibility and protection of workers' rights, especially regarding termination, maternity, hours of work/overtime: underregulation -v- overregulation
- (3) Scope of the employment relationship and new types of work relationships
- (4) Inclusion of new protections, for example HIV/AIDS
- (5) Links with other areas of the law, e.g. environmental law and OSH provisions
- (6) Gender provisions
- (7) Clearer articulation of the objects of the statute
- (8) Coverage of all branches and sectors, with special modalities for certain types of workers, for example civil servants

Form

- (1) Consolidations -v- codifications
- (2) User-friendly, plain language
- (3) Gender inclusive language
- (4) Less reliance on regulations; Ministerial discretion
- (5) Penalties: less capping; penalty "units"
- (6) Enforcement systems: stronger role for Labour Courts
- (7) Cost/benefit feasibility analysis