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Right to Form a Union and to Bargain Collectively

Guidelines for **Campaign for Labour Law Reform**

ITUC - Asia Pacific
INTERNATIONAL TRADE UNION CONFEDERATION - ASIA PACIFIC

INTERNATIONAL TRADE UNION CONFEDEATION – ASIA PACIFIC (ITUC – AP)

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Foreword

It is beyond doubt that the current process of globalisation has generated huge wealth but the one that has accompanied gross inequalities to a level and extent unparalleled in the modern day economic history. The gap between the rich and poor has widened across countries and continents. The distributive injustice has reached alarming proportions. One serious outcome of this milieu has been the job-less growth. No wonder, there has occurred an exponential growth in the number of working poor, casualised and informal work patterns. Indeed, failure to generate gainful and productive employment opportunities for an increasing number of working men and women in the neo-liberal market pursuits and the consequent social fall out as well as upheavals unleashing many countries across continents are ultimately giving credence to the International Labour Organisation (ILO) Decent Work Agenda (DWA).

The ILO adopted the DWA centering on the issues of rights at work, employment creation together with enterprise development, social protection and social dialogue. The overriding goal for DWA has been none else than making fair, equitable and inclusive society a “reality”. The global body – the United Nations – through its World Summit of 2005 also passed a resolution in support of the Decent Work (DW). The global leadership also declared that “we strongly support fair globalisation and resolve to make the goals of full and productive employment and decent work for all, including women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the millennium development goals”.

No doubt, reforming labour laws for the betterment of working conditions and protection of workers' rights is a means to attaining the DWA. This agenda is supported by the trade unions as well as employers and governments as they are the tripartite constituents of the ILO. The key issue is whether trade unions are recognised at workplace and in society to operate as the standard setter of working conditions and the instrument for institutional reforms? Unfortunately this is not the case in majority of the cases. The freedom association and the right to bargain collectively have serious problems in the region.

The ITUC-AP started its work on the issue of labour law reforms in 2004 when a regional survey was carried out on the issue of the Right to Form a Union and to Bargain Collectively and a regional workshop was subsequently organised to further look into the matter. There are many issues that come under the purview of labour laws and ITUC-AP decided to focus on two fundamental rights issues i.e. freedom of association and the right to bargain collectively.

In continuation of the process initiated by ITUC-AP and as a sequel to the brief report on the regional conference organised by us in cooperation with the LO-FTF in March 2010 in Bangkok on “Decent Work and Labour Law Reforms: Focusing on Freedom of Association and the Protection of the Rights to Organise and to Bargain Collectively”, we prepared the draft “Guidelines” in June 2010. The guidelines were presented, discussed in detail and supported by the participants of the subsequent regional conference organized by us in Bangkok in March 2011. The “Guidelines”, revised and further improved in the light of the comments received by the participants, are now being published with the hope for use by the affiliates of the ITUC-AP in campaigns for labour law reforms in their respective countries.

Let me take this opportunity to acknowledge with thanks the: i) support extended to the ITUC-AP by the LO-FTF towards the realisation of our goal through their financial and technical resources, ii) valuable contributions made by the country resource persons in preparing and presenting

national studies as well as providing inputs in the Bangkok regional conference, iii) the resource person for preparing the report of the Bangkok Regional Conference and as a follow up preparing the draft and final version of the “Guidelines”, and iv) indeed the participating brothers and sisters of the two regional conferences for their active participation and useful contributions.

Noriyuki Suzuki April, 2011
General Secretary

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I. Introduction

Respect and implementation of labour rights is fundamental in creating conditions of work in freedom, dignity, security and equity. The freedom of association, right to organise and bargain collectively are the internationally recognised fundamental labour standards set by the International Labour Organisation (ILO) through a participatory mechanism many decades ago. This provides a level playing field to the labour and capital. The labour relations, no doubt, are intended to facilitate the resolution of conflicts that may develop between labour and management. They also help in developing harmonious and mutually respecting working environment based on partnership.

The three phases of labour management relations that such laws govern are: i) when workers attempt to organise the workforce of an enterprise and form a union, ii) when parties work to establish terms and conditions of employment through Collective Bargaining (CB), and iii) when there arises problem in day-to-day interpretation and administration of agreement. Based on the principles of social justice and equitable distribution of development benefits, no doubt, these are also the building blocks for an economically prosperous enterprise, the overall economy and even society.

However, the neo-liberal pursuits underway through out the world now for well over one and half decade, have led to a number of developments moving in the opposite direction and hence raising concerns. The concerns, for example, relate to the “dismantling” of hitherto available labour protections. Gains achieved through struggle and CB are being minimised; largely on the pretext of remaining competitive. The labour market flexibility - widely practiced now – has led into a surge in the irregular work.

The access of working women and men to many labour protection mechanisms including exercise of their fundamental rights to organise and bargain collectively hitherto available to the workers in the formal economy is now being increasingly undermined on the one or other pretext. The domestic manufacturing and industry in a large number of developing countries facing the onslaught of imports, for example, are under increasing stress. Furthermore, domestic industrial redundancies and closures are attributed to the privatisation and deregulation. The vulnerabilities also relate to the capital movements and foreign investors. The Export Processing and Special Zones (EPSZs) – cropping up in many developing countries – are found succumbing to the “dictates” of the foreign investors and providing numerous concessions including relaxation in labour laws.

The move from permanent to flexible employment, from stationary to distance work, etc. is fast emerging as the labour market reality. Even jobs in the formal economy are becoming informalised; non-core tasks are increasingly outsourced thus furthering the process of casualisation and informalisation of jobs. Workers’ protections are conveniently ignored and where they exist, they are being clawed. No doubt, focus on unionism and bargain collectively is on the decline and the boardroom is in the ascendancy. This new paradigm of “flexibility” however, overlooks the important role of adequately evolved and properly implemented employment protection mechanisms. The importance of Core Labour Standards (CLSs) in ensuring decent work in conditions of freedom, equity, dignity and security is neither properly understood nor importance realised for their contribution in sustaining development and growth.

Adequately evolved and implemented employment protection mechanisms could have been an important instrument in addressing this issue. Developments, however, point in the direction of their weakening instead of being reinforced. Indeed, labour market regulations, in addition to

providing a level playing field to the working women and men, are also important for employment stability, provision of social security, protection of workers and their incomes from business and economic downturns as well as discriminatory and arbitrary actions of employers. However, they are on the "back-seat" in our quest for the delivery of a market-led development and growth. In fact, labour market regulations and institutions are sometimes seen as "stumbling blocks" in the drive by enterprise to restructure and remain competitive in a fast globalising economic environment. Regulations are seen as limiting the opportunity to respond quickly to emerging market needs as well as raising the cost of doing business.

No wonder, the labour market changes consequent to the market-led development pursuits are in the direction of deterioration. The swelling ranks of unemployed - estimated to be 195.2 million or 6.3 percent of the global workforce - and the working poor comprising 47.4 percent of total employed indeed cause serious concern. While, the last century did witness creation of untold wealth for a segment of the population particularly of the industrialised world, it also led into a surge in the "have-nots". The people living on US dollar two or less a day were 1.37 billion in 2006 [ILO (2007)]. About 900 million people now live on a mere dollar-a-day income; some two-thirds of the world's poor live in Asia. Poverty, hunger, malnutrition and exploitation remain deep and widespread throughout the developing world and even in some so-called transition economies.

> *The recent global economic and financial meltdown is the testimony that unfettered market liberalisation and deregulation even in case of industrialised countries - boasting oversight of institutions and regulatory bodies - would be counter productive and make the global economic and financial system vulnerable but with serious employment and labour market implications as well as social fall out.*

I.1 Global Acknowledgement of Decent Work

It is now increasingly realised that such a growth model is neither beneficial nor sustainable. Availability of a "Decent Work" (DW) to all the able and willing to work women and men is now gaining increasing attention in the world; it is now seen as the main primary route out of poverty. There is now increasing realisation that it is not the employment *per se* that is important in pulling working men and women out of poverty but equally important are the conditions of employment afforded to them. The DW is defined as productive and quality jobs obtained under conditions of freedom, equity, security and dignity. The Decent Work Agenda (DWA) of the ILO is a strategy to achieve people-centred sustainable development.

The heads of state and government, for example, of more than 150 countries, meeting at the World Summit-2005 of the UN General Assembly, made a commitment to implement a wide-ranging international agenda requiring global, regional and national action. They also declared that "we strongly support fair globalisation and resolve to make the goals of full and productive employment and decent work for all, including women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the millennium development goals".

Subsequently, the United Nations Economic and Social Council (ECOSOC) Ministerial Declaration of July 2006, reaffirming this commitment, requested the whole multilateral system - the United Nations system, the International Financial Institutions (IFIs) and the World Trade

Organisation (WTO) - to support efforts to mainstream the goals of full and productive employment for all in their policies, programmes and activities.

In this context, labour market regulations are considered important for employment stability, provision of social security, and protection of the fundamental rights of workers. Indeed, these are the important building blocks towards the goal of DW for all as well as initiating and sustaining a benevolent development process.

2. Labour Law Reforms

The rapid changes in the world of work pose a challenge to the legal framework that governs working environment. Labour laws provide the institutional framework for the fair conduct of labour matters. However, there is still much to be desired in terms of fairness. Many countries in the region still have labour laws that do not adequately reflect the spirit and text of the CLSs on the fundamental rights of workers i.e. the right to organise and to bargain collectively as embodied in the two ILO Conventions, 87 and 98. Whereas, matters pertaining to the freedom of association and protection of the right to organise are dealt by the Convention-87, the Convention-98 deals with the right to organise and bargain collectively.

While, it is now increasingly realised that all workers should enjoy their fundamental rights of freedom of association and bargain collectively, reality and practices are different. It is not only restrictive nature of the industrial relations laws of a number of countries in the Asian Pacific region, equally disturbing is the inadequate attention to enforcement. While workers in the public sector and those engaged in the informal economy and agriculture in a number of countries in the region are denied the right to organise and bargain collectively, where laws are applicable they are not properly enforced. Even in most of the cases, workers in EPSZs are excluded from the coverage of labour laws. Many working men and women do not have the right to strike – largely attributed to the inadequacy of labour laws and labour administration.

Thus, the current realities do point out the need for labour law reforms. The reforms, however, have two dimensions. While, on the one hand there is a need to simplify and codify labour laws, on the other hand it relates to a universal application. The reform process, however, should neither be in the direction of making labour laws attractive and favourable to the employers nor undertaken without taking on board the social partners i.e. both the employers and workers. Furthermore, the labour law changes should be only with a view to improving working conditions and labour protections.

2. I ITUC-Asia Pacific Initiative on Labour Law Reforms

The labour laws can be classified in broad groups of: i) industrial relations, ii) employment and working conditions, iii) occupational health, safety and environment, iv) wages and other remunerations, v) social security, and vi) human resource development. Whereas, focus of labour law reforms needs to be on all the laws falling under these broad groups, the International Trade Union Confederation-Asia Pacific (ITUC-AP) initiative – in the beginning - nevertheless is only on the issues of freedom of association and the protection of the rights to organise and bargain collectively. Whereas, the right to organise provides for the existence of free and democratic unions, the right to bargain collectively provides for unions to function, improve wages and working conditions.

In 2004, the ITUC-AP prepared a report on the state of the right to form a union and to bargain collectively among the affiliates on the basis of the survey it carried out for its affiliated

organisations in the region. The survey results formed the basis of a regional conference organised by it in 2007. This regional conference on "Labour Law Reform Focusing on the Right to Form a Union and to Bargain Collectively" was also used as part of the campaign on labour law reform.

In continuation of this campaign, the ITUC-AP carried out series of activities on labour laws reform at the national and regional level that included carrying out of three national level studies and organising two regional conferences. These activities were carried out to achieve the following objectives:

- Draw up a report on the status of the existing labour laws and recommendations for change pertaining to the issues of freedom of association and the protection of the right to organise and to bargain collectively; and
- Use the report as main input in the campaign for the reform of labour laws at national level for the improvement of freedom of association and the protection of the rights to organise and to bargain collectively.

The Danish LO-FTF joined the initiative by lending support for the conduct of three additional national studies for Bangladesh, Cambodia and Thailand. It also commissioned a study on developing tool-kit for "labour law reform research" and provided financial support for meeting part of the regional conference expenses.

2. II Brief Account of the Bangkok Regional Conferences

Both of the regional conferences were organized in Bangkok – Thailand. Whereas, the first regional conference organised during 16-18 March 2010 witnessed assemblage of key trade unions leaders and officials from many of the ITUC-Asia Pacific affiliates together with national researchers of the six country studies, namely: Bangladesh, Cambodia, Indonesia, Nepal, Pakistan and Thailand, the second regional conference organized during 29-31 March 2011 saw in attendance participation of ILO in addition to the key trade union leaders and officials from many of the ITUC-AP affiliates. The regional conferences were convened with the following objectives:

- Exchange information on DW and labour laws in various countries in the region;
- Share experiences on activities on DW and labour law reform focusing on freedom of association and the right to bargain collectively; and
- Provide inputs to the "Guidelines" on campaigning for labour law reform focusing on freedom of association and the right to bargain collectively in the first regional conference and discuss and finalise the "Guidelines" in the second regional conference.

In his opening addresses on both the occasions, the ITUC-Asia Pacific General Secretary Noriyuki Suzuki opined that reforming labour laws is primarily for the betterment of working conditions and protection of workers' rights; it is also a means to attain "DW". Whereas, globalisation process has generated huge wealth; it has also led to greater inequalities. The distributive injustice, a cause of serious concerns, is attributed to the very process of globalisation. The gains from this surging wealth have also been not shared equitably even in the Organisation for Economic Cooperation and Development (OECD) countries. Quoting the International Monetary Fund (IMF), Suzuki informed that whereas the labour share in the OECD countries where trade unions are generally recognised has declined in the past 30 years by 20

percent, not only a disproportionately larger wealth has gone to the shareholders but corporate tax has also been reduced.

These developments led to the realisation on the part of the ITUC-AP, Suzuki informed, to work for developing "Guidelines" on campaigning for labour law reforms focusing on freedom of association and the right to bargain collectively. The work in this regard has been the three country studies carried out and follow-up national workshops held in each of the three countries as well as the two regional conferences. This work was supplemented through cooperation extended by the LO-FTF for the studies in three other countries in the region and subsequent national workshops also conducted.

In conclusion, Suzuki acknowledged and thanked the cooperation extended by the LO-FTF and for the support extended in this work by the ITUC-AP/ITUC Solidarity Fund.

In his introductory remarks on both occasions LO-FTF Regional Coordinator Jens Aarup informed about the support of his organisation towards the attainment of Millennium Development Goals (MDGs) and in this regard the natural focus on "DW" as well as participation in this work of the ITUC-AP. It was informed that a huge programme of LO-FTF on DW in Asia is supported by the Danish Government.

The presentation and discussion on the six country studies as well as sharing of country experiences on the topic of the regional conference formed the important part of the deliberations. In addition, a presentation was also made on toolkit on labour law research. The participants of the regional conferences were introduced with the outline of the draft "Guidelines" in the first regional conference and "Guidelines" in the second regional conference. These all formed the basis for the discussion from the floor.

> *A succinct review of country studies, research toolkit and draft outline of the "Guidelines" has been done separately and produced by the ITUC-AP in the form of a brief report on the Bangkok Regional Conference; see ITUC-AP (2010).*

3. Labour Laws in Theory and Practice in Selected Asian Countries: Abridged

The Constitutional provisions and enactment of a number of labour laws and regulations notwithstanding, the ground realities remain different and depict denial of the fundamental rights to organise and bargain collectively, harassment and intimidation of unions' organisers and officials, and anti union tactics. This section provides insights into the absence of laws, denials and lack of enforcement by using the six country studies.

In Bangladesh, the labour laws provide working women and men the right to form and join association, and join trade union of their own choosing. However, union formation requires the support of 30 percent of workers. Workers have the freedom to elect union from their own establishments. However, domestic and agriculture workers are excluded from the application of labour laws. There is lack of inspection and monitoring in both Ready Made Garments (RMG) and construction sector.

Non-cooperation of "inspectors" and "labour court" officials with workers is not uncommon. The labour courts are also insufficient; only seven in the country. Some instances of workers' rights violations as reflected in the labour laws are: i) medical care/treatment facility is only for workers of newspapers industry, ii) tea-workers are not entitled to casual leave, iii) the number of annual

leave is not uniform; it differs for workers in different sectors, iv) employers are allowed to engage workers during festivals, vi) in case of termination, employer is not required to assign any reason - no chance for self-defence from worker's side in case of termination, vii) no provision to get the consent of workers to engage them in overtime work, and vii) an employer can dismiss a worker without any prior notice or compensation (of wages, etc) on the basis of some grounds, e.g. "misconduct".

In Cambodia, the labour law provides universal coverage except for those in the public service, military, aviation, maritime and domestic household service. It defines employer and worker respectively as anybody employing at least one employee, and anybody with an "employment contract". However, interference of employers in union formation as well as harassment of the officials forming union is widespread. Even, government officials and political parties interfere in the work of unions. Whereas, the guidelines with regard to the most representative union and selection of bargaining agent are not clear, there is also no clear system to resolve deadlocks in the CB process. Dispute settlement mechanism is comprised of "Arbitration Council" (AC). However, its decisions are neither binding nor fair. As yet, a formal labour court system despite the demand by unions has not been established.

In Indonesia, the law provides for the right to form unions by workers/labourers including civil servants, it is nevertheless denied to the civil servants. This denial is on the pretext that "public service holds a special function as public employees; the requirements shall be stipulated in a separate law". Such a law, however, as yet, is to be adopted. Furthermore, anti union discrimination is widespread. Union formation efforts often lead into termination from services or other penalties imposed by the employer, such as: transfer, demotion, etc. Attacks on union organisers by employers and even by law enforcing officials are not un-common. Outsourced and contract workers are afraid to form or join unions.

In Nepal, country's Constitution has specified association and social justice as the fundamental rights of the Nepalese people. There also exists a body of labour laws that deal with: right to organise and bargain collectively, job protection, social protection, fair wages and welfare, working conditions, grievance handling mechanism, right to redress in case of unjust dismissal, etc. However, practice is different. The appointment letter is not given to a large number of the working women and men. In fact, its non-provision remains a major area of industrial relations conflict as its non-provision makes a worker weak and prone to exploitation. It also denies a worker the legal protections and entitlements. Whereas, there is growing practice of getting "outsourced" workers for services, such as: security, utility, logistic and maintenance from independent companies, the conditions of such workers are more vulnerable – they do not have any legal status in the companies where they are deputed. There are no statutory provisions that require a company to conduct regular health check-ups and publish reports relating to it. Factories of garments and cement as well as powder coating industries are said to be facing acute Occupational Safety and Health (OSH) related problems. The mechanisms with regard to minimum and daily wage fixation are weak. In addition to the definitional problems, the informal economy and bonded workers are largely outside the purview of work security, dignity and social protection in Nepal.

In Pakistan, Constitution lays the foundation for a "rights- and commitment-based" approach and makes provision of the freedom of association and right to organise to the citizens. These provisions notwithstanding, the coverage and enforcement of labour laws continues to raise serious concerns. The fundamental rights to organise and bargain collectively are not available to the working men and women in agriculture, informal economy and home-based as well as civil servants.

Unfair labour practices are also common despite legal provisions. Whereas, the Industrial Relations Laws of provinces do stipulate that "save prior permission of the Registrar, no officer of a union of workmen can be transferred, discharged, dismissed or otherwise punished during the pendency of an application for registration of the union with Registrar", employers do resort to unfair labour practices. Intimidation, harassment and coercions are not uncommon. The instances of labour rights violations also echo rather strongly in the discussion and observations in the relevant bodies of the ILO and particularly in the deliberations of the Committee of Experts on Application of Conventions and Recommendation (CEACR).

In Thailand, the Constitution provides its citizens the right to organise and form unions but it is limited to workers of the private sector and of state enterprises. However, many conditions and processes have been spelled out that makes organising complicated and cumbersome, such as: number and qualifications of organising committee members, prior approval by the Registrar, etc. At least support of 15 percent of total workers in writing – through signatures – is needed for a union to submit point (charter) of demands on behalf of workers. The union is also required to submit a maximum of seven union leaders to represent it in negotiations with the employers – the names of seven are to be filed with the office of Labor Protection and the employers. It is mandatory under the law.

The employers interfere in union formation and resort to unfair practices are not un-common. They usually intervene and ask workers to withdraw their names. In exchange, they offer some benefits like rise in wages, higher positions, etc. They also either transfer members of union organising committee or assign them positions where they are not able to perform the union work. The employers also transfer members of the organising committee. The Registrars of Trade Unions are also known to inform employers about the workers trying to organise; consequently workers are laid off. The Registrars also take long time in according approval (registration) to the union organising committee.

4. Key Issues Governing Labour Laws in Asia and the Pacific

Key elements in stable industrial relations system are: i) a favourable legal framework, which guarantees basic rights of employers to manage business and of workers to just and decent working conditions, ii) full recognition of unionism and acceptance of unions as partners of industry and government in growth and nation building, iii) bipartite cooperation and collaboration leading to higher enterprise productivity and better working conditions, iv) tripartite partnership and social dialogue, which are essential in forging national competitiveness and harmonious industrial relations, and v) effective labour dispute settlement, which means establishment of efficient, fair and affordable systems of conciliation, mediation, arbitration and adjudication.

The labour laws governing these important aspects exist in the Asian Pacific countries. The problem, however, is none else than effective enforcement. Yet another problem relates to the "exclusion" clauses in the laws. Almost, all the countries have restrictive clauses denying the right to organise and bargain collectively to specified categories and groups of working women and men. The segments of workers being denied their fundamental rights may comprise of any or all belonging to: i) civil service, ii) informal economy, iii) agriculture, iv) sub-contract/outsourced, and v) home-based. In some countries, one union-one enterprise is mandatory for state enterprises.

Furthermore, migrant workers are also denied the right to organise in a large number of countries. Restrictions are also found imposed on either union formation or union work and collective bargaining. Even strikes can also be banned or cancelled. Many countries boast of Essential Services Maintenance Act (ESMA) or similar laws restricting union work, putting a ban on union for a specified number of months, banning strike, etc.

Where the law allows for unions, obstacles in union formation are not un-common. Harassment and intimidation is a widely practiced phenomenon. In some countries, where unions are formed, process of union formation and CB is made cumbersome. The preparation of demand list/charter of demand, for example, is linked with prior approval of the members through general assembly.

A number of conditions - such as seeking consent of more than half of the members through general assembly of a union – are linked for the union to go for a strike. Furthermore, the state retains the authority to ban and/or cancel the strike. Even, governments in some countries can also restrict CB process on the pretext that the country is facing economic crisis. The Ministries of Labour are empowered to announce prohibition for workers or unions not to submit points (charter) of demand, and/or increase in salary or wages.

Violations of workers' rights as well as unfair labour practices abound. Payments of wages, for example, are not fully paid in case of construction workers in some countries; it is kept pending and linked with the completion of the task/work. Payment of overtime is quite often irregular.

Labour inspection is confronted with capacity and capability. Corruption is yet another dimension of labour inspection. The dispute settlement is also cumbersome and time consuming. Whereas, labour courts do not exist in some countries, in some countries they are available only at the provincial level.

The laws have stipulations on unfair labour practices. The detailed elaborations, however, become meaningless as they are found lacking implementation and enforcement.

These all instances are not only sufficient to raise concerns but equally point out the need for trade unions actions and campaigns for seeking labour law reforms.

5. Guidelines for Campaign on Labour Law Reforms

5. I Introduction and Background

Availability of DW is critically linked with respect to fundamental workers' rights underscoring the need for effective implementation. It is fundamental in creating conditions of employment in freedom, dignity, security and equity. It is also well understood now that the primary route out of poverty is none else than availability of a "DW" to all the able and willing to work women and men. The worth noting in this context is that It is not only the employment *per se* that is important in pulling working men and women out of the poverty but equally important are the conditions of employment afforded to them. Efforts aiming at generating employment should need to be closely linked with a readily available and accessible "social protection" and, importantly, fundamental rights at work. Indeed, the sustainable way out of poverty and beneficial development process requires a simultaneous focus on: i) fundamental rights at work,

ii) quality productive work; iii) social protection, and iv) social dialogue based on freedom of association and equal participation. The gender mainstreaming should remain the cross cutting theme.

Thus, labour market regulations, in addition to providing a level playing field to the working women and men, are also important for: employment stability, provision of social security, protection of workers and their incomes from business and economic downturns as well as discriminatory and arbitrary actions of employers. It is irony that in a large number of countries these considerations are on the "back-seat" owing to the "quest" for the delivery of a market-led development and growth. In fact, labour market regulations and institutions are quite often seen as "stumbling blocks" in the drive by the enterprises to restructure and remain competitive in a fast globalising environment. Regulations are seen as limiting the opportunity to respond quickly to emerging market needs and raising the cost of doing business, seldom realising that these are the necessary building blocks for an harmonious and mutually respecting industrial relation conducive for industry and enterprise growth and sustainable as well as benevolent development.

5. II Campaign for Labour Law Reforms

The campaign for labour law reforms though depending upon the peculiarity of a country implying country-specific identification of priority areas nevertheless would also need to be based on references to the global developments, the DWA of the ILO, international Conventions and protocols. The Conventions of the ILO would need to be especially mentioned in terms of obligations separately for ratifying and non ratifying countries. The mechanism developed by the ILO with regard to monitoring enforcement of Conventions as well lodging of complaints on the specific violations of workers' rights would also need to be properly portrayed in the campaigns.

> *The areas that need to be looked into and listed in this section are illustrative of the dimensions that need to be carefully looked into for the preparatory work and launch of campaign for labour law reforms.*

5. II.i Mapping Constitutional Provisions with Related Labours Laws

A careful reading, understanding and documentation of the Constitutional provisions should appear rather high in the design and launch of campaign for labour law reforms. Constitutional provisions with regard to the: i) fundamental rights guaranteed to the citizens, ii) right to organise and bargain collectively, iii) state responsibility for providing employment, iv) state responsibility for providing social security/social safety nets, v) non-discrimination, and vi) gender equality should be carefully read and used for the design and launch of the campaign for labour law reforms.

The Constitutions of the countries in the region, as has been pointed out in the preceding sections, do have provisions with regard to guaranteeing fundamental rights to the citizens including the right to organise and bargain collectively.

In most of the countries, there are specific laws dealing with union formation, CB, dispute settlement and adjudication. Such laws are normally grouped under "Industrial Relations" (IR). The Constitutional provisions then need to be matched with stipulations in the IR laws by the unions. In fact, matrix needs to be prepared on conformity or alternately non-conformity of the

specific clauses of the IR law with the Constitutional provisions along with highlighting the campaign areas for reforms. For illustrations, see table-1 below.

Table-1
Mapping Industrial Relations Law with Constitutional Provisions: An Illustrative Example

Country	Constitutional Provision	Corresponding IR Law	Remarks & Areas for Reform Campaigns
Nepal	Specifies association & social justice as the fundamental rights of the Nepalese people.	Labour laws provides for the right to organise and bargain collectively.	Appointment letter that makes a worker eligible for legal protection is not given to a large number of the working women and men. This practice violates the Constitutional provision as well as the labour laws. The campaign would be focusing on reforms of labour law with regard to making it mandatory for employers to issue letter of appointment and failing with well articulated imposition of penalties.
Pakistan	Besides laying the foundation for a "rights- and commitment-based" approach, it makes provision of the freedom of association and right to organise to the citizens.	The legal framework with regard to: i) freedom of association, ii) right to organise and bargain collectively, and iii) dispute settlement in Pakistan is currently governed by the provisions as stipulated by the Industrial Relations	Right to organise and bargain collectively is not available to those working in agriculture, informal economy and home-based as well as civil servants. The campaign would be focusing on reforms of labour law with regard to

		Act 2008 (IRA-08).	the availability of right to organise and bargain collectively to working men and women in all economic activities.
Thailand	Provides citizens the right to organise and form unions but it is limited to workers of the private sector and of state enterprises. However, the Constitution does not specify the right of workers to strike and bargain collectively.	The Labour Relation Law 1975 nevertheless provides for the right to strike for workers in the private sector.	Those working in or as: i) informal economy, ii) agriculture and forestry, iii) supervisors and management who have the authority to hire and fire workers, and iv) civil servants are denied from their right to organise and bargain collectively[1]. It is same as for Pakistan above.

Note: This table has been prepared solely for the purpose of illustration. It is, however, important that such a mapping exercise for an individual country would need to be done for each of the related Article of the Constitution and the corresponding clauses in the industrial relations laws and/or enactments as well as pointing out specific areas for reforms.

5. II.ii Mapping Labour Laws with their Violative Clauses

The campaign should look into the legal framework and identify nature and extent of coverage with regard to: i) right to organise provided and/or denied), ii) the role and application of ESMA or similar laws, iii) legal provisions with regard to the union registration (process) separately for union, federation and confederation, iv) the collective bargaining; its availability, process, duration and enforcement, v) nature and extent of workers' participation in management, vi) mechanism established/provided for the dispute settlement including conciliation, arbitration and adjudication, vii) provision with regard to strikes, viii) unfair labour practices, ix) clauses on fines and sanctions, and x) tripartite consultations (tri-partism).

As an illustration, few areas taken up for stipulations in labour laws and areas for reform campaigns are: i) right to organise, ii) union formation, iii) unfair labour practices, iv) collective bargaining and settlement, v) adjudication, and vi) multiplicity of unions. These areas have been looked into by taking the industrial relations law of Pakistan, table-2 below.

[1] It is important to point out workers of the informal economy (sector) and those engaged in agriculture and forestry in Thailand are, in fact, prohibited to form a union.

Table-2
Campaign on the Nature and Extent of the Coverage of Industrial Relations Law
An Illustrative Example form Pakistan

Areas	Stipulation in the Law	Remarks & Areas for Reform Campaigns
Right to organise	The industrial relations act/laws of provinces provide that both workers and employers have the right to: i) elect their representatives in full freedom, ii) organise their administration, and iii) formulate their programs and undertake activities.	As indicated in table-1 above, the laws do contain exclusion clauses. *Here the campaign needs to more focus on changing the clauses whereby right to organise and bargain collectively is provided to all the working women and men – in this regard taking a recourse to the Constitutional provisions and also the relevant clauses of the ILO C-87 that Pakistan has ratified more than fifty years ago would also be needed.*
Union formation	A trade union is not entitled to registration unless: i) all its members are workmen (and work women) actually engaged or employed in the industry with which the trade union is connected, and ii) not less than 75 percent of the executives are also from workers of the same establishment. The law provides for details with regard to union formation and "registration requirements".	Whereas the law provides details with regard to union registration and also specifies time to be taken for union registration, the practice nevertheless is contrary. Delays in according registration also by raising unnecessary objections provide an opportunity to the employer to resort to unfair labour practices. Employers in connivance with officials quite often also form pocket unions by taking advantage of clause of the law that allows formation of first two unions by few workers. Thus, making formation of a third but genuine union a formidable task.

		Here the problem is more of the enforcement of the law. The campaign needs to clearly identify such cases and make proposals for reforms, such as: specifying number of days for union registration and ensuring enforcement also by making provisions for penalties.
Unfair labour practices	The laws/act stipulate that "save the prior permission of the registrar, no officer of a trade union of workmen can be transferred, discharged, dismissed or otherwise punished during the pendency of an application for registration of the trade union with the registrar provided that the union has notified the names of its officers to the employer in writing".	The practice is contrary; instances of intimidation, harassment, termination and even dismissals abound. *The campaign needs to clearly identify such practices and also using it for making specific proposals for reforms.*
Collective Bargaining and Settlement	Law/Act provide for a collective bargaining agent (CBA) elected by workers through secret ballot. The tenure for CBA is for two years during that time it represents workers and undertakes CB.	The definition of "settlement" stipulates as being arrived at in the course of conciliation proceedings, and includes an agreement between an employer and a collective bargaining agent (CBA) or "workmen". It undermines the CBA. The provision also excludes the role of the representative trade union - CBA – or even any other registered union for applying for holding a referendum in an establishment or group of establishments. The provision also entitles an employer and even the government to seek the

		determination of a CBA. *The campaign here would be specifically targeting those clauses undermining the role of CBA and making specific proposals for reforms.*
Adjudication	The laws/act provide for different tiers of adjudication – labour courts, labour appellant tribunals and National Industrial Relations Commission (NIRC).	The problem here is the mode of appointment of Presiding Officers to the Labour Judiciary. The condition of a prior consultation with the Chief Justices of High Courts and Supreme Court has been is conspicuous with its absence – this has implications for the independence of the labour judiciary. Furthermore, owing to the 18th Constitutional amendment in 2010 devolving legislative powers to the provinces, the role of NIRC hangs in balance. This has implications for national centres and industry wide unions. *The campaign here would be specifically targeting those clauses undermining the independence of labour judiciary as well as continued functioning of the NIRC.*
Multiplicity of unions	The laws/act makes provision to this effect.	As per the provisions, first union in an enterprise or plant can get registration even with few members. Even, there is no limit on number of workers as members for the registration of second union. However, registration of the third

		union requires membership of 20 per cent of the total workforce.

5. II.iii Mapping Conformity of Labour Laws with ILO Conventions 87 and 98

The ILO Conventions 87 and 98 respectively on "Freedom of Association and Protection of the Right to Organise Convention, 1948" and "Right to Organise and Collective Bargaining Convention, 1949" are the most relevant global instruments in enshrining the freedom of association, rights to organise and bargain collectively. They provide guidelines with regard to developing national labour laws and enforcing mechanisms as well as all other related matters. The C-87, for example, stresses on: i) public authorities to refrain from any interference in the work of workers' and employers' organisations as well as not to dissolve them by administrative authorities, ii) law of the land not to impair guarantees of the Convention, and iii) exercising of the right to organise freely. The C-98 stresses on the establishment of machinery and provision of adequate protection against anti union discrimination. This Convention also has stipulations with regard to the armed forces, police and public servants, table-3.

Table-3
Important Clauses of ILO Conventions 87 & 98

Major Areas	**Convention**	**Articles of the Convention**	**Remarks & Areas for Reform Campaigns**
Public authorities to refrain from any interference	Freedom of Association and Protection of the Right to Organise Convention, 1948 (C-87)	Article-3 (1): Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, (2). The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.	Section-4 and tables 1&2 above are illustrative of interference that is more in the direction of impeding in the exercise of the right. *The campaign here would be specifically targeting those clauses and practices that are impeding in the exercise of the right.*
Not to be dissolved by administrative authorities	*Freedom of Association and Protection of the Right to Organise Convention, 1948* (C-87)	Article-4: Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.	In many countries, the public authorities retain the right to ban union for a specific period, declare work as falling under ESMA, etc. Campaign here would be similar to the above.
Law of the land not to impair	*Freedom of Association and*	Article-8 (2): The law of the land shall not be such as to	This Article of the Convention is the most

guarantees of the Convention	*Protection of the Right to Organise Convention, 1948* (C-87)	impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.	volatile as a large number of countries have stipulations in the IR laws that restrict the guarantees provided by it. Section-4 and tables 1&2 above are illustrative of the divergence with this Article. *The campaign here besides pointing out the violative parts of the national laws with this Convention would also include preparing and filing complaints with ILO.*
Exercise of right to organise freely	*Freedom of Association and Protection of the Right to Organise Convention, 1948* (C-87)	Article-11: Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.	As above
Adequate protection against anti union discrimination	*Right to Organise and Collective Bargaining Convention, 1949 (C-98)*	Article-1: (1). Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.	Section-4 and tables 1&2 above are illustrative of the divergence with this Article. *The campaign here besides pointing out the violative parts of the national laws with this Convention would also include preparing and filing complaints with ILO.*
Establishment of machinery	*Right to Organise and Collective Bargaining Convention, 1949 (C-98)*	Article-3: Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles 1&2.	In many countries the machinery established besides lacking capacity and capability is also insufficient. Labour inspection machinery is the most inadequately developed – and this affects effective enforcement of labour protection measures. The

			corruption of the machinery is yet another dimension. *The campaign here should focus on establishing the appropriate machinery with capacity and capability and also mechanism ensuring proper oversight and accountability.*

The obligations for a country ratifying an ILO Convention, such as: making laws in conformity with the ratified Convention, compliance and reporting are also used to build the momentum of campaign. The Campaign should also make use of the detailed reports that are automatically requested every two years on the ten Conventions, regarded as priority, namely: i) 87 and 98 on freedom of association and right to bargain collectively, ii) 29 and 105 on abolition of forced labour, iii) 100 and 111 on equal treatment and opportunities, iv) 122 on employment policy, v) 81 and 129 on labour inspection, and vi) 144 on tripartite consultation. Furthermore, the Committee of Experts on Application of Convention and Recommendations (CEACR) may request detailed reports outside the normal periodicity.

It is important to point out that a ratifying member country is also required to show the extent to which the law and practice conforms to the provisions of the Convention: by legislation, administrative action, collective agreement or otherwise.
It is also pointed out here that the mechanism of annual follow up of ILO Declaration on "Principles at Work" comprises of the global report prepared by the ILO Director General by taking each year one out of the four fundamental principles, see section 5.II.iv below.

5. II.iv Using ILO Declaration on Fundamental Principles and Rights at Work

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow up, adopted at the 86th Session of the ILC makes it clear that all member states have an obligation to respect in good faith and in accordance with the Constitution (of ILO), the principles concerning fundamental rights that are the subject of the Conventions covered under it. It also envisages the preparation and submission of progress reports by those members who have not ratified the relevant Conventions[2].

It is important to point out that promotional role of the Declaration, notwithstanding, the mechanism of annual follow up on the efforts made by the state not ratifying the relevant Conventions and the preparation of the global report by the ILO Director General by taking each year one out of the four fundamental principles are the instruments considered important in

[2] The (Core Labor) Conventions covered in the Declaration are: 1) C-87 on freedom of association and protection of the right to organize, 1948, 2) C-98 on right to organize and collective bargaining, 1949, 3) C-138 on forced labor, 1930, 4) C-105 on abolition of force labor, 1957, 5) C-100 on equal remuneration, 1951, 6) C-111 on discrimination (employment and occupation), 1958, and 7) C-138 on minimum age, 1973. Later, the C-182 on worst form of child labor, adopted in 1999 also became part of the Declaration.

terms of ensuring and enhancing the respect to the Declaration. The cycle of these reports revolves as: i) freedom of association and the effective recognition of the right to collective bargaining, ii) elimination of all forms of forced or compulsory labour, iii) effective abolition of child labour, and iv) elimination of discrimination in respect of employment and occupation.

Unions need to take advantage of preparation of reports and highlighting the violative nature of labour laws with focus on undermining and restrictive clauses in exercise of the right to organise and bargain collectively.

5. II.v Using Global Recognition of the ILO's Decent Work Agenda and Decent Work Country Programmes

> *The DW, as defined by the ILO, is productive work for women and men in conditions of freedom, equity, security and human dignity. The four pillars of ILO's DWA are: i) employment creation and enterprise development, ii) social protection, iii) standards and rights at work, and iv) governance and social dialogue.*

The campaign should use rather extensively the adoption of the DWA by the United Nations. As detailed in section 1.I above, more than 150 heads of state and government, meeting at the World Summit-2005 of the UN General Assembly, made a commitment to implement a wide-ranging international agenda requiring global, regional and national action. They also declared that "we strongly support fair globalisation and resolve to make the goals of full and productive employment and decent work for all, including women and young people, a central objective of our relevant national and international policies as well as our national development strategies, including poverty reduction strategies, as part of our efforts to achieve the millennium development goals".

The campaign should specifically use the ECOSOC resolution asking the whole UN system, IFIs and WTO to ensure DW in the programmes. In fact, this stress of the ECOSOC provides an opportunity to unions to also engage IFIs in order to seek their support for the labour law reforms enabling working men and women right to organise and bargain collectively.

The four pillars of the DW including standards and right at work does provide an opportunity for the unions to campaign for its adequate integration in the Decent Work Country Programmes (DWCPs). Many countries either have developed or developing DWCPs. If the DWCP is under preparation then the focus of trade union campaign should be to get on board in order to ensure that process duly incorporates CLSs as essential elements of the strategy (programme). The unions should also campaign for a space in the team monitoring implementation. In case, DWCP is already developed then the campaign needs to focus for integration of CLSs as well as being part of the team monitoring implementation.

5. II.vi Labour Judiciary

An independent labour judiciary is critical for dispensation of justice to the aggrieved, discriminated and intimidated workers as well as other labour disputes with the management. The campaign in addition to the independence of the judiciary should also be on the appropriately located labour courts, sufficient of number of labour courts and different tiers of labour judiciary. Furthermore, campaign should also focus for workers' representation in the whole process of adjudication. The campaign also needs to focus on the litigation cost, time normally consumed and instances of corruption.

5. II.vii Labour Inspection Machinery

Existence of labour inspection machinery sympathetic to workers or at best neutral is important for providing necessary protection to working women and men as stipulated in the labour laws as well as ensuring availability of labour welfare provisions. The campaign should also look into the sufficiency of labour inspection officials as well as their capacity and capability. Instances of corruption and malpractices of the labour inspection machinery need to be carefully monitored and highlighted in the campaigns.

5. II.viii Documentation of Best Practices

Trade union movement boasts of successes in its efforts and campaigns with regard to: i) organising - success (s) of strategy (ies), ii) court decisions, iii) bringing changes in laws, iv) networking, forming coalitions and building civil society support, v) bi- and tri-partism, and vi) dispute settlement.

These need to be fully documented and used for the campaign seeking reforms of labour laws.

5. II.ix Documentation of DW Deficits

The campaign should need to record and document instances of decent work deficits. Important areas that should be covered for the documentation are: i) employment and working conditions that would include wages, remunerations and benefits, working hours, paid leave, and occupational safety and health, ii) rights at work that would also cover nature and extent of application of labour laws and the rights denied, iii) union formation process and difficulties covering registration mechanism, unfair labour practices, intimidation, harassment, restrictions, termination, etc., iv) responsiveness of labour inspection machinery, and vi) issues and hurdles confronting seeking dispute settlement.

5. II.x Launching Campaign

How to proceed with regard to the launch of the campaign is also an important aspect requiring adequate consideration? First, unions need to form a committee to steer its work on labour law reforms and developing a work plan. Second, unions need to prepare legislative changes required and in this regard also seek inputs form labour friendly lawyers. Third, unions should also prepare the administrative and/or institutional changes that are required with regard to proper implementation of labour laws as well as ensuring appropriate representation in the tri-partite committees. Fourth, unions should ensure wider dissemination of the legislative and institutional changes put on demand by them. Some other important steps to be taken in this regard would be as under:

1. Preparing posters, pamphlets and banners on key elements of reform proposed and arrange wider dissemination;
2. Arranging meetings with leaders of political parties to share and discuss proposed reforms;
3. Organising briefing sessions with parliamentarians, media and other key stakeholders;
4. Greater and effective interaction with electronic media including participation in the talks on reforms proposed;
5. Arranging nation wide processions on dedicated days seeking support and exerting pressure for improvements; and

6. Through a model letter also sending to different stakeholders at local, regional and national level.

The development of campaign material and particularly the needed research can draw benefits from the toolkit for labour law reform research.

6. Conclusions

The industrial relations system refers to the regulatory framework and a mechanism that governs workplace relations; it establishes rules that govern this process. Harmonious industrial relations promote efficiency, productivity and DW. Indeed, a participative and mutually respecting industrial relations advance cooperation, enhance productivity and promote trust thereby reducing antagonism and exploitation.

Respect and implementation of labour rights is fundamental in creating conditions of work in freedom, dignity, security and equity. The onus of responsibility for securing and implementing these rights lies on both: state and unions. Thus, industrial relations are the key to a peaceful and economically prosperous society based on social justice and equitable distribution of development benefits.

Many countries in the Asian and Pacific region display deficits in terms of labour law, its application and coverage. Glaring deficits are noted in respect of the most important fundamental right of workers i.e. right to organise and bargain collectively. Engaging in policy dialogue is important in seeking labour law reforms. However, the utmost need is to launch a carefully prepared multi-faceted campaign for the reform of labour laws. Guidelines prepared are indicative of the work that unions need to take up for launching of a successful campaign for labour law reforms.

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