Enforcing Labor Standards

This module has the following objectives:

Enable the participants to

- Determine labor standards under the ILO Declaration on Fundamental Principles and Rights at Work;
- Analyze the labor issues faced by workers in Northeast Asia/country;
- Discuss issues that affect full implementation of the ILO Conventions.

Time: 3 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the ILO Conventions.

Enforcing Labor Standards

I. Procedure

b. Input - 1 HOUR

Provide an input on the ILO Declaration on Fundamental Principles and Rights at Work that covers the following conventions:

1. Freedom of association and the effective recognition of the right to collective bargaining
    i. Freedom of Association and Protection of the Right to Organise Convention, 1948 (CO87);
    ii. Right to Organise and Collective Bargaining Convention, 1949 (CO98);
2. Elimination of all forms of forced and compulsory labor
    i. Forced Labour Convention, 1930 (CO29);
    ii. Abolition of Forced Labour Convention, 1957 (CO105);
3. Effective abolition of child labor
    i. Minimum Age Convention, 1973 (CO 138);
    ii. Worst Forms of Child Labour Convention, 1999 (CO182);
4. Elimination of discrimination in respect of employment and occupation
    i. Equal Remuneration Convention, 1951 (CO100);
    ii. Discrimination (Employment and Occupation) Convention, 1958 (CO111).

A short presentation on the ILO Declaration on Fundamental Principles and Rights at Work can be found at www.ilo.org/declaration/lang--en/index.htm.

Below are some ILO materials that are useful in discussing different labor issues:

1. Child labor – *Eliminating Child Labour : Guide for Employers*
2. Forced labor – Forced labour, human trafficking and slavery
3. *The Labour Principles of the United Nations Global Compact: A Guide for Business* (ILO, 2008) – this can be used as guide for introducing the labor rights;
4. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (as amended in 2006) - this provides "principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and multinational enterprises are recommended to observe on a voluntary basis."
5. IOE-ILO guidance note on the 2014 Protocol to the Forced Labour Convention, 1930 - short note jointly produced by the ILO and IOE to support the employer/business engagement to implement the Forced Labour Protocol.

Inform the participants about the status of ratification of the ILO Conventions in Northeast Asia. (Annex A).

Explain the ILO mechanisms on monitoring enforcement of its conventions, such as the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Emphasize the obligation of governments to submit reports to CEACR and to respond to comments on these reports from labor unions.

Mention also the Annex to the ILO Declaration on Fundamental Principles and Rights at Work on annual review of requested reports from "governments which have not ratified

one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice." The follow-up covers the "four areas of fundamental principles and rights specified in the Declaration."*

After the presentation, hold an open forum. Summarize the discussion during the open forum by focusing on the factors that supported the enforcement of the ILO Convention.

C. Activity A – 1 HOUR

Ask the participants to form small groups to discuss the workers' rights that are being violated using the cases taken up by the CEACR as listed below:

1. Right to Organize and Collective Bargaining – Japan;
2. Right to Equal Remuneration – Japan;
3. Private Employment Agencies – Japan;
4. Labour Inspection – Korea;
5. Discrimination (Employment and Occupation) – Korea;
6. Workers' Representatives – Korea;
7. Discrimination (Employment and Occupation) – Mongolia;
8. Weekly Rest (Industry) – China;
9. Minimum Age – China;
10. Worst Forms of Child Labor – China.

Ask the participants to analyze in the groups some of these cases (Annexes B, C, D, E, F, G and H) by examining the responses of governments, employers, and the workers to specific issues. Tell them to determine factors that prevent the enjoyment of workers' rights. Ask the participants to use the following group report format:

Issues	Response			Comment
	Government	Employer	Labor	

Ask the participants to present the results of the group discussion in a panel discussion format.

List on the board the major highlights of the group reports.

d. Activity B - 1 HOUR

Ask the participants to discuss in small groups specific cases of labor initiatives at the local and national levels that

* See Annex of the ILO Declaration on Fundamental Principles and Rights at Work , available at www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO.

1. helped address the violation of specific workers' rights;
2. helped implement the ILO Conventions and identify elements that led to the success of the initiatives.

Ask them also to focus on cases that show the capacity of the workers and/or labor unions to resolve their problems. See Annex I for an example of a local initiative that support labor rights. Use other examples available in the subregion/country.

Ask the groups to present the results of their discussion in a creative manner (drama, painting, tableau, etc.).

List on the board the major contents of the group reports.

II. Summary - 15 MINUTES

Summarize the main points discussed during the session such as the following:

- Major components of the ILO Declaration on Fundamental Principles and Rights at Work;
- Issues affecting workers in Northeast Asia/country;
- Issues regarding the implementation of ILO Conventions at the national level.

Annex A
Status of Ratification of ILO Conventions

Convention	China	Japan	Korea	Mongolia
Freedom of Association and the Effective Recognition of the Right to Collective Bargaining				
Freedom of Association and Protection of the Right to Organise Convention, 1948 (CO87)	NR	R	NR	R
Right to Organise and Collective Bargaining Convention, 1949 (CO98)	NR	R	NR	R
Elimination of All Forms of Forced and Compulsory Labour				
Forced Labour Convention, 1930 (C029)	NR	R	NR	R
Abolition of Forced Labour Convention, 1957 (C105)	NR	NR	NR	R
Effective Abolition of Child Labour				
Minimum Age Convention, 1973 (CO138)	R	R	R	R
Worst Forms of Child Labour Convention, 1999 (CO182)	R	R	R	R
Elimination of Discrimination in Respect of Employment and Occupation				
Equal Remuneration Convention, 1951 (CO100)	R	R	R	R
Discrimination (Employment and Occupation) Convention, 1958 (CO111)	R	NR	R	R

Note: NR – Not yet ratified; R - Ratified

(Source: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F .)

Annex B

1. Equal Remuneration Convention (Japan) - Excerpt

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Equal Remuneration Convention, 1951 (No. 100) - Japan (Ratification: 1967)

The Committee notes the observations of the Zensekiyu Showa-Shell Labor Union received on 17 December 2012, to which the Government replied in its report, as well as the observations of the Japanese Trade Union Confederation (JTUC-RENGO), which were annexed to the Government's report received on 30 September 2013. It further notes the observations received on 6 August 2013 from the Aichi Solidarity Laborers' Union and the Union of Women Trading Company Workers as well as the observations of the National Confederation of Trade Unions (ZENROREN), received on 25 September 2013.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

The Committee recalls the report adopted on 11 November 2011 of the tripartite committee established by the Governing Body to examine the representation submitted by the Zensekiyu Showa-Shell Labour Union (GB.312/INS/15/3). The tripartite committee concluded that further measures were needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal value in law and practice in accordance with Article 2 of the Convention, and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs (paragraph 57).

Articles 1 and 2 of the Convention. Work of equal value. Legislation. For a number of years, the Committee has been pointing out that section 4 of the Labour Standards Law, which provides that "an employer shall not engage in discriminatory treatment of a woman as compared to a man with respect to wages by reason of the worker being a woman", does not fully reflect the principle of the Convention. The Government indicates that in order to clarify the interpretation of section 4 of the Labour Standards Law, the related Notification was revised in December 2012, and some court cases relating to section 4 of the Labour Standards Law were added as references. A brochure of relevant court cases was also prepared for employees to verify whether their payroll system had substantial gender discrimination. The Government reiterates that as long as the payroll system does not allow any discrimination in wages between men and women only by reason of the worker being a woman, it is considered to meet the requirements of the Convention. While noting the Government's views, the Committee is bound to reiterate that only prohibiting sex-based wage discrimination does not capture the concept of "work of equal value", which is fundamental to tackling occupational sex segregation in the labour market (see General Survey on the fundamental Conventions, 2012, paragraphs 673-676). The Committee also notes the views expressed by Zensekiyu Showa-Shell Labor Union, Aichi Solidarity Laborers' Union and the Union of Women Trading Company Workers that the principle

of equal remuneration for work of equal value is not considered as a principle that directly regulates employment relations, thereby creating a significant barrier to pay equity. In addition, JTUC-RENGO observes that the Government's interpretation of section 4 of the Labour Standards Law in the Notification limits the scope of the discrimination to be eliminated and does not directly deal with equal remuneration for men and women for work of equal value. The organization reiterates its request for the inclusion of a clause prohibiting wage discrimination based on sex in the Equal Employment Opportunity Law (EEOL), and for "sex" to be added as a ground of discrimination in section 3 of the Labour Standards Law. The Committee once again urges the Government to take immediate and concrete measures to ensure that there is a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value and appropriate enforcement procedures and remedies. The Committee asks the Government to provide detailed information on the measures taken and the progress achieved in this regard, as well as information on any revision of the current labour legislation which could have an impact on equal remuneration for men and women, and on any judicial or administrative decisions relating to equal pay.

Practical measures to address the gender pay gap and promote gender equality. The Committee notes the detailed information provided by the Government regarding the measures taken to address the differences between men and women in employment positions and in the number of years of employment through positive action and support for the reconciliation of work and family responsibilities. Noting that the gender pay gap remains significant (27.8 per cent in 2012), the Committee asks the Government to step up its efforts to encourage enterprises to take positive measures aimed at narrowing the gender pay gap, including regarding the access of women to managerial positions and the reconciliation of work and family responsibilities for both men and women on an equal footing. The Government is requested to report on the measures taken and the results achieved.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3174112:NO.)

Annex C

2. Equal Remuneration Convention (Japan) – Second excerpt

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Equal Remuneration Convention, 1951 (No. 100) - Japan (Ratification: 1967)

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Non-regular employment: Part-time and fixed-term employment. The Committee has previously noted that in Japan "non-regular employment" refers to part-time and fixed-term work. With respect to part-time employment, the Committee notes from the Labour Force Survey of 2012 that women workers constituted 69.2 per cent of all part-time workers. According to the JTUC-RENGO, the wages and working conditions of many part-time workers remain at low levels and their wages hardly increase with their age or length of service. The Committee recalls section 8 of the Part-Time Workers Law, which prohibits discriminatory treatment in the determination of wages only in the case of part-time workers who meet specific criteria: their job descriptions and the level of responsibilities are equal to those of regular workers; they have concluded an employment contract for an indefinite period; and, during the contract period, any change in their job description or assignment corresponds to what a regular worker could also expect. The Committee notes that, according to ZENROREN, an official survey showed that, due to these criteria, in practice only 1.3 per cent of part-time workers enjoy equal treatment with their full-time counterparts. JTUC-RENGO reiterates its calls for the revision of section 8 on equal treatment and the inclusion of a provision concerning the payment of divisible benefits with monetary value to part-time workers. In its report, the Government indicates that legislative measures will be taken to amend the provisions prohibiting discriminatory treatment. The Committee notes with interest the adoption of Law No. 27 of 2014 to amend the Part-Time Workers Law. Law No. 27 amends several provisions, including section 8(1) on the prohibition of discrimination so as to remove the requirement relating to the conclusion of a contract for an indefinite period of time, and therefore extends the prohibition of discriminatory treatment to part-time workers with a fixed-term contract who fulfil the two remaining criteria. Recalling that the Convention applies to both full-time and part-time workers, the Committee asks the Government to provide detailed information on the content and scope of the amendments to the Part-Time Workers Law and their impact on the situation of part-time workers with respect to remuneration, including the proportion of part-time men and women workers now covered by the prohibition of discrimination. The Committee also asks the Government to continue taking measures to ensure that part-time workers and full-time workers are treated equally with respect to the principle of the Convention. The Committee once again asks the Government to provide information on the results achieved in practice in promoting conversions from part-time status to regular status, and to continue providing statistical information disaggregated by sex on the number of part-time workers.

The Committee notes that, according to the Zensekiyu Showa-Shell Labor Union, the disparities in wages between men and women are connected to disparities in working conditions, including seniority, between workers in regular and non regular employment, with women being concentrated in the latter. With respect to fixed-term

employment, the Committee notes that the amendment of the Labour Contract Law adopted in August 2012 and in force since April 2013, provides for a mechanism requiring the employer to convert fixed-term employment contracts into employment contracts for an indefinite period at the employee's request when fixed-term contracts are renewed repeatedly for more than five years. It also prohibits the termination of fixed-term employment contracts under "certain circumstances", as well as the imposition on fixed-term workers of working conditions that are "unreasonably different" from those of workers under contracts for an indefinite period. In this respect, the Committee notes the Government's reply to the Zensekiyu Showa-Shell Labor Union that "unreasonably different" working conditions are determined taking into account job descriptions (duties and level of responsibilities), scope of duties, job rotation and other factors. The Committee also notes that JTUC-RENGO asserts that there are many cases in which employers set different wage standards for fixed-term workers. For its part, ZENROREN expresses concern that, since the working conditions (duties, place of work, salary, hours of work, etc.) applied to a fixed-term worker will not change after the conversion of his or her contract, unless a separate contract is signed to that effect, the existing pay gap will persist between workers with an indefinite contract and fixed-term workers whose work is identical but who are treated differently in terms of place, hours of work and employment management category. In addition, the Committee notes that, according to JTUC-RENGO and ZENROREN, concerns remain regarding compliance with the new provisions by employers who want to avoid conversion into definitive contracts. The Committee asks the Government to take the necessary measures to monitor closely the effect of the new provisions of the Labour Contract Law concerning the conversion of fixed-term contracts into contracts for an indefinite period of time so as to ensure that the mechanism put in place does not have adverse effects on the situation of fixed-term workers, including women workers, with respect to remuneration. The Committee also asks the Government to clarify the meaning, in the amendment of the Labour Contract Law, of the terms "unreasonably different working conditions" and to specify the "circumstances" under which the employer is prohibited to terminate (or not renew) a fixed-term contract, including any interpretation given by the courts.

The Committee further notes the detailed statistical information provided by the Government showing that, as of 1 April 2012, there was a total of 603,582 temporary and part-time officials in local governments, of whom 74.2 per cent were women and that job categories are highly segregated by gender. According to the Government, since 24 April 2009, local governments are regulated by a notification explaining the system related to temporary and part-time employees. The Government indicates that further information will be provided in this respect. JTUC-RENGO underlines the precarious situation of such workers, 65 per cent of whom are paid on a daily or weekly basis and 39.6 per cent continue to work for less than one year (while 31.7 per cent work for three years or longer and 17.8 per cent for five years or longer). The trade union also stresses that the absence of provisions in the Local Autonomy Law and the Local Public Service Law regarding temporary and part-time workers in the public sector makes their status unclear; they have little access to commuting allowances, regular medical examinations and bereavement leave, although they are usually engaged in jobs similar to those of regular workers. JTUC-RENGO also indicates that in May 2013 the Alliance of Public Service Workers Unions (APU) submitted to the

Diet a bill to amend partially the Local Autonomous Law with a view to ensuring the entitlement to various allowances, on the basis of municipal ordinances, of part-time employees who are equivalent in their working conditions to full-time employees or are in official posts with shorter working hours. The Committee asks the Government to indicate the manner in which the remuneration of local government non-regular employees is determined, in comparison to the remuneration of officials in regular employment, and how it ensures that officials performing work of equal value receive equal remuneration, regardless of their employment status. Please also continue to provide information disaggregated by sex on the number of temporary and part-time officials in local authorities at the prefectural and municipal levels.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3174112:NO.)

Annex D

3. Discrimination in Employment (Korea) – First Excerpt

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Korea, Republic of (Ratification: 1998)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in May-June 2014, including the written information provided by the Government.

Articles 1 and 2 of the Convention. Migrant workers. For a number of years, the Committee has been drawing the Government's attention to the need to provide appropriate flexibility to allow migrant workers to change workplaces and to ensure the effective protection of these workers against discrimination. In this context, the Committee noted previously that migrant workers are generally covered by the labour and anti-discrimination legislation, and it welcomed the changes made to the Employment Permit System to allow foreign workers unlimited workplace changes if they are subject to "unfair treatment", defined as including unreasonable discrimination by the employer. At the same time, the Committee noted that it is not clear how job centres "objectively recognize" a victim of discrimination, which would allow the foreign worker concerned to request an immediate change of workplace. It requested the Government to keep the applicable legislation governing migrant workers and related measures under regular view. The Committee notes that foreign workers can submit a complaint to the National Human Rights Commission of the Republic of Korea (NHRCK), the outcome of which can be forwarded to job centres. The Committee also notes that, during the discussions on the application of the Convention at the Conference Committee, the Government indicated that the burden of proof does not lie solely with the worker and that, in the absence of sufficient evidence, the local job centre would try to gather the facts to deal with the case. The Government further indicates in its report that, in the event of such an investigation, the worker is placed in a new job while the case is pending. The Government also provides general information on the number of workplaces inspected in 2013 and the total violations of the labour legislation found. The Committee requests the Government to continue its efforts to ensure that migrant workers are able, in practice, to change workplaces when subject to violations of the anti-discrimination legislation, and to provide information in this respect. Please provide information on the number of migrant workers who have applied to job centres for a change of workplace on the basis of "unfair treatment by the employer", the nature and outcome of those cases and the manner in which the job centres "objectively recognize" a victim of discrimination. The Committee requests the Government to continue monitoring the situation to ensure that the legislation protecting migrant workers from discrimination is fully implemented and enforced, and to provide information on the nature and number of the violations detected, and the remedies provided, as well as the number, nature and outcome of complaints brought before labour inspectors, the courts and the NHRCK.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192311:NO.)

Annex E

4. Discrimination in Employment (Korea) – Second Excerpt

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Korea, Republic of (Ratification: 1998)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in May-June 2014, including the written information provided by the Government.

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Discrimination based on sex and employment status. The Committee recalls that in the Korean context, the term "non-regular workers" refers to part-time, fixed-term and dispatched workers, and that many of these workers are women. The Government indicates in its report that following the adoption in November 2011 of the Measures for Non regular Workers in the Public Sector, 30,932 non-regular workers engaged in permanent and continuous work have become workers with open-ended contracts, and that the amendment of the Act on the Protection, etc. of Dispatched Workers in 2012 resulted in 3,800 workers being hired directly by their employers in 2013 in accordance with government orders. The Government also indicates that in 2014 further revisions were made to both the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, to introduce a punitive monetary compensation system as a measure to address repeated or willful discrimination. Starting in 2014, employers with 300 or more workers will be required to announce the status of workers' employment. The Government also plans to introduce a guideline on employment security of non regular workers and their conversion to regular status, which will promote the voluntary conversion of non-regular workers to regular status. The Committee further notes that in 2013 the NHRCK conducted a survey on non-regular women workers (Annual Report 2013, Seoul, April 2014, page 72). While welcoming these initiatives, the Committee urges the Government to review the effectiveness of the measures taken regarding non-regular workers to ensure that they do not in practice result in discrimination on the basis of sex and employment status, contrary to the Convention. In particular, the Committee asks the Government to provide information on the practical application of the measures for non-regular workers in the public sector and on the revisions made to the Act on the Protection, etc. of Fixed-Term and Part-Time Employees and the Act on the Protection, etc. of Dispatched Workers, including any penalties imposed for violations. The Committee requests the Government to take steps to ensure that any information gathered on workers' employment status is disaggregated by sex, and it requests the Government to provide information in this regard. Please also provide information on the results of the survey by NHRCK on non-regular women workers, including any follow-up action taken.

Enforcement. The Committee notes the general information provided by the Government on the number of workplaces inspected and the overall number of

violations detected by labour inspectors. The Committee further notes that according to the information provided by the Government to the Conference Committee, 589 violations of the Act on the Protection, etc. of Dispatched Workers and 213 violations of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees were recorded in 2013. The Committee notes the Government's indication to the Conference Committee that 37 support centres and one call centre have been established to provide free services to migrant workers, such as counselling on labour laws. The Committee notes from the 2013 Annual Report of the NHRCK that it received 615 complaints concerning discrimination in employment, most of which related to recruitment, hiring and wages, although it is not clear to what extent these were filed by migrant workers. The Committee requests the Government to continue providing information on the number and nature of the violations detected by or reported to labour inspectors concerning the non-discrimination legislation, the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, the sanctions imposed and the remedies provided. Please indicate the number, nature and outcomes of the relevant complaints handled by the NHRCK, as well as complaints brought by migrant workers to the National Labour Relations Commission and the courts, and provide copies of relevant judicial decisions.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192311:NO.)

Annex F

5. Discrimination (Employment and Occupation) (Mongolia)

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Mongolia (Ratification: 1969)

Article 1 of the Convention. Legislative developments. The Committee notes that the new draft Labour Law is currently under elaboration and that it addresses many of the issues raised by the Committee, including the exclusion of women from certain occupations, restrictions relating to the inherent requirements of the job, the protection of workers with family responsibilities and protection against sexual harassment. The Committee hopes that the new Labour Law will soon be adopted and that it will take into account the Committee's comments and will be in conformity with the Convention.

Exclusion of women from certain occupations. The Committee recalls its previous comments concerning the exclusion of women from a wide range of occupations under section 101.1 of the Labour Law of 1999 and Order No. A/204 of 1999. In this respect, the Committee notes the Government's indication that Order No. A/204 of 1999 was annulled by Order No. 107 of 2008 and that the Ministry of Labour and Social Welfare decided, following some studies carried out in order to renew the list of prohibited jobs, that it was not necessary to proceed to such renewal or to adopt a list of prohibited jobs for women. The Government also indicates that under the new draft Labour Law women can only be excluded from certain occupations for reasons of maternity protection. The Committee requests the Government to ensure that the new Labour Law strictly limits the exclusion of women from certain occupations to measures aimed at protecting maternity.

Inherent requirements. The Committee referred in its previous comments to section 6.5.6 of the Law on Promotion of Gender Equality (LPGE) of 2011, which allows for sex-specific job recruitment "based on a specific nature of some workplaces such as in pre-school education institutions". The Committee also noted that the scope of other provisions of the LPGE may be overly broad in permitting sex-based distinctions, such as in the "provision of health, educational and other services designed to cater for the specific needs of one particular sex" (section 6.5.1) and in respect of employment in specific "workplace facilities" (section 6.5.2). The Committee notes that the definition of inherent requirements in the new Draft Labour Law no longer refers to the limitations set out in the LPGE. The Committee requests the Government to take the necessary measures to ensure that any limitations on protection against discrimination in recruitment are strictly related to the inherent requirements of the particular job, in accordance with Article 1(2) of the Convention. The Committee also asks the Government to review sections 6.5.1, 6.5.2 and 6.5.6 of the LPGE in order to ensure that they do not in practice deny men and women equality of opportunity and treatment in respect of their employment.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183395:NO.)

Annex G

6. Weekly Rest (China)

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Weekly Rest (Industry) Convention, 1921 (No. 14) - China (Ratification: 1934)

Article 2 of the Convention. Normal weekly rest scheme. In its previous comment, the Committee had noted that the International Trade Union Confederation (ITUC) indicated that the workers' entitlement to weekly rest was easily undermined by employers using national and local rules on flexible and consolidated working-hour schemes to exclude workers from the legal protection on rest and compensation. The ITUC also indicated that, under those schemes, which had become commonplace and even the norm in an increasing number of sectors, weekly rest could be replaced by "consolidated rest" arranged unilaterally by employers based on business considerations. The ITUC further alleged that exemptions were often granted by the Ministry of Human Resources and Social Security with the mere "paper consent" of the enterprise trade union without prior proper consultations with workers. The Committee had also noted that the ITUC referred to the Measures for the Examination and Approval of Flexible Working Hours Arrangement and Consolidated Hours Scheme, adopted in 1995, which allowed for the averaging of hours of work without, however, guaranteeing a reasonable weekly rest day arrangement. Instead of specifying the right to compensatory leave with respect to every seven-day period, the Measures referred vaguely to "consolidated work and consolidated rest" and, as a result, employees were easily misled by their employers to confuse compensatory leave with annual leave. It had further noted that according to the ITUC, employees were underpaid or not paid at all for performing work on their weekly rest day which should entitle them to 200 per cent of the normal hourly rate under the Labour Law. The Committee once again requests the Government to transmit its comments in reply to the observations of the ITUC and to provide further information on the manner in which weekly rest is ensured in law and practice.

In addition, in its previous comment, the Committee had noted that the ITUC referred to new draft national legislation on working hours which had been prepared by the Ministry of Human Resources and Social Security in May 2012, and, in particular, to draft section 10 providing for one 24-hour rest day in every period of two weeks in the case of consolidated working hours schemes. The Committee would appreciate receiving up-to-date information on the status of the above-referenced draft legislation and requests the Government to continue to provide information in this regard.

Articles 4 and 6. List of exceptions. With reference to its previous comment on the weekly rest arrangements applicable in specific industries (including railway, petroleum and chemistry, power generation, press and publishing, civil aviation, metallurgy, banks, tobacco and shipbuilding) and the conditions set out in the Convention that any exceptions to the general standard must comply with (i.e. due regard for all proper humanitarian and economic considerations and prior consultations with the employers' and workers' representative organizations concerned), the Committee notes the Government's indications that the labour administration authorities adopted strict review and examination procedures for the approval of special working hours, which

include the consultation in writing of trade unions of enterprises. It recalls, however, that the ITUC alleged that exemptions were often granted by the Ministry of Human Resources and Social Security with the mere "paper consent" of the enterprise trade union without prior proper consultations with workers. The Committee once again requests the Government to provide more information on the weekly rest arrangements applicable in these specific industries. In particular, it requests the Government to indicate how these provisions of the Convention are ensured in law and practice.
(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183312:NO.)

Annex H

7. Minimum Age (China)

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Minimum Age Convention, 1973 (No. 138) - China (Ratification: 1999)

The Committee notes that the country is participating in an ILO technical assistance programme, the Special Programme Account (SPA) project, carried out jointly between the ILO and the Ministry of Human Resources and Social Security (MoHRSS). It also notes that, in the framework of the SPA, a tripartite inter-ministerial workshop was conducted in September 2012 in Nanchang, Jiangxi Province, with the aim of drawing attention to the implementation gaps identified by the Committee with regard to the child labour Conventions, as well as two follow-up missions in Beijing in September 2013, and in Chengdu, Sichuan Province in September 2014, to assess the progress achieved; provide a forum to exchange information on the problems encountered in addressing child labour in the country; and identify priorities for future assistance.

Article 3(1) of the Convention. Hazardous work performed through work-study programmes. The Committee previously expressed its concern at the continued engagement of school children under 18 years of age in hazardous types of work within the context of work-study programmes.

The Committee notes the information provided by the Government in its report, as well as the information it supplied under the Worst Forms of Child Labour Convention, 1999 (No. 182), with respect to its work-study programmes. In this connection, the Committee notes the Government's indication that the Ministry of Education has repeatedly issued circulars and increased its inspection efforts with a view to ensuring healthy development in these programmes. The Government further indicates that the work-study programmes must be incorporated into, and must abide by, normal teaching programmes and may not, for example, modify hours of work without prior permission. In addition, it indicates that schools that organize work-study programmes must ensure the safety of students by prohibiting participation in toxic, hazardous or dangerous types of activities or labour which exceeds their physical capacity. The Government states, in this respect, that safety education must be provided to students to prevent accidents, and that the local governments are required to analyse the manner in which work-study programmes are carried out on a local basis.

The Committee takes note of the Government's efforts to ensure a healthy environment for its work-study programmes. It also recalls that the missions undertaken within the context of the SPA, discussed above, addressed ways in which the legal framework could be strengthened with respect to protecting young persons engaged in work-study programmes. The Committee notes, however, the 2014 report on the labour protection of interns in Chinese textile and apparel enterprises, carried out with ILO assistance, according to which 52.1 per cent of interns continue to work in conditions that do not meet national minimum standards for labour protection, and 14.8 per cent of interns are engaged in involuntary and coercive work (page ix). It further notes that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined third and fourth reports (CRC/C/CHN/CO/3-4, paragraphs

85?86), urged the Government, as a matter of priority, to end the use of work-study schools and the use of forced and exploitative child labour under those programmes.

While noting the measures taken by the Government, the Committee notes with concern that a significant number of school children continue to engage in hazardous work within the context of work-study programmes. The Committee accordingly urges the Government to strengthen its efforts to ensure that persons under 18 years of age are not engaged in hazardous work through work-study programmes, even where safety and security measures are in place. Furthermore, noting the absence of information on this point, the Committee once again requests the Government to submit statistical information concerning the number and nature of infringements of the applicable legislation and penalties applied.

Article 9(1). Labour inspectorate and penalties. In its previous comment, the Committee noted that it was difficult to assess the extent of child labour owing to a lack of official reporting on cases and the lack of transparency in statistics. It also noted that the chances of discovering child labour were slim given the shortage of labour inspectors in the country and the extensive collusion between private businesses and local officials.

The Committee notes the Government's information concerning its labour inspection system which, by the end of 2013, consisted of 3,291 labour security inspection departments, 25,000 full-time labour security inspectors and 28,000 part-time inspectors. The Committee further notes the information provided by the Government under Convention No. 182, which indicates that it has employed labour security advisors from the All-China Federation of Trade Unions (ACFTU), trade unions and other institutions, to monitor the compliance of employers with national labour laws and regulations. The Government further reports that the departments of human resources and social security implement the provisions of national legislation prohibiting child labour and regularly monitor implementation through routine and ad hoc inspections, investigation of complaints and verification of cases reported by informants, written requests and other forms of supervision and law enforcement.

While noting this information, the Committee notes with deep concern that, to date, not a single case of child labour has been found, despite the Government's indication that its labour inspectors conduct routine visits and inspections. The Committee also notes with regret the absence of any information concerning measures taken or envisaged to address the allegations of extensive collusion between private businesses and local officials. The Committee notes, in this respect, that the CRC, in its concluding observations on the combined third and fourth reports (CRC/C/CHN/CO/3-4, paragraph 85) in 2013, noted the absence of specific data on child labour in the country, despite reports which indicate that child labour is widespread. In the absence of any indications of child labour in the country, the Committee once again urges the Government to take the necessary measures to address the issue of collusion between labour inspectors and enterprises to ensure thorough investigations into possible cases of child labour. In this regard, it requests the Government to indicate the methodology used to collect information and to provide information on the types of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed. The Committee also requests the Government to pursue its efforts to strengthen the capacity of the labour inspectorate. Lastly, the Committee

urges the Government to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children in China is made available, including, for example, data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3187553:NO.)

Annex I
Community Unions

"Community unions" means a labor union in the local community, and any workers including part-time workers, temporary agency workers and foreign workers can join it as a single individual. The first community union was Edogawa Union, which was organized in 1984 under the slogan of "Fureai, Yuai and Tasukeai (Contact, Compassion and Cooperation)." After that, community unions were organized nationwide. Each community union is basically an independent labor union and the activities vary from one union to another. The resolution of labor disputes is listed among their commonly performed activities.

Community unions play significant role in preventing and resolving labor disputes. They listen sympathetically to the workers who have nowhere to go to resolve their problems, and provide advice. They help the workers regain their dignity and get empowered to move on their next job as in the case of temporary agency workers. During collective bargaining, community unions raise the problems of the companies regarding personnel management, labor management or communication that led to disputes. Finally, they resolve disputes that cannot be resolved with the company. They often deal with labor disputes that cannot be resolved by administrative bodies. They essentially function as administrative or judicial body in terms of dispute resolution and play a different role from company unions.

(Based on Hak-Soo Oh, *Occurrence Mechanism and Resolution Process of Labor Disputes: Cass of Community Unions (Kyushu Area),* The Japan Institute for Labour Policy and Training, pages 84, 100-101.)

Materials

Labor Issues and Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

- Reports per country in the "Supervision by country," www.ilo.org/dyn/normlex/en/f?p=1000:11000:0::NO:::

Papers on problems regarding enforcement of Conventions covered by the ILO Declaration on Fundamental Principles and Rights at Work

- Alfred Wisskirchen, *The standard-setting and monitoring activity of the ILO: Legal questions and practical experience* (2005). Available at www.ilo.org/public/english/dialogue/actemp/downloads/projects/standard_setting_2005_en.pdf
- General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 101st Session, 2012. Available at www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf

Case study on initiatives of the labor sector to implement the ILO Conventions

- Hak-Soo Oh, *Occurrence Mechanism and Resolution Process of Labor Disputes: Cass of Community Unions (Kyushu Area),* The Japan Institute for Labour Policy and Training Available at www.jil.go.jp/english/reports/documents/jilpt-research/no.111.pdf.

ILO materials:

1. The Labour Principles of the United Nations Global Compact: A Guide for Business (Geneva: ILO, 2008). Available at www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/instructionalmaterial/wcms_101246.pdf
2. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (as amended in 2006). Available at www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf
3. An introduction to the Multinational Enterprises Declaration - a self-guided e-learning module available at https://ecampus.itcilo.org/course/view.php?id=21
4. Child labor – Eliminating Child Labour : Guide for Employers Available at www.ilo.org/public/english/dialogue/actemp/downloads/projects/child_guide1_en.pdf
5. Forced labor – Forced labour, human trafficking and slavery www.ilo.org/global/topics/forced-labour/lang--en/index.htm
6. IOE-ILO guidance note on the 2014 Protocol to the Forced Labour Convention, 1930. Available at www.ilo.org/global/topics/forced-labour/publications/WCMS_321410/lang--en/index.htm.