



## 106<sup>th</sup> Session of the International Labour Conference (June 2017)

### Agenda item V

#### Briefing Note for Workers' Delegates

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### **Employment and decent work for peace and resilience:**

#### **Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71)**

Standard setting, double discussion - Second year discussion

#### **BACKGROUND**

At its 320<sup>th</sup> Session (March 2014) the ILO Governing Body decided to place a standard-setting item on the agenda of the 105<sup>th</sup> (June 2016) and 106<sup>th</sup> Session (June 2017) of the International Labour Conference on decent work for peace, security and disaster resilience: Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), (standard setting, double discussion) with a view to the elaboration of a Recommendation.

Last June, the Committee held its first discussion and adopted proposed conclusions in the form of a draft Recommendation. The debate revealed a broad consensus on the timeliness and necessity of revising the Employment (Transition from War to Peace) Recommendation, 1944, No. 71.

The first discussion was, however, difficult. The two sections on “vulnerable groups” and “refugees, internally displaced people, and returnees” that were of great importance for the Workers’ Group, could not be agreed upon and were bracketed for further discussion this year. Concerning the latter, Governments requested that the discussion be postponed pending the ILO tripartite technical meeting on the access to refugees and other forcibly displaced persons to the labour market to be held in July 2016 and the UN Summit for Refugees and Migrants in September 2016.

Progress in various areas was difficult as a group of governments repeatedly raised objections on the text put forward by the Office.

Informal tripartite consultations were arranged by the Office on May 4-5, 2017 to go over a number of the more contentious issues coming out of the first year discussion. While not necessarily indicative of future discussions, the tenor of the meeting was clearly more positive and constructive.

The objective of this second discussion will be to finalise the negotiations and ensure that comprehensive guidance is adopted to promote employment and decent work policies for peace and resilience. The instrument will be proposed to the Conference plenary where a two third majority will be required for its adoption.

#### **Brown Report V (1)**

Following the 1<sup>st</sup> year discussion, the text of the proposed instrument was published in the Brown Report. Member States and social partners were invited to send comments on the proposed text.

#### **Blue Report V (2A) & (2B)**

The replies received on the Brown Report were summarized in the first part of the Blue Report - V(2A). The Office received a total of 99 replies from Member States, 15 replies from employers’ organizations and 62 replies from workers’ organizations. Based on these replies the Office produced the second part of the Blue Report - V(2B) containing the proposed text for the Recommendation that will be discussed in June 2017.

The reports are available in several languages on the ILO website at the following address:

<http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/lang--en/nextRow--0/index.htm>

We invite worker delegates to read and review these documents prior to the Conference.

## **PROPOSED RECOMMENDATION**

We are providing below a number of preliminary comments on the text of the Recommendation as proposed by the Office in the Blue Report.

Of note, the future instrument refers to “Employment and Decent Work”. The Workers’ Group may wish to ensure that in addition to employment the Recommendation contains strong provisions on the remaining pillars of decent work: social protection (social security and labour protection including occupational safety and health) as well as social dialogue and rights at work.

The Recommendation should, in addition, contain provisions recognizing public services and the role of the public sector, the need for just transition towards an environmentally sustainable economy (as part of the post-disaster response as well as of resilience building efforts), due diligence in global supply chains operating in the post-crisis and crisis-prone countries (taking into account the recently revised ILO MNE Declaration) and recognition of fundamental principles and rights at work in relation to both refugees as well as other forcibly displaced persons (such as those displaced by disasters) – taking into account the guiding principles on the access of refugees and other forcibly displaced persons to the labour market adopted in July 2017.

## **Preamble**

### **Paragraph 13**

Public services and the public sector are mentioned in Paragraph 13, Paragraphs 7c, 10a (public employment programmes), 10g, 22e (public employment services), 28c (public employment services) and 34c (management). Most often, it is mentioned together with references to the private sector. The role of access to public services in prevention and in building resilience, by reducing inequality, is not mentioned.

The Workers’ Group may wish to seek the appropriate amendment to correct this gap.

## **I. Objectives and scope**

### **Paragraph 1**

By referring to “crisis situations arising from international and non-international conflicts and disasters”, the focus of Paragraph 1 is limited to “post-conflict” and “post-disaster” only. Specifically, situations of high-risk fragility that can precede and fuel vulnerability as well as the consequences of a conflict or a disaster are missing from the scope of the instrument as formulated in Paragraph 1. This creates inconsistency with the objectives of the Recommendation to cover the role of employment and decent work in enabling a post-crisis recovery, but also in preventing crises, promoting peace and building resilience. Of note, the ILO Guide issued in 2016 in order to provide guidance on implementing this Recommendation, titled “ILO Guide on Employment and Decent Work in situations of fragility, conflict and disaster”.<sup>1</sup> The inclusion of “situations of fragility” should therefore be considered.

### **Paragraph 5**

The Workers’ Group may wish to consider the inclusion of a reference to the principles and provisions of international labour standards in Paragraph 5. The Workers’ Group may wish to state clearly that it does not support the insertion of provisions subordinating the effect of the Recommendation, and therefore diluting the guidance, in various parts of the text.

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<sup>1</sup> [http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/documents/instructionalmaterial/wcms\\_141275.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/documents/instructionalmaterial/wcms_141275.pdf)

## II. Guiding principles

### Paragraph 6

The Office changed the operator in the chapeau of Paragraph 6 from “should” to “should take into account”. This change results in weakening the substance of each of the sub-paragraphs. In several cases, the proposed formulation does not reflect the language of the 1998 ILO Declaration on Fundamental Principles and Rights at Work (FPRW) or the 2008 Social Justice Declaration (SJD). All ILO Member States are obliged to respect, promote and realize FPRW. According to the text proposed by the Office, States merely “should take into account” the need to take action on FPRW – see for example sub-paragraphs 6b, 6f, and 6k.

The Workers’ Group may wish to express its concerns and seek the appropriate amendments.

## III. Strategic Approaches

### Paragraphs 7a, 7c, and 7h

There is lack of consistency between sub-paragraphs 7a, 7c and 7h. Sub-paragraph 7a refers to some strategic objectives of decent work – employment and social protection – but in the context of “immediate” measures, which are the subject of Paragraph 8. Paragraph 7a is part of a list of provisions that refer to other thematic areas including: promotion of sustainable development, creation of sustainable enterprises, just transition towards an environmentally sustainable economy and access to public services. Paragraph 7h refers to social dialogue.

The Workers’ Group may wish to consider proposing to rearrange the paragraphs in the following order:

Paragraph 7a: to cover the strategic objectives of decent work – including employment, social protection and social dialogue. Reference to “immediate” employment and social protection should be moved to Paragraph 8a.

Paragraph 7c would cover other thematic areas: sustainable development, sustainable enterprises, transition from informal to the formal economy and just transition.

A new sub-paragraph, after 7c should be added to cover access to public services.

### Paragraph 7e

The Workers’ Group may wish to revise the text of Paragraph 7e taking into account the recently revised ILO MNE Declaration adopted by the Governing Body in March 2017 and its paragraph 10c.<sup>2</sup>

## IV. Employment Generation

### Paragraph 10f

According to the 1998 Declaration and the SJD, Member States have an obligation to “protect, promote and realize” FPRW of all workers, including workers in the informal economy. The proposed text only requires States to “protect” FPRW of informal workers.

The Workers’ Group may wish to seek the appropriate amendment.

### Paragraph 13a

At the end of 2015, it was estimated that there were 40,8 million Internally Displaced Persons (IDPs) worldwide, the highest number on record. Of note, this figure, provided by UNHCR<sup>3</sup> represents only the number of persons internally displaced by conflict and violence, not by disasters, therefore the estimated number of all IDPs is higher. IDPs are nationals and they have full right to be covered by tailored

<sup>2</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf)

<sup>3</sup> <https://s3.amazonaws.com/unhcrsharedmedia/2016/2016-06-20-global-trends/2016-06-14-Global-Trends-2015.pdf>

employment policies as well as other decent work strategies (social protection, social dialogue, rights at work). The Workers' Group may therefore wish to consider strengthening the language of Paragraph 13a to include measures for employment and social protection as part of national policies and programmes.

## **V. Rights, Equality and Non-Discrimination**

### **Paragraph 14a**

As in Paragraph 10f (above), the proposed text only requires States to “promote” equality of opportunity and treatment. The appropriate wording should be pursued in line with the 1998 Declaration on FPRW.

### **Paragraphs 14a, 14e, 15a, 15b, 16**

Since all references to Conventions in these paragraphs concern ILO core labour standards, it would be better to replace the words: “taking into account” by “in line with”.

### **Paragraph 14h**

The proposed text refers only to migrant workers and members of their families “lawfully staying in a country affected by the crisis”. The text lacks reference to obligations of Member States to respect, promote and realize FPRW of all migrant workers, irrespective of whether lawfully staying in the country or territory or not. Since Paragraph 14h is in the chapter that covers “rights, equality and non-discrimination” the text should not create discrimination in rights between regular and undocumented migrants.

A possible reformulation, excluding the word “lawfully” was discussed during the informal consultations in May 2017 and will be put forward in the second discussion.

## **VI. Education, Vocational Training and Guidance**

### **Paragraph 17a**

The Office has not restored a reference to “free, quality public education”, agreed upon during the 2016 discussion. The Office argued that the text was redundant, since there was a reference to relevant international standards. The Workers' Group may consider opposing the deletion, given that the deleted text contained substantive guidance.

## **VII. Social Protection**

### **Paragraph 20b**

The SJD calls to “develop and enhance” social protection. Paragraph 20b calls only to “create or restore”.

The Workers' Group may wish to seek the appropriate amendment.

### **Paragraph 21**

Recommendation No. 202 refers, in Paragraph 14c, to “seek to close the gap in protection”. The Workers' Group may wish to seek the appropriate amendment to include this important concept.

## **VIII. Labour Law, labour administration and labour market information**

The Recommendation is silent on developing and enhancing labour protection including occupational safety and health measures. The only references to safe and decent working conditions are contained in Paragraphs 4 and 8d, and both refer primarily to the organization of the immediate crisis response.

The Workers Group may wish to call for an explicit reference to labour protection and OSH in this section in particular under Paragraph 22b.

## **IX. Social Dialogue and the Role of Employers' and Workers' Organizations**

Chapter IX does not contain concrete reference to developing responses to crisis situations through social dialogue. Paragraph 23(a) states that “reconciliation, social and economic stability, recovery and resilience” should be “promoted” (not developed) through social dialogue. Paragraph 24 indicates that “Members should recognize the vital role of employers’ and workers’ organizations in crisis response” without specifying such role - i.e. participation in planning, developing and monitoring such responses.

The Workers’ Group may wish to seek the appropriate amendments.

## **X. Refugees and Returnees**

The very existence of a Chapter covering Refugees and Returnees was one of the main issues of contention in the first discussion. A group of governments expressed significant concern that undue pressure was put on them to provide employment and services to very large groups of persons on their territory as a result of conflicts and disasters.

The informal consultations tentatively showed a more conciliatory tone from some of the governments. The title of this chapter is, however, unduly restrictive.

The Workers’ Group will note that the legal definition of a refugee as a person who “owing to well-grounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (1951 UN convention on the Status of Refugees) is indeed restrictive. It excludes many classes of persons, including other Forcibly Displaced Persons (FDP) and victims of disasters who should fall within the scope of this Recommendation.

We believe that all FDP are entitled to the same rights and protection under the law, as well as those covered by the pertinent international standards.

The Workers’ Group may therefore wish to argue that FDP, other than those covered by specific refugee laws, should be addressed more fully in this instrument.

The Blue Report in Paragraph 25 furthermore offers language which makes measures taken “contingent on national and regional circumstances, with due regard being had to international law and national legislation”. As discussed during the informal tripartite consultations, the Workers’ Group may wish to propose to replace the text to reflect language under the SJD (Section I, C (i), (ii) and (iii)) whereby measures taken by Members would be “subject to its existing international obligations and the fundamental principles and rights at work with due regard, among others, to: (i) the national conditions and circumstances, and needs as well as priorities expressed by representative organizations of employers and workers; (ii) the interdependence, solidarity and cooperation among all Members of the ILO that are more pertinent than ever in the context of a global economy; and (iii) the principles and provisions of international labour standards.”

### **Paragraph 29 (chapeau)**

The Workers’ Group may want to reflect the right of refugees to have all their FPRW “respected, promoted and realized”. It might also be important to reemphasize that under the 1951 Convention on the Status of Refugees, discrimination in wages and conditions of work is not permitted. Specific language may be pursued in this regard.

## **XII. International cooperation**

This section underpins the responsibility of the international community to support initiatives in countries affected by conflicts and disasters directly and indirectly. The Workers’ Group should remain open and sensitive to the concerns expressed by affected countries while defending the principle that sovereignty cannot ‘trump’ obligations undertaken by governments to protect, promote and realize rights.

**Paragraph 37**

The Office has included Paragraph 37 as new text (not adopted during the 2016 discussion). The Workers' Group may wish to balance references to the role of the private sector and self-employment with references to the role of the public sector (for instance public works programmes) and "sustainable enterprises and cooperatives".

**Conclusions**

Following last year's difficult discussion, the Workers' Group will maintain its goal of achieving a new instrument which will provide a useful and effective framework for affected countries to put in place the necessary programmes and policies to build resilience and sustainability based on the principles enshrined in the 1998 Declaration and SJD.

To achieve this we will need to redouble our efforts to remain in close contact with governments in order to clearly and forcefully argue and defend our positions, as well as with the Employers' Group with whom we worked effectively last year to reach common objectives.

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