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## Social Dialogue for Decent Work

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## Social Dialogue for Decent Work

### Abstract

[Excerpt] This paper aims to develop usable indicators of the concept of social dialogue, as part of the ILO's effort to develop operational measures of *Decent Work*. Section 1 examines the concept of social dialogue. Section 2 looks at past approaches to measuring social dialogue. Section 3 discusses what we have learned from past approaches and the implications for developing indicators and collecting data. Section 4 describes and justifies the proposed indicators. Section 5 concludes the paper with a discussion of the implications of this methodology for practice, and an examination of the costs.

### Keywords

social dialogue, International Labour Organisation, measurement, methodology, tripartism

### Disciplines

Human Rights Law | Labor and Employment Law | Labor Relations

### Comments

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# Chapter V

## Social dialogue for decent work

*Sarosh Kuruvilla*

### Executive summary

The goal of this paper is to develop measures (indicators) of social dialogue to help assess the progress of nations on this important dimension of *Decent Work*. The ILO's definition of social dialogue covers various types of information exchange (e.g. negotiation or consultation), between representatives of governments, employers and workers, on any issue of common interest, and includes both bipartite and tripartite mechanisms. However, partly because the ILO's structure is tripartite, tripartism has been seen as the primary avenue for social dialogue.

More recently, the growing size of the informal sector, the continuing decline in the living standards of large sections of the world's population, and the decline in union density internationally, have all prompted the ILO to articulate the concept of *Decent Work*, comprising four basic principles or core rights that are universally applicable. Since social dialogue is one of these core labour rights, there is renewed interest in developing measures or indicators of social dialogue.

The paper argues that any effort to develop measures of the social dialogue concept should take account of its current limitations. First, overwhelmingly, social dialogue has been operationalized in terms of collective bargaining between employers and workers (bipartite), and social concertation, i.e., tripartite talks between representatives of labour, employers, and governments. Other actors (e.g. civil society) have been ignored in this process. Second, there is no guarantee that collective bargaining rights do in fact lead to discussions about social policy at national level, although this is implied in the ILO's practice of developing social dialogue.

Third, the focus on “representatives” is also limiting, in that great numbers of the world’s workers (and in some cases, employers) do not have the right to representation, which raises the question of how the practice of social dialogue could apply to these populations. Finally, there is the implicit assumption that an “employment relationship” between workers and employers is necessary for social dialogue to occur. This assumption excludes large numbers of workers who are in the informal sector, or who are self-employed, or in contractual relationships, since social dialogue as currently defined does not apply to them. Any attempt to develop measures must be sensitive to these problems.

Numerous efforts have been made to develop measures and indicators of social dialogue (these are reviewed in the paper). Overwhelmingly, the focus has been on the rights underlying bipartite collective bargaining and the way it is actually practised. Measures regarding the rights and practice of tripartism have also been developed, but these have largely been based on research in Western Europe (the one region of the world in which tripartism is significantly developed). The advantages and problems of the various different measures that have been used in prior efforts are also examined in the present report.

The design of the social dialogue indicators described here takes account of the conceptual problems mentioned above as well as the lessons learned from previous approaches. The guiding principles are as follows: the measures developed must be linked with earlier approaches to preserve continuity; measures of the rights underpinning social dialogue are clearly necessary but they are not sufficient, as we need good measures of the actual practice of social dialogue as well; since social dialogue is a complicated process, there is also a need for subjective interpretations of the elements involved by experts who have an intimate knowledge of national systems: the measures developed must take account of the large portions of the world’s population who do not have representation rights, as well as those who are not in traditional employment relationships; the measures must be dynamic, comprehensive, valid and transparent; and finally, the costs involved in collecting data for the measures and the actual assessment exercise must be lower than those required for alternative forms such as national surveys.

The methodology advocated here involves the creation of “National Social Dialogue Data Sheets” that incorporate information on 28 quantitative and qualitative indicators/measures of social dialogue. Section 4 of the paper defines each indicator and provides a detailed justification for including it in the overall assessment instrument. The National Social Dialogue Data Sheets should be prepared by national or regional experts, who should also carry out the basic research required to collect, analyse and present this information. Each National Social Dialogue Data Sheet

will thus reflect the state of social dialogue in the country concerned and also indicate ways in which it could be improved. In that sense, these are dynamic, rather than static indicators. To increase uniformity in the data sheets, detailed guidelines are developed for national experts in respect of each indicator. These guidelines mitigate problems with the subjective interpretation of labour and industrial relations institutions and the way they operate (an essential aspect of social dialogue in practice), since they provide a stable comparative basis on which national experts can make their evaluations.

The approach taken in developing this framework of 28 indicators deals with the conceptual issues noted above as well as the problems with prior approaches. It is comprehensive, since it covers the rights underpinning social dialogue as well as the actual practice; it is reliable since it draws upon experts who know social dialogue practices well in each country or region; it is cost efficient, since it is cheaper than carrying out national surveys in every country; it is relatively simple to understand; it is real, given that the measures are based on the variation in rights and practices in the world rather than on abstract and unmeasurable concepts; and it is dynamic in that it shows how each country could improve on different dimensions of social dialogue. A unique aspect of this approach is that each national data sheet is made up of both quantitative and qualitative information that provides a broad picture of the operation of social dialogue in that country, but which does not permit crass (and needless) "comparative rankings of countries". Rather, the overall focus is on helping countries improve on social dialogue. The primary limitation of the approach is that some of the indicators for the unorganized and informal sectors are not very clearly specified, given the lack of research on the new alternative approaches to social dialogue that have emerged during the last decade. The paper concludes with a discussion on the tradeoffs between validity and reliability in the measures proposed.

## Introduction

This paper aims to develop usable indicators of the concept of social dialogue, as part of the ILO's effort to develop operational measures of *Decent Work*. Section 1 examines the concept of social dialogue. Section 2 looks at past approaches to measuring social dialogue. Section 3 discusses what we have learned from past approaches and the implications for developing indicators and collecting data. Section 4 describes and justifies the proposed indicators. Section 5 concludes the paper with a discussion of the implications of this methodology for practice, and an examination of the costs.

## 1. The concept of social dialogue and decent work

For the past six decades, the concept of social dialogue has been central to the ILO's core mission and organization. Social dialogue is defined by the ILO to include:

all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organizations), with or without indirect government involvement. Concertation can be informal or institutionalized, and often it is a combination of the two. It can take place at the national, regional or at enterprise level. It can be inter-professional, sectoral or a combination of all of these. The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work.<sup>1</sup>

While social dialogue as defined above encompasses both tripartite and bipartite relationships, in practice it is more closely linked to tripartism for a variety of institutional reasons. The conceptual glue linking social dialogue and tripartism is the notion of participation, which is fundamental to the tripartite structure of the ILO itself.

Tripartism has assumed a centrality in the ILO that bipartism does not enjoy. However, the key problem with both concepts is that they define and often limit the ILO's sphere of influence. For instance, it can (and has) been argued that the traditional agents (employers' federations and trade unions) represent only a very small part of their constituencies. In particular, trade unions do not represent a significant percentage of the world's workforce. Although there is great variation in trade union densities (measured by union members as a percentage of the non-agricultural workforce) across the world, it is only in very few cases that unions represent a majority of the workforce (see table below).

The data in the table are obviously not perfect, and do not include density figures from all countries. But the table is suggestive of the limitations of the concept of social dialogue and tripartism articulated by the ILO. First, a sizeable majority of the world's population does not have access to avenues for social dialogue. Second, and even more important, many non-European countries have not developed tripartite structures, given that bargaining is

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<sup>1</sup> ILO, 1994; 1996; 1999.

**Average union density and bargaining coverage**

Region	No. of countries for which union density data is available, as of 1995	Average union density	Average collective bargaining coverage % for countries for which this data is available (number of countries)	% of world population in each region (2000)
Americas	23	14.50	30.90 (12)	13.7
Asia and Oceania	16	15.58	18.53 (10)	61.3
Europe	33	42.64	72.89 (13)	12
Africa	25	14	30 (8)	12.9

Source: World Labour Report, ILO, 1997/8.

decentralized in many nations. Third, even if we only look at the result of bipartite negotiation, collective bargaining coverage rates are low. Fourth, we must remember that most countries do not allow every member of the non-agricultural workforce to be represented by unions...there are significant exclusions such as workers in small enterprises, workers in supervisory positions, workers earning above a threshold level of income, workers in essential industries, and workers in export processing zones. Finally, various data show that union membership all over the world has declined steadily during the last two decades (in some cases from a high base, in others from an already low base). Although the reasons for lack of union penetration or collective bargaining coverage are many, the basic conclusion from the table above is that only a minority of the world's population enjoys the right to social dialogue via tripartism or bipartism.

Clearly, therefore, the traditional governance structures and the policies deriving from these structures were based on the assumption that urban industrial society (the organized sector) is an enduring model for job creation and worker protection. However, today's reality shows a growing "unorganized" sector in most developing nations. The ILO has not been blind to this reality, and through the ILO Declaration of 1998 and the subsequent articulation of its decent work concept, the office is attempting to broaden its focus beyond the organized sector. The decent work approach is aimed at all workers, even those outside the organized sector. The main element is to establish a universal "social floor" based on four principles or core rights; freedom of association and effective recognition of the right to bargain, elimination of forced labour, abolition of the worst forms of child labour and elimination of discrimination. The concept of decent work requires institutions and rules in all nations to promote these rights. In the case of social dialogue, however, the ILO has not yet articulated new "pathways to the periphery", as its concept of social dialogue remains

rooted in traditional bipartite or tripartite terms, and its structure, programmes and projects continue to reflect that traditional orientation.

The key problems are the low and declining levels of union density and the increasing proportion of the world's workers who do not have the right to participate (the concept underlying social dialogue). Since there is no sign at all of unions increasing their membership in most countries, worker participation must occur through alternative institutions or means. This is the "grey" area that the ILO has to consider in developing indicators of social dialogue.

The above background raises several fundamental questions. Must the concept of social dialogue be restricted to "representatives of governments, employers, and workers on issues of common interest relating to economic and social policy"? We have already pointed out that many workers do not or are not allowed to have representatives. Another question...do bipartite negotiations, which form the basis for collective bargaining in many countries, count as social dialogue since they do not involve the government or the general public? Yet another question....do bipartite negotiations ultimately lead to tripartite negotiations? The common element in these questions is that they hinge on the existence of *representatives* of employers and unions. This forces us to focus on social dialogue ONLY in arenas where such representation occurs. Second, focusing on representatives of *employers* and *unions* suggests that the *employment relationship* is at the core of social dialogue. The discussion that follows will explain in detail how these two concepts limit social dialogue.

As long as the ILO defines social dialogue as "involving all types of negotiations, consultations, or exchange of information between or among *representatives* of employers and workers on issues of common interest relating to economic and social policy" (Jose, 2002, p. 2), then democratically elected trade unions are the best vehicle for providing workers with "voice" or participation. However, in the absence of the principal-agent relationship we need to cover alternative approaches.

In many countries, individual workers have the right to raise industrial disputes. Arguably this provides individual workers with some degree of "voice" without "representation". However, this "voice" at the workplace does not necessarily provide workers with any voice over public policy that is of interest to them. Recently, a number of other alternatives have arisen, which do not require "representation by unions" but still provide employees with some degree of voice at work, and perhaps even in making policy relevant to them. These include NGOs purporting to provide workers with some voice in decision making, through a variety of means, or corporate codes of conduct that lay down basic standards or guidelines for worker consultation, or regional-level guidelines and codes, voluntary industry codes and in a few cases, agreements on working conditions for factories



where there is no union representation. Some examples include the Global Reporting Initiative (GRI), the UN Global Compact and certification systems. There have also been efforts that look beyond labour-standards compliance to worker development. Consider the following examples. There is an NGO called Global Alliance, a tri-sectoral alliance (World Bank, Nike, Gap, and Universities) which provides training to workers and supervisors in garment and sportswear factories. The partners offer worker education in a number of areas such as health, safety, nutrition, financial planning, communication skills, presentation skills, while simultaneously providing supervisory training to employers' representatives in the factories. As a result, some real "empowerment" is taking place, and many factories have established health and safety committees or worker committees to discuss workers' problems. This is an example of introducing "participation" where no "voice" existed before. Similarly, the ILO has a Factory Improvement Programme that consists of training factory managers in the apparel industry to follow good work practices. This approach is based on the idea that managers can be persuaded to establish good and participatory work practices if it is demonstrably in their interest to do so. The results of these training programmes are encouraging.

Such alternatives are open to a number of criticisms. The most important one is that workers often do not participate in drawing up the codes of conduct that apply to them. Second, the evidence that they really provide voice is not very compelling. It is still too early to draw the conclusion that workers in these factories have adequate voice. However, they certainly have more say than they did in the past.

Another relevant issue is whether providing voice at the workplace leads to some degree of voice at the policy level. Put differently, do collective bargaining rights necessarily lead to tripartite rights and practice? We do not have clear answers to this question. Many countries have little or no tripartite consultation over social policy issues, but considerable collective bargaining. On the other hand, for example, the international agreement on working conditions in the toy manufacturing industry fundamentally concerns workplace issues, i.e. health and safety in toy factories, but it has had wider effects on safety and health policy in some developing countries. The alternatives briefly mentioned above tend to increase workers' voice at the workplace, and in some cases in a wider context, without traditional notions of representation.

Yet these avenues do not solve the problem of social dialogue for those who are not in an *employment relationship*. Arguably, there is no "employment relationship" in many parts of the informal sector, the largest sector in the world economy. Many in the informal sector are actually self-employed, and often engaged in contractual relationships with other people or institutions. Without representation, and without an employment relationship,

how can we provide social dialogue to the informal sector? This is the critical problem that definitions of voice do NOT address.

Thus, when we consider how to improve social dialogue in the world (note that this is a more critical need in developing nations) there are three problems. First is the question whether many developing nations today have the institutional framework that gave rise to unions, collective bargaining and tripartite negotiations. Second is whether there is enough trade union representation for workers, given the low levels of union density in most third world nations. Third, the size of the informal sector shows that there is very little of the "employment relationship" which is so necessary to the ILO's definition of social dialogue. These problems may not be easily surmountable.

What is the implication of the above discussion for developing measures of social dialogue? The paper takes a three-pronged approach. First, measures of social dialogue are developed in ways that are consistent with the ILO definition, i.e., assuming an employment relationship and requiring representation by unions and employer federations, incorporating both bipartite collective bargaining and tripartite negotiations. Although this does not address the various limitations noted above, especially in relation to third world nations, it still is a relevant approach, given (a) the current nature, composition, and focus of the ILO; (b) the relatively large percentage of countries where representation and the employment relationship exist; and (c) as long as our model of economic development is geared towards increased formal sector industrial employment (which is the case today). Thus, assuming that development will take place, the traditional approach involving unions, employers' associations, and governments remains valid. Therefore, the bulk of the measures developed in this paper are based on the conventional approach.

Second, the paper includes measures of worker voice where there is no representation by unions. These include the plethora of alternative approaches that are emerging such as corporate, bilateral, and multilateral codes of conduct, certification programmes, NGO activities, worker development and training programmes, and pressure from consumers. Given that these efforts are expanding, while trade unions are shrinking, it is important that the concept of social dialogue should take account of these alternative voice mechanisms. They are not perfect measures to be sure. For example, a key pillar of the ILO, the international trade union movement, is divided over how best to deal with these alternative approaches and is sometimes opposed to them on the grounds that they are poor substitutes for unions. They are right, in that they are poor substitutes for the degree of participation provided by trade unions, but in the absence of trade unions, they are a significant development: any measure of social dialogue then, must take into account these developments, however imperfect.

Third, the paper attempts to deal with the issue of social dialogue where there is no representation and no employment relationship, which characterizes a significant part of the third world today. As several authors have pointed out (e.g. Jose, 2002), the basic requirement here is a highly decentralized participative democratic regime. Unless there is grassroots democracy, there can never be social dialogue, especially where informal sectors are large and without the institutional conditions that favour the development of workplace, or tripartite institutions. As is patently obvious, there has to be a long-term revision of the ILO's definitions and objectives to be consistent with this approach. In sum, despite the various problems noted, the bulk of the measures developed in this paper are consistent with the ILO's current definitions of social dialogue.

## 2. Prior approaches to measuring social dialogue

This review of previous efforts to measure social dialogue provides more detail on each of the measures used in the table which appears in Annex I.

The review highlights the major types of measure and examines the implications of each category for the future development of indicators. It also illustrates the point that no measure is perfect – they all have significant advantages and disadvantages. Those interested in a more complete discussion should refer to Lance Compa's paper (2002). The present review concerns social dialogue at national level. For measures at the individual firm level, the reader might consult the reports of companies under the Global Reporting Initiative of the United Nations.

In general, the various measures listed in the table can be broken down into five major categories: (a) common and universal measures; (b) particular measures of institutions, processes, and outcomes; (c) measures focusing on rights and violations thereof; (d) measures focusing on implementation; and (e) descriptive reports from various institutions.

### *Common and universal measures*

These measures have been commonly used by the ILO and independent writers for decades, they are generally easy to collect, they are quantitative or can be used in quantitative comparisons, and they are available for most member countries of the ILO.

The first and most commonly used measure is union density, i.e., the number of union members expressed either as a percentage of the

non-agricultural workforce or as a percentage of wage and salary workers. Union density has sometimes been used as a measure of union strength. This measure has been seen as an important indicator of the potential for social dialogue, the argument being that higher union density is associated with more social dialogue at tripartite or bipartite level. Union density data exist for most countries, and experience in the European countries has invariably shown a positive correlation between union density and almost any other measure of tripartism or bipartite industrial relations. Nonetheless, the measure has also had its problems. First, not all countries outside Europe evidence the positive correlation noted above. Second, union density as a proxy for union strength and as a basis for dialogue is questionable in countries where unions are not independent and are subject to authoritarian control. Third, there have been several problems with the quality of data, both in terms of the data collection methodology and in the calculation of density. For a detailed review of the problems with using union density as a proxy for social dialogue and/or union strength and influence see Kuruvilla et al. (2002), and Compa (2002). An important question is whether union density as a percentage of the agricultural workforce (a measure commonly used in North America) is appropriate, since agricultural workers in many countries do have unionization rights, and are, in fact, unionized. In this context, the percentage of union members amongst wage and salary earners (the measure used by the OECD) might be more appropriate.

A second indicator – collective bargaining coverage – has also gained popularity over time. Collective bargaining coverage was seen as a measure of bipartite industrial relations in countries where bargaining was invariably conducted at the industrial or workplace levels; and it was considered to be a measure of tripartite industrial relations in countries where bargaining was conducted at national level. Collective bargaining coverage was a tangible measure of the real degree of social dialogue (or participation) since it provided a quantifiable indicator of the number of workers who are actually covered by collective bargaining agreements i.e., in some sense a real measure of the effectiveness of collective bargaining. This measure is not as widely available as union density, and in some countries, the information is very difficult to collect. For example, many countries require that all collective bargaining agreements be registered yet there is no effort to consolidate the total number of agreements – thus, the data are available, but not collected and collated in usable form. In addition, there is a danger in assuming that collective bargaining coverage adequately represents the right to bargain, since in many countries collective bargaining agreements at the apex level are extended to cover workers in the entire industry, whether unionized or not. Kuruvilla et al. (2002) have combined indicators of collective bargaining coverage with levels of bargaining to

arrive at a measure of union influence and effectiveness of representation, but this approach has not yet taken root.

A third indicator that has been commonly used is whether countries have ratified the ILO Conventions relating to freedom of association and collective bargaining. The assumption here is that ratification denotes a country's basic commitment to social dialogue and can serve as a basis for the ILO to persuade members to increase social dialogue or at least to avoid repressing social dialogue possibilities. These data are easily collected and are already in the ILO databases e.g. the reports of the Committee on Freedom of Association. Several studies have used these data to examine growth (Rama, 1995), export performance (Mah, 1997) and trade performance (Rodrik, 1996). Chau and Kanbur (2001) even find that standards are higher in countries which ratify Conventions than in countries that do not. The disadvantage of the measure is that not all countries have ratified the relevant Conventions (the United States for example), and even amongst those which have, there are many violations. Despite the problems, this indicator has tactical value, because such data make it possible for the ILO to use its powers of persuasion to convince countries to implement the Conventions in practice. For a detailed treatment of this measure, see Hepple (2003).

A fourth measure, less commonly used than the others but still relatively easy to collect, concerns the existence of national tripartite structures or institutions. The data are easy to collect using national legislation, but the existence of tripartite structures and institutions does not always guarantee that tripartite social dialogue actually takes place, nor does it tell us much about the quality of that dialogue.

### ***Particular measures of institutions, processes and outcomes***

These measures are highly variable. They reflect the approach of individual researchers, data are often not readily available, and the measures are usually based on interpretation and judgement by academic researchers.

The nature, processes, institutions, and outcomes of tripartism are the focus of this set of measures: for a detailed review see Kenworthy and Kittel (2002). One group of measures reflects the degree to which unions (or employer associations) are concentrated or centralized, which is arguably a precondition for successful tripartism. A second group reflects the process of tripartism, for example, the levels at which bargaining takes place, the degree of corporatism in national decision making, the degree of policy concertation, or the level of involvement by different actors in the wage setting process (see Annex I for examples of these measures). A third group of measures reflects employer or union activity, such as the

degree of wage coordination, and the locus of authority in bargaining. In general, these three groups of measures focus on different aspects of the interaction between the tripartite, and in some cases, bipartite actors. A fourth group focuses on the outcomes of tripartite processes. The most common outcomes that have been studied are strikes and lockouts (this measure gives rise to several interpretation issues), wages (e.g. wage drift as a measure of tripartite bargaining or wage centralization), or the relationship between wage centralization (an outcome measure) and macroeconomic performance. Many variants of these measures can be found in the literature on corporatism which has been very popular in the realm of political science.

Despite the variation in focus, these measures share some characteristics. First, they have the advantage of being integrated in the national institutional framework – thus, they are largely “accurate” even if they are not quantitative in nature. A related point is that several of these measures require interpretation and judgement by researchers with deep institutional knowledge of the country’s industrial relations systems. Much of the industrial relations literature is case-study oriented, either national- or industry- or workplace-level case studies. These qualitative measures certainly tell us more about how tripartism actually works than the traditional quantitative measures, although data on wages tell us a lot too. On the other hand, a significant disadvantage is that these measures tend to relate primarily to the Western European countries, largely due to the prevalence tripartism has enjoyed in many countries in this region. For example the link between wage centralization (a tripartism measure) and macroeconomic performance can be demonstrated only in countries where there is serious and active tripartism. Although these measures have been used in comparative research, much of that research focuses on Europe. The measures do not transfer well to countries without strong tripartite arrangements or to those with decentralized bargaining regimes. However, this group of measures indicates that national experts must play a key role in depicting the practice of social dialogue.

### ***Measures focusing on rights***

A third set of measures focuses on the rights underpinning social dialogue. These measures go beyond ratification of ILO Conventions, as they indicate whether the rights to freedom of association and collective bargaining actually exist in member States. While the ILO has focused on this issue for decades, working quietly with each member State, these measures are slowly becoming more popular with recent debates about trade and labour standards and various monitoring efforts. At least one

organization, Verité,<sup>2</sup> assigns points on a number of measures pertaining to the rights (laws) underpinning social dialogue. For example, do workers have the right to freely elect their own representatives? Are union activists adequately protected from discrimination? Are unions free from government control? Is there legal protection for the right to strike? As Compa (2002) notes “Threshold evaluations can examine laws with relative ease to determine whether the right legal framework is in place to afford freedom of association to workers. However, most countries’ laws are not clear cut”. He cites the example of the United States, where law forbids discrimination against workers for union activities, but goes on to exclude large swathes of the labour force from this protection. Thus, beyond a superficial level of analysis, the use of laws as indicators of social dialogue requires very careful analysis and expert knowledge of national labour law.

Another method of approaching the rights question lies in the examination of violations. The OECD follows such an approach, coding and assigning numerical values to countries regarding compliance with freedom of association. This is based on qualitative and descriptive data drawn from a multiplicity of sources, including the ICFTU annual survey, US State Department Section 6 reports and ILO committee reports (Committee of Experts on the Application of Conventions and Recommendations-CEARC) and Committee on Freedom of Association-COFA. These are discussed in greater detail in the fifth category below. The problem with this approach is that the numerical scores are only as good as the input data. These suffer from several problems, especially the fact that they are not comprehensive reviews of freedom of association in any given country. The OECD classifies countries into four categories, on a four-point “favourable to critical” scale.

Similarly, another approach has been taken by Kucera (2001), who codes and assigns numerical values to instances and seriousness of violations of freedom of association using seven different data sources (unionization rates, Freedom House indices, findings of violations in EPZs, and weighted and unweighted indices based on textual analysis of ICFTU’s

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<sup>2</sup> Established in 1995, Verité is an independent, non-profit social auditing and research organization (an NGO). Verité’s mission is to ensure that people worldwide work under safe, fair and legal working conditions. Verité accomplishes its mission through monitoring independent factories, linking with local humanitarian and advocacy organizations to interview workers and report on workplace conditions. Where Verité auditors identify exploitation of workers or health and safety violations in the workplace, Verité develops concrete steps to correct them through a combination of training for management and workers, education programmes and remediation programmes. Since 1995, they have completed over 700 factory evaluations in 61 countries. Their management team is comprised of individuals based in five countries with backgrounds in organizations such as Oxfam, Save the Children and Amnesty International. Recently, Verité completed its report to CALPERS (California Public Employees Retirement System). The report ranked countries on 44 separate indicators connected with labour conditions. The website is [www.verite.org](http://www.verite.org)

annual surveys, US state department Section 6 reports and CEARC and COFA reports. This research develops 37 detailed criteria on freedom of association, yet the data gaps for any country are considerable as Compa (2002) points out.

The focus on rights is clearly important because they are the foundation on which the concept of social dialogue stands. There are some major implications of using this set of measures however. First, the collection of such information requires a good knowledge of national labour law systems; there are differences across nations in terms of labour law, but also considerable variation within nations on how the law is established and administered, which means that a knowledge of the administrative rules surrounding these rights is critical. Second, judgement is required, especially in the interpretation of legal positions and opinions. Third, interpretation and judgement are important in examining violations and using violations as a basis to score countries. For example, not all violations of the law are reported or documented, the nature of the violations differs within and across systems, and violations may only take place within one or two sectors within a country, (thus it would be wrong to “tar” the entire country with a low score on rights because of these limited violations). Alternatively, it may be that a high incidence of complaints pertaining to violations indicates the vibrancy and robustness of the rights regime in that country. Hence, judgement is important in deciding whether the number of complaints is healthy or unhealthy. Fourth, the availability of data regarding labour law systems is not uniform – we know a lot about some countries’ systems but less about others. Finally, many of the qualitative databases that underlie quantitative measures and scores are complaint-driven, so they do not constitute a comprehensive survey in each country.

### ***Measures focusing on implementation***

Our fourth category of measures reflects the way in which labour laws are actually implemented in different countries. This is similar to examining how social dialogue works, but the focus is on whether the rights are respected. Two groups of measures are involved. The first includes assessments by researchers or other experts on how things work – for example are there non-formal restrictions on the right to organize? Or is collective bargaining allowed without government interference? Do works councils or factory committees actually work? Some types of industrial relations outcomes may be useful here, such as the number of collective bargaining agreements, or strikes. The second group of measures relates to the institutional capacity of governments to enforce laws, and generally takes the



form of recording the number of inspections, or the number of fines for violations of laws, or the adequacy of government inspection staff.

The disciplines of industrial relations and industrial sociology have a long tradition of examining practical implementation issues and outcomes, and there is a considerable body of published research. On the negative side, this research is diverse, since it focuses on different levels of IR institutions within countries; there is little uniformity in approach (except in regard to some outcomes); and there is variation in the countries which have been studied. Very little is known about labour institutions in at least a third of the ILO member States, partly because there is no academic tradition of studying these subjects.

Here too, national expertise and informed judgement is critical to assessing the way in which IR systems work in practice, and to evaluating the degree to which governments are capable of implementing labour law. There is also the question of dealing with different expert interpretations of cases and events, and of identifying national experts. A major criticism of Verité's approach has been a lack of expertise in national industrial relations systems.

### ***Descriptive reports***

These fall into two categories, comprehensive and occasional. Compa (2002) has examined these in great detail. The best examples of comprehensive reports are those published by the US State Department (Section 6 reports) that examine all labour rights, not just freedom of association; ICFTU's annual survey of violations of labour rights; and the ILO's CEARC and COFA reports. The State Department approach is to provide a yearly account of human rights in each country, based on a variety of sources, including document analysis, interviews with local experts and site visits by the labour attaché. Many of the questions require interpretation and judgement, and the responses are not easily quantifiable. ICFTU's report provides an overview of labour law and practice and then describes specific violations during the year reported; their primary sources of information are national labour movements. The third important group are the ILO's CEARC and COFA reports. These describe the situation in countries under scrutiny with respect to ILO Conventions Nos. 87 and 98. The COFA reports are complaint driven.

The advantage of these studies is that they are prepared at regular intervals (except COFA). The disadvantage is that in some cases they do not make an in-depth analysis of social dialogue, and where they are complaint driven, they are not necessarily comprehensive. This tends to skew country assessments towards those whose trade unions avail themselves of

the COFA complaint procedure. But they do provide a “rich mosaic” of information (Compa, 2002) and should be part of any assessment of the right to social dialogue.

The second category, occasional descriptive reports, covers a large variety of documents that are not annual or comprehensive. These include government agency reports (USILAB, USTR Trade Policy Committee, OPIC, NAALC, Congressional Research Service), International Agency Reports (e.g. UNHCR, GRI, and World Bank occasional reports) union reports (e.g. AFL-CIO) and private agencies and NGOs (AFL-CIO, Freedom House, Human Rights Watch, Lawyers Committee on Human rights, International Labor Rights Fund, Amnesty International, Solidar, Asia Monitor Resource Center, Code of Conduct Reports, FLA).

The comprehensive and annual reports are more useful than the occasional reports since they provide consistent information regularly. They can be integrated in the present effort to develop indicators, and they are a useful source for national experts as well. The occasional reports also serve as a basis for further detailed and regular information-gathering efforts.

## ***Summary***

A wide variety of measures and indicators have been used to assess and demonstrate the social dialogue concept. There are quantitative and qualitative measures and a host of descriptive reports. In general, the measures exhibit tensions between quantitative approaches and subjective interpretations, breadth and depth of coverage of issues, complaint driven and comprehensive approaches, and static and dynamic indicators. The measures are also “skewed” geographically, towards countries where unions are strong and free, and have tripartite systems, or where the study of industrial relations is well developed. Descriptive reporting seems to dominate over comparative scoring schemes. All these measures have significant disadvantages, and many “quantitative indicators” such as union density, collective bargaining coverage and strikes are open to different interpretations. The next section examines the implications of these past approaches for the further development of indicators, and for data collection and use.

### 3. Implications for indicator development, data collection and use

The first principle is that any new effort must be connected with the old, to preserve some degree of continuity. Thus, despite their disadvantages, measures that have been used frequently in the past, such as union density, will continue to play a part, although the data may be used in new ways. This principle also means that greater weight will be accorded to traditional bipartite and tripartite institutions in the development of measures.

A second principle is that it is essential to measure the rights underpinning social dialogue. Because these rights are varied and numerous, we must select some over others. But this also implies that national or regional experts who are very familiar with the labour law systems must be involved in assessing these rights.

Third, it is clear that a focus on rights alone is necessary but not sufficient. We must measure how rights are implemented and how they are exercised in practice. Here too, local knowledge of the institutions and how they work in each country is essential to drawing conclusions.

Fourth, it is clear that subjective interpretation by national experts is key to assessing social dialogue. As the data in Annex I suggest, the work of experts has resulted in more in-depth reporting which is more useful in assessing how social dialogue works than the quantitative indicators of union density, bargaining coverage, or wage drift. Since industrial relations institutions, rules, and outcomes are socially embedded in their unique institutional contexts, progress on social dialogue must be evaluated by experts with a deep institutional knowledge of those countries. This principle, however, has one major implication. It is likely that arguments and differences of opinion will arise because of the subjective interpretations of national experts. There are two ways in which this can be minimized. First, it is advisable that all national experts follow a basic framework of assessment that is flexible and sensitive to cross-national institutional differences. The present paper will develop this framework and issue detailed guidelines for national experts. Second, it is important that assessments of social dialogue in each country be made public and available on the internet, so that dissenting voices and views can also be aired. In the long term, *transparency* is key to measuring progress on social dialogue.

Fifth, it is clear that there must be a dynamic focus when developing social dialogue indicators. We must move beyond static indicators to provide a sense of where social dialogue is headed – at the minimum our measures must indicate trends or the direction of progress.

Sixth, and consistent with the new interpretation of social dialogue as a mechanism to increase workers' voice, it is necessary to develop

indicators of social dialogue in a non-union setting or in places where unions do not exist.

A seventh principle pertains to the quality of information and the cost of data gathering. We know that easily available data (such as union density) tell us very little about social dialogue in practice. We also know that detailed descriptive studies tell us the most. Many information-rich approaches use multiple methods, including case studies, complaints, interviews, analysis of documents and so on. It seems likely that a qualitative research approach may yield the most useful information. Surveys are less useful because they are not always sensitive to how institutions work and the extent to which rules are followed. It is also likely that a qualitative approach using national experts will cost less than country surveys.

Finally, the choice of indicators depends heavily on how the data are likely to be used. One type of usage (indeed, the majority of previous work) is to determine whether there is, in fact, violation of the freedom of association in member countries and the extent of violation. The CEARC and COFA reports of the ILO are good examples here. A second type of usage is embodied in the OECD approach, which is explicitly comparative and seeks to group countries according to the severity of violation. Similarly, organizations like Verité have focused on the development of comparative scoring and ranking systems, which are then used to drive investment decisions. A third type of usage has been to link measures of social dialogue to broader constructs such as economic development and trade performance, and some of these studies have been comparative in nature.

The key purpose of developing indicators of social dialogue is to help nations make progress on social dialogue and decent work. This is the ILO's interest as well. Thus the indicators should be used for longitudinal comparisons *within* nations, rather than cross-sectional comparisons *between* nations. The present paper therefore develops the concept of "national social dialogue data sheets" which make it possible to assess the nature of social dialogue at a glance, and to assess progress over time. The approach includes both scorable and non-scorable criteria to present a comprehensive picture of social dialogue, and therefore yields enough information to make comparisons on some issues. However, the primary focus is on measuring national progress.

## 4. Indicators for the national social dialogue data sheet

This section presents the indicators, provides a rationale for each one, and develops guidelines for reporting and assessment. The indicators are listed in Annex II.

### A. Basic control information

The indicators in this group provide some basic information that is relevant for the operation of social dialogue. Such indicators have been widely used in the past; they link up with earlier approaches and facilitate longitudinal comparisons.

#### A1. Union density and changes in density

**Rationale.** This is a widely used measure that is available for most countries. It is not an indicator of social dialogue, although it has been used as such in past work. It is included as basic control data, although we do not make any interpretations from this measure.

**Guidelines for national experts.** It is necessary to report three aspects of union density data. First is the denominator used (some countries calculate density as part of the wage and salaried workforce (e.g. OECD countries), while others calculate it as a percentage of the non-agricultural workforce (United States). Second, it is also necessary to report the data source. Many countries use unions as the primary source for union membership data, while others use national surveys. Third, it is important to indicate the trend in union density – perhaps over the last five years, or at least to report the percentage change, so as to provide a dynamic picture.

#### A2. Whether countries have ratified ILO Conventions Nos. 87 and 98, and the number of violations of these Conventions during the last five years.

**Rationale.** Monitoring and reporting this information might induce more countries to ratify the Conventions. Although this does not guarantee social dialogue, ratifying countries can be persuaded to uphold these rights. It is also important to report trend data, since we are interested in progress.

**Guidelines for national experts.** It is necessary to use multiple sources of information here. National statistics are the obvious first stop, though not all countries keep figures on violations of these two Conven-

tions. The second stop must include CEARC data and COFA data from the ILO, which can be made available to national experts. Third, other sources of data can be consulted. The key issue here is for the national experts to report the data, but also to give an opinion on whether they think this is a partial or comprehensive picture of violations. A comprehensive picture is collected from a source where most if not all violations are reported.

*Example:* For the United States, the data sheet might look like this.

- Ratified ILO Conventions Nos. 87 and 98: No
- Violations of ILO Conventions 2000: 14 2001: 12 2002: 10 (These figures are not real.)
- Violations information based on data that is: Comprehensive

### A3. Labour force statistics

**Rationale.** To provide basic information about the labour force in absolute numbers and as a percentage of the population, as well as the size of the labour force in different sectors. The sector-wise distribution is important because some sectors tend to evidence more social dialogue than others (e.g. manufacturing over services).

**Guidelines for national experts.** Sector-wise employment data are easily available from national or international statistics for most countries. It is necessary to report employment in each sector rather than the contribution of each sector to GDP. However, it is also necessary to provide some measure of unionization or collective bargaining by sector, if possible.

### A4. Who does the legislation on freedom of association and collective bargaining apply to? Which categories of people are excluded from this legislation? What percentage of the non-agricultural population has rights with regard to freedom of association and collective bargaining?

**Rationale.** This is critical information. It is a dynamic measure, since it allows us to see whether countries progressively expand the proportion of workers who have access to social dialogue. For example, in the Republic of Korea teachers have recently been given the right to form unions and bargain collectively.

**Guidelines for national experts.** Calculations must be based on the laws in each country, and on labour force statistics. In many countries this information is not easily available, so researchers will have to make the calculations themselves. Experts must make clear the denominator that is being used.

*Example:* In the United States, roughly 27 per cent of the civilian labour force does not have the right to bargain collectively. A smaller percentage does not have the right to freedom of association (this is largely because a number of public sector employees have the right of freedom of association but are not allowed to bargain collectively).

## **B. Rights underlying social dialogue**

If the basis for freedom of association and collective bargaining is not strong, then social dialogue (either tripartite or bipartite) will not function well. A large number of indicators are relevant here.

### **B1. Freedom of association**

The right of workers to form representative organizations of their own choosing is a primary determinant of social dialogue. This section focuses on how employer and union organizations are formed, whether they are free to operate without government supervision or interference, whether members of these organizations are protected against discrimination, and whether these rights can be taken away either temporarily or at government whim.

#### **B1A. Union and employer association formation**

**Rationale.** There is great variety in the laws and processes of union formation around the world. In some countries the process is simple and easy; in others it is long drawn out and difficult. This often has significant implications for the unions' ability to bargain collectively, as in the United States. In that country, 30 per cent of workers must indicate their preference for a union, in which case the NLRB conducts elections. Until the elections are over, both sides (union and employer advocates) try to persuade the workers to join or not to join. In addition, allegations of unfair labour practices must be investigated. It is possible for the employer to legally delay the process of union formation through tactical actions. In some countries, unions can only be formed if the government permits and the government has the absolute right to grant union registration or withhold it, as is the case in Malaysia.

There is generally less variation in the formation of employers' associations and the process is quite simple. Moreover, often there is no legislation limiting the formation of employer associations. Hence, we focus only on the formation of unions.

**Guidelines for national experts.** A categorization scheme is provided below to guide the judgement of national experts.

Category	Description
Category A: Simple process	Where the process of union formation is simple and direct; where there is no supervision by government bodies and no need to conduct elections; where there is no scope for employer opposition.
Category B: Lengthy process that is open to influence (de jure) by employers	Where the laws prescribe a lengthy and time-consuming process; where employers can influence the outcome of elections through campaigns or can influence the speed at which a union can form through tactical but legal actions.
Category C: Difficult process where employers (de facto) have great influence over union formation	Where employers can influence the outcome of a union election through legal and illegal actions; where these type of action are widely used (substantiated with figures); where the punishment for violations of the law is not a sufficient deterrent.
Category D: Process where prior government permission is required de jure	Where unions must seek government permission to form: where governments have a history of denying permission (figures needed here).

*Example:* The United States would fall into category C on this scale (since the union formation process is quite complex and can be challenged on various occasions by the employer) while Malaysia (where the Registrar of Trade Unions has near absolute power to accord or withhold registration) will fall into category D.

### *B1B. Independence of unions and employer associations*

**Rationale.** Social dialogue depends heavily on unions and employer associations being independent of government control. There is variation here as well. In most countries unions at the local or national level are independent but in some countries they are heavily controlled by government, which limits their ability to voice the concerns of workers effectively. Assessing the degree of government control is not easy. Verité, for example, has created a four point scale in which a score of 3 means that multiple unions can organize without government interference, 2 indicates some interference, 1 means that unions are closely affiliated with the government and 0 means that they are not independent. The literature on corporatism is particularly relevant here since different models of corporatism tend to evidence different levels of government control over unions, as noted by Kenworthy and Kittel (2002). The literature on corporatism is used as a basis for developing categories here; a three point scale is recommended.

**Guidelines for national experts.** A categorization scheme is provided below.



Category A: Independent	Where it is clear from historical studies, case studies, and the national expert's own research, that unions are independent of government control, where the government or ruling party is not a significant source of union finances, and where the government or ruling party does not control the union's strategic goal articulation.
Category B: Unclear	Where previous studies, case studies, or the national expert's research shows that there is notional independence but that there is still some degree of government influence over national or local union decisions (examples should be provided). Or when one federation is controlled by the government while other federations are free of government control.
Category C: Not independent	Where it is clear that the unions in general are controlled by government, or that only one federation friendly to the government is permitted to exist.

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*Example:* The United States would be classified in category A; Singapore would be in category B (there is much controversial research that links the People's Action Party and the Singapore National Trade Union Congress, making this arguable); the Republic of Korea before 1997 would be a good example of category C.

### *B1C. Protection from discrimination against union members or activists*

**Rationale.** The key issue here is whether nations provide protection from employer or government retaliation against workers who join unions or who are union activists. Without such protection, social dialogue cannot move forward. Here too there is variation, although the extremes are easy to measure. There are many Western European nations with no explicit legal protection but with no violations because of the country's institutional history and structure. The long list of unfair labour practices outlined in US legislation might merit placement in category A: but the general ineffectiveness of the law as a deterrent to such behaviour and the continuing evidence of violations would give at best, a place in category B. Malaysia gives some protection against discrimination but a variety of other actions are de facto permissible under the law (e.g. the practice of closing a factory because of union activity and then reopening it with non-union employees – indirectly discriminating against union members) would merit, at best, a place in category C. Countries where no protection exists would be placed in category D.

**Guidelines for national experts.** The following categorization will help national experts to place countries.

Category A: Strong protection with full recourse or institutional conditions which do not permit such violations.	Where a broad set of anti-union activities are illegal; where the law provides procedural recourse that is generally considered effective (previous research/case studies) or where the number of violations has steadily declined in the past five years (NE to provide data), or where such violations are non-existent due to wider institutional forces in the country.
Category B: Partial protection with full recourse	Where a much narrower set of practices are illegal; where there is a system of resolution provided by law that is generally considered effective (research/case studies), and where the data show a declining trend.
Category C: Partial protection with partial and ineffective recourse	Where the law does not clearly prohibit anti-union practices; or where there is no effective system to resolve alleged violations, and where the data show persistent violations (report data).
Category D: No protection	

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## B2. Bipartite free collective bargaining

Union formation is necessary for social dialogue but it is not sufficient. For social dialogue to occur the parties, once formed, must be able to bargain freely. Category B2 indices concern the ability to bargain. Note that in countries which lack an environment congenial to the development of unions and collective bargaining, alternative representative structures might accomplish the same objectives. We deal with these later.

### *B2A. Union recognition and obligation to bargain*

**Rationale.** Once unions have formed, bargaining cannot necessarily start automatically. In some countries there is a distinction between union formation and recognition of the union as the bargaining agent, an intermediary step before the employer is obliged to bargain. In other countries recognition as the bargaining agent takes place at the formation stage. Second, even after formation and recognition, there is variation in the duties imposed on the employer. Some countries impose an obligation to bargain. Others impose the obligation, but the process is riddled with loopholes which can delay the start of bargaining. Several countries do not impose an obligation to bargain on the employer. Social dialogue on a bilateral basis cannot take place if there is no obligation to bargain or if bargaining can be delayed. For instance, in the United States, research shows that in roughly 25 per cent of the cases where unions win the representation election, there are delays in bargaining.

**Guidelines for national experts.** The following schema may be used by national experts in assessing their countries on this dimension.

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Category A: Clear rules on recognition and obligation to bargain	Where there are clear rules regarding union recognition, and where the law imposes a clear duty on the employer to bargain; where data show no violation of the obligation to bargain; where data show no delays in union recognition.
Category B: Problems in recognition or problems with the obligation to bargain	Where the rules regarding bargaining and recognition are clear but where practice shows delays in one or both.
Category C: No recognition or no obligation to bargain	Where there are no rules regarding recognition (in cases where recognition is required) with consequent delays in the start of bargaining, and/or where there is no obligation on the part of the employer to bargain.

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### *B2B. Scope and subject matter of bargaining*

**Rationale.** The obligation to bargain does not in itself guarantee that successful social dialogue will take place. Countries differ on what they will allow the parties to bargain about. At one end of the continuum are countries (e.g. Sweden) in which co-determination legislation mandates that any subject of interest to either union or management is subject to bargaining. In the middle of the continuum are countries that make a distinction with regard to bargaining subjects. The United States, for example, uses the “mandatory” versus “permissive” distinction. Mandatory subjects such as hours, wages, and working conditions are normal subjects of bargaining, while permissive subjects such as management rights or union security issues will be bargained only if both parties agree that they are negotiable. This approach also gives rise to continual debates on what is a mandatory subject and what is permissive. At the other end of the continuum are countries which prohibit bargaining on certain issues. Singapore and Malaysia do not permit bargaining on transfers, promotions, job assignments, retrenchment and lay-offs. Taiwan (China), does not permit bargaining on the introduction of new technology. Thus, the scope of bargaining directly affects the extent of social dialogue.

**Guidelines for national experts.** The following table is based on the variations identified in the literature.

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Category A: Broad scope	Where any item of interest to either party is bargainable.
Category B: Intermediate scope	Where the rules suggest that some subjects may be bargained only if both parties agree that they are negotiable.
Category C: Narrow or restricted scope	Where the subjects of bargaining are restricted by legislation.

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*B2C. Right to strike, restrictions on the right to strike,  
and weakening of the right*

**Rationale.** Free collective bargaining requires the right to lockout (for employers) or strike (by unions). Many countries have procedures that restrict the right to strike in national emergencies, but we will not consider that here. Similarly, strikes are often banned in essential services in most nations, and that is also excluded from the present discussion. We will simply note that some countries choose to take such a broad view of “essential” that it could be a significant threat to the right to strike.

At one end of the continuum are countries that freely permit the right to strike for non-essential service workers, or at least the private sector. The Western European countries are good examples. Then there are countries that permit workers to strike if they are directly involved in an industrial dispute, but which do not permit sympathy strikes. The United States and the United Kingdom are good examples here. Then there are countries that permit the right to strike, but significantly weaken the right in certain ways. The United States is a good example here since it allows employers to permanently replace striking workers where the dispute does not involve unfair labour practices – wage disputes fall into this group. Other countries permit the right to strike, but then de facto take away that right through a plethora of administrative rules and restrictions. In India and Singapore, for example, dispute resolution rules require 14 days notice of strike. If either party calls for mediation, then the strike must be withheld and the parties must enter the mediation process. If mediation is not successful, the government may refer the dispute to binding arbitration, or to an industrial court or tribunal (the two countries differ on this approach). Theoretically then, strikes will not take place if this procedure is followed. Singapore has not reported a strike in the last 12 years, while India reports strikes on a daily basis (which shows that the procedure does not work well in India). Finally, some countries, such as China, still do not permit the right to strike. Apart from the legal provisions in force, it is necessary to take account of subtle variations in rules that cannot be captured by a simple scoring mechanism, thus requiring national experts to exercise their judgement. One rule that is prone to much variation is the definition of legal and illegal strikes under national law.

**Guidelines for national experts.** The following guidelines do not place great emphasis on data regarding strikes, since the number of strikes and lockouts is affected by issues other than rules, such as the economic cycle and shifts in bargaining power. We also know that the number of strikes has decreased steadily in most countries with the decline in trade union membership.

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Category A: Unfettered right to strike	Where workers may strike even if they are not directly linked to the dispute (e.g. sympathy strikes).
Category B: Normal right to strike	When workers directly connected with the dispute are free to strike.
Category C: Weakening of the right to strike	Where industrial relations rules permit the replacement of striking workers, thus weakening the ability of labour to exercise the right to strike.
Category D: Circumvention of the right to strike	Where the right is curtailed by provisions that require the strike to be withheld, or the use of compulsory arbitration or adjudication for private sector workers. Each country is likely to have different rules that affect the right to strike.
Category E: No right to strike	When there is a ban on strikes.

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### *B2D. Parallel workplace representation*

**Rationale.** Social dialogue is improved if employees have avenues (besides unions) for participation at work. In the absence of unions, these avenues are particularly important. The best known example of parallel representation is the works council, which is common in most Western European countries. There is great variation in the scope and function of works councils or similar institutions across countries, however. In addition, there is a debate on whether works councils in fact substitute for unions, and this argument has been cited by many unions to oppose government plans to introduce works councils (the United States). On the other hand, European experience shows that unions can work well with works councils, often exercising significant control over them. It should be noted that works councils evolved long after unions were formed in most European nations. It is possible that they represent an evolution in traditional industrial relations concomitant with “new forms of work organization” which are accompanied by high flexible wages, wages tied to skill acquisition, high participation, and flexible deployment or “functional flexibility”.

### **Guidelines for national experts.**

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Category A	Countries where the law prescribes the works council or committee and mandates regular meetings covering a wide range of issues.
Category B	Countries where the law prescribes some form of workplace level committee, even if the scope is restricted. Safety and health committees are good examples.
Category C	Countries with no provision for workplace representation.

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### B3. Tripartism

This section focuses on a series of rights that underpin tripartism.

#### *B3A. Right to tripartite processes*

**Rationale.** Tripartism depends heavily on whether the law provides for it. Many countries explicitly provide for tripartism in their national legislation. It is also possible that there is no legal provision for tripartite relationships, but that they are practised (hence the differentiation between rights and practice). It is also possible that countries provide for tripartism in a limited form, i.e. for specific subjects. In addition, the enactment of legislation regarding tripartism is often the result of demands by strong unions. It is clear, however, that tripartism flourishes when it is backed by legislation, whatever the origin of the right to tripartite processes.

**Guidelines for national experts.** Three categories are relevant here.

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Category A	Where national legislation explicitly requires some form of tripartite consultation.
Category B	Where the law does not specify any requirement or form of tripartite practice and does not prohibit it in any form.
Category C	Where tripartite processes are explicitly prohibited.

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#### *B3B. Limitations on tripartite rights: Affiliation*

**Rationale.** Even if countries explicitly require or do not prohibit tripartism, there are several ways in which the ability of actors to effectively engage in tripartite activity is reduced or enhanced. One issue is whether unions or employer associations have the right to affiliate to federations or industry level bodies. There are two ways in which the right to free affiliation is limited. The first is a ban on affiliation. As an example, Malaysia permits enterprise level unions in its electronics industry but does not permit them to affiliate with industry level unions. In other cases, unions are only allowed to affiliate with a specific federation, which is often sponsored by the government, without the freedom to affiliate with alternative or competing federations. This is also a limitation of tripartite rights.

**Guidelines for national experts.** There are two categories here. Category A relates to countries which do not prohibit affiliation to higher level organizations or federations. Category B countries explicitly prohibit such affiliation or require affiliation to a preferred federation.

### *B3C. Limitations on tripartite rights: Politics*

**Rationale.** Tripartite social dialogue is generally understood to mean that employer organizations and unions participate broadly in economic and political discourse. Yet many countries restrict the ability of unions and employer organizations to do so. One method is to limit their ability to affiliate with political parties. The second is to expressly forbid apex trade union or employer organizations from participating in politics. Malaysia is a good example of this, as the apex federations are registered as societies rather than unions.

**Guidelines for national experts.** There are three categories here.

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Category A	Countries where there are no restrictions on union or employer abilities to participate in politics or affiliate with higher level organizations or federations.
Category B	Countries where there are restrictions on the ability of unions and employer organizations to affiliate with higher level bodies.
Category C	Countries where unions and employers are prohibited from political activities and debate.

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## **C. Social dialogue in practice**

This section focuses on indicators of both process and outcome, so that we can assess how social dialogue is working.

### **C1. Bipartite process and outcome**

#### *C1A. Collective bargaining coverage*

**Rationale.** A measure of coverage is essential since it indicates how many employees are covered by collective bargaining agreements. The number of union members or union density may not be closely related to collective bargaining coverage for a variety of reasons. In many developing countries (e.g. Philippines), the number of union members (according to union records) is much higher than the number of employees covered by collective bargaining agreements. This is due to overstatement of union members on the one hand, and the presence of unions of unemployed persons, on the other. In France, for example, collective bargaining coverage is very high (almost 80 per cent), although union density figures are very low. This is because agreements reached by some unions and employers are extended to the rest of the industry. A second problem with collective bargaining coverage is that while some countries have the data, others do not.

**Guidelines for national experts.** For this indicator to be useful, the national expert should report the data over time (e.g. for the last five years), identify how the data were collected, and explain any variance between this measure and union density.

### *C1B. Number of collective agreements*

**Rationale.** The number of collective bargaining agreements tells us whether bipartite social dialogue is increasing or decreasing. It is a direct measure of the growth of collective bargaining. Although the number of agreements might be related to coverage, note that coverage is partly due to other institutional forces, as in France. It is also possible that coverage may be high even with a low number of agreements, if the size of the workforce covered by each agreement is large. Hence, both measures are necessary. Note that the number of agreements in any given year will vary with the length of the agreements, which typically ranges between one and five years.

**Guidelines for national experts.** Report the number of collective bargaining agreements for each of the last five years, at least.

### *C1C. Parallel workplace arrangements*

**Rationale.** Since we have a measure of rights regarding parallel workplace arrangements it is also necessary to see how those rights translate into practice. The international variation here is great, as is the availability of good data. Some countries (e.g. Japan) report the number of joint labour/management councils in firms, while others do not. In most Western European countries works councils are mandatory, yet there is no systematic information on what they do in practice. These institutions also differ substantially in terms of scope. Works councils in Europe are typically involved in all aspects of the employment relationship except for wages. There is some evidence in Germany for example, that over time the works councils have increased the scope of their decision making activities. In contrast there are many countries where the scope is limited. In the Philippines, for example, labour/management councils typically discuss only safety health, and welfare issues. Thus, the national experts must draw on previous research and data to make an assessment.

### **Guidelines for national experts.**

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- Category A Where parallel workplace arrangements generally exist in most firms, and where these institutions take substantial decisions regarding day-to-day workplace issues i.e. where the scope is broad. Where possible, data on distribution should be provided.
  - Category B Where only a minority of firms have parallel representation arrangements and where they take substantial decisions, i.e. where the scope is broad. Where possible, data on the distribution of such institutions should be provided.
  - Category C Where parallel representation institutions commonly exist, but have limited scope (e.g. safety and health only, or welfare only or some other combination that suggests limited scope).
  - Category D Where parallel representation with limited scope exists but only in a minority of firms.
  - Category E Where parallel representation institutions do not exist, or they exist but are not routinely used.
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*C1D. Number of strikes and lockouts*

**Rationale.** This is one measure of healthy social dialogue, as the right to strike and lockout is a key element in practice. The actual number of strikes and lockouts is open to different interpretations. For example, countries that recognize the right to strike but report no strikes either have very good labour-management relations or place administrative restrictions on the right to strike. A dramatic increase in the number of lockouts can suggest a change in relative bargaining power between employers and unions. Strikes may occur for a number of reasons including political motivations.

**Guidelines for national experts.** Report the number of strikes and lockouts over time.

*C1E. Data on grievances or industrial disputes*

**Rationale.** This is yet another (and more important) measure of the health of bipartite labour relations. Unions may not strike because of weak bargaining power, and employers may not lockout for the same reason. However, disputes between labour and management are best resolved through means other than the strike. For social dialogue to work well, it is essential that employees and employers use these alternative means to settle their differences. In addition, in countries where the right to strike is administratively restricted (see Hebdon and Stern, 2003) the number of disputes and grievances may be high, as employees seek alternative ways to settle their disputes.

There is great variation in the availability of data. Most countries report the number of disputes or grievances that go to arbitration or other third-party resolution mechanisms. Some countries also report disputes by cause, which provides even more information regarding the health of social dialogue, since it tells us which aspects of freedom of association and collective bargaining are being violated.

**Guidelines for national experts.** Report trend data on the number of disputes and if possible the number of disputes by cause for the last five years.

**C2. Tripartite process and outcome***C2A. Tripartite processes*

**Rationale.** Even within Western Europe, where tripartism is most developed, there is wide variation in the way it works in practice. The literature on corporatism (which is heavily focused on Europe) is a good basis for developing and refining this measure, although the present paper relies on research in developing nations to create categories that take account of the variation across countries. This measure is also based on the judgement of the national expert, but backed up by research. (Annex I

lists the large number of measures used in previous research that focus on the outcomes of tripartism).

### **Guidelines for national experts.**

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| Category A | Where there is evidence of regular meetings and cooperation between the social partners, and there is clear and documented evidence of participation in key macroeconomic decisions. Data on the regularity of meetings is necessary but not sufficient here. It is important that the national expert provide concrete examples of national decisions. This could involve wages too. |
| Category B | Where there is no regular interaction between the social partners, but they come together when occasion demands; decisions regarding national economic and social issues emerge from tripartite discussion.   |
| Category C | Where there are occasional meetings between the social partners, primarily for information and consultation; the social partners make recommendations, which may or may not be accepted by the government.  |
| Category D | Where it is clear that social partners meet but not to discuss substantial issues (pseudo-tripartism).  |
| Category E | No participation in any issue at the national level.  |
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### *C2B. Tripartite outcomes: Wages*

**Rationale.** It is useful to have an objective measure of outcomes as well as the subjective measure based on the judgement of the national expert. The simplest objective measure is wage drift. However, since this is only applicable where wages are the subject of centralized bargaining, this measure cannot be used in all countries.

### **Guidelines for national experts.**

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| Category A | Report data on wage drift for countries in which bargaining is highly centralized at tripartite or industry level. |
| Category B | Does not apply: do not report data in countries where bargaining is primarily decentralized.                       |
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### *C2C. Tripartite outcomes: Income inequality*

**Rationale.** An important indicator of the success of tripartism in industrial relations is the extent of income inequality. While it is true that inequality is caused by a number of factors (such as skill differentiation), there is also very strong evidence that inequality increases when bargaining systems become decentralized (see Kuruvilla et al., 2002). Thus, high inequality is likely to be associated with a decrease in tripartite activity or no tripartite activity at all.

**Guidelines for national experts.** The World Bank reports income inequality data for most countries. It is necessary to report the gini-coefficient over time, but also to report the source of the data, as multiple sources exist for several countries.

## ***D. Alternative avenues for social dialogue: Codes of conduct, certification and reporting systems***

### **D1. Descriptive measures of industry codes**

**Rationale.** Alternative approaches are particularly relevant for third world countries with fairly limited labour movements, and with national legislation which has not been effective in providing opportunities for social dialogue. Some corporate codes of conduct have developed in response to pressure from northern unions and NGOs precisely because legislation in some countries was not sufficiently protective of workers' rights.

These emerging approaches require attention on the part of the national expert for two main reasons. First, they are often sector-specific or industry-specific and it is necessary to estimate how many workers are covered by these arrangements. Second, and most important, it is necessary to know if local workers are involved in drawing up the codes of conduct that apply to them. Research shows that this is generally not the case, but we do know that international unions are sometimes involved in designing multilateral codes of conduct or industry-specific codes. The different mechanisms (codes, certification schemes, reporting arrangements), the variations in application (countries, industries, sectors), and the variations in effectiveness do not permit the creation of uniform or objective assessment criteria. The approach is therefore to leave this as a descriptive measure. National experts should consider various issues (see below) when they report and assess these developments. Since these alternatives are just emerging, it is possible that future research on effectiveness will make it possible to develop classifications and scorable criteria.

**Guidelines for national experts.** National experts should report on each of the following issues.

- (a) *Industry codes of conduct.* Attention should be paid to the scope of the code (broad or narrow), the number of employees in the industry who are effectively covered by the code, and whether there are any research studies on the code's effectiveness in improving workers' participation in decision making.
- (b) *Company codes.* The national expert should determine whether a majority of companies in a particular industry (e.g. sports shoes or garments) are covered by corporate codes of conduct, whether monitoring is conducted by independent monitors; the number of workers in the industry who are covered by the codes should be noted. National experts should also report on the scope of the codes in terms of furthering social dialogue.
- (c) *Certification and reporting systems.* National experts should report on the number of companies in the relevant industry that are part of general

certification and reporting schemes, and whether these are monitored by independent monitors. They should cite case study evidence where available.

In general, the national experts should focus their assessments on the involvement of local workers in developing alternative practices, and the extent to which social dialogue opportunities for local workers have increased as a result of these practices.

### ***E. Implementation and government capacity***

National law has to be enforced in ways that make the practice of social dialogue possible. There are two main approaches to enforcement. The first is to impose high penalties for non-compliance. The second is to operate an inspection regime that is reliable and forces employers and unions to obey the law.

#### **E1. Penalties for violating social dialogue laws**

**Rationale.** The enactment of laws pertaining to social dialogue is not sufficient to ensure that social dialogue takes place. It is possible for actors to break the law or ignore it on a routine basis. For example US employers continually violate the law that prohibits firing union organizers. Research suggests that they do this because the penalties for violation are minor compared to the savings made by keeping a union from forming in their enterprise.

**Guidelines for national experts.** This subject requires the national experts to exercise their own judgement, but the following categories are proposed as a guide.

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Category A    Where in the opinion of the national expert, the penalties for violation are not a sufficient deterrent. National expert to provide trend data for past five years on violations.

Category B    Where in the opinion of the national expert the penalties for violation are a sufficient deterrent. National expert to provide trend data for the last five years.

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#### **E2. Government administrative capacity**

**Rationale.** For inspections to work, governments must have an administrative system to carry them out, a sampling procedure that is relevant to the needs of the country, an adequate budget and qualified personnel. These elements are all necessary if the inspections are to be an effective means of law enforcement.

**Guidelines for national experts.** National experts must exercise their own judgement, although that judgment should be based on the following issues:

- (a) adequacy of personnel and budgets compared to the number of workplaces;
- (b) sampling schemes: the frequency and adequacy of inspections;
- (c) coverage of establishments;
- (d) data on violations.

Many countries provide sampling schemes and annual data on the number of establishments inspected, so the necessary information is available. The national experts can use two primary categories:

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Category A	Where the national expert feels, based on the above four sets of data, that governments have the institutional capacity to monitor labour laws in their country.
Category B	Where the national expert feels that the institutional capacity is lacking.

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## ***F. Rights and practice in the informal sector***

It is essential to develop social dialogue indicators for the informal sector, given the growing size and centrality of this sector in the world. However, the diversity of occupational categories, and a lack of “descriptors” of the sector make it very difficult to decide what information is relevant to the creation of indicators. Thus, our approach focuses on basic general information, although some research would make it possible to create more detailed measures.

### **F1. Freedom of association**

**Rationale.** The right to form associations and/or unions is a precondition to social dialogue. There are several instances where unemployed workers have formed unions (e.g. Philippines), or where informal sector workers have formed associations (although not always for collective bargaining purposes). The informal sector also includes a sizeable number of agricultural workers, and there are organizations of peasants in some countries. Broadly, the alternatives range from countries in which all workers (including informal sector workers) have the right to form associations or unions, countries in which the law is silent on the issue (associations and unions may or may not exist in practice), and countries where freedom of association is specifically prohibited or excluded for informal sector workers.

**Guideline for national experts.** The national expert simply reports whether the country recognizes the right or not. Thus

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Category A	Countries which expressly allow freedom of association for the informal sector.
Category B	Countries where the law is silent on the issue and the right exists in practice.
Category C	Countries where the right is de jure or de facto prohibited.

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## F2. Collective bargaining and individual disputes

**Rationale.** While bargaining does take place either formally or informally in many parts of the informal sector, it is not clear that the right to bargain is uniformly available to informal sector workers in all countries. And in many cases, particularly in small establishments that are outside the scope of legislation regarding collective bargaining, workers can exercise their social dialogue rights individually through regular or specially created dispute resolution channels, by raising individual disputes. It is also desirable to know which types of informal sector workers have these rights. Thus, the guidelines for national experts are based on the variation in these approaches, but also stress the need to provide information on the types of workers in the informal sector who have or do not have these rights.

### Guidelines for national experts.

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Category A	Where collective bargaining is protected and encouraged in the informal sector generally.
Category B	Where collective bargaining is permitted only for some occupations within the informal sector, or for some types of informal establishments (national experts to state which occupations/establishments).
Category C	Where all informal sector workers may raise individual disputes even though collective negotiations are not applicable.
Category D	Where only some occupations or employees in certain types of establishment may raise individual disputes even though collective negotiations are not applicable. National expert to provide detail on the occupations and types of establishment.
Category E	Where the rights are granted in categories A-D, but only in respect of certain subjects (e.g. retrenchment).
Category F	Where no collective or individual rights are granted to the informal sector.

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## F3. Unionization

**Rationale.** It is important to examine the practice of freedom of association in the informal sector. There are two problems here; the variation across occupations and the lack of data. For example, in India construction workers are in the informal sector. However, construction

workers in many states are heavily unionized. It is unrealistic to hope for estimates of union density in each occupation in the informal sector. What the national expert can do, however, is to list the occupations which are unionized and perhaps estimate (however roughly) the density of unionization in the informal sector.

**Guidelines for national experts.** Report on the informal sector occupations that are unionized, and estimate union density using these figures.

#### F4. Other informal sector organizations

**Rationale.** There are numerous informal sector organizations that provide some degree of voice for workers on a range of issues. In the Indian state of Kerala, for example, organizations of contract workers in the beedi industry have associations which manage social security funds. Cooperatives and NGOs are also active in the informal sector. It is not possible to devise guidelines for national experts with regard to this point. Instead the national data sheets should allow space for experts to report on unusual practices to enable some cross-national learning about informal sector work.

## 5. Implications and costs of this methodology

To summarize, the methodology adopted in this paper focuses on the creation of national social dialogue data sheets for each country. The guidelines for national experts mitigate the problems with subjective interpretation, since they provide a basis on which judgements can be made. The national experts are expected to provide data to support their judgement in many situations. The methodology involves a degree of transparency in that the NSDDS will be made available on the web so that interested parties can discuss the results and argue over the conclusions reached, which also helps to limit the degree of subjectivity. This transparency is important in itself, since it will promote discussion and raise awareness of social dialogue issues. However, it is impossible to completely eliminate subjective judgements from this process.

The NSDDS approach has several implications.

**Construct validity.** This approach identifies all the relevant issues (rights, practices, outcomes) connected with the operation of social dialogue. Thus, it certainly points to the most appropriate concepts and the most relevant measures for evaluating progress on social dialogue as defined currently by the ILO.

**Reliability.** There are several ways in which this methodology promotes reliability in data collection. First, it forces national experts to consider various issues as they make their judgements. Second, the guidelines are clear enough to enable any national expert to collect the data. Third, the national experts often have to report data to back their assessments. Fourth, there is a high degree of internal consistency. Yet, reliability is not perfect. There is no guarantee that two national experts will agree on how collective bargaining institutions actually work in practice. It is true that reliability would be better if we had measures that were more “objective”, but this would reduce construct validity. Because social dialogue is a complex phenomenon some degree of qualitative judgement and interpretation is necessary for a realistic and meaningful assessment.

**Relationship to past approaches.** The indicators developed for the NSDDS are based on comparative research and earlier approaches to measuring freedom of association and collective bargaining. However, there is an important departure. A large number of measures have been used in previous research on tripartism as it operates in Europe, but tripartism is not well developed in the rest of the world (75 per cent of global population), and the NSDDS should not be overly biased towards European models. The indicators are designed to help countries make progress on social dialogue, and it is the rest of the world rather than Western Europe that needs to make the most progress.

**Comprehensiveness.** Although these indicators describe social dialogue in the formal sector very well, more work is needed on alternative approaches such as codes of conduct, certification and the informal sector. Codes of conduct and certification schemes are relatively new phenomena, and information is not yet available on the variation in how these approaches work. Some basic sets of information on these issues have therefore been developed for the NSDDS, with the expectation that more assessable indicators can be devised in future.

**Comparative ranking.** The essence of this approach is to yield national data sheets that provide a composite picture of the state of social dialogue. There is space for categorization, actual trend data, examples, judgements and so forth. It is possible to reorder the categories so that they can be scored (or ranked). However, not all the indicators are amenable to scoring. Thus, it is not possible to arrive at country rankings if all the indicators are used. If ranking is the goal, then a smaller subset of indicators could be used, but that would provide a less comprehensive picture of social dialogue. Nevertheless, comparing a national social dialogue data sheet over two points in time will allow policy makers to judge whether a particular country has made, or is making, progress on social dialogue.

**Costs and frequency of data collection.** An important issue in collecting data is the cost involved. The approach advocated by this paper



of using qualitative data prepared by national experts not only captures the processes of social dialogue, but is cost efficient. Assuming that one national expert per country is engaged, and that data are collected and reported for 100 countries, the NSDDS would cost about US\$500,000; i.e. much less than the same number of national surveys. This means that such data can be collected more frequently. Given the interest in monitoring progress, one suggestion is to have national experts prepare NSDDS for each country once in 4 or 5 years. Another way to reduce the cost would be to engage regional experts who would cover several countries, or to use ILO country experts (see below).

**Nature and availability of national experts.** The above figures assume that there are national experts in each country. That is not necessarily a valid assumption, as several countries do not have an academic discipline of industrial relations (hence no national experts). However, there are two other sources of national expertise. One is within the ILO. The ILO regional offices have staff who are experts on social dialogue in certain groups of countries and who are perfectly capable of collecting data according to the template provided in this paper. The second source of expertise is research on comparative industrial relations; there are scholars who focus on these issues in a set of countries or a region. Thus, it may not be necessary to identify a national expert in every country, as long as regional experts are available. A combination of ILO experts and comparative industrial relations scholars would be appropriate.

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