

**Minutes of 35th Session of Tripartite Committee on Convention (COC)
(first meeting)
held on 22nd July, 2011**

The 35th Session of Tripartite Committee on Conventions COC was held on 22nd July, 2011 under the chairpersonship of Secretary (L&E). The list of participants is annexed.

2. Shri. A.C. Pandey, Joint Secretary welcomed all participants to the meeting. He stated that Ministry of Labour and Employment has been working vigorously on certain ILO Conventions with the ultimate aim of ratifying them. Steps had been taken for examination and analysis of their provisions vis-a-vis existing legislations, holding meetings with all stakeholders and social partners and completion of necessary documentation for obtaining approval of the competent authority. Speaking about the action plan formulated by the Ministry for ratification of ILO Child Labour Conventions 138 and 182, he stated that the process of carrying out amendments in existing legislation in respect of Convention No. 182 was in progress. With regard to Convention No. 138 an inter-ministerial meeting was convened recently in which the initial response was quite positive.

3. Joint Secretary (AP) stated that DG (Shipping) was engaged in bringing about amendments in the various Acts which were compulsorily needed for ratification of Maritime Labour Convention 2006. A workshop was organized on ILO Convention 188 (Fisheries) in Visakhapatnam. An inter-ministerial meeting was convened on ILO Convention No. 155. The proposal for ratification of the said Convention, after exclusion of certain branches of economic activities, was under consideration in consultation with all stakeholders. The Ministry of Agriculture was examining some crucial aspects in this context.

4. It was further indicated by Joint Secretary (AP) that to formulate a consensus on the Conventions 87 and 98 relating to Freedom of Association and Collective Bargaining an inter-ministerial meeting had been convened. Although ratification of Convention 87 at this stage did not look possible due to the technical reasons, the Department of Personnel & Training has been requested to closely examine Convention No. 98. He informed the Committee that a beginning has also been made to examine the various provisions of Convention 181 (Private Employment Agencies). The State Governments had a crucial role in developing reliable data about employment agencies before ratification could be considered. The ILO had also been requested to share the experiences of other countries in implementing the provisions of this Convention.

5. After brief remarks on Agenda Items by Joint Secretary (AP) a Presentation on Convention No. 138 was made by Ms Sameera Saurabh, Deputy Director in the Ministry.

6. The presentation highlighted the salient features of the Child Labour Convention, the basic minimum age standards and relaxation available to developing countries, sectors covered by the Convention as well as similar provisions under UN Convention, MDG etc. The international repercussions of non-ratification of the Convention by India were discussed with focus on roadmap for elimination of worst forms of Child Labour by 2016 advocated in the Global Child Labour Conference at Hague in 2010 and issues relating to linkages between Trade and Labour Standards. The reference to ratification of Convention 138 in Declaration on Fundamental Principles of Rights at Work, 1998, Social Justice Declaration, 2008 and Global Jobs Pact, 2009 were highlighted. The presentation indicated the existing legal provisions relating to prohibition of Child Labour. The constraints for ratification of C-138 by India were explained viz. minimum age for child labour in Acts/Rules, socio economic conditions and difficulties in coverage of children working in unorganized sector. It was indicated that the minimum age for children working in hazardous occupations was proposed to be raised to 18 years. A consensus was required to be developed on whether Government should move towards ratification of C-138, whether entry age for employment be fixed as 14 years availing of relation provisions and selected sectors be covered under the Convention leaving out sectors like agriculture and small scale industry.

7. Conventions No. 138 and 182 (Child Labour)

7.1 The representative of **BMS** stated that a special meeting on Convention No. 138 should be convened with all stakeholders to consider issues relating to determination of minimum age and exemption of sectors. He admitted that amendment of laws was a time consuming process. Hence Government could consider making suitable revisions in Rules through notification which was a quicker option. He requested that children employed in jute mills, carpet weaving and fire cracker industries should also be brought under the category of hazardous processes. He also requested Government to ascertain how the 161 countries which had ratified Convention No. 138 were implementing the provisions and whether they were also resorting to any relaxation etc.

7.2 The representative of **AIMO** favoured the proposal of Government to fix the minimum age as 14 years by availing of relaxation clause. As regards limiting the sector wise coverage he indicated that the matter should be discussed with all stakeholders before reaching a mutual agreement.

7.3 The representative of **INTUC** stated that Government should change its stand regarding amendment of laws followed by ratification of a Convention.

Rather ratification of a Convention should be given effect first and thereafter the laws should be brought into conformity with its provisions. He pointed out that even though 90% ILO member states had ratified C-138 child Labour was still widely prevalent all over the world which goes to show that all ratifying countries may not be necessarily implementing the Convention in a fool proof manner. The Right to Education guaranteed by Government to children upto 14 years was all the more reason for urgently ratifying the Convention with stipulation of minimum age as 14 years. Any further delay to ratify the Convention would adversely affect India's image and standing in the world community.

7.4 The representative of **CII** indicated that while everyone wanted total abolition of child labour, it was a point for discussion as to how the provisions of the Convention can be strictly implemented keeping in view India's socio-economic condition and vast informal sector.

7.5 The representative of **AITUC** stated that even though the deadline for elimination of worst forms of child labour had been extended upto 2016 at the Hague Conference, Government should not delay its ratification any further. Government of India and tripartite partners face adverse criticism in the international fora due to non-ratification of Core Conventions. Issues relating to ratification of C-138 could be further considered and sorted out in separate meetings like SLC where senior leaders were present. He mentioned that while ratifying Convention 138, Government should not go in for any dilution in age or sector coverage because that would amount to justification of child labour.

7.6 The representative of **LUB** supported the action being taken by Government for expeditious ratification of Convention 182. In the case of C-138 he stated that in India the socio-economic situation was such that children were compelled to work to sustain their families. Universal social security coverage was not available to unorganized sector workers and strict implementation of laws like right to education had still not been achieved. Hence it was premature to consider ratification of C-138 at this stage.

7.7 The representative of **HMS** welcomed the positive approach shown by Government in international meetings of G-20, ILO, UN etc w.r.t ratification prospects of core labour standards. He appreciated the support of Domestic Workers Convention by Government of India. He stated that India was doing a lot for implementation of the Child Labour Conventions. In respect of Convention 138 defining child labour and adolescent or young labour may be a feasible solution to help in expeditious ratification of the Convention. Non ratification of these Conventions was proving detrimental to the interests of the private sector industry as their exports were banned by developed countries on this account. It was, therefore, necessary to de-link labour standards and trade. He suggested that India should maintain a firm stand on this issue and enter into dialogue with concerned member countries at international platform.

7.8 The representative of **ASSOCHAM** appreciated the Agenda document. He stated that the right course of action was to be fully geared up for implementation. For this there was need to bring the laws in conformity with provisions of Child Labour Convention. He raised the issue that it was a matter for consideration whether all the countries which had ratified C-138 were actually implementing the Convention in its entirety. Hence it was important that India should not face criticism for not implementing the Convention after ratification. He urged Government to have detailed consultations with the states regarding their preparedness for implementing the Conventions and ascertain whether adequate machinery, infrastructure etc. was available with them for this purpose.

7.9 The representative of **CITU** raised some general issues regarding conducting of the meeting. He stated that as per tradition opening remarks were made by the Chair indicating progress on the Agenda Items. Further, discussion on the Actions Taken Report had also been skipped during the deliberations. He requested that the initiative taken by the Ministry to hold two COC meetings in a year should be maintained. He also drew attention of the Chair to decisions taken in the 28th Meeting of COC that the Ministry would share with social partners the Reports under Article 19 and 22 regarding status of implementation of unratified and ratified ILO Conventions before being sent to ILO. Speaking about the ratification of Core Conventions by India he stated that while initially 4 Core Conventions were ratified in quick succession, ratification of remaining Core Conventions was unduly delayed. In view of latest developments like enactment of RTE and the age relaxation clause available in C-138 for developing countries, the situation was completely favourable for ratification of Convention 138 by India.

7.10 The representative of **FICCI** supported the stand taken by Government for evolving a consensus about action plan for ratification of the Child Labour Convention. He stated that that Government should take into account the ground realities and ensure effective enforcement of labour laws. He cited the example of MNCs who were not keen on collaboration with small scale industries because of non-ratification of Child Labour Conventions by India.

7.11 The representative of **AIUTUC** stated that India as the largest democracy had a pro-active role and commitment to the cause of abolition of child labour. Even after 38 years of enactment of C-138 the ILO Core Labour Instrument remained unratified by India. He requested Government not to defer ratification any further. The socio-economic problems would continue. However, with proper laws abolition of child labour was possible. He assured Government of the cooperation of trade unions for implementation of the Convention once ratified by India.

7.12 The representative of **TUCC** stated that India as a founder member of the ILO had the moral responsibility to take lead in ratifying the Core Conventions. There was rampant exploitation of children in the country. India is projected in poor light in international conferences due to being a defaulter in ratifying the Child Labour Conventions. He requested Government to amend the relevant Child Labour Legislations and ratify the Convention at the earliest. He also suggested discussion on all aspects of the matter in a broader platform and laying down a definite time frame for ratification of Convention 138. He appreciated the move to amend Convention 182 shortly.

7.13 The representative of **SEWA** drew attention of Government to the plight of child labour engaged in the informal economy and requested for providing adequate social security measures to workers in the unorganized sector. She urged Government to ratify the Child Labour Conventions urgently.

7.14 The representative of **AICCTU** requested Government to ratify Convention 182 without any further delay. As regards Convention 138 he stated that the plea regarding socio-economic conditions was not tenable as they may not improve substantially in many years to come. He stated that low minimum wages were a major cause of child labour as children were sent out to work to supplement the family earnings. He indicated that Government should ratify Convention 138 at the earliest not because of international pressure but to guarantee dignity and human rights to the children of the country.

7.15 The representative of **LPF** urged Government ratify Convention 138 stipulating minimum age as 14 years. He requested that sectors like electricity, gas, water, sanitary services, transport, communication and agriculture etc. should be covered. He requested that Convention No. 182 should be ratified at the earliest.

7.16 The representative of **UTUC** appreciated the initiatives taken by Government to speed up the process for ratification of the Child Labour Convention through organization of inter- ministerial meetings. He stated that the Child Labour Act should be implemented more effectively as the rightful place of children is in a school and not the factory. He requested Government to ratify Conventions 182 and 138 expeditiously.

7.17 The representative of **NFITU** also requested Government to ratify the Child Labour Conventions urgently.

7.18 The representative of **Government of West Bengal** stated that new areas of hazardous work for children were emerging and Government should consider including them under the legislations. He welcomed the initiative of Government to ratify Convention 182. He stated that growing population was an important factor in enhancing child labour. Hence a comprehensive approach was required

to tackle the problem of child labour which should include promotion of health and family planning measures and rehabilitation of child workers through NCLP Schools and other PPP ventures.

7.19 **Shri. Prabhat C. Chaturvedi, Secretary (L&E)** stated that Government had set a target of delivering the Instrument of ratification of Convention 182 at the 100th Session of ILC in June, 2011. The process of consultation has taken more time than expected. However, we would be expediting the whole process of bringing about the necessary amendments required for ratification of this Convention.

7.20 The representative of **AIUTUC** drew attention of Government to the 1977 Supreme Court order asking Government to withdraw all child labour from hazardous work and providing employment to their parents. The representative of HMS stated that Government should honour the tripartite mechanism.

7.21 The discussion thereafter centered around ratification of C-138 (Minimum Age Convention). The consensus view of the social partners was that we should move forward in the direction of ratification of Minimum Age Convention No. 138. We should avail the relaxation provision of this Convention and keep the entry age of employment as 14 years. Some of the sectors which are compulsorily to be covered under this Convention are already prohibited in the Child Labour (Prevention and Regulation) Act, 1986 and those which are at present not in this list of prohibited occupations/processes (i.e (i) electricity, gas and water, (ii) sanitary services, (iii) transport and (iv) commercial agriculture) in the Child Labour (Prevention and Regulation) Act, 1986, should be included. At present we should go ahead for ratification by limiting ourselves to these sectors. In view of the present socio-economic situation prevailing in the country, our vast informal sector consisting of family units etc. should be excluded from the sectors to be covered in this Convention for ratification purpose. On this issue no further consultation with social partners was needed.

7.22 Secretary (L&E) agreed with the suggestion in the para above regarding ratification of ILO Minimum Age Convention No. 138. He further stated that with the enactment of RTE, Government was committed to providing compulsory education upto 14 years and hence the entry age of employment can be kept as 14 years and we should proceed towards ratification of C-182.

8. In the context of the two unratified Core Conventions 87 and 98 relating to Freedom of Association and Collective Bargaining, Secretary (L&E) stated that immediate ratification of these Conventions does not seem possible in view of Government's stand in the matter. The subject was handled by a separate Ministry. However, the Ministry of Labour and Employment was open to further discussions. The ILO had also been requested to provide the assistance of Expert subject matter specialists in this regard.

9. **Maritime Labour Convention 2006 and Convention 188 (Fishing)**

9.1 Brief overview about status of ratification of Maritime Labour Convention and Convention 188 (Fishing) was provided by concerned officers.

9.2 **Deputy Director General Shipping** stated that the Maritime Labour Convention would come into force with effect from 1st January, 2012. Action was being taken by Government to ratify the Convention before this date. The existing Rules were being amended for incorporating the provisions of the Convention and necessary approval of competent authority was being obtained in the matter.

9.3 The representative of **Ministry of Agriculture** informed the Committee members that Fishing Sector Convention No. 188 would enter into force after ratification by 10 countries (including 8 coastal countries). Various steps had been taken by Government to expedite the process for ratification of Convention 188 which included national level stakeholders consultations. Based on the outcome of these deliberations a gap analysis of existing legislations vis a vis provisions of the Convention was being undertaken by an external agency.

9.4 The representative of **BMS** appreciated the move of Government towards ratification of MLC 2006 and Convention 188. He stated that the fishermen in the coastal states were poor and exploited without any collective bargaining rights. Ratification of the Conventions would ensure that Fishing was recognized as an economic activity and could contribute to determination of GDP.

9.5 The representative of **CITU** termed the developments regarding ratification of Maritime Labour & Fishing Conventions as encouraging.

10. **Conventions 87 and 98 (Freedom of Association & Collective Bargaining)**

10.1 The representative of **Department of Personnel and Training (DOPT)** explained the stand of Government of India on both the Conventions. He stated that ratification involved granting certain rights to workers viz right to strike and join trade unions. Government servants have a high degree of job security under Article 311 of the Constitution. Effective arbitration measures like JCM (Joint Consultative Machinery) and CAT (Central Administrative Tribunal) were available to Government Servants. In these circumstances unionization of Government employees was not favoured. Government has accordingly decided not to ratify these ILO Conventions and there was no change in this stand till date.

10.2 The representative of **TUCC** requested Government to hold stakeholders consultation on this issue.

10.3 The representative of **AITUC** started that nearly 50% of Government employees comprised of railways and industrial workers. Moreover, inspite of ban strikes were taking place. The JCM was not a fool proof mechanism and a large number of arbitration cases were pending. He also refuted the general allegation and Trade Unions were politicized in India.

10.4 The representative of **BMS** mentioned that there were many categories of workers to whom no rights were available like Medical Representatives and Contractual Employees. Hence withholding ratification of these Core Labour Conventions on account of a small percentage of Government employees with sovereign powers was not justified.

10.5 The representative of **INTUC** requested for detailed discussions on these Conventions in another separate meeting.

10.6 The representative of **HMS** stated that India faces adverse criticism in ILO Committee for non-ratification of the Core Conventions 87 and 98. The Constitution of India provides the Right to Freedom of Association. The arbitration mechanism of Department of Personnel and Training was not functioning satisfactorily and many Awards were pending implementation.

10.7 The representative of **CITU** stated that the matter needs to be re-examined at highest level. Government should find a solution instead of taking the same stand regarding privileges available to Government Servants to justify non-ratification. He pointed that in India the right to collective bargaining was available to only 2% workers. The contractual workers were being exploited in the absence such rights.

10.8 The representative of **AIUTUC** requested for early ratification of the Convention so that right to form unions was available to all workers. India should not be compared with U.S.A which has also not ratified these Conventions as the ground reality in both countries was very different.

10.9 The representative of **TUCC** stated that the Right of Freedom of Association and Collective Bargaining was a Fundamental Right. In India trade unions were not allowed to be registered. He urged Government to ratify the ILO Core Conventions 87 and 98 at the earliest.

10.10 The representative of **SEWA** stated that the right to collective bargaining was the only tool available with informal sector workers to get better wages and fair conditions of employment. Hence the ratification of these Instruments should be supported.

10.11 The representative of **AICCTU** drew attention of Government to the suppression of workers right to organize themselves in large private sector enterprises.

10.12 The representative of **LPF** stated that it was necessary to ratify the Conventions to improve India's image in the world community. He stated that inspite of no laws to regulate collective bargaining employees in Railways, Postal Department, Telecom, Coal industry etc. had formed Unions. Even Government employees had formed Associations. There were conduct Rules in place for Government employees. Besides strike was always the last resort and not the normal practice. Therefore, Government should seriously consider granting right to Freedom of Association to its workers and ratify Conventions 87 and 98.

10.13 The representative of **UTUC** indicated that violation of labour laws was quite common in India. Workers were discharged without giving adequate reasons and no rights were available to them.

10.14 The representative of **NFITU** pointed out the gross violation of workers rights while determining fitness standards in coal companies. The workers had no remedial mechanism to protect their rights.

10.15 The representative of **ASSOCHAM** stated that while right to employment, education or food was justified, the right to strike had no justification and should be completely banned.

11. In his concluding remarks, Secretary (L&E) stated that Government had noted the views expressed by Trade Unions for ratification of Conventions 87 and 98. The subject matter was dealt with by Department of Personnel and Training. The Department had expressed their reservations/difficulties in ratifying the Conventions. In view of this scenario ILO had been requested to provide technical assistance to help resolve the issues. He hoped that the concerned experts and stakeholders would be able to deliberate, analyse and make some progress for removing the existing impediments in a favourable manner.

12. The COC members requested Secretary (L&E) to convene another meeting to cover the remaining Agenda Items which could not be taken up due to time constraint.

13. Secretary (L&E) promised to hold the second meeting of 35th Session of COC in August, 2011 and also assured that the next regular session of COC would be organized around December, 2011.

The meeting ended with a Vote of Thanks to the Chair.

**List of Participants who attended the 35th Session of Tripartite Committee
of Conventions (TCOC) held on 22.07.2011**

Ministry of Labour and Employment

1. Shri Prabhat C. Chaturvedi, Secretary(L&E)- in the Chair
2. Shri Ravi Mathur, AS(L&E)
3. Ms. Vinita Kumar, LEA
4. Shri Anil Swarup, DGLW
5. Shri Sharda Prasad , DGET
6. Shri A.C. Pandey, Joint Secretary
7. Shri Satish Puri, DG (Mines Safety), DGMS
8. Dr. M. Rajaram, DDG, DGFASLI
9. Shri S.B. Mathur, DDG, DGFASLI
10. Ms. Naina Bakshi, Regional Labour Commissioner, CLC
11. Shri B.K. Sanwariya, Dy CLC
12. Shri H. Vishvanathan, Director (Safety) DGFASLI
13. Shri Vikas, Director
14. Ms Vandana Sharma, Director
15. Ms. Indrani Gupta, US (ILAS)
16. Ms. Sameera Saurabh, Dy Director (ILAS)
17. Ms. Ashwini Lal, Dy Director (ILAS)
18. Shri Sonmani Haobam AD (ILAS)
19. Shri Kamal Pandey AD (ILAS)

Ministry of Shipping

Shri. C. Relhina Dhas, Dy Director General (Shipping)

Ministry of Agriculture

Shri Shanker, Deputy Commissioner

Ministry of HRD

Shri Gaya Prasad, Director

Department of Personnel & Training

Shri Dinesh Kapila, Director

Shri Ashok Kumar, Deputy Secretary

Workers Group

1. Shri Baij Nath Rai, General Secretary, BMS
2. Shri N.Adyanthaya , Vice President, INTUC
3. Shri G.L Dhar, AITUC
4. Shri Thampan Thomas, HMS
5. Shri Swadesh Dev Roye, Secretary, CITU
6. Shri Sankar Saha, AIUTUC
7. Shri A. Sinha, AIUTUC
8. Shri Sheo Prashad Tiwari, General Secretary, TUCC
9. Ms. Shalini Trivedi, SEWA
10. Shri Rajiv Dimri, Secretary, AICCTU
11. Shri V. Subburaman, Secretary , LPF
12. Shri Rashid Khan, Adviser, LPF
13. Shri Mihir . R. Chanda, UTUC
14. Mohd. Hashim, Secretary, NFITU

Employers Group

1. Shri Vineet Bharadwaj,Dy Director, CII
2. Shri Srinageshwar, AIMO
3. Shri N.K. Singh, National General Secretary, LUB
4. Shri R.K. Bhardwaj, Secretary, LUB
5. Shri M.K. Garg, Cheif Adviser, ASSOCHAM
6. Shri Shitangshu Taye, Research Associate FICCI

State Government

1. Shri Sarban Singh, Principal Secretary, Labour & Employment, Haryana
2. Shri Indranil Sen Gupta, Joint Secretary, West Bengal
3. Shri Sita Ram Meena, Labour Commissioner , U.P
4. Dr. P. Singh, Addl. Labour Commissioner, U.P
5. Shri A. Thangavelu, Addl. Commissioner of Labour, Tamil Nadu
6. Shri Dharendra Mohan Jha, Labour Commissioner, Bihar
7. Shri. Gurudas . M.Bhat, Addl. Labour Commissioner, Karnataka
8. Dr. H.K. Nagu, Addl. Commissioner of Labour, Andhra Pradesh
9. Shri Jacob Pratap, Dy Labour Commissioner, Punjab
10. Shri H.R. Shah, Dy Labour Commissioner, Gujarat

ILO Sub Regional Office

1. Ms. Tine Staermose, Director
2. Ms. Sherin Khan, Senior specialist (Child Labour)
3. Ms Ingrid Christensen, Senior Specialist (OSH)
4. Mr. Coen Kompier Specialist (ILS)
5. Ariel Castro Specialist (Worker Activities)
6. Ms. Neetu Lamba, National Professional Officer

Proposal for obtaining the Observers Status by India to Agreement on Government Procurement (GPA) of the World Trade Organisation (WTO)

- The proposal contained in the Cabinet Note relates to **obtaining the Observers Status by India to Agreement on Government Procurement (GPA) of the World Trade Organisation (WTO)**. The **proposal** does not concern the Ministry of Labour and Employment directly.

- India is not a signatory to the Government Procurement Agreement (GPA). It is neither a member nor an Observer to the GPA.
- The Agreement on GPA is a legally binding plurilateral Agreement of the WTO with 13 signatories. GPA signatory suppliers enjoy certain benefits like non-discrimination in selection of suppliers, market access to trade, transparency in tendering, special and differential treatment for developing countries for negotiation and provision of technical assistance.
- India had considered the matter regarding membership of GPA in the past. But action was withheld keeping in view the preparatory measures to be undertaken and the estimated gains being not commensurate with the reciprocal market access that would be granted to partners.
- However, the matter has been revisited as Indian suppliers will lose out on contracts in GPA member states like EU and US and benefits of stimulus packages announced by these countries.
- A UNCTAD study in 2007 reported that India had great potential and is expected to make gains in trade with EU and USA in sectors such as textile and apparel, leather and wool products, transport vehicles, sugar, beverages, chemicals, food products, vegetable oils, forestry products and computer related information services. Accession to GPA and bilateral agreements between India and EU/US are crucial in the context of these outcomes. The study has estimated that a one-time administrative cost of US\$ 191 million would be required for meeting reporting obligations under the GPA.
- Besides accession to GPA, there is provision of participation of Observers without meeting any major preconditions. The Observers attend, follow the proceedings and participate in discussions of the Committee on Government Procurement. However, they cannot take any decisions in the Committee.
- An Observer status would help India in gaining experience to decide the desirability or otherwise of its accession to the GPA.
- So far as MOLE is concerned, the proposals do not concern us directly. However, the proposal will help to generate increased awareness about global trade opportunities and watch the interests of participating firms and suppliers. Improved trade opportunities will generate employment in the long run.