

REGIONAL INTEGRATION AGREEMENTS IN THE AMERICAS: the Labour Dimension

International Labour Office - ILO

Regional Office for Latin America and the Caribbean

***Project: Fundamental Principles and Rights at Work in the context of the XII Inter-American
Conference of Ministers of Labour of the Organization of American States***

Acuerdos de Integración Regional y Libre Comercio en las Américas: La Dimensión Laboral
Regional Integration Agreements and Free Trade in the Americas: The Labour Dimension
versión impresa: ISBN 92-2-014937-0
versión pdf: ISBN 92-2-014938-9

TABLE OF CONTENTS

PROLOGUE	
I. INTRODUCTION	3
II. THE LABOUR DIMENSION OF REGIONAL AGREEMENTS	9
2.1. International legislation on fundamental rights at work	9
2.2. Legislation in the Americas on fundamental rights at work	9
2.3. Norms on fundamental rights at work as established in subregional integration agreements	10
2.4. The directives from the Summits of the Americas	13
III. LABOUR DIMENSION IN THE FREE TRADE AGREEMENTS OF THE AMERICAS	14
IV. THE APPLICATION OF THE FUNDAMENTAL PRINCIPLES AND RIGHTS IN INDIVIDUAL COUNTRIES	16
4.1. The application of the four fundamental principles and rights at work	16
a. Freedom of association and the effective recognition of the right to collective bargaining	16
b. Forced Labour	19
c. Nondiscrimination	20
d. Elimination of Child Labour	22
4.2. Comments by the Committee of Experts on the Application of Conventions and Recommendations of the ILO (CEACR) on the Enforcement of Norms providing for the Fundamental Rights at Work	24
V. INTEGRATION, ECONOMIC DEVELOPMENT AND LABOUR RIGHTS	26
VI. THE OPINION OF THE SOCIAL ACTORS ON THE LABOUR DIMENSION OF INTEGRATION	30
VII. COOPERATION PROGRAMMES	32
VIII. CONCLUSIONS, COMMENTS AND SUGGESTIONS	34
8.1. General Conclusions	34
8.2. Comments on Some Pending Issues	36
8.3. Suggestions	37
GLOSSARY	
ANNEXES	
Table 1: Fundamental Conventions Ratifications in the OAS countries	
Table 2: Socio-labour Policy-making Agencies and Community Legislation in the Americas	
Table 3: Fundamental Principles and Rights at Work and their follow-up through Regional Integration Agreements	
Table 4: Principles and Rights at Work in 9 Countries of the Region	

PROLOGUE

Since the nineteen nineties, the ILO's Regional Office for the Americas has been carrying out various efforts to support the tasks of the Inter-American Conference of Ministers of Labour of the Organisation of American States (IACML-OAS).

Initially the Regional Office gave direct support for the technical meetings held in 1995 in Buenos Aires, Argentina and in 1998 in Viña del Mar, Chile. As of the year 2000, support was channelled through the specific project *Fundamental Principles and Rights at Work in the context of the XI Inter-American Conference of Ministers of Labour of the OAS* financed by the United States Department of Labour (US-DOL). The first phase of said project had as its objective the carrying out of activities designed to comply with the Declaration and Plan of Action of Viña del Mar. At that time, diverse studies were carried out on a wide variety of labour issues, and the foundations were laid for the initiation of a close coordination and collaboration process between the ILO and the IACML.

At present the project (*Principles and Rights at Work in the context of the XII IACML-OAS*) is in its second phase, and as its general objective "*the project aims at contributing to the effective application of the ILO's fundamental principles and rights at work, and to improve the employment and social conditions in the hemisphere by supporting the execution of the Plan of Action of the XII Inter-American Conference of Ministers of Labour of the OAS.*" Another of its objectives is the support of the *Pro Tempore* Presidency currently held by Canada.

More specifically the project's objective is to provide technical assistance to Working Group 1 of the XII IACML-OAS, created during the Ottawa Conference in 2001, whose task it is to provide follow-up on labour aspects of the Americas Summit Process. To this end, five studies have been carried out to illustrate the consistency found in the labour legislation present in the four subregional integration agreements and one multilateral free trade agreement, with respect to the fundamental labour principles and rights of the ILO.

The previously mentioned studies analysed the principal subregional agreements: the North American Free Trade Agreement (NAFTA), the Caribbean Community and Common Market (CARICOM), the Andean Community (CAN), the Southern Common Market (MERCOSUR), and the Central American Integration System, (SICA)

The studies were carried out by five consultants of the ILO: Tamara Kay, for NAFTA; Orville Taylor, for CARICOM; Noemí Cohen, for MERCOSUR; Alexander Godinez for SICA; and Juan Carlos Cortés for the CAN. To ensure consistency, a common methodology was employed which was further reinforced by means of a workshop held in Lima, Peru in December of 2002.

Subsequently, more in-depth studies were conducted in nations that make up these regional agreements, and that participate in NAFTA. Nine countries participated actively: Canada and the USA for NAFTA, Jamaica and Barbados for CARICOM, Argentina and Uruguay for MERCOSUR, Costa Rica and Panama for SICA, and Peru for the CAN.

The present comparative analysis of these studies was developed by an ILO task force composed of: Daniel Martínez, Adjunct Director of the Regional Office for Latin America and the Caribbean, Virgilio Levaggi, Regional Specialist in Socioeconomic Integration and Decent Work, María Luz Vega, Program Specialist for the In Focus Program on the ILO Declaration of 1998, and Verónica Oxman, Principal Technical Coordinator for the project "*Fundamental Principles and Rights at Work in the context of the XII IACML-OAS.*"

I trust that the present publication will be useful for the promotion and application of the labour commitments recognised in the context of integration and free trade agreements. In addition, this study contributes to better knowledge of the *labour dimensions of the Americas Summit Process and globalisation issues related to employment and work*, as requested by the Ministers of Commerce of the Americas at the Quito, 2003 conference.

I wish to thank all those who made these studies possible. With their collaboration they have demonstrated their profound commitment to human rights at work in each of the nations of the American region.

Agustín Muñoz
Regional Director for the Americas
Regional Office of the ILO for Latin America and the Caribbean

I. INTRODUCTION

All economic integration processes involve social aspects. Sometimes, these aspects may not be defined clearly when the processes begin. Nonetheless, the social effects that these processes precipitate means that sooner or later, the “social dimension” or “labour issues” inevitably appear in the analysis of regional and supra regional integration.

Without in any way denying the commercial and economic motivations which generate integration processes, there can be no doubt that the balance of forces necessary to guarantee an equitable distribution of its benefits among the members of a society requires the development of a number of fundamental factors originating in social development. All economic integration processes imply social aspects.

Today, it seems that a successful integration process is impossible unless a number of basic political and social pre-conditions are met. These are: a democratic regime; true rule of law; and strict and general compliance with human rights, including the fundamental rights at work. Compliance with these pre-conditions, while indispensable, is not sufficient to ensure success.

The link between integration processes and the social and labour development of the societies involved is evident, since any trade or economic regulation will very likely affect (positively one hopes) employment levels, the relations between social actors, and workers’ rights.

That is why there can be no discussion of economic integration without addressing the labour aspects involved and without taking the economic actors into account. Integration may, particularly in the short term, change the internal structure of the labour market, the traditional composition and interrelation between the social actors -and the balance of these relations- either for the better or for the worse. Social dumping, understood as the attempt to base international competitiveness on cheapening the labour component by failing to respect fundamental rights at work, is a recurrent issue in every debate on this issue.

If one only observes the fora where the debate on the regulation of international trade is conducted one sees how relevant the social and labour dimension is to this issue at the national level and this makes it easy to realize that labour standards are indeed central to the international agenda as well.

While not forgetting that integration works to improve a society’s development by transforming the production system and improving the population’s living standards, it is necessary to work at defining ways for regional integration to help achieve the various countries’ labour policy objectives.

Over the past decade a consensus has emerged around a number of core labour rights which are considered to be the minimum (although not the only) pre-requisite for the establishment of a level playing field in both the development race and the juridical foundation for poverty alleviation, distributing income more equitably, and spreading the earnings of trade more widely¹. The soundness of national economic policy is undercut where the fundamental principles and rights at work are not respected, quite simply because the standards these ensure are a factor of balance in international trade. There is ample evidence that non-industrialized countries stand to gain in terms of trade advantage if they comply with such minimum fundamental standards. Such is the case, for instance, with the Generalized Systems of Preferences, of Free Trade Agreements, and so on.

¹ Polasky, Sandra (2003): *Trade and Labor Standards: A Strategy for Developing Countries*: Carnegie Endowments for International Peace: www.ceip.org/pubs.

The first attempt to raise international consensus in support of core labour rights was made by the Director General in his Report to the 1994 International Labour Conference, where for the first time the idea of creating this body of law was put forward explicitly. At Copenhagen, in 1995, the convening heads of State and Government at the World Summit for Social Development agreed to a number of commitments and a Programme of Action which made explicit reference to "basic workers' rights", namely: prohibition of forced labour and child labour; freedom of association and protection of the right to bargain collectively; equal pay for work of equal value; and freedom from employment discrimination. At the World Trade Organization Ministerial Conference held in 1996 in Singapore, this new school of thought received a new and stronger official sanction when the States renewed their commitment to enforce and respect internationally recognized fundamental labour standards, confirmed ILO's role as the body in charge of establishing and enforcing these standards, and reiterated their support to ILO's work to advance them.

Since then the ILO has held the view that, although economic globalization may help economic growth, and although the latter is an indispensable condition of social progress, it cannot ensure that progress in and of itself. According to the ILO, progress must be accompanied by a modicum of social rules founded on shared values enabling the concerned parties to demand a fair share of the wealth they have helped create. In this context, the desire to encourage the efforts which all countries devote to have economic progress accompanied by social progress must be reconciled with the need to allow for each country's situation, capabilities and preferences.

This idea is based on a principle that is at the heart of the ILO mission; namely, that *labour is not a commodity*. It must be considered as the minimum pre-requisite for achieving sustained and sustainable development (paragraph 54,b de Programme of Action adopted in Copenhagen at the World Summit for Social Development), since both the dignity of the individual and his/her equal status as a citizen are founded on it.

In order to extend the value of its particular legal Conventions and Recommendations with regard to these issues, the ILO has been insisting on the existence of a number of international customary norms. The sphere of application of these norms exceeds the scope of its own legal instruments which bind the Member States directly as constituents of the Organization. Indeed, these principles apply with no need for ratification or adherence.

In fact, even when they have not ratified the Conventions designated as fundamental² (meaning that their governments have no legal obligation to enforce them) all ILO Member States have a commitment to implement the general principles from which these rights derive. This is because the principles enshrine values the Member States accepted by freely adhering to the ILO Constitution. Such is the mandate that was specifically confirmed in the ILO Declaration of Fundamental Principles and Rights at Work of 1998³, which reaffirms the worldwide consensus that began in Copenhagen.

In other words, for the ILO and, therefore, for its constituents, the acceptance of certain labour rights as human rights inheres to the obligation effectively undertaken by every Member State⁴ in recognition

² These are ILO Conventions: N°87 on Freedom of Association and Protection of the Right to Organize (1948), C N°98 on the Right to Organize and Collective Bargaining Convention (1949), C N°29 on Forced Labour (1930), C N°105 on Abolition of Forced Labour (1957), C N°111 on Discrimination in Employment and Occupation (1958), C N°100 on Equal Remuneration (1951), C N°138 on Minimum Age (1973), C N°182 on Worst Forms of Child Labour (1999).

³ Namely, "to respect, to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions".

⁴ Not to mention the juridical value of the Declaration per se, which is the equivalent of a resolution.

of the fact that certain general, higher and essential values exist in the social sphere, without which adequate development policy cannot exist.

In this spirit, and guided by the conviction that the enforcement of basic labour standards is a way to contribute to progress overall, the international community is devoted not only to debating the issue, but also to preparing such technical cooperation programmes as may enable all countries to bring about whatever changes may be necessary to extend these rights to every citizen. These are the terms of reference of this report and the sense in which it is intended to function.

II. THE LABOUR DIMENSION OF REGIONAL AGREEMENTS

In line with the goals of the project which has made its preparation possible, this report focuses on the implementation of national and regional instruments concerning fundamental principles and rights at work, while excluding national or regional laws protecting other labour rights, such as those pertaining to occupational health and safety, vocational training, minimum wage, social security, etc.⁵ This, however, does not mean that such laws do not exist.

2.1. International legislation on fundamental rights at work

Apart from ILO “social” texts, several different international instruments on human rights guarantee⁶ a number of individual and collective rights, which are typically “social”. Such is the case of the International Covenant on Civil and Political Rights (U.N. Resolution 2200A (XXI)) of 16 December 1966 that enshrines the right to freedom of association (Art. 22), to equality before the law (Art. 26) and the prohibition of slavery (Art.8). Likewise, the International Covenant on Economic, Social and Cultural Rights (U.N. Resolution 2200A (XXI)) of 16 December 1966 establishes the principle of equality (Art. 7), the abolition of forced labour (Art. 6), and the protection of children (Art. 10) as fundamental precepts. The Convention for the Protection of Human Rights and Fundamental Freedoms (U.N. Rome, 4 November 1950) establishes the prohibition of slavery and forced labour (Art. 5), freedom of association (Art. 11.2), and the prohibition of discrimination (Art. 14). Numerous other Declarations and Covenants, such as the Convention on the Elimination of All Forms of Discrimination against Women, or the Convention on the Rights of the Child, as well as a number of regional instruments (e.g. the American Declaration on the Rights and Duties of Man of the Organization of America States -OAS) move in the same direction.

The Universal Declaration of Human Rights enshrines the principles of equality and freedom in its Preamble: (“*inherent dignity and of the equal and inalienable rights of all members of the human family*). It defines equality as a human right (Art. 2)⁷. Its Article 7 stresses that all must be equal before the law. Article 23.2 affirms the right to equal pay for equal work. Article 4 prohibits slavery and servitude. Article 23.4 affirms the right to form and to join trade unions for the protection of professional interests. Article 26 affirms the right to protect children through education. The Declaration also establishes other labour rights, such as the right to social security (Article 22) or rest and leisure (Article 24), and the right to work in general (Art. 23).

2.2. Legislation in the Americas on fundamental rights at work

The existence of international instruments for the Americas is strong evidence of the importance attached to labour rights in the region.

By making the Universal Declaration of Human Rights its own, the American Convention on Human Rights brings a full list of fundamental rights under the protection of the norms governing the regional international relations of the Organization of American States. It establishes systems of judicial or quasi-judicial protection through the Inter-American Commission on Human Rights and the Inter-

⁵ For further information, see Ciudad R. Adolfo (2002): *Labour Standards in the Integration Process in the Americas*: ILO: Lima, Peru.

⁶ They, in fact, precede the above texts, for they embody an idea central to the existence of the ILO itself, sanctioned by its Constitution and fundamental Conventions.

⁷ Art. 2 sanctions the existence of *equal rights and freedoms without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.

American Court of Human Rights as adjudicatory bodies. In fact the link between human rights and democracy was established within OAS in 1991, by the Santiago commitment (linking *human rights to democracy and the renewal of the inter-American system*), and by the Inter-American Democratic Charter adopted by consensus in the year 2001.

Labour and social rights are clearly stated in the region's four basic instruments, namely: the American Declaration on the Rights and Duties of Man (OAS Res. XXX, 1948, OAS/Ser.L.V/IL82 doc.6 rev.1 p.17, 1992); the American Convention on Human Rights (OAS, date of entry into force: 18 July 1978, OAS/Ser.L.V/ii.82 doc.6 rev.1 p. 25, 1992); the Additional Protocol to the American Convention on Human Rights, known as the Protocol of San Salvador (OAS treaties No. 69, 1988, OAS/Ser.L.V/IL82/ doc.6 rev.1 p. 67, 1992); and the Inter-American Democratic Charter⁸.

The American Declaration on the Rights and Duties of Man affirms the principle of equal dignity and rights in its Preamble (a principle reaffirmed in its Article II) and recognizes the right of association (Art. XXII), as well as the right and duty to work. Regarding fundamental rights at work, the American Convention on Human Rights, recognizes the right of children to protection (Art.19), equality before the law (Art. 24), freedom of association (Art.16)⁹; and prohibits slavery, compulsory servitude and forced or compulsory labour¹⁰ (Art. 6).

The Protocol of San Salvador recognizes the right to work (Art. 6), the principle of equal wages for equal work¹¹ (Art. 7, paragraph a.) and trade union rights in its Article 8, which guarantees not only the freedom of association, but also the right to strike. With regard to children, Article 13 recognizes the right to education. Its paragraph 3.a specifies that primary education should be compulsory and accessible to all without cost, which seems to imply the need to establish a minimum working age and avoid child labour, thereby reiterating the provision of Article 16 on the right to be children.

Article 10 of the Inter-American Democratic Charter states that “the promotion and strengthening of democracy requires the full and effective exercise of workers’ rights and the application of core labour standards, as recognized in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, and its Follow-up, adopted in 1998, as well as other related fundamental ILO Conventions”. Its Article 9 explicitly recognizes the principle of equality and nondiscrimination.

We see then that a wide range of regional instruments has given more specific treatment to commitments already made at the universal level.

2.3. Norms on fundamental rights at work as established in subregional integration agreements

The various subregional instruments reiterate the signatory countries’ commitment to protect and enforce the four fundamental rights at work (see Annex Table 2). Thus, for example, non discrimination appears in Article 6 of the Treaty on Social Integration for Central America of 30 March, 1995¹², whereas all four fundamental rights are recognized in the 1997 *Charter of Civil*

⁸ Resolution adopted at the twenty-eighth extraordinary session, Lima, Peru, 11 September 2001.

⁹ Although the article in question refers to associations of every description—cultural, political, labour, etc.), it is in line with ILO Convention N°87, in that it restricts the right in question only in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others, or in the case of the armed forces and the police.

¹⁰ Virtually in the same terms as in the relevant ILO Conventions.

¹¹ The ILO term is “work of equal value” (Convention N°100).

¹² This is the only fundamental right protected by the Treaty.

*Society*¹³ for the Caribbean Community as well as in its Declaration of Labour and Industrial Relations Principles (Bahamas, 28 April 1995).

For the purposes of this report, one of the most important aspects of the Caribbean Community and Common Market (CARICOM) since the mid-nineties is the drafting of subregional model laws -a very interesting approach to the enforcement of the four fundamental rights. Today such models exist for the recognition of trade unions and equality of opportunity and treatment (as well as on termination of employment; occupational safety and health). There can be no doubt that this legislative practice enhances the signatory countries' commitment to harmonize labour laws across the region and facilitates the fulfillment of their commitment.

In addition to other rights, the Southern Common Market's (MERCOSUR) Socio-Labour Declaration (Rio de Janeiro, December, 1998) explicitly recognizes equality, collective bargaining, freedom of association and the protection of minor children. According to its own terms, it builds on the progress already achieved with regard to the social aspects of integration, "especially through the ratification and enforcement of the core ILO conventions". It proclaims a number of labour principles and rights, "without prejudice to such others as may have been recognized now or in the future through the national or international practices of the Member States". In its whereas clauses, the Declaration specifies that the MERCOSUR Member States "are committed to the declarations, covenants, protocols and other treaties that are part of the juridical heritage of mankind", with explicit reference to the most important universal and American declarations and covenants on human rights.

The Andean Community of Nations (CAN) has centered its subregional agreements and commitments on such issues as vocational training, migration and social security—thereby distancing itself somewhat from the core rights issue addressed at other levels and by other sub regions (see Annex Table 3). With regard to the four fundamental rights, the Andean Social Charter¹⁴, although not binding, is particularly worthy of attention. It was adopted by Decision N° 815 during the Fifteenth Regular Session of the Andean Parliament, held in Lima (December 1999). Among its provisions, the Charter includes rules that refer to the four fundamental principles and rights at work, namely: equality of opportunity and treatment and nondiscrimination; prohibition of child labour; freedom of association and collective bargaining; the right to strike and social dialogue.

Also important is the “Andean Charter for the Promotion and Protection of Human Rights” adopted by the Andean Presidents in July 2002¹⁵. The fifth point of the Declaration of Guayaquil stipulates that the binding nature of the Charter and its effective incorporation into the legal order of the Community will

¹³ The Declaration provides a number of explicit guidelines covering the following topics: freedom of association; collective bargaining; non-discrimination in employment and occupation; employment policy; labour administration; disputes settlement; and consultation and tripartism. Each of these topics is given further detail in the declaration, to demonstrate a great degree of affinity with the ILO's core labour standards. As an example, Article 16, which is titled *Forced Labour*, deals with the subjects of compulsory work as well as child labour. Subsection 1 of the Article reads, *The Member States shall not impose nor permit to be imposed, forced or compulsory labour...*” and Subsection 2 states, *“The member States undertake to prohibit the employment of children of less than fifteen years.”*

¹⁴ Although, being a Declaration, this instrument is nonbinding, the Andean Parliament monitors its implementation through specific mechanisms for its evaluation and follow-up. The requests to incorporate the instrument into the Community legal order have become more vocal recently.

¹⁵ This Charter enshrines the general principles, legal provisions, spheres and mechanisms that guarantee the observance, respect for, promotion and defence of human rights in the Sub-region. By guaranteeing the opportunity to earn a living through freely chosen and accepted work; the enjoyment of fair and satisfactory working conditions; the right to organise and join trade unions and to enjoy other labour rights; and the right to social security, the Charter regulates socio-labour matters in the Sub-region. It also establishes the express commitment to promote and safeguard worker rights and guarantees under national law, International Human Rights Law, and labour standards issued by the International Labour Organization.

depend upon the approval of a Decision by the Andean Council of Foreign Ministers. Both the Andean Parliament and the Sub-region's employers and workers have asked that Council to immediately incorporate the Charter into the Andean legal order. The potential development of an authentic social dimension rests on the incorporation of several instruments that are not a part of the Community legal order at present.

Regarding the Central American Integration System (SICA), there can be no doubt of two aspects: 1) that its evolution has been different from the other processes in the region, not only from the institutional but also from the normative standpoints, and 2) that social integration within that system is at a lower stage of development. A brief look at the list of legal instruments of Central American integration is enough to realize that since the very inception of the regional integration process, the subscribed agreements, pacts or protocols on industrial development, tariffs or charges were at the basis of the nascent Central American normative system (see Annex Table 3). This gives rise to the fact that those institutions associated with the economic subsystem are also those with the strongest regional tradition. In this context it is not surprising that the fundamental principles and rights at work are not present in any of the existing subregional instruments. Even in the Declarations of Presidential Meetings issued after 1998, there is no concrete mention of any of the four fundamental rights included in the ILO Declaration.

Remarkably, only in the final Declarations of meetings between the heads of SICA Member States and presidents of countries politically, geographically or commercially proximal to the region, have a number of regional measures or policies begun to emerge that are specifically aimed at promoting and protecting one or more fundamental rights.

The North American Free Trade Agreement -NAFTA (which is -or, at least, was conceived as- a free trade agreement (FTA) rather than an integration system¹⁶), is complemented by a North-American Agreement on Labour Cooperation (NAALC). This commits each of the three signatory countries—Mexico, Canada, and the United States—to “*protect, enhance and enforce basic workers’ rights*”¹⁷, and it establishes eleven “guiding principles” each signatory country agrees to promote. The agreement does not, however, establish common minimum standards for each country’s domestic law. Rather, the principles indicate “broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces”¹⁸. The eleven principles include freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, the prohibition of forced labour, and the elimination of employment discrimination.

In order to further the goals of the NAALC, the Commission for Labour Cooperation (CLC) established under the Agreement has embarked on a variety of cooperative and collaborative activities since its inception in 1994. Many of these activities directly or indirectly advance not only the NAALC’s eleven labour principles, but also the four fundamental principles outlined in the ILO Declaration of Fundamental Principles and Rights at Work. In addition to these activities, collaboration also occurs through the submission and review of public communications. To date, approximately 26

¹⁶ Perhaps the time has come to draw a distinction between free trade agreements explicitly including socially-oriented rules, and side agreements or supplementary agreements to free trade agreements, which will be discussed in one of the following sections. In the case of the North American FTA, it went into effect with a side agreement called North-American Agreement on Labour Cooperation, the primary objective of which is to achieve enforcement of each signatory country’s own labour standards as a way to advance certain specifically listed, important labour principles under the conditions set out in their respective domestic legislations.

¹⁷ North-American Agreement on Labour Cooperation, preamble.

¹⁸ NAALC, Annex 1.

public communications have been submitted and reviewed. MERCOSUR also reviews annual reports on the enforcement of the four fundamental principles.

On the basis of the preceding we can safely say that all four fundamental rights are recognized and expanded (by way of inclusion of such other rights as social security or minimum wage) at the subregional level by MERCOSUR, CARICOM and NAFTA, whereas only nondiscrimination is recognized by SICA and none is explicitly recognized within the CAN.

Regarding the implementation of these decisions, a consensus exists in the Americas in favor of endowing the integration instruments with special promotional bodies wherein the social actors would be represented and actively involved¹⁹. In some cases, including OAS, MERCOSUR or NAFTA, adjudicatory bodies have been established with the power to resolve disputes on non-compliance or the interpretation of the integration rules. In spite of the above, however, cases of noncompliance and complaints alleging violations of human rights in the social sphere continue²⁰.

2.4. The Directives from the Summits of the Americas

Independent of any specific recognition in the existing treaties, the region supports the general idea of promoting the fundamental principles and rights at work. Thus in their Santiago Summit the Heads of State agreed (Declaration of Santiago, April 1998) to “promote the international labour standards recognized by the International Labour Organization (ILO)”. The same agreement was repeated in the Declaration and Plan of Action adopted at the Third Summit of the Americas held in the city of Québec, Canada, in April, 2001, where the Heads of State and Government from the region instructed their Ministers of Labour to consider the issues related to the construction of a hemispheric integration agreement (Free Trade Area of the Americas -FTAA) which affect employment and labour.

In other words, the instruments are in place, the issue is on the table, and human rights are indeed taken into consideration in the national and regional contexts. Nevertheless, as we shall see in the next few pages, the problem of enforcement is very much present and, indeed, huge obstacles still stand in the way of effective compliance, even when the states have ratified various instruments and have agreed to their obligations.

This picture of the subregional integration agreements as relevant to the social sphere is far from complete. While the very existence and value of the principles as basic instruments of reference is yet to be defined under some agreements (SICA and CAN), in the other three there should be evaluation of follow-up mechanisms, their impact in terms of enforcement and their development on the national level.

¹⁹ Such, for instance, is the case with SICA or NAFTA.

²⁰ The NAFTA process allows the Parties multiple opportunities to modify their practices before sanctions are applied in the form of fines. So far, no ECE or Arbitral Panel has been established.

III. LABOUR DIMENSION IN THE FREE TRADE AGREEMENTS OF THE AMERICAS

Various subregional agreements together with a multitude of trade agreements spawned around the world by the Uruguay Round in Uruguay 1986, define the spectrum free trade agreements with its variety of transnational coverages.

In the Americas, the only trade agreement with regional coverage is the Latin American Free Trade Association (LAFTA) “*created by the 1980 Montevideo Treaty. It provides the legal framework for other bilateral or subregional agreements, such as those mentioned in the following pages*”²¹. However, LAFTA does not enshrine any explicit social rule or norm.

With regard to coverage, only the North American Free Trade Agreement and the Free Trade Agreement between Colombia, Mexico and Venezuela (G3 FTA)²², involve more than two countries. Most trade agreements in the region are bilateral in nature.

Bilateral agreements are numerous in the region, and most of them contain no labour provisions. One notable exception -and the most studied- is the Canada-Chile Free Trade Agreement (CCFTA). It was ratified in 1997 and complemented by a side Agreement on Labour Cooperation (CCALC). The CCALC established a number of principles, objectives, institutions and initiatives to avoid social dumping and advance fundamental labour principles and workers’ rights. It came into force in 1998 with a structure similar to that of labour agreements generated within the framework of NAFTA. In addition to recognizing the fundamental labour rights, the CCALC includes a number of protective provisions regarding employment conditions (hours of work, minimum wage, occupational safety and health), and rules on employment promotion and the protection of migrant workers.

The Canada-Costa Rica Free Trade Agreement signed in April 2001 includes a parallel labour cooperation agreement, which even though it is an annex, forms an integral part of the FTA Agreement. In addition to recognizing a number of rights, this agreement commits both countries to the compliance with, and promotion of, principles and rights included in the ILO Declaration on Fundamental Principles and Rights at Work. In other words, the laws, regulations, procedures and practices of both countries shall uphold the principles and rights regarding freedom of association and protection of the right to organize, the right to bargain collectively, the right to strike, the prohibition of forced labour, elimination of child work and labor protection of youth, the elimination of employment discrimination, and equal pay for women and men.

The recently signed (June, 2003) US-Chile Free Trade Agreement also includes an annex on a labour cooperation agenda which commits the signatory countries through the authority of their respective domestic legislations to enforce the fundamental workers’ rights defined as: freedom of association, collective bargaining, prohibition of forced labour, labour protections for children, and acceptable employment conditions regarding the minimum wage, hours of work and occupational safety and health. Although recognized as fundamental principles and rights by the ILO Declaration, equality and nondiscrimination are absent from the accord in question, even though both parties reaffirm their obligations as members of the ILO, agreeing to strive to ensure that their domestic laws provide for labour standards consistent with internationally recognized labour principles. The Agreement also makes clear that it is inappropriate to weaken or reduce domestic labour protections to encourage trade or investment.

²¹ Rosenthal, G., Di Filippo, A. & Franco, R. (1997): *Aspectos sociales de la integración*: Volumen I: ECLAC: Serie políticas sociales N° 14.

²² The G-3 agreement makes no provision for the fundamental rights at work.

A novel scheme known as the “Free Trade Area of the Americas” (FTAA) is being developed currently with the participation of all countries in the region, including Caribbean nations. This scheme was submitted and approved at the Miami Summit of the Americas (December 1994), and ratified at the Second Summit of the Americas held in Santiago in 1998. At the III Summit of the Americas held in the city of Quebec in 2001, the Heads of State agreed on February 2005 as the deadline for the conclusion of the negotiations.

Although the FTAA negotiation process is taking place in line with the directives given by the Presidents at the Summits of the Americas, the structure of the negotiation—i.e. the thematic commissions—do not, at least for the time being, conform to the Presidential directives on labour development and fundamental principles and rights at work. Nevertheless, the Ministers of Trade of the region met in Quito towards the end of 2002 and requested IACML to report on the results of the study it was conducting (with ILO’s support) on, *inter alia*, “questions of globalization related to employment and labour,” (point 10 of the Ministerial Quito Declaration).

IV. THE APPLICATION OF THE FUNDAMENTAL PRINCIPLES AND RIGHTS IN INDIVIDUAL COUNTRIES

As already mentioned, all countries in the region make important references to the fundamental rights in their instruments. In the case of certain principles, such as the freedom of association and collective bargaining, and, to some extent, the elimination of child labour, such references are particularly detailed and extensive (see Annex Table 4).

In Latin America legislation is heir to the civil law tradition, which means that regulations are created by statute only: Hence the importance—in all 18 countries—of the existence of adequate written laws. However, whether such extensive legislation exists or not, the real problem nearly everywhere in the region lies with enforcement. One reason is the fact that such enforcement depends directly on administrative control that is of highly debatable efficiency²³. The other and ultimate reason is that in nearly all countries the adjudicatory function is entrusted to specialized labour courts who are strongly criticized for slowness and a general inability to solve problems.

4.1. The application of the four fundamental principles and rights at work

a. Freedom of association and the effective recognition of the right to collective bargaining

In the Americas the most detailed regulations on the fundamental principles are those concerning freedom of association and the effective recognition of the right to collective bargaining. They are also those, as we shall see in this report, about which enforcement is most widely questioned. It should also be pointed out that CARICOM member states have common-law based legal systems where much is left to the judicial application (case law) of a smaller number of written rules. While this approach facilitates compliance with, and development of, a principle we must not for a moment forget that there is still a considerable way to go.

In Barbados, for instance, nothing in statute exists to give workers the right to choose a union for the purposes of collective bargaining. However, in practice the Department of Labour plays a pivotal role, and the de facto situation is that workers and their unions have this right, with 60 per cent of the Barbadian workforce unionized. That said, it should be added that all countries in the British Caribbean have legislation supporting this principle in place except Barbados (which has not prevented the latter from applying it in practice). The United States and Canada²⁴ also have statutes on this matter.

It should be pointed out here that during the past decade, international pressure accompanied in some cases by the threat of trade sanctions has driven a number of countries to revise their legislations in order to ensure greater respect for internationally recognized workers' rights, particularly those enshrined in the ILO Declaration on Fundamental Principles and Rights at Work²⁵. One special case is perhaps Chile, where the ratification of ILO Conventions N°87 and N° 98 in 1999²⁶ has been considered an essential point of reference in its legislative reform within the framework of the nation's commitments as an ILO member and of the various international trade agreements to which it has subscribed.

²³ Among the reasons mentioned are insufficient human and material resources available to perform the inspections, lack of training, lack of internal coordination.

²⁴ At the national and provincial levels.

²⁵ This is particularly true of the reforms introduced into the labour codes of Guatemala, Costa Rica, Grenada and El Salvador, respectively in 1992, 1993, 1999 and 1994.

²⁶ Chile also ratified Convention 151 in 2000.

What are the most important aspects of today's regulation of the freedom of association principles in the region?

By and large, but with due respect for the differences arising from each country's legislative tradition, they can be summed up as follows:

The most notable characteristic is the limited scope of application of the existing legislation. This is due to the current composition of the labour market and the small number of workers included in it. Even apart from the laws that leave out certain groups of wage earners entirely (agricultural workers in Bolivia and Honduras or some Canadian provinces and US states; civil servants, apprentices or trainees in Peru²⁷, domestic workers, among others), a significantly large number of workers simply is not covered by the law. In most countries, workers in the informal sector, family workers, and independent unskilled workers (who, according to statistics, make up the highest number of people included in the region's EAP) are not covered by labour law, and in that sense they are deprived of their freedom of association because of the legal difficulties in exercising the right to collective bargaining²⁸. The existence of this state of affairs has been pointed out in the case of Canada, where the exclusion affects not only agricultural workers, but also domestic workers, migrant workers and certain civil servants.

A further factor of exclusion is the minimum number of workers legally required for the creation of a company union. This number is usually around 20, although it can be as high as 40 in Panama, and as low as 12 in Costa Rica. In addition, labour relations are regulated within the enterprise (meaning that the law recognizes freedom of association and collective bargaining at all levels, but regulates their application of these principles within the enterprise in detail) further reducing the scope of application of the general legislation. This is also true with respect to workers in the informal sector and independent workers. In Haiti, the law requires governmental approval for any trade union comprised of more than 20 workers.

Another similar factor of exclusion is the existence of the so-called "non-labour contracts"²⁹, for example in the cases of Peru (apprenticeship contracts, training employment contracts, workers' cooperatives), Ecuador (hours-based contract), Costa Rica (temporary and seasonal banana workers) and Argentina (apprenticeship contracts and the recourse to services contracts under civil law)³⁰. This is particularly true with regard to women, and its direct result is as much a matter of labour discrimination as it is an adverse impact on women's ability to exercise their freedom of association and collective bargaining rights.

Another characteristic feature is the current tendency by employers' organizations to create "associations" under the civil law, which means they are not governed by labour law. There is very little regulation of employers' unions in labour codes and the reforms have not brought any change in this respect. In fact, it appears that all parties considered are quite comfortable with this state of affairs -which, in fact, is in full agreement with the freedom of association principle. In none of the CARICOM countries is there a norm providing for recognition of an employers' organization.

²⁷ This is because civil servants and trainees are not considered employees under labour law.

²⁸ It is perhaps appropriate to point out how few are labour codes such as Nicaragua's *Código Laboral* (labour code), which covers both independent workers in urban and rural sectors and people working in family workshops.

²⁹ These are contracts that do not recognize the party performing the work as employees in the full sense of the word, and therefore do not provide for the same rights as for other employees.

³⁰ See the Goldin, A. and Feldman, S. study on labour relations in Argentina, 2000.

<http://www.ilo.org/public/english/dialogue/ifédial/II/wphtmdialogue/govlab/papers/2002/newnp/index.htm>.

Although less prevalent, the tendency to impose single trade union representation by law also continues in a number of countries. However, the evolution of the trade union movement and the crisis it is experiencing are beginning to affect monopolistic tendencies in this area, as in all others.

While in no way surpassing the predominance of problems connected with enforcement, the majority of complaints and demands filed by trade unions regarding the content of the legislation, indicates that the insufficient regulation of the right to employment security and other protections for union representatives is another characteristic. This is a situation that not only elicits multiple comments from ILO supervisory bodies, but also generates a general lack of protection. In fact, during the past five years acts of anti-union discrimination have represented the highest percentage of complaints examined by the Committee on Freedom of Association³¹. In the case of the United States, complaints have been centering on acts of repression performed in some sectors against the exercise of freedom of association in the form of anti-union activities³², which also affect the development of collective bargaining.

It is evident that the recognition of the right to strike, the definition of essential services and the general conditions for exercising this right also pose problems, particularly in CARICOM and Canada. In Jamaica, for example, although the right to strike is not recognized, the freedom to strike is, which simply means that both workers and employers can withdraw their labour without legal penalties. However, the freedom to strike does not exist when essential services are involved. In Barbados, as in Jamaica, there is no right to strike. The *Better Security Act* makes work stoppages in the water, gas and electricity sectors unlawful. However, there is no provision for compulsory arbitration in any sector or industry. In Belize the regulation is limited and has been considered insufficient. In Trinidad and Tobago the problem lies with the law requiring a qualified majority to call a strike. Limitations also exist in Dominica where the definition of essential services is an impediment to the right to strike.

In summary, although a tendency to conform to international norms does exist on the part of the various national legislations, a degree of legal inertia is evident -at least in Latin America. The cause is a legislative tendency to overregulate with little consideration for the real composition and the dynamics of the labour market, or for the radical changes it is undergoing. The emergence of other types of agreements that disregard compliance with the freedom of association principle, and the role of other organizations in determining labour relations are a consequence of this lack of flexibility. Throughout the Americas, enforcement problems are also evident, perhaps due to insufficient activity by those involved in the application of the principle.

Two issues bear mentioning this context: First, the cost of labour and second, the debate as to whether regulation of the labour market undermines the international competitiveness of regional economies by creating labour rigidities. Indeed, such considerations have led to serious criticisms and reforms of labour standards to prevent legislation from impeding a flexible management of the labour force. Given the wage rates prevailing in the region, however, it is not clear that the regulation of labour is dramatically increasing the unit cost of labour. However, this certainly is a question deserving of more in-depth analysis³³.

³¹ By way of an example, in 1999 alone ILO's Committee on Freedom of Association asked that measures be taken to remedy infringements of trade union rights in nearly half the cases reviewed.

³² Human Rights Watch (2000): *Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards*: p. 9.

³³ Over the past decade non-salary labour costs (nslc), meaning workers' and employers' contributions to fund welfare facilities, vocational training, etc.) have been reduced in many countries. This was done for a dual purpose. One was to cut down overall labour costs as a way to increase the competitiveness of enterprises. The other was to create more jobs by making salaried jobs cheaper. The reduction of nslc, however, took place almost exclusively by reducing the percentage of gross salaries charged to employers as their contribution to the funding of welfare facilities, vocational training and other items benefiting workers and the enterprise. Workers' contributions, on the contrary, were either increased or maintained at

Remarkably, whilst so much concern is voiced about the effect of labour regulation on labour costs, very little is said about how the inability to generalize and improve vocational training adversely affects the enterprises' ability to compete in terms of productivity or quality. This is truly paradoxical for if one considers that the most effective way to meet the challenges of productivity and competitiveness is through functional flexibility (i.e. the ability to assign workers to different jobs), any consideration of the merit of this approach is rendered moot by the absence of adequately qualified human resources.

b. Forced Labour

The issue of forced labour is addressed in general terms by most Constitutions and by ordinary law which strictly forbid it and provide for effective sanctions. Such practices are also subject to penalties under criminal law.

With regard to enforcement, the main problem seems to be the lack of knowledge of how to measure and identify the presence of forced labour in any given nation. The latest comments of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEARC) have been about the existence of compulsory labour—specifically debt bondage and the truck system in Brazil, Peru and Haiti (the *reste-avec*, or slave children, problem is well known). Other comments were on compulsory national service or criminal penalties for walking away from certain contracts in Dominica and Belize, the use of prison labour in Jamaica (in addition to forced labour for merchant seafarers) and cases of child labour traffic detected in some countries³⁴.

These are documented cases submitted to the ILO supervisory bodies. However, the real challenge posed by forced labour is its “obscurity”, i.e. its concentration in restricted or almost inaccessible areas, and a general lack of perception of the magnitude of its presence even by those authorities that consider it a blight.

The list of the Committee of Experts (CEARC) as cited above was augmented by the ILO Global Report *Stopping Forced Labour, 2001*³⁵ which added Bolivia (compulsory labour in sugar cane harvesting), Dominican Republic (Haitian emigrants), and Guatemala (rural servitude), and several countries in the region as countries of origin of traffic in persons. There are also references to the United States with respect to private prison labour, which in some cases, depending how it is used, can be considered as compulsory labour. This is a topic concerning numerous developed countries. Reference is also made to other countries in the North and South with regard to trafficking for domestic labour and, to some extent, activities related to sexual exploitation.

In spite of this general situation of indetermination, a number of countries recognize the inadequacy of existing legal remedies and have taken positive measures. Such is the case of the United States with

the same level due to the migration of pension systems towards individual capitalization, which is financed by the individual worker solely. Thus workers' contributions increased in Argentina (14% of gross salaries in 1980, 16% in 1990 and 17% in 1998), as well as in Colombia (7,4% after the enactment of Law 50 of 1991) and Peru (6% in 1990, 19% in 1994 and 11% in 1998), whereas employers' contributions were reduced in most countries where labour legislation was reformed: Argentina (60% of gross salaries in 1980, 56% in 1990 and 45% in 1998) and Peru (67% in 1990, 63% in 1994 and 62% in 1998). Chile had already seen a reduction to 38% of gross salaries in the eighties. In countries where labour legislation was not reformed, employers' contributions remained stable (Brazil: 58%; Mexico: 48%). (cf. text resumed from Vega Ruiz (2002): *La Flexibilidad en América Latina*: p. 47-49).

³⁴ See CEACR comments on this point in <http://webfusion.ilo.org/intranet/db/standards/normes/index>.

³⁵ ILO (2001): *Stopping Forced Labour*: Global report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: International Labour Conference, 89th Session 2001, Report I (B) ISBN 92-2-111948-3 :Geneva, Switzerland.

the passage of the Victims of Trafficking and Violence Protection Act of 2000 and of Brazil where the elimination of forced labour is the stated objective of the first plan established by the Inacio 'Lula' da Silva Government in March 2003. The Plan in question provides for the implementation of a number of specific measures with support from several domestic and international agencies, including the ILO. The goal is to eliminate all forms of forced labour by 2005.

As distinct from the other three principles, the real obstacle to the elimination of forced labour is the general unawareness of its existence. While all countries agree that forced labour is an abominable form of exploitation, little effort has been made to ascertain whether such a thing exists in their own territories. Even when complaints and reports are made, they gain very little coverage in the media. Brazil is a case well worth studying. Suspecting that a form of slavery was under way, the administration carried out studies that led to the establishment of programs and policies to eliminate this form of exploitation. It is estimated that between 1995 and 2000, 1834 forced laborers were released from bondage³⁶.

c. Nondiscrimination

The legislation on equity and nondiscrimination has largely sprung from gender-related issues. It has also produced new practices that have spread across the region -particularly in Canada and the United States- over the past ten years.

At the national level, both rights are widely recognized both by constitutional charters and ordinary laws.

Constitutional declarations of the principle of equality before the law vary from making it an obligation not to admit discrimination (Paraguay, Venezuela), to declaring any act of discrimination violating fundamental rights and freedoms punishable under the law (Brazil and Honduras). No law or authority is allowed to establish unreasonable differences between individuals (Chile, Venezuela), such as those based on sex, race, birth, national extraction or family, language, religion, political or philosophical opinion, social origin, economic status or any other personal or social circumstance affecting the equal enjoyment of human dignity (Colombia, Honduras, Nicaragua and Peru). The only distinction accepted between persons is that based on their respective talents or virtues (Uruguay). In all CARICOM member countries discrimination, whatever the reason, is considered unconstitutional. The Venezuelan Constitution of 1999 deserves a special mention, for it provides *that the law shall create whatever legal and administrative conditions are required to guarantee that this equality is real and effective; it shall take proactive measures on behalf of discriminated against, marginalized or vulnerable persons or groups; it shall grant special protections to those persons who, because of one or more of the above stated conditions, are in a patently weak position, and shall punish any abuse or mistreatment of such persons.*

Some constitutional charters specifically mention equality between the sexes. Thus, for instance, the Brazilian Constitution provides that men and women have equal rights and duties under the terms of the Constitution. Likewise, the Constitution of Paraguay states that men and women have equal civil, political, social, economic and cultural rights. For its part, the Venezuelan Charter provides that the State shall guarantee equality and equity between men and women in the exercise of their right to work.

³⁶ Source: Ministry of Labour and Employment of Brazil, 2000 data on the operations of the Unidade Movel Especial de Inspeção.

Numerous constitutional texts in the Americas establish the principle of equal pay. The Brazilian Constitution, in particular, goes so far as to prohibit any difference in wages, by reason of sex, age, color or marital status.

Constitutional recognition is expanded by ordinary laws, which in addition to recognizing these rights explicitly and specifically, mark considerable steps forward on the subject of equality and non-discrimination since the nineties. Although some outdated statutes survive, including Bolivia's *Ley General del Trabajo* (general labour law) with its provisions for a different working week for women—40 hours as against men's 48 hours week—with wages based on the number of hours worked, and for a 40% limit to the proportion of female employees in an enterprise, a number of important legislative developments are taking place.

On the whole, labour codes in the region recognize the principle of equality through general provisions which repeat, to varying degrees, the text of Article 2 of ILO Convention N° 111. Many modern codes attempt to incorporate the idea of programs, integration processes and even proactive measures and actions as a way to advance equality.

In Jamaica and Antigua and Barbuda specific laws have been enacted on this subject, many of which have been drafted with the ILO's assistance. The Bahamas Employment Act also recognizes this principle.

As already mentioned, Canada and the United States have equality laws in place—at both the provincial/state and the federal levels—which not only penalize discriminatory conduct, but also develop specific policies. The existing legislation covers every sector (as in the case of the Government Employee Rights Act of 1991).

Most legislations make explicit reference to discrimination related to gender. They introduce such concepts as the transfer of the burden of proof (Guatemala) or the need to apply proactive measures (Venezuela). The concept of equal pay for work of equal value is widely recognized in nearly all countries.

Again, the nineties have seen the biggest legislative advances as a result of a greater awareness and acceptance of equality as a priority objective. That is how the principle of nondiscrimination expands beyond its initial gender-related area of application to include other groups subject to discrimination and other areas where equality is needed.

Thus many countries either have regulated sexual harassment specifically or with *ad hoc* provisions (Argentina, Brazil Mexico, Peru), or they have enacted employment security laws for pregnant women or laws prohibiting pre-employment pregnancy screening (Brazil, Chile). Maternity leave provisions have been expanded to include parental leaves (Uruguay, Chile). Here, again, the Venezuelan Constitution and the legislation developing it provide a significant example, for in addition to using non-sexist language in some articles (unfortunately not all of them, which makes its text confusing in this respect), it recognizes, among other rights, the right to proactive action; establishes gender equality in access to employment; and establishes labour protections for housewives. Venezuela has enacted a law on equal opportunities for women (developing the Convention on the Elimination of All Forms of Discrimination against Women – CEDAW); new criminal and labour legislation on sexual harassment; a law providing for female quotas in public office; and it has extended the statutory maternity leave to 18 weeks and established unconditional employment security for one year following childbirth.

The above notwithstanding, numerous failures exist in the application of the principle, as pointed out in the “Time for Equality at Work” ILO Global Report of 2003³⁷. Findings of this report include the persistence of a wage gap between men and women, racial discrimination in several countries, discrimination based on HIV/AIDS and several reasons originating from poverty.

As the report points out, America is the region of the world with the greatest income disparities, which explains why the absolute poverty rates of the region are higher than one would expect on the basis of per capita income. These income disparities reflect in part the individual characteristics of working men and women, such as the level of education, the field of study and working experience. Other factors of disparity include the type of employment, the size of the employing enterprise, wage scales and the economic sector.

In the region at large and in Latin America and the English-speaking Caribbean in particular, the social groups most affected by discrimination in the labour market are: (i) women, although the intensity and the manifestations of discrimination vary according to ethnic extraction, social origin or age; (ii) indigenous peoples and Afro-Latin American populations (including the mulattos) constituting approximately 30% of the region’s total population; (iii) people with disabilities and (iv), more recently, workers with HIV/AIDS.

The obstacles impeding application of this principle are numerous. In some countries in the region, discrimination against indigenous women would appear to be on the increase, especially regarding education. In Guatemala, for instance, the difference between the education completed by indigenous and non-indigenous women aged 58 years was two years, whereas in the case of women aged 23 years it was greater, in 1998³⁸.

The disproportionately high share of domestic and family responsibilities performed by women is another non-labour market factor that affects: the type of jobs performed by women compared to men; the number of hours devoted to paid work by each sex; as well as income disparities³⁹.

Another point worth considering is that there are no indicators allowing direct measurement of discrimination at work, and that by necessity indirect indicators are used instead.

In short, the fight against discrimination is being conducted with laws very much in need of clarity. It is a fight that involves addressing structural and economic problems with broad-spectrum solutions. When we talk about equality we must necessarily talk about the elimination of poverty and about ensuring respect for the right of every individual to fulfill his or her potential—hardly an easy task.

d. Elimination of Child Labour

Child labour is widely present⁴⁰ because minimum working age requirements are often violated, especially regarding the most hazardous types of work. According to the ILO report entitled *A Future*

³⁷ ILO (2003): *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2003: International Labour Conference 91st Session 2003 Report I (B)* ISBN 92-2-112871-7: Geneva, Switzerland.

³⁸ Buvinic, M. (2003): *Social Inclusion in Latin America and the Caribbean: experience and lessons*: draft, Inter-American Development Bank: document presented at the IDB seminar on “Good practices in social inclusion: a dialogue between Europe and Latin America”: Milan, Ital.

³⁹ ILO (2001): *Labour Overview*: ILO: Lima.

⁴⁰ Nor should we forget that, according to an ILO estimate, about 246 million children ages 5 to 17 worldwide were involved in child labour in 2002. Of these, 170 million were exposed to the worst forms of child labour - SIMPOC 2002.

*without Child Labour*⁴¹, in Latin America and the Caribbean, for instance, there are no fewer than 17.4 million child workers, which means that one out of every five children in the region is involved in child labour. These estimates suggest that peasant communities harbor 50% of rural child workers, and that 90% of child labour in the region is concentrated in the informal sector. The few examples that follow indicate the extent of the problem. In Ecuador nearly 500 thousand minors aged 5 to 14 work⁴². In Peru 1.8 million boys and girls aged 10 to 14 years work⁴³. In Colombia the estimated number of employed children aged 10 to 14 years is 700 thousand⁴⁴. In Argentina, according to estimates for 2002, child workers aged 10 to 14 years numbered 252 thousand.

And yet, this is precisely the area where the greatest legislative progress has occurred in the region over the past few years, driven, no doubt, by ILO's ratification campaign in favor of ILO Conventions N°138 and N°182. The greater general awareness and political commitment can be traced back to ILO's International Programme on the Elimination of Child Labour (IPEC).

There is a general increase of concern both in the law and in practice, for child labour is unanimously considered by all countries and by all social actors to be a blight.

Regarding normative content, most countries in the region agree on a minimum working age (14 years) in line with ILO Convention N°138, with the same flexibility provisions in the case of light work. Likewise, penalties are established for noncompliance with the relevant legislation. Only a few countries have legislations providing for a lower minimum age than the Convention, whether they have ratified it or not (Bolivia, Peru, Paraguay). Most problems concern either highly sector-specific norms or practical problems of improper application.

By and large the relevant legislation is becoming stronger and better in every country (CARICOM, with the exception of Jamaica and Barbados, is the community with the fewest statutes). Some countries have established minimum working ages exceeding 14 years and still higher ages for hazardous work. In general they strive to align themselves with international legislation. Yet despite this, the worst forms of child labour remain a serious problem which has not been regulated with the level of detail provided for in ILO Convention N°182. Such things as the children of war (Colombia), sexual exploitation, workers in the informal sector or domestic child workers are not covered.

Even when laws are considered adequate, problems of enforcement persist. This is the case of Canada, where in spite of the Government's concern, actions and laws, a report⁴⁵ points to child exploitation continuing, in the sex trade, in agriculture, the leather industry and manufacturing.

In some countries, the legislation is reinforced by educational programs, inspection programs, even by social labeling rules (the United States, Canada). There can be no doubt that, in spite of all efforts, enforcement remains a problem. Practical, effective mechanisms are needed for clearly defining the responsibilities of the parties concerned and making free circulation of information among them possible. Innovative mechanisms that can be activated against the worst forms of child labour in particular are needed.

⁴¹ ILO (2002): *A Future without Child Labour* Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2002: International Labour Conference 90th Session 2002 Report I (B) ISBN 92-2-112416-9: Geneva, Switzerland.

⁴² Source: ILO/IPEC (2002): Statistical Information and Monitoring Programme On Child Labour -SIMPOC.

⁴³ Source: INEI (2001): National Household Survey IV.

⁴⁴ Source: DANE (2001): child labour survey.

⁴⁵ http://www.unite-svti.org/En/STOP_SWEATSHOPS/sweatresource/child_labour/child_labour.html

4.2. Comments by the Committee of Experts on the Application of Conventions and Recommendations of the ILO (CEACR) on the Enforcement of Norms Providing for the Fundamental Rights at Work

The inevitable conclusion of the foregoing is that the region is also facing serious problems regarding compliance with workers' fundamental rights.

This is further confirmed by the high number of observations and direct requests made by the Committee of Experts on the Application of Conventions and Recommendations Regarding Ratified Conventions, as well as by the high number of complaints (especially regarding freedom of association and collective bargaining) submitted to the ILO supervisory bodies pursuant to Articles 24 and 26 of the ILO Constitution⁴⁶.

Compared with other regions, the Americas have a respectable track record regarding the ratification of the fundamental ILO Conventions. With the sole exception of the United States, every member country has ratified more than 4 fundamental Conventions, and the average is 6 per country (see Annex Table 1).

Nonetheless there are numerous problems regarding application, to which the ILO's supervisory bodies have pointed. These areas of concern arise from both the enforcement of legislation and the legislation itself, notwithstanding the trend towards its gradual improvement.

Problems allied with the definition of, and compliance with, freedom of association are the best known, undoubtedly because of the number of complaints lodged with the Committee on Freedom of Association by the region's trade unions. Since 1951, 1173 complaints have been presented (52.2% of the world's total), 405 of which have been presented since 1990 (54% of the world's total).

However, observations and requests have been made on every one of the four principles. The issues range from difficulties in having a strike declared legal or anti-union discrimination, to slave labour, the exploitation of children, or situations of discrimination on a variety of grounds.

By and large and with specific reference to the ILO, the Americas can be defined as a region with a proclivity to ratify the fundamental Conventions; where the social actors have strong knowledge of the ILO's supervisory mechanisms (evidenced in part by the high number of complaints); and which makes wide use of mutual cooperation and technical assistance mechanisms. In fact, numerous legislative reforms endorsed by the ILO, have overcome the problems pointed out by the CEACR.

In addition to the comments issued under the supervisory mechanisms, mention should also be made of the comments from the social actors and the statements from the ILO Declaration's Expert-Advisers, operating under the constitutional follow-up mechanism, who have reviewed both the annual reports submitted by countries yet to ratify one or more fundamental Conventions.

These reports show a gradual tendency by some countries (Brazil and, in some way, Mexico) to overcome the existing problems, to consider ratifying the fundamental Conventions still pending (Brazil) and to seek direct application mechanisms. Other countries are still striving to find the way to ensure enforcement in the event of ratification because of constitutional impediments (that is the case of El Salvador regarding ILO Conventions N°87 and N°98), and in almost every case technical cooperation is deemed necessary.

⁴⁶ For full information, use ILOLEX in web. www.ilo.org

The above notwithstanding, the Governments of the Americas are well aware, as they have always said, that the fundamental rights at work are an essential and absolutely minimum requirement for the generation of decent work. In fact, all these countries are run by democratic regimes committed to the objective of making compliance with these principles a reality.

V. INTEGRATION, ECONOMIC DEVELOPMENT AND LABOUR RIGHTS

As already pointed out, one of the purposes of this report is to provide a better understanding of the labour and employment dimensions of regional integration. This chapter develops a few central ideas on this point, most specifically, about the relationship between integration, economic development and labour standards with particular reference to those relating to the fundamental rights at work.

It is safe to say that in the American region the effects of economic integration and trade liberalization in terms of employment, income, social protections and general wellbeing (poverty reduction) are mixed⁴⁷. Over the past five years the general trend has been one of regression in many areas (employment and poverty), stagnation in other areas (social protections), and small improvement in the income of a certain segment of the employed.

Given that economic integration, the opening up of markets and (nearly permanent) structural adjustment are processes which take place simultaneously, it is virtually impossible to attribute the poor performance of the labour market and the levels of wellbeing of the past six years to any one of them. Nor should it be forgotten that in any one country, many of these effects depend on the nature of the processes themselves, as well as the structural conditions of the country at the time.

Nearly impossible as it may be to distinguish the causes of the poor labour performance of the past few years, the many reports produced on this subject make it clear that integration is the one process which has *not* contributed to this poor performance. Rather it has somewhat mitigated the negative impact of other factors. As we shall explain later on in this report, the integration process, far from depressing wages and causing a direct increase in poverty, is an effective tool for increasing trade flows and investment. That being so, integration helps the dynamization of an economy and job creation, although not in the numbers required to compensate for the negative impact of structural adjustments and the opening up of markets. This is due to the fact that the opened economies have become more permeable to external crises.

The following aspect of the relationship between labour standards, investment, growth and development should not be ignored. Despite the lack of conclusive empirical evidence, there are significant indications that investment is actually encouraged by compliance with labour standards and commitments made within the framework of integration to strengthen that compliance, particularly the ones that regulate the exercise of fundamental rights at work. Compliance guarantees social stability, which in turn helps the consolidation and development of a democratic system and, ultimately, the political and legal stability needed by investors.

At present, there are at least three different positions on the economic incidence of labour standards, especially those regarding the fundamental rights at work. Their relevance is that in the extent to which those standards affect the behavior of the economy, they will impact the labour market as well.

The first position holds that the application of labour standards introduces inflexibility into the functioning of the labour market, which contributes to “excessive” increases in wages and other labour costs and consequently, higher unemployment. Should this inflexibility not exist, the only unemployment would be voluntary. On the other hand, excessively high wages make enterprises less competitive, thereby impeding economic development and an economy’s ability to generate employment.

⁴⁷ See ILO (2002): Labour Overview. Latin America and the Caribbean: ILO: Lima.

According to the second position, the application of labour standards has no adverse effect on either wages or on the level of employment. On the contrary, it helps social peace that lowers country risk and increases investment that generates economic growth and employment.

The third position is mid way between the other two. It defends the application of labour standards and respect of fundamental right at work in principle, but it considers that in certain countries this can generate labour costs that micro- and small businesses cannot sustain. As a result there is an increase in informality and segmentation of the labour market. The supporters of this position argue that there should, therefore, be two types of labour regulation. One, more expensive, should be for formal enterprises and their employees, the other, “cheaper”, should be for the informal sector.

These positions are three different ways to answer a single question: Does the application of labour law in general, and the fundamental rights at work in particular, affect short and long-term economic growth positively or negatively, or at all?

It seems that no amount of study or research has been able to give a conclusive answer to this question. A study carried out by Kucera in 2001⁴⁸ finds that it is not possible to prove that the application of and compliance with the fundamental rights at work encourages economic growth, but neither is it possible to prove the opposite.

At the same time, the Organization for Economic Cooperation and Development (OECD) had undertaken a study on trade and international labour standards, published in 1996. Among its findings, the study concludes that there is no trade advantage in failing to respect freedom of association. In other words, it reached from an economic perspective the same conclusion as the one that the ILO has long held regarding fundamental human rights. The same conclusion was reached in the 2000 repeat of the OECD study.

Since there is no conclusive answer to this question, perhaps a different approach should be tried. Given that there is abundant empirical evidence of it, our starting point must be the recognition that countries vary widely in terms of degree of economic, political and social development and that many of them have considerable technological and economic diversity. A further point is that the economic, political and social dimensions of development go hand in hand, meaning that there is no country with high social development and low economic and political development, or vice versa. Countries with high economic development have high social and political development, while countries with low economic development are most deficient in political and social terms.

If this is so -and the evidence confirming it is indeed overwhelming- then another form of inquiry is more pertinent. Instead of asking about the economic impact of core labour standards, we should be investigating why countries that have high compliance with fundamental rights also have higher levels of productivity and competitiveness, and why countries where fundamental rights at work are violated almost systematically have lower levels of productivity and competitiveness? So that it cannot be argued that the way in which the question is asked establishes *a priori* causality, the converse can be formulated. Why are the countries with the higher productivity and competitiveness the same as the ones with higher respect for fundamental rights at work, and why in the countries with poor economic development are these rights poorly respected, if at all.

This same question (in either form) can be addressed to the internal situation of each given (least developed) country, namely: why its rural sector, least regulated or totally unregulated in labour terms,

⁴⁸ Kucera, David (2001): *Effects of core workers rights on labour costs and foreign direct investment: evaluating the 'conventional wisdom'*: ILO en Labordoc: www.ilo.org

is also the sector with the lowest productivity and income, and why certain sectors of the urban economy (as well as large-scale mining) where labour regulation is strongest are also those with the highest productivity and income?

One answer to these questions is that (and here, too, there is sufficient empirical evidence) the level of economic development results from the behavior of domestic and foreign investment over time. The most developed countries are those that have sustained the highest rates of investment over the past century (or thirty years in the case of Southeast Asia or certain Latin American countries, such as Chile). By contrast, the least developed countries are also those with the lowest investment levels. Most African countries and some Central American countries provide overwhelming evidence of this.

If this is so, and the International Monetary Fund (IMF) and World Bank (WB) statistics suggest it is, the question is whether and how, the fundamental rights at work affect investment flows into, or in, a country.

The various surveys carried out on this point shows that, in Latin America at least, the fundamental rights at work and labour regulations in general are not decisive criteria at the time an investment decision is made. In any case, the only socio-labour factor investors consider is the level of qualification of the work force. In other words, surveys show that neither regulations on fundamental rights at work, nor the cost of social protections and wage policies scare investors away.

What then attracts investors, and what scares them away? The first and foremost factor of attraction is the existence of effective domestic or external demand of the goods or services to be produced. Next comes macroeconomic stability especially from the monetary (interest rates) and exchange standpoints. Third comes juridical stability, which includes an autonomous, just and expeditious judicial system. Fourth comes the availability of sufficient numbers of adequately qualified labour. Fifth, but no less important, is the existence of a culture of dialogue, of consensus building, of solving conflicts within the framework of a stable democracy.

The factors of repulsion would include, in addition to a lack of the above described factors of attraction, a climate of social upheaval and political instability which would put at risk the adequate operation of the market, juridical stability, the safety of a company's executives, etc.

If respect for the fundamental rights at work is not a primary investment criterion, why are these rights important at all? They undoubtedly are, not so much in the short-term economic sphere, but their greatest importance lies in the human, that is to say, social and political sphere. Even in the economic sphere, their importance in the long term should not be underestimated, as demonstrated by the economic history of Western European countries, the United States of America, Canada, Australia and in the case of Latin America, Chile (except during the military regime). There is no evidence of a country where compliance with the fundamental rights at work has hampered long-term economic development and condemned the country to underdevelopment. Even Southeast Asian countries with their historically low level of labour regulation saw how, once macroeconomic balance was restored after the 1997 crisis, investment returned even though labour regulation had become stronger. This would indicate the low relevance of such regulation on short-term investment decisions.

The evidence shows, then, that noncompliance with the fundamental rights at work does not help attract investment. In other words, investors are not looking for countries where the fundamental rights at work are violated in order to invest there. If, for example, we use the index built by professors

Wermenbol, Cuyvers and Van den Bulcke of the University of Ambers⁴⁹ in 1998 to measure compliance (or noncompliance) with the fundamental rights at work, we observe that the countries with the worst indices are North Korea, Kazakhstan, Serbia, Uzbekistan, Viet Nam, the Sudan, Cambodia, Mali, Pakistan, Uganda, Bangladesh, Equatorial Guinea, Myanmar, Morocco and China. If we look at the foreign investment figures published by the International Monetary Fund (IMF: 2001) we can see that these are the very countries at the bottom of the list of foreign investment recipients. The only exception is China, due in all likelihood to the large size of its market and to the fact that it was, until recently, closed to foreign investment.

On the other hand, compliance with the fundamental rights at work does seem to be important in the economic sphere as well. The studies by the University of Ambers and by the IMF already mentioned show that the highest rates of sustained investment can be observed in countries where the compliance index is highest: the Netherlands, Norway, Sweden, Finland, Germany, Poland, Spain, Yugoslavia, France, etc.

Why this long-term incidence of compliance with fundamental rights at work on economic growth? The existing studies (which, however, are not focused solely on the labour dimension) suggest, as in the case of Chile, Costa Rica and Uruguay in Latin America, that such compliance helps social and political stability, which in turn is an essential condition for a sustained increase of investment.

Based on this assumption, our current focus is on determining how regional integration can achieve the adequate application of labour laws regarding core workers' rights in particular and workers' rights in general in order to help create social peace and political stability as a way to guarantee security of the of law that is so necessary for investment and growth. In other words, without forgetting that integration seeks to develop society as a whole by transforming production and raising the population's living standards and quality of life, our focus is on finding ways to incorporate the labour dimension into it sufficient to achieving labor's specific objectives.

⁴⁹ Wermenbol, G., Cuyvers, L. & Van der Bulcke, D. (1998): *Proposals for a Social Development index: respect for ILO core labour standards against the background of the implementation capacity of countries*: The University of Ambers: Deutschland.

VI. THE OPINION OF THE SOCIAL ACTORS ON THE LABOUR DIMENSION OF INTEGRATION

When it comes to implementing national policies and programs aiming to develop the integration process, there can be no doubt that the social actors' endorsement is of essential importance⁵⁰.

By and large, the CARICOM features a more homogenous structure and a consistent course of action in applying the ILO norms and the labour provisions of the integration agreements. The same applies to its harmonization of member countries' labour legislations. In every English-speaking country and Suriname, there is a Labour Advisory Council (LAC) or committee. It is tripartite in composition and has a mandate to provide counsel to the Minister of Labour on how to achieve the harmonization in question. In some countries such as Barbados, Grenada and the Bahamas, the LAC is functional and its comments are taken into consideration. All countries except the Bahamas have agreed to the full implementation of the regional labour contents by 2005. This facilitates the harmonization process and ensures that the social actors involved support regional integration in principle, even though they disagree on the state of development of the free trade process in the hemisphere, on the grounds that their direct participation in it is insufficient.

Social actors in the MERCOSUR stress the importance of their involvement and oppose the surrender of their countries' sovereignty to world economic organizations that put their own interests before the subregion's purely labour interests. Their role in the process should be expanded beyond their present, merely advisory capacity. Labour matters should be addressed in specific sections of regional free trade agreements, the relevant provisions should be binding, and relations between the MERCOSUR's Socio-economic Consultative Fora (*Foro Consultivo Económico y Social*) and the FTAA's Advisory Council should be strengthened. Consensus is unanimous on the need to work with all social actors.

As for the NAALC, its process elicits much criticism from the social actors, and some sectors contend that there is no significant cooperation between the three social actors. Some employers doubt the importance of adopting labour agreements at all, and feel that social issues should be left out of trade agreements. Labour organizations have a very different view. They contend that the labour aspect needs to be reinforced, and that the social provisions should be included in the text of the trade agreement itself and not be left for a side agreement. NAALC is also criticized (by workers' organizations) for its lengthy dispute resolution process and its lack of enforcement mechanisms.

Regarding SICA (Central American Integration System), the social actors recognize the importance of their countries' participation. They hold that policies can be devised to unify efforts directed at strengthening the SICA integration process in order to adopt a unified approach in the negotiation of free trade agreements. However, they also contend that SICA is a complex and highly bureaucratized network of organs and agencies about which little or nothing is known, particularly with regard to their activities in the socio-labour field. They feel that PARLACEN (Central American Parliament) should be in charge of normative harmonization together with the subregion's Ministers of Labour, but they also contend that laws are generic, abstract declarations of hardly any value in terms of enforceability. They recognize that the advance of the integration model is hampered by socio-labour and economic asymmetries between the member countries and by a lack of political will to overcome them. They consider it necessary to develop initiatives aimed at increasing competitiveness, strengthening vocational training and formal education programs, as well as housing and health care programs.

⁵⁰ In the course of the preparation of the national reports, surveys and opinion polls were carried out to detect the attitude of people participating in the process.

While all social actors in SICA member countries feel that socio-labour issues should be addressed in the guidelines for the Central American Integration System, they disagree on the advisability of building them into free trade agreements. For trade unions, the relevant provisions must be included and supported by effective enforcement mechanisms. For employers, much depends on the purpose of such an inclusion. In any event, they absolutely reject the idea of a social clause of the type demanded by workers.

In the Andean Community of Nations (CAN) the social actors operate through the Andean Advisory Business Council (*Consejo Consultivo Empresarial Andino*) and the Andean Advisory Labour Council (*Consejo Consultivo Laboral Andino*). These are bodies that consist of delegates who are elected directly by the organizations that represent the workers and the employers in the Member Countries.

In practice, however, there apparently has been so little participation by members of the *Consejo Consultivo Empresarial Andino* that the Third Meeting of the Advisory Council of Ministers of Labour (*Consejo Asesor de Ministros de Trabajo*) in May 2002, urged that council to make certain its representatives take active part in the meetings of the labour ministers “in order to address the issues from a tripartite approach”. Even so, the report of the Fourth Meeting of the *Consejo Asesor de Ministros de Trabajo* (December 2002) expressly placed on record its “concern over the repeated failure of the *Consejo Consultivo Empresarial Andino* to attend the meetings,” and requested “the Chair of the *Consejo Asesor de Ministros de Trabajo* and the General Secretariat (*Secretaría General*) of the Andean Community to make further efforts to ensure that the *Consejo Consultivo Empresarial Andino* participates more fully”. By and large, trade unions, which were the promoters of the Andean Social Charter, support the inclusion of social norms in the text of the agreements, whereas employers’ organizations feel that such issues should be left out of trade negotiations.

In short, while doubts exist in every subregion regarding the scope of application or the enforceability of the social provisions in international agreements, they are still considered necessary. Likewise, there is a consensus that active participation in the process is also a necessity.

VII. COOPERATION PROGRAMMES

Every industrialized and developing country in the region has a number of cooperation programs, national plans on its agenda to support its existing legislation on the application of fundamental principles and rights at work.

The largest group of national cooperation programs has its focus on child labour in general and the IPEC/ILO program in the region in particular. Even a donor country like Canada collaborates with IPEC in the development of national activities to overcome its child labour-related problems.

General projects designed to advance the ILO Declaration include a wide variety of initiatives ranging from wide-spectrum programs such as the one supporting the present study in support of the Inter American Conference of Ministers of Labour of the OAS to more specific projects aimed at educating the public on the fundamental principles and rights through the press, the radio and other media.

Forced labour elimination projects have so far focused on Brazil, in support of all governmental activities implementing its plan of action. In compliance with a decision of its Governing Body, the ILO itself has activated throughout the world an internationally funded forced labour elimination task force to measure the forced labour phenomenon, establish its scope, and work for its elimination. In this context, a number of seminars were held in 2002 jointly with the Latin American Social Sciences Faculty (FLACSO) to identify the first avenues for action.

Since 1999, through its InFocus Programme on Promoting the Declaration and other related services and departments, the ILO has been engaged in the implementation of several cooperation projects funded by donor countries for the advancement of freedom of association and the effective recognition of the right to collective bargaining. We could mention at this point other multilateral projects directed to one social actor in particular, for the promotion of the principles focused in this report.

Among the tripartite projects, the following are particularly worth mentioning: Improving labour relations and promoting economic growth to foster gender equality in Colombia, RELACENTRO (on the promotion of best practices in labour relations at the enterprise level) in Central America and Belize, PRODEL (on promoting the fundamental rights) in Bolivia, the Programme on the Promotion of Labour-Management Cooperation (PROMALCO) on the promotion of best practices in labour relations at the enterprise level in the Caribbean, and PRODIAC on strengthening democratic consolidation and social dialogue in Central America⁵¹. Together with these projects that are directed to all social actors, there are a few which are specifically focused on one social actor in particular. Such is the case of the project for strengthening workers' organizations for tripartite social dialogue and the economic development of the region which was completed in 2002.

Other projects are being implemented for the elimination of discrimination (especially in respect of gender, poverty and employment) within the framework of the program on Mainstreaming gender dimension into the policies and programmes for poverty alleviation and employment generation in Latin America (Gender, Poverty and Employment Programme –GPE), funded by the Government of the Netherlands. Its objective is to facilitate the integration of a gender-based focus into the poverty eradication strategies and into employment and income generation programs by building the institutional capacity of governments, trade unions and employers' organizations, as well as social

⁵¹ Funded by USDOL (Colombia; the British Caribbean and Central America), the Netherlands (Bolivia), Norway (PRODIAC).

organizations with a recognized track record in those areas. Also worth noting is the regional research on collective bargaining and gender equality being developed by the regional office. A mention of a variety of projects on indigenous peoples and people with disabilities, as well as HIV/AIDS in the British Caribbean completes this brief overview.

In addition to supporting national plans, the ILO lends its assistance throughout the region by means of multilateral technical cooperation projects implemented in every area, and co-funded through bilateral and multilateral cooperation from various donor governments and other international institutions. Many of these programs focus on issues related to labour relations, inspection, discrimination against vulnerable populations, and so on.

For their own part, countries use their own resources to engage in legislative reform, carry out public education and internal information campaigns (United States), establish special task forces (Canada), launch educational initiatives, and so on. Some SICA member countries have begun to prepare codes of best practices.

Albeit brief, this summary clearly shows that there is real interest in ensuring domestic and international compliance with the fundamental principles, and that institutions and governments alike give due priority to the achievement of this goal. Nonetheless, a serious evaluation of existing programs, their scope, their design, repercussion and impact appears to be in order. How do programs, plans and cooperation help integration and compliance with the fundamental principles? Do they foster true compliance with these principles and certain norms of internal solidarity? These are only two of the many questions that await an answer.

VIII. CONCLUSIONS, COMMENTS AND SUGGESTIONS

8.1. General Conclusions

- 8.1.1. Latin American integration processes and some free trade agreements have generated a significant amount of new and more advanced legislation regarding the fundamental rights at work, even though the domestic legislation of some countries in the region needs further development. In the case of some communities (SICA and CAN⁵²), the role of the fundamental principles and rights should be revised and the possibility of explicitly enshrining them in legislation should be considered.
- 8.1.2. Many countries evidence serious limitations regarding the application of these norms and commitments, the main reasons being a lack of enforcement of the law and the existence of extensive sectors of the working population not covered by labour legislation. The comments by the ILO's CEACR highlight the existing problems with the application of international labour legislation.
- 8.1.3. Domestic enforcement mechanisms are insufficient and the human resources called on to operate them are inadequately trained. On the whole, labour administrations are weak and ineffectual. They find it difficult to develop effective policies and follow them up adequately.
- 8.1.4. Regarding, particular subregional processes, we can see that:

CAN: While its present normative structure does not allow for autonomous development of the socio-labour dimension, its process does enhance employment-related aspects. There can be no doubt that employment expansion, vocational training, the freer movement of workers or equal social security coverage are fundamental components of integration.

A review of the initiatives and projects that are still untouched by the Community's regulatory system shows that the prospects are excellent for consolidating a socio-labour dimension capable of boosting equitable economic growth. In fact, incorporating the "Andean Social Charter" and the "Andean Charter for the Promotion and Protection of Human Rights" into the CAN's regulatory system could contribute significantly towards adjusting the aims of the Agreement and the means it uses to achieve its ultimate purpose of equitable development.

CARICOM: This sub region can boast significant progress in the socio-labour area, particularly insofar as the harmonization of legislation is concerned. "Model laws" can play a key role and this is an option well worth considering. CARICOM issued its first labour declarations as early as 1973 and it can be considered to be on the forefront of social legislation in the Americas. Its programs and projects in the area of technical cooperation and dissemination of best practices have made a substantial contribution to overall progress because they combine productivity with protection in their objectives. By and large, there is little debate on the application of principles, since CARICOM's social charters are treated as declaratory instruments rather than as starting points for action.

⁵² Apart from a few initiatives, the CAN's code of laws does not protect the fundamental principles and rights at work. This state of affairs has several consequences, one of which is to limit the definition of an all-encompassing social and labour dimension for the integration process and the possibility of giving such fundamental principles and rights the support of the CAN's adjudicatory mechanisms (the Andean Community Court of Justice).

MERCOSUR: This appears to be the group that has made the most progress in terms of integration of the socio-labour dimension, even though the application of the principles at community level is made difficult by the marked institutional weakness of the process. While specialized institutions and bodies for public labour policy design do exist along with consensus building and implementation mechanisms, the MERCOSUR is yet to really operate as a common market, which means that neither the Common Market Council -*Consejo del Mercado Común* (CMC, the MERCOSUR's highest policy-making body), nor the Common Market Group -*Grupo del Mercado Común* (GMC, the MERCOSUR's executive organ) has initiated common social and labour policies. The national and regional committees face an overload of tasks therefore the need of an executive secretary has been observed. On the other hand, conclusions reached by the Regional Committee -even to the GMC- tend to be vague and need improvement. Priorities for actions should include creating a supranational labour code, introducing individual labour rights into community legislation, facilitating greater horizontal cooperation, and agreeing on joint enforcement mechanisms which might include making the control, investigation and detection of labour rights violations a specific function. This would help the enforcement of community and national legislation based on labour principles and rights. Greater dissemination of the contents of the Socio-Labour Declaration may well help.

NAFTA: The ILO Declaration of Fundamental Principles and Rights at Work is explicitly mentioned both in the NAALC and Commission for Labour Cooperation (CLC), which provide the regulatory framework for the activities pertaining these matters. Even though all three NAFTA member countries grant legal protections to their workers and the eleven principles enshrined in the CLC mandate are recognized by their respective labour regulations, their enforcement is still unfulfilled. Although the challenges that appeared in NAFTA's wake should not be underestimated, the creation of new venues for invoking labour protections through the Commission for Labour Cooperation is a small but positive step in the right direction. The articulation of mutually agreed upon labour principles among the three NAFTA nations is also significant. The existence of a number of non government organizations established in response to the regional integration process show civil society's interest in participating and promoting the inclusion of social measures in economic development. Over the past few years many tripartite socio-labour initiatives in the subregion have been suspended due to disagreement between the social sectors and a lack of coordination with other subregional policies. Nevertheless, an analysis of the labour commitments made in the context of the NAFTA and the ILO Declaration show that the regional integration process creates new opportunities as well as new challenges for workers and their organizations.

SICA: While the legal institutions linked to the SICA economic subsystem are the oldest in the region, socio-labour aspects are little developed. SICA's Social Integration Subsystem (*Subsistema de la Integración Social*) has, so far, had little say in the definition of subregional social policies. As to the fundamental principles and rights at work enshrined in the ILO Declaration, they are not mentioned explicitly in the documents of the Regional Agreement, even though SICA Member States have ratified virtually every one of the ILO Conventions enshrining them. The few measures adopted to comply with the ILO Principles and Rights at Work have had unequal scope. Their effectiveness depends to a great extent on funding provided by governments from outside the subregion and by international organizations. The follow-up to the Summits of the Americas and the Inter-American Conferences of Ministers of Labour takes place within individual countries with little SICA involvement. As already pointed out in this report, the Central American Integration System is a complex and highly bureaucratized network of organs and agencies about which little is known. Even less is known about their activities in the socio-labour field.

- 8.1.5. Far from destroying jobs and depressing wages, integration reinforces compliance with the fundamental rights, which is a central factor of social and political stability and security of law, all essential requirements for sustained increase in investment, economic growth and the creation of quality employment.
- 8.1.6. There is a consensus that spurious competitiveness based on noncompliance with the fundamental rights at work should neither be promoted nor accepted. The terms of integration and free trade agreements should make this clear in no uncertain terms.
- 8.1.7. By and large, the representatives of the social organizations consulted by the ILO favor the integration process and the development of a social labour dimension within it, particularly with regard to workers' fundamental rights. Nevertheless, they also feel that the social actors' involvement in the development of such processes and their socio-labour dimension should be greater than it is now. Likewise, there is much criticism about the bureaucracy that is stifling some integration processes.
- 8.1.8. Although still insufficient, cooperation projects designed to help countries in the region advance towards compliance with workers' fundamental rights, including the elimination of child labour and forced labour, are numerous. Their number has increased significantly over the past ten years, and is expected to continue growing at an even faster pace, in line with the advancement of the integration processes and the negotiations of a Free Trade Area encompassing the entire hemisphere. It is very important to evaluate their impact, development and sustainability in order to ensure that future programs are better coordinated and more effective in a regional context.
- 8.1.9. While enforcement of existing legislation has been achieved in a number of cases, the experience gained has not been disseminated adequately across the region. Information, horizontal cooperation, debate fora and regional information networks seem a necessary requirement for progress in this respect.

8.2. Comments on Some Pending Issues

- 8.2.1. There is little doubt that all countries in the region need to improve their level of compliance with labour standards and commitments included in integration agreements, and, in some cases, in free trade agreements, if we want such norms and commitments to be more than mere statements of good intention. For this to happen labour administrations and the social actors, who are the direct agents of this process, need strengthening.
- 8.2.2. It is also evident that the region's various integration processes are at different levels of development regarding the promotion of international labour standards in general and of fundamental rights at work in particular. SICA -and CAN to some extent- are far behind in this respect.
- 8.2.3. The region's countries, whether acting individually or as subregional groups, will have to decide at some point whether the hemispheric free trade area being negotiated at present should or should not include a socio-labour dimension and. If they choose to include it they will have to decide its nature and legal form.

- 8.2.4. For the sake of the very social legitimacy of the integration process in general, and of the Free Trade Area of the Americas in particular, it does not appear advisable to maintain the social actors' level of involvement at its present low level.
- 8.2.5. Sharing of information and experience is essential to regional development. Common strategies need to be explored for facilitating: a) equal access to the best current information and b) disseminating the best labour practices.

8.3. Suggestions

- 8.3.1. In those countries where domestic labour legislation related to fundamental rights at work is insufficiently developed remedial action should proceed. Likewise the SICA process and, to some extent, CAN, should develop the socio-labour dimension they have so far lacked and bring it in line with the other integration processes in the region.
- 8.3.2. Improving the enforcement of laws related to the fundamental rights at work requires not only building the capacity of labour inspection and labour justice institutions, but also of the entire labour administration in general. It also requires carrying out campaigns directed at fostering a culture of acceptance of the fact that compliance with these rights is something more than an ethical and social duty, it is a condition of political stability and a sound economic investment – in the long term at least.
- 8.3.3. The social actors' greater involvement in integration fora and institutions, as well as in the integration process proper will make them more dynamic and will ensure the social support which at present is sometimes lacking. Promoting and facilitating greater involvement by the social actors should therefore be a priority of the integration process in the next few months.
- 8.3.4. To advance compliance with the fundamental rights, detailed multilateral and bilateral cooperation projects should be developed with a global perspective. They should aim for true effectiveness based on national needs and working methods adapted to new compliance situations in the context of globalization.
- 8.3.5. In order to achieve effective compliance with the fundamental principles and rights at work, it is urgent, to develop innovative legal and political measures for including micro businesses, small businesses and rural sector businesses in the enforcement process, in addition to strengthening existing mechanisms.

GLOSSARY

CAN	: The Andean Community of Nations
CARICOM	: Caribbean Community and Common Market
CCFTA	: Canada-Chile Free Trade Agreement
CEARC	: ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	: Convention on the Elimination of All Forms of Discrimination against Women
CETI	: National Committee for the Elimination of Child Labour of Uruguay
CFR	: United States Code of Federal Regulations
CLC	: Commission for Labour Cooperation
CMC	: Common Market Council
CONADIS	: National Council on Disabled People of Peru
CONAETI	: National Commission for the Elimination of Child Labour of Argentina
CONATO	: National Council of Organized Workers of Panama
CONEP	: National Council of Private Enterprises of Panama
DINAE	: Directorate General for Employment of Uruguay
EAP	: Economic Active Poblacion
EEOC	: United States Equal Employment Opportunity Commission
FEPA	: Fair Employment Practices Act
FLACSO	: Latin American Social Sciences Faculty
FTA	: Free Trade Agreement
FTAA	: Free Trade Area of the Americas
GMC	: Common Market Group
HIV/AIDS	: Human Immunodeficiency Virus/Aquired Immune Deficiency Syndrome
HRDC	: Ministry of Human Resources Development Canada
IACML	: Inter-American Conference of Ministers of Labour
ICFTU	: International Confederation of Free Trade Unions
ILO	: International Labour Office
IMF	: International Monetary Fund
INABIF	: National Assistance Programme for Child Workers of Peru
INEI	: National Institute on Statistics and Computer Science of Peru
IPEC	: International Programme on the Elimination of Child Labour
IPEL	: Institute on Labour Studies of Panama
JUNAE	: National Employment Board of Uruguay
LAC	: Labour Advisory Council
LAFTA	: Latin American Free Trade Association
LRIDA	: Labor Relations and Industrial Disputes Act of Jamaica
MERCOSUR	: Southern Common Market's
MINDES	: Ministry for the Promotion of Women and Human Development of Peru
MINEDU	: Ministry of Education of Peru
MINGOBJ	: Ministry of Government and Justice of Panama
MINJUMNFA	: Ministry of Youth, Women, Childhood, Family of Panama
MINSA	: Ministry of Health of Peru
MINSA	: Ministry of Health of Panama
MITRADEL	: Ministry of Labour and Labour Development of Panama
MTPE	: Ministry of Labour and Employment Promotion of Peru
NAALC	: North-American Agreement on Labour Cooperation

NAFTA	:	North American Free Trade Agreement
NAO	:	Canadian National Administrative Office
NGO	:	Non-Governmental Organization
NLRB	:	United States Labor Relations Board
OAS	:	Organization of American States
OECD	:	Organization for Economic Cooperation and Development
PANI	:	National Board for Youth of Costa Rica
PARLACEN	:	Central American Parliament
PIOM	:	Plan for equal opportunities for women
PNP	:	Training Programme for Law Enforcement & Health Centre of Panama
PRODEL	:	ILO Programme on Promoting the Fundamental Rights in Bolivia
PRODIAC	:	ILO Programme on Strengthening Democratic Consolidation and Social Dialogue in Central America
PROJOVEN	:	Young Persons Vocational Training Program of Peru
PROMALCO	:	ILO Programme on the Promotion of Labour-Management Cooperation
RELACENTRO	:	ILO Programme on the Promotion of Best Practices in Labour Relations in Central America and Belize
SICA	:	Central American Integration System
SUTEP	:	Peruvian Teachers' Union
U.N.	:	United Nations

ANNEXES

Table 1

Fundamental Conventions Ratifications in the OAS countries

Country	Freedom of association and collective bargaining		Elimination of forced or compulsory work		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	C N° 87	C N° 98	C N° 29	C N° 105	C N° 100	C N° 111	C N° 138	C N° 182
Antigua y Barbuda	02:02:1983	02:02:1983	02:02:1983	02:02:1983	02:05:2003	02:02:1983	17:03:1983	16:09:2002
Argentina	18:01:1960	24:09:1956	14:03:1950	18:01:1960	24:09:1956	18:06:1968	11:11:1996	05:02:2001
Bahamas	14:06:2001	25:05:1976	25:05:1976	25:05:1976	14:06:2001	14:06:2001	31:10:2001	14:06:2001
Barbados	08:05:1967	08:05:1967	08:05:1967	08:05:1967	19:09:1974	14:10:1974	04:01:2000	23:10:2000
Belize	15:12:1983	15:12:1983	15:12:1983	15:12:1983	22:06:1999	22:06:1999	06:03:2000	06:03:2000
Bolivia	04:01:1965	15:11:1973		11:06:1990	15:11:1973	31:01:1977	11:06:1997	06:06:2003
Brazil		18:11:1952	25:04:1957	18:06:1965	25:04:1957	26:11:1965	28:06:2001	02:02:2000
Canada	23:03:1972			14:07:1959	16:11:1972	26:11:1964		06:06:2000
Chile	01:02:1999	01:02:1999	31:05:1933	01:02:1999	20:09:1971	20:09:1971	01:02:1999	17:07:2000
Colombia	16:11:1976	16:11:1976	04:03:1969	07:06:1963	07:06:1963	04:03:1969	02:02:2001	
Costa Rica	02:06:1960	02:06:1960	02:06:1960	04:05:1959	02:06:1960	01:03:1962	11:06:1976	10:09:2001
Dominica	28:02:1983	28:02:1983	28:02:1983	28:02:1983	28:02:1983	28:02:1983	27:09:1983	04:01:2001
Dominican Republic	05:12:1956	22:09:1953	05:12:1956	23:06:1958	22:09:1953	13:07:1964	15:06:1999	15:11:2000
Ecuador	29:05:1967	28:05:1959	06:07:1954	05:02:1962	11:03:1957	10:07:1962	19:09:2000	19:09:2000
El Salvador			15:06:1995	18:11:1958	12:10:2000	15:06:1995	23:01:1996	12:10:2000
Grenada	25:10:1994	09:07:1979	09:07:1979	09:07:1979	25:10:1994	14:05:2003	14:05:2003	14:05:2003
Guatemala	13:02:1952	13:02:1952	13:06:1989	09:12:1959	02:08:1961	11:10:1960	27:04:1990	11:10:2001
Guyana	25:09:1967	08:06:1966	08:06:1966	08:06:1966	13:06:1975	13:06:1975	15:04:1998	15:01:2001
Haiti	05:06:1979	12:04:1957	04:03:1958	04:03:1958	04:03:1958	09:11:1976		
Honduras	27:06:1956	27:06:1956	21:02:1957	04:08:1958	09:08:1956	20:06:1960	09:06:1980	25:10:2001
Jamaica	26:12:1962	26:12:1962	26:12:1962	26:12:1962	14:01:1975	10:01:1975		
Mexico	01:04:1950		12:05:1934	01:06:1959	23:08:1952	11:09:1961		30:06:2000
Nicaragua	31:10:1967	31:10:1967	12:04:1934	31:10:1967	31:10:1967	31:10:1967	02:11:1981	06:11:2000
Panama	03:06:1958	16:05:1966	16:05:1966	16:05:1966	03:06:1958	16:05:1966	31:10:2000	31:10:2000
Paraguay	28:06:1962	21:03:1966	28:08:1967	16:05:1968	24:06:1964	10:07:1967		07:03:2001
Peru	02:03:1960	13:03:1964	01:02:1960	06:12:1960	01:02:1960	10:08:1970	13:11:2002	10:01:2002
Saint Kitts and Nevis	25:08:2000	04:09:2000	12:10:2000	12:10:2000	25:08:2000	25:08:2000		12:10:2000
Saint Vicent and the Grenadinas	09:11:2001	21:10:1998	21:10:1998	21:10:1998	04:12:2001	09:11:2001		04:12:2001
Saint Lucia	14:05:1980	14:05:1980	14:05:1980	14:05:1980	18:08:1983	18:08:1983		06:12:2000
Suriname	15:06:1976	05:06:1996	15:06:1976	15:06:1976				
Trinidad and Tobago	24:05:1963	24:05:1963	24:05:1963	24:05:1963	29:05:1997	26:11:1970		23:04:2003
United States				25:09:1991				02:12:1999
Uruguay	18:03:1954	18:03:1954	06:09:1995	22:11:1968	16:11:1989	16:11:1989	02:06:1977	03:08:2001
Venezuela	20:09:1982	19:12:1968	20:11:1944	16:11:1964	10:08:1982	03:06:1971	15:07:1987	
Total: 34	31	30	31	34	32	32	23	29

Table 2

Socio-labour Policy-making Agencies and Community Legislation

	CAN	CARICOM	MERCOSUR	SICA	NAFTA
Agencies	<p>Consejo Asesor de Ministros de Trabajo (advisory council of labour ministers)</p> <p>Consejo Consultivo Empresarial (advisory business council)</p> <p>Consejo Consultivo Laboral (advisory labour council)</p> <p>Convenio Simón Rodríguez (Simón Rodríguez convention)</p> <p>Observatorio Laboral Andino (Andean labour observatory) Project <i>(being developed)</i></p>	<p>Council for Human and Social Development</p> <p>Committee of Ministers of Labour</p>	<p>Subgrupo de Trabajo (working subgroup) 10</p> <p>Foro Consultivo Económico Social (economic and social advisory forum)</p> <p>Comisión Sociolaboral (socio-labour commission)</p> <p>Reunión de Ministros de Trabajo (meeting of labour ministers)</p> <p>Observatorio del Mercado de Trabajo (labour market observatory)</p> <p>Reunión Especializada de Cooperativas (specialized cooperatives meeting)</p> <p>Foro de la Mujer (women's forum)</p> <p>Foros Tripartitos de la Competitividad (tripartite fora on competitiveness)</p>	<p>Subsistema de la Integración Social Centroamericana (Central American social integration subsystem):</p> <p><i>Consejo de la Integración Social</i> (council of social integration ministers)</p> <p><i>Consejo de Ministros del Área Social</i> (intersectoral council of social integration ministers)</p> <p><i>Consejo de Ministros de Trabajo</i> (council of labour ministers)</p> <p>Secretariat for Social Integration</p> <p><i>Comisión de Asuntos Sociales, Laborales y Gremiales del Parlamento Centroamericano</i> (committee on social, labour and union issues of the Central American parliament)</p> <p><i>Comité Consultivo de Integración Social</i> (consultative committee on social integration)</p>	<p>Commission for Labour Cooperation:</p> <ul style="list-style-type: none"> - Ministerial Council - The Secretariat - National Administrative Office (NAO) - National advisory committees - Governmental Committees Evaluation Committee of Experts Arbitral Panel

	CAN	CARICOM	MERCOSUR	SICA	NAFTA
Legislation	<p>Cartagena Agreement: makes reference to employment generation</p> <p>Andean Social Charter</p> <p>Andean Charter for the Promotion and Protection of Human Rights</p> <p><i>Decision 113: Andean Instrument on Safety and Health at Work</i> (approval pending)</p> <p>Decision 148: Andean Social Security Instrument Regulations</p> <p>Decision 116: Andean Labour Migration Instrument</p>	<p>Art. 10 of the Treaty establishing CARICOM (Chaguaramas 1973): Establishes guidelines for the mobility of labour within the region; dictates, as a cardinal principle, that in the hiring process, CARICOM nationals are to be given priority over foreigners.</p> <p>Protocol II of 1997 amending the initial Chaguaramas treaty: graduates of the regional Universities, may work in any territory without requiring work permits.</p> <p>1996 Agreement on Social Security</p> <p>Charter of Civil Society</p> <p>CARICOM Declaration of 1995</p>	<p>MERCOSUR's Socio-Labour Declaration</p> <p>Brasilia Protocol on dispute settlement</p> <p>Multilateral Social Security Agreement</p> <p>Agreement on the regularization of the position of illegal immigrants from the region and granting of residence permits to nationals of MERCOSUR Member States (approval pending)</p>	<p>Treaty on Social Integration for Central America</p>	<p>North-American Agreement on Labour Cooperation (NAALC / NAALC):</p> <p>Arts. 8°, 9°, 10° & 11°</p>

Table 3

Fundamental Principles and Rights at Work and Their Follow-up through Regional Integration Agreements

	CAN	CARICOM	MERCOSUR	SICA	NAALC
Freedom of Association	<p>Andean Social Charter: Art. 58°: Creation of trade unions</p> <p>Andean Charter for the Promotion and Protection of Human Rights Art. 24° - sub-clause 3: Right to found and join trade unions</p>	<p>CARICOM Declaration of 1995: - Art. 3° y 4°: Freedom of association and organization - Art. 6: Voluntary negotiation and free collective bargaining -Art. 7 and 9: Protections for union members Draft legislation on recognition of trade unions</p>	<p>MERCOSUR's Socio-Labour Declaration: - Art. 8: Right to create trade unions - Art. 9: Protection against anti-union discrimination - Art. 10: Right to collective bargaining - Art.11: Right to strike - Art. 12: Development of forms of out-of-court settlement for labour disputes - Art. 13: Promotion of social dialogue</p>	No specific legislation	<p>North-American Agreement on Labour Cooperation (NAALC / NAALC)</p> <p>It enshrines the following labour principles: 1. Freedom of association and THE effective recognition of the right to create and join trade unions 2. Right to collective bargaining 3. Right to strike</p> <p>NAALC - Art. 11: (i) Labour relations and collective bargaining; (l) Legislation on the organization of trade unions, collective bargaining and labour dispute resolution</p>
Forced Labour	<p>Andean Social Charter: implicit reference</p> <p>Andean Charter for the Promotion and Protection of Human Rights: implicit reference in Art. 24°</p>	<p>CARICOM Declaration of 1995 (Art. 16)</p>	<p>MERCOSUR's Socio-Labour Declaration (art. 5°)</p>	No specific regional legislation	<p>North-American Agreement on Labour Cooperation (NAALC / NAALC)</p> <p>Art. 4° . Prohibition of forced labour</p>

	CAN	CARICOM	MERCOSUR	SICA	NAALC
Child Labour	<p>Andean Social Charter: Art. 15: Promotion of children's rights</p> <p>Andean Charter for the Promotion and Protection of Human Rights: Art. 44° and 45°: Rights of children and adolescents</p>	<p>No specific regional legislation.</p> <p>The CARICOM Declaration of 1995 indirectly recognizes this principle.</p>	<p>MERCOSUR's Socio-Labour Declaration: Art 6°</p>	<p>No specific regional legislation</p> <p>Implicitly recognized in:</p> <ul style="list-style-type: none"> - Principles of the Central American Alliance for Sustainable Development - Treaty on Social Integration for Central America - Conferencia Internacional de Paz y Desarrollo en Centroamérica (International conference on peace and development in Central America, Tegucigalpa, 1994) - Declaration of San Salvador II - Programme of immediate actions based on the Declaration of San Salvador II for investment in human capital 	<p>North-American Agreement on Labour Cooperation (NAALC / NAALC)</p> <p>Art. 5: Labour protections for children and young persons</p> <p>Art. 11°: (b)cooperative activities regarding child labour</p>

	CAN	CARICOM	MERCOSUR	SICA	NAALC
Nondiscrimination	<p>Andean Social Charter:</p> <ul style="list-style-type: none"> - Art. 10: Elimination of all forms of discrimination against women <p>Andean Charter for the Promotion and Protection of Human Rights:</p> <ul style="list-style-type: none"> - Art. 10: Rejection of all forms of racism, discrimination, and xenophobia. - Art. 11: Promotes educational plans and programmes on human rights in order to promote a social culture based on tolerance, the respect of differences and non-discrimination. - Art. 12: Provides for actions to combat all acts of discrimination - Art. 42 and 43: Elimination of all forms of discrimination against women 	<p>CARICOM Declaration of 1995:</p> <p>Chapter IV: "Non-Discrimination in Employment and Occupation" – Art. 11°, 12° and 13°</p>	<p>MERCOSUR's Socio-Labour Declaration (Art. 1° and 2°)</p>	<p>No specific regional legislation</p> <p>Implicitly recognized in:</p> <ul style="list-style-type: none"> - Tegucigalpa Commitments on Peace and Development - Treaty on Social Integration for Central America - Cumbre Ecológica Centroamericana para el Desarrollo Sostenible (Central American ecological summit on sustainable development, Managua, 1994) - Declaration of San Salvador II 	<p>North American Agreement on Labour Cooperation (NAALC)</p> <ul style="list-style-type: none"> Art.7: Elimination of employment discrimination Art. 8: Equal pay for women and men NAALC - Art. 11°: (13) cooperative activities regarding the equality of women and men in the workplace

Table 4

Principles and Rights at Work in the Countries of the Region (voluntarily participants on the studies)

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
CAN			
PERU			
Freedom of Association	<p>Political Constitution of 1993: Sub-section 13) of Article 2 and Article 28.</p> <p>Decreto Ley (executive order) No. 25593, Ley de Relaciones Colectivas de Trabajo (law on collective labour relations).</p> <p>Ley (act of Parliament) No. 27912, which modifies Arts. 1, 2, 4, 13 and 66° of Ley de Relaciones Colectivas de Trabajo.</p> <p>Decretos Supremos (Presidential decrees):</p> <ul style="list-style-type: none"> - N° 011-92-TR. – Regulations implementing Ley de Relaciones Colectivas de Trabajo. - N° 009-93-TR. - N° 006-2001-TR. - N° 003-82-PCM Art. 19° 		<p>MTPE– Ministry of labour and employment promotion</p> <p>Consejo Nacional de Trabajo y Promoción del Empleo (National council on labour and employment promotion).</p>
Forced Labour	<p>Political Constitution of 1993: <i>Literal b) of Numeral 24) of Art. 2°</i>. <i>Numeral 15) of Art. 2° and Art.. 22 and 23.</i></p> <p>Ley No. 27687</p> <p>Código de Ejecución Penal (code of penal execution): Arts. 65 and 67.</p> <p>Ley N° 27270.</p>		<p>Inspection programmes designed to detect and punish debt bondage practices in Peru's Selva (Amazon jungle area).</p>

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
CAN			
PERU			
Child Labour	<p>Political Constitution of 1993: <i>Numeral 1</i>) of Art. 2, Literal b) of <i>Numeral 24</i>) of Art. 2 and Art. 23.</p> <p>Ley No. 27337, Código de los Niños y Adolescentes (children's and adolescents' code)</p> <p>Ley No. 25669</p> <p>Decreto Supremo (sectoral presidential decree) No. 009-2002-TR, TUPA of the MTPE.</p> <p>Resolución Ministerial (ministerial resolution) No. 128-94-TR</p> <p>Decreto (decree) No.° 003-97 PROMUDEH</p>	<p>1996-2000 Plan nacional de Acción por la Infancia (national action plan for children)</p> <p>2002-2010 Plan Nacional de Acción por la Infancia y Adolescencia (national action plan for children and adolescents)</p> <p>Comité contra trabajo infantil (committee against child labour)</p> <p>Young persons vocational training program (PROJOVEN)</p> <p>Cooperative programmes with IPEC</p> <p>Child labour elimination programmes in: Huachipa brick factories, Mollehuaca artisan mining community, Caserío (hamlet) of Santa Filomena.</p> <p>National assistance programme for child workers (INABIF)</p> <p>Peruvian teachers' union)' actions for the elimination of child labour (SUTEP).</p>	<p>Ministry for the promotion of women and human development (MINDES)</p> <p>Ministry of education (MTPE, MINEDU)</p> <p>Ministry of health (MINSa)</p> <p>Defensoría del Pueblo (ombudsman)</p> <p>National Assistance Programme for Child Workers of Peru (INABIF)</p> <p>Peruvian Teacher's Union (SUTEP)</p>

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
CAN			
PERU			
Nondiscrimination	<p>Political Constitution of 1993: Sub-section 2) of Art. 2 and Arts. 23 and 24°, Sub-section 1) of Art. 26</p> <p>Decreto Supremo No. 003-97-TR, TUO of D. Leg. 728, LPCL: Arts. 29° and 30°</p> <p>Ley No. 26772, on discrimination in job offers.</p> <p>Ley No. 27270, against acts of discrimination.</p> <p>Ley No. 27050: general law on persons with disabilities.</p> <p>Ley No. 26626: National plan against HIV, AIDS, and ETS</p> <p>Ley Orgánica de Procesos Electorales (general electoral law)</p> <p>LEYES (ACTS OF PARLIAMENT) NO. 27240 AND 27403: BREASTFEEDING. LEYES NO. 26644, 27606 AND 27402: PRENATAL AND POSTNATAL REST</p> <p>DECRETO LEGISLATIVO (LEGISLATIVE DECREE) NO. 689: HIRING FOREIGN WORKERS</p> <p>LEY NO. 27409: ADOPTION LEAVE</p> <p>Decreto supremo No. 002-98-TR. Regulations implementing Ley No. 26772.</p> <p>Decreto supremo No. 004-97-SA, Regulations implementing Ley No. 26626</p>	<p>Plan Nacional de Acción para la Personas con Discapacidad (national action plan for persons with disabilities) (2003 - 2007)</p>	<p>MTPE's Directorate for employment and vocational training</p> <p>(CONADIS), a (MINDES) Agency for the Disabled People</p> <p>Ministry of Labour and Employment Promotion (MTPE)</p> <p>Ministry of Education(MINEDU)</p> <p>Ministry of Health (MINSA)</p> <p>National Institute on Statistics and Computer Science (INEI)</p> <p>Defensoría del Pueblo (Ombudsman)</p> <p>Ministry of Promotion of Women and Human Development (MINDES)</p>

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
CARICOM			
JAMAICA			
Freedom of Association	Jamaica Constitution Regulations of Labor Relations and Industrial Disputes Act (LRIDA), LRID		Labour Advisory Committee
Forced Labour			Labour Advisory Committee
Child Labour	2 statutes requiring amendment.	Statute under debate	Labour Advisory Committee
Nondiscrimination	Constitution	Under debate	Labour Advisory Committee
BARBADOS			
Freedom of Association	Constitution	Under debate	Labour Advisory Committee
Forced Labour			Labour Advisory Committee
Child Labour	3 statutes requiring amendment	Under debate	Labour Advisory Committee
Nondiscrimination	Constitution (no legislation on equal pay)		Labour Advisory Committee

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
MERCOSUR			
ARGENTINA			
Freedom of Association	National Constitution: Art. 14° bis, Art. 31°, Art. 75° Resolución (resolution) No. 532/2001 on trade unions Ley n° 23551 on trade unions Decree No. 1040 and 757 of 2001 ON trade unions Resolución No. 1052/96 of the Ministry of Labour, Employment and Human Resource Development.		Ministry of Labour, Employment and Human Resource Development.

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
MERCOSUR			
ARGENTINA			
Forced Labour	National Constitution: Artículos 10°, 15° and 17°		Ministry of Labour, Employment and Human Development
Child Labour	Ley 25255 Ley No. 24650 ILO Convention No. 138 ILO Convention No. 182 Decreto No. 719/2000	<ul style="list-style-type: none"> - Memorandum of Understanding with the ILO/ IPEC - National Action Plan - Conventions and letters of commitment between CONAETI and: Provincial Government of San Juan, Unión Argentina de Trabajadores Rurales y Estibadores, Federación Agraria Argentina, Unión de Cortadores de la Indumentaria, Federación Argentina de la Industria de la Indumentaria y Afines, Unión de Trabajadores de la Industria del Calzado, Cámara de la Industria del Calzado, Unión de Obreros de la Construcción and Cámara Argentina de la Construcción. - Child labour elimination project in José León Suárez - Pilot programme for child labour elimination, keeping children in the formal school education system and supporting stable generation of family income, in the provinces of Chaco, Mendoza and Salta - Training and awareness raising programme against child labour: National seminar on the prevention and elimination of child labour, Course for provincial labour inspectors; Workshop for civil servants, Coordination workshop with the Buenos Aires Province, Awareness raising campaign on the elimination of rural child labour, and Workshops for law enforcement officers (Fuerza de Seguridad Policial). 	<ul style="list-style-type: none"> Ministry of Labour, Employment and Human Development National commission for the elimination of child labour (CONAETI) Provincial and municipal governments Several NGOs

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
MERCOSUR			
ARGENTINA			
Nondiscrimination	National Constitution ILO Convention No. 100 ILO Convention No.156 Decreto No.254	Plan for equality of opportunities for men and women in the world of work.	Ministry of Labour, Employment and Human Resource Development National Women's Council
URUGUAY			
Freedom of Association	Constitution of Uruguay: Arts. 57°, 96°, 97° and 98° ILO Convention No.98 ILO Convention No.87 Ley No.15587 Decreto No. 390		
Forced Labour	Constitution of Uruguay Ley No.. 16643 ILO Convention No.29		
Child Labour	Constitution of Uruguay: Arts. 54 and 41. United Nations Convention on the Rights of the Child ILO Convention No.138 ILO Convention No. 182 - Decreto Presidencial (presidential decree) No. 460 - Código del Niño (children's code), Chapt. XVII On child labour, Arts. 223-226, 231, 242, 244, 249.	Letter of Intention with ILO/IPEC National plan for the elimination of child labour Training workshops for labour inspectors	National committee for the elimination of child labour (CETI)

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
URUGUAY			
Nondiscrimination	Constitution of Uruguay Decreto No. 28942 Decreto No.365/999	Programme for the promotion of equal opportunities for men and women in employment and in vocational training	Ministry of Labour and Social Security Tripartite commission for equal labour opportunities and treatment National employment board (JUNAE) Directorate general for employment (DINAE)
SICA			
COSTA RICA			
Freedom of Association	Reglamento de Negociación Colectiva en el Sector Público (regulations on collective bargaining in the public sector) Resolution No. 346-98 issued by the Minister of Labour and Social Security Resolution No. 967-2000 issued by the Minister of Labour and Social Security		

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
SICA			
COSTA RICA			
Forced Labour			
Child Labour	ILO Convention No.182 Decreto Ejecutivo No.29220-MTSS Minister of Labour Directriz (guideline) No.1	National Plan of action for the elimination of child labour	Ministry of Labour National board for youth (PANI) Ministry of Public Education Instituto Nacional de Aprendizaje Instituto Mixto de Ayuda Social Ministry of Health Caja Costarricense del Seguro Social Instituto Nacional de Seguros y Municipalidades

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
SICA			
PANAMA			
Non-discrimination	Decreto Ejecutivo No.29221-MTSS	" <i>Guía de Buenas Prácticas Laborales para la Equidad de Género</i> " – Gender equity unit of the Ministry of Labour	Gender equity unit of the Ministry of Labour
Child Labour	ILO Convention No. 138 ILO Convention No. 182 Ley No.38 Panama Maritime Authority Resolución No.063-2001	National plan of action for the elimination of child labour Programmes for dissemination of Ley No.38 Training programme for law enforcement (PNP) and health centre personnel	Technical secretariat of the Committee for the elimination of child labour and the protection of child workers Ministry of Government and Justice(MINGOBJ) Ministry of Youth, Women, Childhood, Family (MINJUMNFA) Ministry of Health (MINSa)

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
SICA			
PANAMA			
Non-discrimination	Ley No.4 of 29 January 99 Decreto Ejecutivo No.53 of 25 June 2002 which regulates the implementation of Ley No.4 of 1999	PIOM II – Plan for equal opportunities for women, 2002-2006	Ministry of Labour and Labour Development (MITRADEL) (MINJUMNFA) Institute on Labour Studies (IPEL) National Council of Private Enterprises (CONEP) National Council of Organized Workers (CONATO) Fundación del Trabajo

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
FTA			
CANADÁ			
Freedom of Association	Chapter on Rights and Freedoms of the Canada Labour Code, 2; Part I, s.8 - Part I, s. 48 (also s. 28, 36, 50). ILO Convention No. 87 ratified	(NAO) National Administrative Office. (Public Communications)	Ministry of Human Resources Development of Canada (HRDC) (Federal Level) Federal Mediation and Conciliations Service
Forced Labour	Criminal Code, s. 279; Chapter on Rights and Freedoms of the Canada Labour Code, 7; Canada Labour Code: Part III ILO Convention No. 105 ratified Immigration and Asylum Act 2002 The Protocol Against the Smuggling of Migrants by Land, Sea and Air The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.		Federal and Provincial Agencies

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
FTA			
CANADÁ			
Child Labour	Canada Labour Code Part III (industrial relations regulations) ILO Convention No. 182 ratified Criminal Code Amendment 1997	Involved in IPEC Education initiatives	Federal and Provincial Agencies
Nondiscrimination	- Human Rights Act, ss. 7, 8; - Employment Equity Act 1995 - Equal Wages Guidelines s. 11 - Labour Code 1986; Part III, s. 182 - ILO Convention No.100, 101	Status of Women Canada Income Equity Task Force	Federal and Provincial Agencies
NAFTA			
EEUU			
Freedom of Association	Norris-LaGuardia Act, National Labour Relations Act, secs. 141 + Labour-Management Reporting & Disclosure Act, secs. 401-531	National Administrative Office (NAO) (Public Communications)	United States Labor Relations Board (NLRB) Federal Mediation and Conciliation Service
Forced Labour	Constitution, amendment 13 18 U.S.C. (2000), sec. 1589, sec. 1590 Victims of Trafficking and Violence Protection Act of 2000 ILO Convention No.105	Trafficking in Persons and Worker Exploitation Task Force	Federal Agencies, such as the Department of Labour

	National Legislation	National Plans and Programmes	Institutions in charge of Follow-up, Supervision and Control
NAFTA			
EEUU			
Child Labour	Fair Labour Standards Act of 1938, sec. 212; 29 CFR (2002), pt. 570, pt. 575, pt. 579 ILO Convention No. 182 Executive Order No. 13126 on the "Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labour" (1999)	Involved in IPEC Education initiatives	Federal and State Agencies
Nondiscrimination	Equal Employment Opportunity Laws FLSA Equal Pay Act, 1963 Federal Tripartite Committee recommended ratification of ILO Convention 111	Women's Bureau of the U.S. Dept. of Labour Women in Nontraditional Occupations Act Program	United States Equal Employment Opportunity Commission(EEOC) Fair Employment Practices Act (FEPA)