

Freedom of Association, Right to Organise and Effective Collective Bargaining

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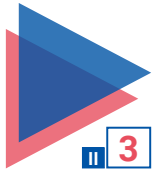
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Key selected International Labour Standards

- C087** the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- C098** the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- C135** the Workers Representative Convention, 1971 (No.135)
- C141** the Rural Workers' Organisations Convention, 1975 (No. 141)
- C151** the Labour Relations (Public Service) Convention, 1978 (No.151)
- C154** the Collective Bargaining Convention, 1981 (No. 154)
- R149** the Rural Workers' Organisations Recommendation, 1975 (No. 149)
- R143** the Workers' Representatives Recommendation, 1971 (No. 143)
- R163** the Collective Bargaining Recommendation, 1981 (No. 163)
- R091** the Collective Agreements Recommendation, 1951 (No. 91)
- R159** the Labour Relations (Public Service) Recommendation, 1978 (No. 159)

Introduction

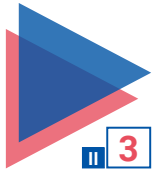
Freedom of association is enshrined in the preamble of the ILO constitution and has been reaffirmed by the ILO Declaration of Philadelphia (1944) as one of the fundamental principles on which the Organization operates. The Philadelphia Declaration also commits the ILO to promote collective bargaining and recognizes the solemn obligation of the International Labour Organization “to further among the nations of the world programmes which will achieve [...] the effective recognition of the right of collective bargaining”. The International Bill of Human Rights specifically recognises freedom of association and assembly, the right to join trade unions, and the right to strike as universal rights¹. It also recognises the right of every human being to work to earn a decent living and to be protected from discrimination, slavery and forced labour.

The **ILO Declaration on Fundamental Principles and Rights at Work** commits all member states to promote and realise these rights and to abide by the eight ‘core conventions’ that encompasses these principles and rights even if they have not ratified these conventions.

The **ILO Declaration on Social Justice for a Fair Globalization** (the Social Justice Declaration) of 2008, reasserted these rights and principles as key to responding to the challenges of globalisation and in pursuing social justice. These Conventions are seen to ‘be mutually supportive’ and the ‘principles and values embodied in these Conventions constitute a universal aspiration of the international community as a whole.’²

What are the benefits of Freedom of Association, the right to organise and effective Collective Bargaining ?

Freedom of association, the right to organise and effective collective bargaining pave the way for fundamental principles and rights at work. For example *it enables constructive leverage to be exerted against forced labour and is a catalytic process to help protect children and other vulnerable groups. It is a key instrument to uphold non-discrimination and*



*equality, integrating the world of work with the guarantee of fundamental rights at work for all*³.

Freedom of association and the right to organise and effective collective bargaining are also important elements of a functioning democracy based on the respect for human rights.

The ILO General Survey 2012 (Fundamental Conventions) also identified the following specific benefits for workers and employers organisations:

- ▶ It allows workers organisations and employers to participate on an equal footing in the making of labour regulation and socio economic policy making.
- ▶ It forms the basis for social partners to establish rules in the field of working conditions, including wages, to pursue more general claims and to reconcile their respective interests with a view to ensuring lasting economic and social development.
- ▶ Strong and independent workers' organizations are essential to compensate the legal and economic inferiority of workers.
- ▶ Employers' organizations are particularly important for the protection of interests of small enterprises.

The ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 recognised the following as universally applicable:

- ▶ freedom of association and the effective right to collective bargaining.
- ▶ the elimination of all forms of forced or compulsory labour
- ▶ the effective abolition of child labour
- ▶ the elimination of discrimination in respect of employment and occupation

3 Ibid

Freedom and participation rights as enabling rights for economic growth

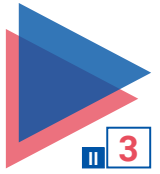
A study conducted by the Danish Institute for Human Rights concluded that freedom and participation rights have a direct and positive impact on economic growth:.. ‘by investing in human rights, in particular in the rights to freedom of speech, freedom of assembly and association, and electoral self-determination, the economic growth of a country is likely to increase⁴.”

From a business perspective, there is also a growing interest towards the role of companies vis-à-vis human rights. While corporate executives do not always see a clear ‘business case’ for respecting human rights, there is evidence in recent research that companies with well-developed Corporate Social Responsibility programmes tend to do better financially than other companies⁵.

A case study of the garment sector in Jordan

The apparel industry in Jordan has grown rapidly over the past decade: It accounts for over 17 per cent of total exports and employs around 60,000 workers, most of whom are female and migrant workers.

- ▶ Limited freedom of association and poor practices of collective bargaining led to unacceptable practices (e.g. paying fees to regain access to employment) and industrial action (e.g. long, drawn-out strikes), which in their turn were negatively impacting the productivity of the sector.
- ▶ In 2010, migrant workers gained the right to freely join trade unions, vote in union elections and participate in factory level committees. In 2013, a collective agreement was signed for the apparel industry in Jordan, covering all workers in the sector: no distinction has been made between migrant and Jordanian workers, male and female workers.
- ▶ The agreement regulated working hours and wages while improving occupational safety. Moreover, all subcontractors automatically became parties to the agreement and all parties agreed to work on ensuring that no worker is charged fees for his/her employment.
- ▶ In 2015, after further consultations between the Government, trade unions and employers of the garment sector, a unified employment contract for migrant workers has been put in use, providing for common terms and conditions of employment and subjecting the ▶▶



issuing of work permits.

- ▶ The collective agreement has been revised for the second time in 2017, marking progress in the utilization of voluntary collective bargaining to determine working conditions in the apparel sector through the harmonization of key conditions of work and employment, including social security benefits and payment of overtime, between migrant workers and Jordanian nationals.

As a result:

- ▶ The number of industrial disputes has been reduced leading to a greater stability in the sector;
- ▶ Improved working conditions incentivized workers to stay longer in the sector, reducing staff turnover and preserving skilled labour, and increased their loyalty to the employer, resulting in overall increase in productivity and rapid economic growth.

The Government, workers and employers continue negotiations on such issues, such as training, health care, bonuses, etc. The process has been ongoing along with the establishment of workers' committees, the election of leaders and workers' education and information sharing on their rights and responsibilities.

To learn more: https://www.ilo.org/beirut/information-resources/factsheets/WCMS_222555/lang-en/index.htm



Guidance from International Labour Standards

C087 - The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

General Principles and Scope

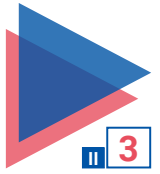
The main principle of the Convention No. 87 is expressed in the *Article 2* which provides that ‘all workers and employers, without distinction whatsoever, **shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization**; The principle applies all to workers including those in the public sector, civil servants, informal sector and self employed.

Article 9 of the Convention allows member States to determine the extent to which the guarantees provided for in the Convention apply to *the armed forces and the police*. Furthermore, these exceptions must be strictly defined and limited as indicated by the ILO’s supervisory bodies .

The ‘freedom’ refers to the prohibition of interference by **government** in the exercise of the right to associate, meaning that workers’ and employers’ organizations shall organize freely and not be liable to be dissolved or suspended by an administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers.

Implementation

The principal objective of Convention No. 87 is to protect the autonomy and independence of workers’ and employers’ organizations **in relation to**



the public authorities, both in their establishment and in their functioning and dissolution.

Under the terms of Articles 1 and 11, each State is bound by the Convention and “undertakes to give effect to [its] provisions” and “to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise”.

Accordingly, the Convention No. 87 is one of the most ratified conventions. Although the Convention does not necessarily require States to adopt legislation for the implementation of its provisions, most countries have introduced specific laws and regulations dealing with freedom of association and the right to organise. In some countries, freedom of association and the right to organise is also enshrined in constitutional laws.

The supervisory bodies of the ILO, especially the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations play a crucial role in guiding implementation of the convention. The former in handling complaints against member states and the latter in providing overall guidance and legal interpretation on measures to give effect to the convention

What is the role of government:

The government is required to take necessary steps and measures to ensure the right to organise. This could include specific laws and regulations. In exercising its authority and whatever steps the Government takes, it must :

- ▶ refrain from interfering with the exercise of freedom of association;
- ▶ ensure that the law of the land does not impair the exercise of freedom of association (In exercising the rights provided for in the Convention, workers and employers and their respective organizations have to respect the law of the land. However, the law of the land must be such, nor may it be so applied as to impair the guarantees provided for in the Convention);
- ▶ ensure that workers have adequate protection against acts of anti-union discrimination;

- ▶ ensure that workers' and employers' organizations have adequate protection against interference by each other in their establishment, functioning or administration.

Role and safeguards for workers' and employers' organizations:

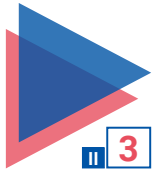
- ▶ Establishment and membership:
 - establish organizations of their own choosing;
 - freely join these organizations (subject only to the rules of the organizations concerned);
 - exercise these rights without previous authorization.
- ▶ Structure and governance:

Once organizations have been established in full freedom and without previous authorization, they must be able to function freely:

 - draw up their own constitutions and rules;
 - elect their representatives in full freedom;
 - organize their administration and activities;
 - formulate their programmes.

Furthermore, with regard to relations with other organizations, the principles of freedom of association cover:

- the right of workers' and employers' organizations to establish and join federations and confederations; they also have the right, in the same way as federations and confederations, to affiliate with international organizations of workers and employers;
- the right of members of workers' and employers' organizations to participate in the international activities of their organizations as and when they so choose;
- the right of workers and employers to receive assistance and support from international level organizations for the establishment of national level organizations, regardless of the political or ideological tendencies of the international body.



▶ Dissolution and suspension:

- The acquisition of legal personality by workers' and employers' organizations, federations and confederations may not be made subject to conditions of such character as to restrict the rights enumerated above. Furthermore, they may not be dissolved or suspended by administrative authority.
- Unless accompanied by all the necessary safeguards, the dissolution and suspension of workers' and employers' organizations can constitute extreme forms of interference by the authorities in their activities, effectively putting an end to the right to organize of their members. The necessary guarantees can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution.

C098 - the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

General Principles and Scope

This Convention is a bridge between freedom association and collective bargaining. It has three main aims, namely:

- (i) protection against acts of anti-union discrimination both at the time of the taking up employment and in the course of employment, including the termination of the employment relationship.
- (ii) protection against acts of interference in the internal affairs of workers' and employers' organizations; and
- (iii) the promotion of collective bargaining.

▶ Anti-union discrimination

Workers must be protected against act of anti-union discrimination, and particularly against acts that are calculated to:

- Make their employment subject to the condition that they shall not join a union or shall relinquish membership thereof;
- Cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours, or, with the consent of the employer, within working hours.

▶ Acts of interference

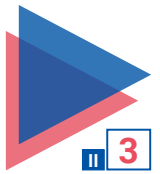
- Workers' and employers' organizations must enjoy adequate protection against any acts of interference by each other, and particularly acts which are designated to promote the domination, financing or control of workers' organizations by employers or employers' organizations.

Implementation

Member states are required to take “measures appropriate to national conditions, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of **collective agreements**” (Article 4).

Regarding the principle of the independence and autonomy of the parties and of free and voluntary bargaining:

- ▶ the effort made, in the context of the various bargaining systems, to reduce to a minimum any possible interference by the public authorities in bipartite negotiations; and,
- ▶ the primacy accorded to employers and their organizations and to trade unions as the parties to negotiations.



Understanding the main elements of Collective Bargaining

According to the Collective Bargaining Convention, 1981 (No. 154), collective bargaining is defined as:

*“all **negotiations** which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for:*

(a) determining working conditions and terms of employment; and/or

(b) regulating relations between employers and workers; and/or

(c) regulating relations between employers or their organisations and workers’ organisations.”

Thus through collective bargaining that allows workers organisations and employers/employers organisations to reach agreement on issues related to work, this principle allows workers to negotiate contracts with their employers, to reach agreement on their terms of employment including remuneration, benefits, hours of work, leave entitlements, occupational safety and health and other relevant working conditions. It is common for agreements to cover conditions and criteria for hiring, working conditions and promotions, worker discipline and termination, and benefit programs.

The collective bargaining process usually results in the conclusion of a Collective Agreement, which is defined as *“ all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other. ”* - the Collective Agreements Recommendation, 1951 (No. 91).

Under certain conditions, collective bargaining also has to extend to negotiations with worker’ representatives other than trade union representatives, as defined under Convention No. 135:

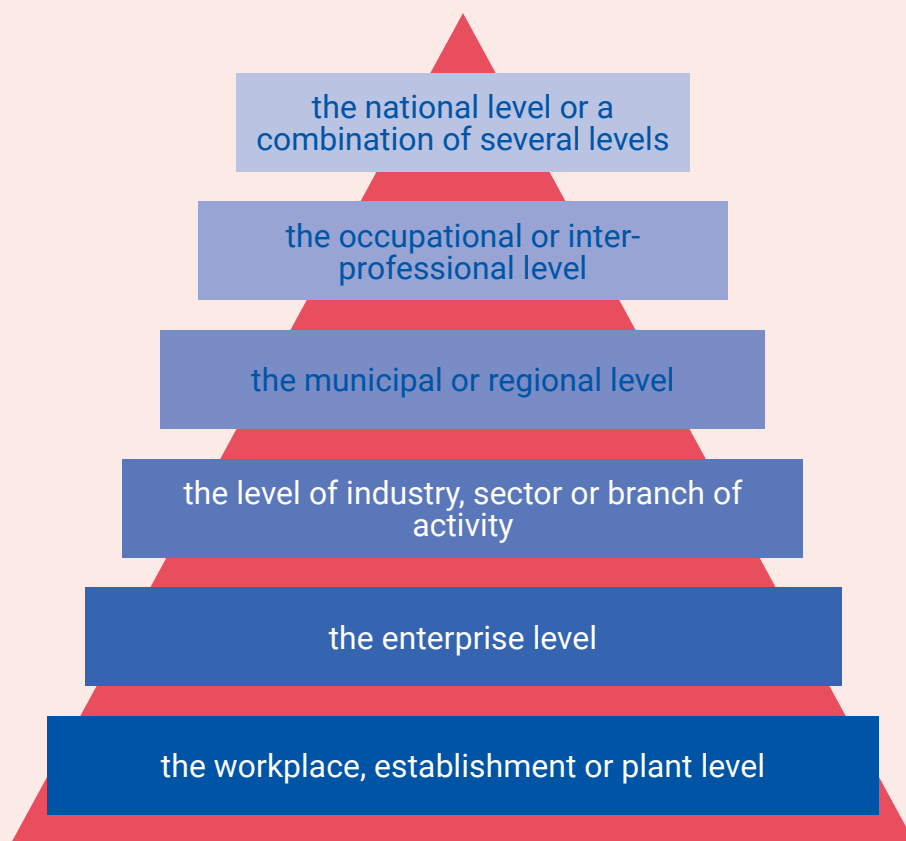
Workers’ representatives – persons who are recognized as such under national law or practice, whether they are –

- ▶ Trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or
- ▶ Elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the executive prerogative of trade unions in the country concerned.

Levels at which bargaining may take place

The Collective Bargaining Recommendation, 1981 (No. 163) proposes that “measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels”.

To conclude collective agreements at a chosen level, collective bargaining may take place at:



▶ Sample session 1:

Freedom of association, the right to organise and effective collective bargaining



OBJECTIVES

- 📌 Participants understand and apply the basic principles, of freedom of association and the right to organise and effective collective bargaining
- 📌 Participants understand the purpose of collective bargaining and the use of collective agreements in practice.



SETTING

- 📌 Two groups to be formed, each assigned one of the two learning objectives



DURATION

- 📌 Both groups will have 40 minutes to discuss the topic assigned to them.
- 📌 Groups will be given 10 minutes each to share the main points of their group work.



TASK

1. Both groups to select a note taker and a moderator/chair. At the end of the group work, a representative of each group will present the main points discussed in the group.
2. The first group is given the task of discussing **freedom of association**, what it means, what types of worker and

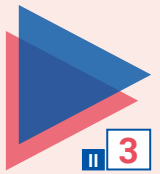
employer organisations there are, in which settings the principle is applied and what benefits this brings to parties involved. The group would also discuss the role and responsibilities of governments, and the obligations of employer and worker organisations

3. The second group's task is to discuss what **collective bargaining** is after which they will draw up a sample collective bargaining agreement. In this exercise, the group will bear in mind the main elements of a collective bargaining agreement. These include working hours, wages and overtime payments, bonuses and other benefits, vacation entitlements and, of course, working conditions.



TIPS FOR TRAINERS:

- 📌 It would be helpful for the participants to have a handout containing a set of basic criteria for establishing or forming associations and a list of the types of associations. This can be handed out after the group work
- 📌 A basic question like “why negotiations fail” can facilitate the group to avoid risks when they are drafting the collective bargaining agreement
- 📌 In order to ensure that group members benefit as much as possible from the exercise, it would be good to go around and listen in in order to guide or clarify points as necessary
- 📌 Once one group presents the main points discussed in their group, invite the other group members to make comments/ ask questions etc.
- 📌 Avoid being strict with the allotted time for group work but ensure that one group is not disadvantaged by the other group taking more time
- 📌 If necessary, go over the ILO definition or main elements/ points about freedom of association and right to collective bargaining before the group work starts
- 📌 Make available copies of the relevant ILO Conventions and references.



Example of a handout: Typical content of collective agreements (South Africa)

BARGAINING UNIT	SMALLER ENTERPRISE COLLECTIVE BARGAINING AGREEMENTS (CBAs)	LARGER ENTERPRISE COLLECTIVE BARGAINING AGREEMENTS (CBAs)
Definitions	Preamble	Preamble
	Scope of the agreement	Scope of the agreement
Duration of agreement	More likely to be single-year agreements	More likely to be multi-year agreements
Wages	Wage increase expressed as a percentage. Generally an across-the-board approach	Wage increase expressed as a percentage. Generally an across-the-board approach, although there are instances of staggered increases applied to broad categories (low, middle and higher grades) according to negotiated wage schedules
	Wage increases less frequently linked to inflation	Wage increases often linked to the CPI, by way of a formula that might include an improvement factor of 1 to 2 per cent
	Base wage is relatively common	Many agreements include a base wage for different grades. Tendency to eliminate particular grades, raising base wages and closing gaps
Other conditions of employment	“Status quo” references to other conditions of employment, without stating what the status quo is	Clauses relating to short time more prevalent after 2009
		Maternity and paternity leave Occupational safety and health Sick leave Clauses regarding labour broking (temporary agency work), casual workers, contract workers or temporary workers Family responsibility leave Compassionate leave Provident fund Medical aid
Labour relations	x	Leave for shop stewards Full and final settlement Peace clause

Credit: *Collective bargaining – a policy guide*, ILO, 2015 - https://www.ilo.org/travail/whatwedo/instructionmaterials/WCMS_425004/lang-en/index.htm

Sample session 2: Role play exercise : Freedom of Association, the right to organise and effective collective bargaining in practice



OBJECTIVE

- 📌 Participants are able to apply the aims and principles of C087 and C098 and to reflect on examples of freedom of association and collective bargaining in practice . Participants are able to identify key issues and challenges.



SETTING

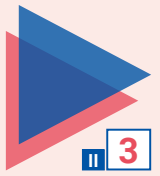
- 📌 Two groups are formed. One group is to prepare a defence in favour of higher wages when the employer is steadfastly refusing to increase wages. The group exercise is to encourage all members to come up with sound justifications for demanding wage increases. The second group is to discuss and report on the challenges migrants and refugees face in exercising their right- freedom of association.



DURATION

60 minutes:

- 📌 40 minutes for each group to work on the assigned task
- 📌 5 minutes for sharing the main points discussed in each of the groups,



📌 followed by a 10 minute discussion on each topic.



TASK:

1. The first group will decide what type of a sector they work in, the types of work they do, the conditions in which they work and other relevant issues. They then will develop arguments and justifications for demanding higher wages. The arguments will need to be based on realistic situations both at the workplace and out in the community/family. They will need to develop counter arguments for the employer's reasoning for not granting higher wages.
2. The second group will first make an assessment of the situation in a country where the right to freedom of association is exercised and where there are migrants and refugees also work. They will then identify the challenges and bottlenecks that prevent migrant workers and refugees from enjoying this right. Once the challenges are identified, the group will then suggest ways to overcome these challenges on behalf of migrants.



TIPS FOR TRAINERS:

- 📌 As groups start working, ask them to ponder on basic questions like;
1. *Why would you need higher wages?*
 2. *How/for what purpose would you utilise the increase in your salary*
 3. *Consider the possible reactions of the employer when you are making your demand*
 4. *How will the workers react if demand for higher wages was not successful?*
- 📌 Remind the group members that negotiating or requesting higher payments is a delicate process and it must be carried out in an amicable manner

- 📌 If the country from which the participants come from, does not have much experience with or incidence of migrant and refugee workers, a scenario can be prepared beforehand and given to the group working on the challenges of migrant and refugee workers
- 📌 Remind the group working on the challenges of migrant workers that it is not only with employers that they experience challenges but also other institutions, like ministries.

▶ Sample session 3 (alternative): Benefits of collective bargaining



OBJECTIVE

- 📌 To reflect on and discuss the benefits of collective bargaining.



SETTING

- 📌 An unlimited number of groups can participate in the activity.
- 📌 Using 1-2-4-all methodology, participants reflect individually and then are face-to-face when working in pairs and in groups of four.
- 📌 No particular setting of chairs or tables is needed.
- 📌 Notepads are useful to record observations and insight.



DURATION

30 minutes:

- 📌 1-2 minutes for individual silent reflection
- 📌 5 minutes for participants to exchange in pairs
- 📌 5 minutes for participants to share ideas in groups of four
- 📌 5 minutes for preparing presentation in groups

📌 10 minutes for plenary discussion.



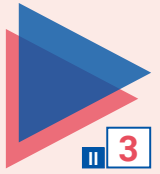
TASK

1. Participants are asked a question “What are the benefits of collective bargaining?”. They spend 1-2 minutes in silent reflection thinking about the question and write down individually as many benefits they can think of.
2. Participants are then invited to exchange their ideas in pairs for 5 minutes, further elaborating or complementing their ideas.
3. Moving to groups of 4, participants discuss all the ideas and concentrate on similarities and differences. For the next 5 minutes, each group appoints a spokesperson and decides on one emerging idea to be presented in plenary.
4. Each group is to present the most important idea in plenary, making sure ideas of different groups do not repeat.



TIPS FOR TRAINERS

- 📌 Considering how important the timing is for this exercise, make sure each participant has a clear understanding of the task before the beginning of individual and collective group works; you may wish to use the definitions from the International Labour Standards, if needed;
- 📌 During the work in pairs, make sure the participants continue the brainstorming, while when shifting to the work in groups of four – concentrate on the discussion. You may wish to remind each group to conduct their discussions around differences and similarities.
- 📌 To wrap up the group discussion, ask each group to identify one idea to be presented in plenary. Ask participants which idea stood up during their discussion and which they consider to be the most important. Make sure each group is ready to present another idea, in case their idea is presented by another group to avoid repetitions in plenary.



- 📌 During the plenary discussion, you might wish to visualize or write down all the ideas on a board. Using the ILO's policy guide on collective bargaining (2015)¹, you could broaden the discussion using the framework described in Table 1.1. by linking all the expressed ideas to the following 6 categories: Job quality, Equity, Training, Labour relations, Enterprise performance, Macroeconomics. You might prepare a grid on a flipchart or a board with these 6 themes and fill it in during the plenary presentations.

1 https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcms_425004.pdf

Further references

- ▶ ILO web page dedicated to the freedom of association and the effective recognition of the right to collective bargaining
<https://www.ilo.org/declaration/principles/freedomofassociation/lang-en/index.htm>
- ▶ ILO web page on International Labour Standards on Freedom of association
<https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/freedom-of-association>
- ▶ Guidelines on Freedom of Association (OSCE/ODIHR, 2015)
<https://www.osce.org/odihr/132371?download=true>
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