

# Way forward of the Tripartite Meeting of Experts to Examine Convention No. 158 and Recommendation No. 166

**Geneva, 18-21 April 2011**

1. The Government and Workers representatives noted that:

(1) the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166), recognizing the employer's right to dismiss a worker for a valid reason, aim to ensure the worker's right not to be deprived of work unfairly. The purpose therefore of the instruments is to provide a balance between the interests of the employer and those of the worker, and to promote the use of social dialogue as a means of achieving that balance;

(2) Convention No. 158 and Recommendation No. 166 are aligned with the ILO's Decent Work Agenda and, as such, with the ILO Declaration for Social Justice for a Fair Globalization of 2008 and the Global Jobs Pact of 2009, the latter of which acknowledges the relevance of these instruments as a support to recovery from crisis;

(3) Convention No. 158 provides a basis on which workers are to be afforded protection in the event of termination at the initiative of the employer and is able to be implemented by member States through a range of mechanisms including collective agreements, arbitration awards or court decisions, or in such other manners as may be consistent with national practice, as well as laws and regulations;

(4) the Convention contains a number of flexibility clauses and also provides for flexibility in its implementation, including through:

(a) exclusion from some or all provisions of the Convention for certain categories of employees either at any time (Article 2(2)) or as listed in the first report, due two years after ratification (Article 2(4) and (5));

(b) the determination of valid reasons for termination (Article 4);

(c) procedures to be undertaken prior to, or at the time of, termination (Article 7);

(d) procedures for appeal against termination (Articles 8 and 9);

(e) the possibility in the event of unjustified termination for either reinstatement or payment of adequate compensation or other relief as may be deemed appropriate (Article 10);

(f) the determination of a reasonable period of notice or compensation in lieu thereof (Article 11);

(g) options to choose the extent and nature of severance allowance or other income protection (Article 12); and

(h) the nature and form of consultation with workers' representatives, and notification to the competent authority, in the event of termination of employment for reasons of an economic, technological, structural or similar nature (Articles 13 and 14);

(5) Convention No. 158 does not promote a single model for implementation;

(6) member States should implement Convention No. 158 in full consultation with the social partners; and

(7) while many member States report compliance with most or all of the provisions of the Convention, the level of ratification is insufficient particularly considering the confirmation of its relevance by the 2009 Global Jobs Pact.

**2. The Government and Workers representatives recommend to the Governing Body that:**

(1) the ILO promotes the ratification and implementation of Convention No. 158, clarifying the aims and content of the Convention, and in particular emphasize its flexibility provisions;

(2) the ILO provides technical assistance to member States that may request it, as well as to employers' and workers' organizations, in their preparations for the ratification and implementation of Convention No. 158;

(3) the ILO develops a programme of research on issues related to Convention No. 158, including the relation between employment creation and termination and the role of social dialogue and collective bargaining in the context of termination of employment. This should include case studies; and

(4) member States be encouraged to engage in full and regular consultation with the social partners on the ratification and implementation of the Convention.