

Current status of vocational training in social dialogue

Hugo Barretto Ghione

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PROLOGUE

With this publication, ILO/Cinterfor resumed its editorial contributions to the development of social dialogue, defined as one of the ILO's strategic objectives and of vocational training, specific Cinterfor's objective. As its lead author, Dr Hugo Barretto Ghione, has stated, to a large extent, this work owes a great deal to a significant number of papers promoted and disseminated by ILO/Cinterfor in the past, and, therefore, represents an effort to continue in this line of thought and of work. But also, and fundamentally, it conveys the results of a research study whose aim was to provide an updated outlook of vocational training in social dialogue in the region, Spain and Italy.

This research was conducted over the course of 2014 and its main sources of information were the answers provided by a number of well-known labour specialists and academics in the countries involved to a questionnaire designed to gather knowledge available on the presence of vocational training issues in five dimensions or fields. These were: studies and publications on social dialogue, vocational training and labour relations; social dialogue processes in the form of pacts or agreements, at country level as well as at sector, enterprise or sub-national (local) levels; collective bargaining by industry or enterprise; labour legislation (with a particular focus on the regulation of learning processes); and strategies and policies that tend to formalize employment, which incorporate training-related content and agreements through social dialogue.

To this body of empirical information, systematized and analysed by the author, were added information and experiences that he compiled from other sources, as well as an approach to the links between social dialogue and vocational training both from the conceptual point of view and from the perspective of international labour standards.

An overall assessment of the multiple outcomes and conclusions provided shows that in this field, the outlook displays features that include, at the same time, continuity and change. While institutionalized examples of social dialogue involving vocational training policies persist, as does the tendency which began at the end of the previous century of incorporating it in stakeholders' dialogue processes, collective bargaining and labour legislation, there are also innovations and variants in the ways in which this occurs. In addition, developments of the link between vocational training and social dialogue are not linear; among other factors, owing to their influence on each other caused by changes in the institutionality of training, progress and setbacks in the promotion of participation and dialogue, or specific economic and political contexts.

Finally, another of this paper's contributions, as significant as the status update it provides, consists in the identification of aspects and characteristics that constitute an encouragement to engage in increased research efforts. As a result, ILO/Cinterfor's forthcoming research agenda will show ongoing and systematic concern regarding these issues. These findings will also contribute to broadening the knowledge base, which will make it possible to develop technical cooperation in this field with the Centre's tripartite constituents and community

of members. This, in turn, will contribute to the design and implementation of employment policies in which vocational training and social dialogue are necessary components in order to improve job quality.

Enrique Deibe

OIT/Cinterfor Director

INTRODUCTION

Current status of the issue under consideration

We should return to the study and consideration of vocational training from the perspective of its inclusion in the various proceedings that constitute what is known as social dialogue, inasmuch as both theory and practice have shown that the issue persists on the agenda of social stakeholders (in their different expressions, which often transcend the mere representation of the interests of workers and employers and include other backgrounds) and governments in the world of work.

Social dialogue is a concept which is acknowledged to have a broad scope and even a certain vagueness, and ranges from government consultation to social partners and labour relations stakeholders, as well as other representative sectors and interested parties. It is the framework within which we shall explore the relevance of vocational training as a current focal point for participants in the various proceedings.

The relevance of training in those communication contexts between stakeholders is the result, as we shall attempt to show, of the pliant features that enable it to be incorporated in the settings or proceedings we have mentioned, fulfilling a number of different roles: sometimes as an active employment policy, at other times as an instrument to increase productivity and competitiveness and at still others, as the right of an individual to be enforced in labour relations.

If the proclaimed relevance of vocational training in the world of work and at different levels of the dialogue established between partners is a fact, we should examine how training is manifested in the wide panoply of expressions of social dialogue, which includes both national experiences in social consensus-building on specific issues and participatory and permanent experiences in vocational training institutions in Latin America.

However, the penetration of vocational training in concertation and consensus-building is not restricted to senior levels of engagement, but is mainly aimed at the connected layers and strata of social dialogue, emerging as a significant issue in collective bargaining and in regional or sectoral agreements or agencies that often, in sector-related cases, lead to the meaningful inclusion of other vocational training stakeholders, who contribute their own specific viewpoints.

The encounter between vocational training and social dialogue leaves such heterogeneous experiences in its wake that sometimes its presence is so evident and visible that it goes unnoticed; a mechanism that brings to mind Edgar Allan Poe's story, "The Purloined Letter".

Because of this, going further into the links between training and the world of work, and through them, to social dialogue, may seem excessive. However, it is impossible to neglect the phenomenon and assume that we are all entirely familiar with it.

Vocational training belongs to a context that has multiple connections with the sphere of employment policy, of business competitiveness strategies and the field of the rights of individuals. It is in this very versatility that its undeniable relevance is surely rooted.

This plasticity is reproduced in the context of labour relations, where training also emerges in connection with the various ups and downs of work relationships, such as individuals' employability, their adaptability to technological change and their chances of functional promotion within the company.

As a component of collective bargaining, training becomes a field of interest for both of the stakeholders in labour relations, since it attracts their viewpoints and opens up agreement possibilities which in other subjects – such as wages – are often difficult to find.

Training's adaptability in fulfilling more than one role in the context of labour relations is clearly established in ILO/Cinterfor's Social Dialogue and Training site, where it is stated that:

"... training influences the employability of individuals, since it determines both their chances of gaining access to a job and their subsequent stability";¹ whereas, "the skills and competencies that individuals can deploy in a labour relationship enable them to adapt to new labour demands (team or work management technologies). Training also determines professional categories and, therefore, the tasks and functions to be performed by a worker in an enterprise and it is, ultimately, key to the establishment of wages and in timetable flexibility limits that certain very highly-skilled tasks demand".

If training is so significant for job performance and for the fate of the enterprise and its workers, it is inevitable that it should frequently be adopted as a part of collective bargaining.² Here then is where we encounter its most singular function, as it represents a source of benefits for all parties in a labour relationship who, with different motivations, converge in agreements that are much more difficult to achieve with regard to other issues typical of labour relations.

This Proposal

The sequence of studying and monitoring social dialogue and vocational training processes has perhaps not been given sufficient weight in recent years, and developments that may have occurred in Latin America have gone unrecorded and unsystematized, despite the fact that the evolution of productive, social and political contexts has been favourable to the progress of this kind of approach.

With the purpose of returning to a process involving the observation, inventory, registration, organization and analysis of these issues, ILO/Cinterfor commissioned a group of experts to provide answers to a survey and report on the "state of the art" of the issue in a number of representative countries in Latin America, as well as Spain and Italy.³

Most of the experts convened had taken part as authors in "Aportes para el diálogo social y la formación" [Contributions to social dialogue and training]⁴, a series published by ILO/Cinterfor in the early 2000s,

1 See, for example, the definition of "Employability" in ILO's Recommendation No. 195, "Human Resources Development" (2004): "...relates to portable competencies and qualifications that enhance an individual's capacity to make use of the education and training opportunities available in order to secure and retain decent work, to progress within the enterprise and between jobs, and to cope with changing technology and labour market conditions."

2 See, for example: Topet, Pablo. La negociación colectiva y la formación profesional [Collective Bargaining and Vocational Training]. Montevideo, ILO/Cinterfor, 2007 <http://www.oitcinterfor.org/node/2226>; Frías Gómez, Julia; Mora Gutiérrez, Jesús (Coord.) Formación profesional y negociación colectiva [Vocational Training and Collective Bargaining]. Madrid, FOREM; CCOO, 2010 <http://www.oitcinterfor.org/node/1244>; Montanaro, Laura. Formación profesional y negociación colectiva: una mirada sindical [Vocational Training and Collective Bargaining: the Trade Union Perspective]. Buenos Aires, UOCRA, 2009 <http://www.oitcinterfor.org/node/1250>

3 The answers provided by the following persons were taken into account in producing this report: Beatriz Cappelletti (Argentina), Sidnei Machado (Brazil), Mauricio Castro (Costa Rica), Martha Monsalve (Colombia), Carlos Patiño (Colombia), Antonio Baylos (Spain), Franca Fiacco (Italy), Carlos de Buen (Mexico), Alfredo Sánchez Castañeda (Mexico) and Oscar Hernández Álvarez (Venezuela). Special thanks to all for their dedication for the realization of this first approach to the reality in the selected countries.

4 "Aportes para el diálogo social y la formación" Series: <http://www.oitcinterfor.org/general/publicaciones-cinterfor-aportes>

and this new contribution can therefore be viewed as a kind of update of those reports, in the concise format of a survey.

Nonetheless, we should acknowledge the fact that some of the experiences compiled are the result of the author's own research, as well as of the observations and contributions made by ILO/Cinterfor specialists.

In short, this paper represents a return to research into vocational training in social dialogue, and is, therefore, indebted not only to previous analyses of this specific issue,⁵ but also to fundamental contributions such as those of Héctor Hugo Barbagelata and his "Formación y legislación del trabajo" [Training and Labour Legislation]⁶ and Oscar Ermida Uriarte and Jorge Rosebaum Rímolo and their "Formación profesional en la negociación colectiva" [Vocational training in collective bargaining];⁷ in addition to other contributions.⁸

The following chart gives details of the terms of the survey:

1. *Please list the works published or research conducted in your country over the last ten years, in relation to the links between vocational training and work (labour conditions, productivity, labour rights, social dialogue and collective bargaining, employability, etc.).*
2. *Indicate whether there were labour-related social pacts or framework agreements during that period – nationwide, sectoral, at company level or local – which included vocational training as part of their agenda.*
3. *State whether vocational training in your country is part of collective bargaining and, if possible, indicate in what branch of industry or companies it has occurred.*
4. *Indicate whether there have been legal reforms over the last ten years that have covered issues that involve vocational training; such as, for example, apprenticeship contracts, laws promoting youth employment, internships, the recruitment of vulnerable populations, etc.*
5. *State whether employment formalization policies implemented in your country have made use of social dialogue to design and implement them, and whether they include measures referring or related to vocational training.*

The international outlook is addressed in **chapter 1**, on the basis of the answers obtained and with the use of other informative inputs. Social dialogue is one of the International Labour Organization's (ILO) basic principles, derived from tripartism, and it is therefore deemed appropriate to review the more or less recent expressions involving training and social dialogue in the organization's regulatory areas. At the same time, a review of the theoretical concept of social dialogue is carried out, together with a demonstration of the continuity of the studies conducted in the field, both academically and institutionally.

5 Specifically, see: Barretto Ghione, Hugo. *Formación Profesional en el Diálogo Social [Vocational Training in Social Dialogue]*. ILO/Cinterfor, 2007. <http://www.oitcinterfor.org/node/2225>

6 Barbagelata, Héctor Hugo. *Formación y legislación del trabajo [Training and Labour Legislation]*. 2nd ed. rev. Montevideo, ILO/Cinterfor, 2003. 178 p. (Tools for Change, 2) <http://www.oitcinterfor.org/node/2160>

7 *Formación profesional en la negociación colectiva [Vocational Training in Collective Bargaining]*. Montevideo, ILO/Cinterfor, 1998. 235 p. (Tools for Change, 9). <http://www.oitcinterfor.org/node/2167>

8 By way of example and without attempting to provide an exhaustive list, the works by Pablo Topet, *La Negociación Colectiva y la Formación Profesional* ILO/Cinterfor, 2007; Fernando Casanova and Gonzalo Graña, *La participación sindical en la formación profesional en América Latina y el Caribe* (ILO/Cinterfor Newsletter Nº 148); Mario Garmendia Arigón, *Derecho del Trabajo y Formación*, ILO/Cinterfor, 2003; etc.

Chapter 2 provides a review of the permanence of vocational training in social pacts and in bodies for consensus-building or social dialogue established in recent years. This is not with the intention of engaging in a merely “legalistic” exercise, but in order to understand that generating legally underpinned participation opportunities is an eloquent indicator of the significance that is allocated to participation, regardless of how irregularly some of these experiences subsequently develop.

Chapter 3 contains reports on vocational training in collective bargaining, on the basis of certain distinctions and rationales. Considering that bargaining is a key issue in collective labour relations, we could by no means neglect conducting an analysis of the different legal systems that surround it and the problem of legislative interventionism in bargaining, a mechanism that frequently fails to contribute to the appropriate development of trade union freedom in Latin America.

A brief analysis of the Chilean Bipartite Training Committees was deemed to be of interest in this chapter, inasmuch as they have been promoted by law and have generated both coincidental and diverging points of view between trade unions and employers.

Chapter 4 addresses legislative changes in relation to vocational training institutions and apprenticeship contracts; a traditional linking tool between training and the world of work. There are references to the most recent amendments, such as those in Peru and Uruguay, without neglecting the case of Mexico, where the labour reform of 2012 introduced a substantial amendment to the Federal Labour Act’s chapter on capacity-building and instruction.

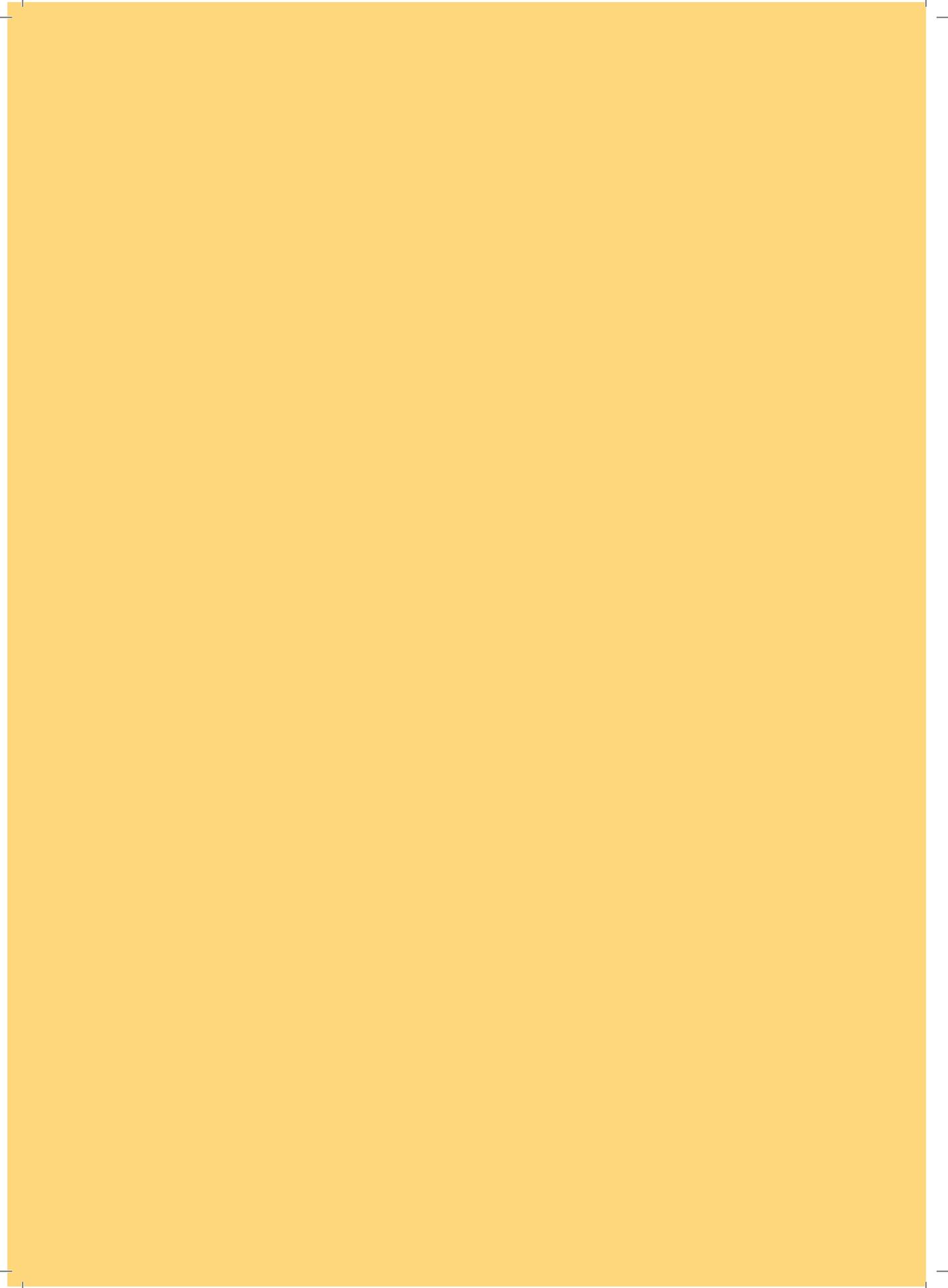
Chapter 5 explores some initiatives linking training and employment formalization policies, which ILO considers to be a highly relevant subject at present. It was addressed at the ILO’s 18th American Regional Meeting held in Lima (2014), and a list of recommendations agreed by the members of the organization was adopted.

Finally, **chapter 6** addresses a number of social dialogue manifestations in relation to training that are not easy to classify from the point of view of labour relations, since they include non-traditional stakeholders. It is of course in this area that the peculiar features of social dialogue on training stand out most clearly; a number of experiences which are briefly described are evidence of this.

A few final considerations bring this volume to a close, raising some matters which will surely be the object of analysis in future studies.

1

Social dialogue and vocational training
in the perspective of international labour
standards



1. SOCIAL DIALOGUE AND VOCATIONAL TRAINING IN THE PERSPECTIVE OF INTERNATIONAL LABOUR STANDARDS

1.1 A conceptual review of social dialogue

The term 'social dialogue' has not yet acquired a precise meaning, since its relative novelty – in labour relations, the tendency was to speak of 'tripartism', or simply, 'participation' – appears to be a paradoxical feature of its definition: the essentially ambiguous traits of the concept are an integral part of its usefulness.

Ermida Uriarte,⁹ citing Spanish doctrine, had warned that:

“as regards the notion of social dialogue, something similar is happening to what the idea of tripartism underwent for a long period: it is used in common parlance, in politics and in a number of international papers and its content is assumed, without being precisely defined. Perhaps it is the fact of this relative lack of definition that is part of the usefulness of the term, which can cover a number of different institutions and practices, without including or excluding others, given its hazy boundaries.” And he adds: “this is why it has been possible to state, for example, that social dialogue is an ‘indefinite and open-ended term, which says a great deal and commits to little’. However, there seems to be a measure of consensus regarding the idea that it encompasses ‘a variety of relationships between trade unions, employers and public authorities, under the form of meetings and contacts that do not necessarily have to involve specific legal acts’ and can ‘simply entail an exchange of impressions’.”

The author concludes by adopting a very general and “negative” definition when he says that “in the context of labour relations, social dialogue includes all types of relationships between stakeholders, other than open conflict”.

Thus stated, the concept does not presuppose any particular outcome, but is presented as a procedure used to address communication between social stakeholders, which has made it possible to relate it to current thinking on “communicative ethics”:

“Social dialogue actually shows evidence of more procedural than substantive roots, with a greater focus on form than on content, on favouring argumentation and debate in the development of good will, which unequivocally links it to current social and philosophical theory, such as discourse ethics, the search for consensus, deliberative democracy and communicative ethics.” In this respect, the term refers to practices that “attempt to ensure the generation of agreements that contemplate a diversity of interests in a participatory way (...) this argumentative ethics also constitutes a form of legitimizing the outcome of discourse, inasmuch

9 Ermida Uriarte, Oscar. Diálogo social: teoría y práctica. In: Inter-American Technical Bulletin on Vocational Training. Montevideo, ILO/Cinterfor N° 157, Sept. 2006. p. 11. http://www.oitcinterfor.org/sites/default/files/file_articulo/ermida.pdf

*as standards are only valid if the approval of all their recipients is obtained, since (and he quotes Habermas) 'norms are excluded as invalid when they do not obtain the qualified assent of all possible recipients'. Thus, 'a norm can only aspire to validity when all the individuals it affects are able to agree – as participants in rational discourse – that the norm is valid' (...) the subjects will freely argue with the purpose of reaching consensus and, therefore, design a regulation that is accepted by all (condition of legitimacy)."*¹⁰

In short, the term has preserved this vague aura which makes it particularly flexible in its application to different situations involving stakeholders in labour relations with a scope which, as far as outcomes are concerned, includes both agreements that entail commitments being undertaken and the simple sharing of information and consultation.

1.2 The persistence of studies on social dialogue, vocational training and labour relations

One way to go about establishing the relevance and currency of an issue in the field of social policy is to analyse "the margins"; that is to determine whether the issue is being addressed in academic, scientific or official publications, or whether specialized international agencies consider it an object of research.

This was the first subject addressed in the survey conducted among American and European experts; they were asked for information about the existence of studies on social dialogue, training and labour relations.

The answers obtained show that on some occasions, most of the tasks involving an approach to link between training and work have been carried out by the research departments of Ministries of Labour.

The most evident case is to be found in Argentina. The publications of its Ministry of Labour, Employment and Social Security (MTEySS) have ensured that interest in and a diversity of approaches to vocational training and work has been constant.¹¹ Among these publications are two journals edited regularly twice a year: Revista de Trabajo [The Labour Journal] (RT)¹² and Trabajo, Ocupación y Empleo [Work, Occupation and Employment] (TOE).¹³

The first takes a socio-labour approach and has published articles on the subject in relation to public policies, social dialogue and youth employment, among others.

The report on Argentina produced by Beatriz Cappelletti highlights in particular the article by Susana Barasatian, La disminución del desempleo y su incidencia en las políticas de formación [The drop in unemployment and its effects on training policies], in RT No. 5 (p. 83-196) and the article by Mónica Sladogna, Las condiciones para el conocimiento productivo [Conditions for productive knowledge], RT No. 5 (p. 105-114). She also points out that RT issue No. 5 of July 2008 was devoted to the subject of Desarrollo e innovación. Empleo y competencias [Development and innovation. Employment and skills], and thus contains further contributions to the subject.¹⁴

10 Barretto Ghione, Hugo. 2007. Op.cit p. 37 and ff. The author attempts a critique of the strict application of this conceptualization in the field of labour relations.

11 The following publications are available from the MTEySS website: www.trabajo.gov.ar

12 The journal is available from: <http://www.trabajo.gov.ar/left/estadisticas/revista/index.asp>

13 The journal is available from: <http://www.trabajo.gov.ar/left/estadisticas/toe/index.asp>

14 http://www.trabajo.gov.ar/left/estadisticas/descargas/revistaDeTrabajo/2008n05_revistaDeTrabajo.pdf

The second of the MTEySS journals had reached its issue number 12 at the time of the survey, the last of which contained an article by Castillo, Ohaco and Schleser, Evaluación de impacto en la inserción laboral de los beneficiarios de los cursos sectoriales de formación profesional [Impact assessment of sector-based vocational training courses on the job placement of beneficiaries].¹⁵ The MTEySS has also released some publications in collaboration with ILO.

In Brazil, Sidnei Machado's report noted the existence of both public and private studies, on occasion produced in collaboration, as was the case of the agreement entered into by the Instituto de Pesquisa Econômica Aplica (Ipea) and the Agência Brasileira de Desenvolvimento Industrial (ABDI), which have established a research network on Formação e Mercado de Trabalho [Training and the Labour Market], the content of which is available on IPEA's website.¹⁶

Spain, for its part, has the longest tradition and depth in the matter of academic studies. In his report, Baylos Grau notes:

"Scientific production on this issue is both extensive and intensive, especially if one includes the relationship between vocational training and the education system, or views it from sociological or economic positions. In the legal area alone, in the field of labour law, the number of publications and articles is vast."

The report focuses on the latest publications and points out that:

"they represent the period which saw the labour market reform dictated by Europe's austerity policies, and apply particularly to Spain. Notwithstanding, we shall refer to some of the publications that we consider to be highly significant in relation to the issue being addressed."

A very restricted list of references provided by the Spanish author is evidence of this wealth of publications. Some of them are listed in the following chart:

Spain. Publications on training in social dialogue

- Aguilar González, M.C., "El sistema alternativo de Formación Profesional Dual para el Empleo en España", Comunicación, XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales (JUADTRL); 21 and 22 November 2013.
 - Apilluelo Martín, M., *El contrato para la formación y el aprendizaje: la cualificación profesional como clave*, Editorial Bomarzo, Albacete, 2014.
 - Ayala Sánchez/Bernal Santamaría, "Prácticas no laborales: la nueva esclavitud del siglo XXI en las relaciones laborales"; VV.AA. (MONEREO, Coord.) *Retos del Derecho del Trabajo frente al desempleo juvenil (XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales)*; CARL, 52/2014.
 - Cano Galán, Y., *La formación profesional en España y las cláusulas de formación en la negociación colectiva*, CCNCC, Ministerio de Trabajo e Inmigración, Madrid, 2010. (The full text can be downloaded from http://www.empleo.gob.es/es/sec_trabajo/ccncc/descargas/FormacionProfesionalEspanya_ClausulasNegColectiva.pdf)
 - Escudero Rodríguez, R., "Nuevos derechos de formación y contrato para la formación y el aprendizaje"; *Relaciones laborales*, 23-24/2012.
 - Frías, J., *Formación profesional y negociación colectiva*, FOREM – CCOO, Madrid, 2010. (The full text can be downloaded from http://www.ccoo.es/comunes/recursos/1/pub81545_Formacion_profesional_y_negociacion_colectiva.pdf)
 - Giménez, J.L., "El modelo dual de la FP alemana"; *Trabajadores de la Enseñanza*, 328, 2011.
-

¹⁵ http://www.trabajo.gob.ar/left/estadisticas/descargas/toe/toe_12_completo.pdf

¹⁶ IPEA website: www.ipea.gov.br

- López Gandía, J., "Los Contratos formativos y a tiempo parcial tras la reforma laboral de 2012"; *Revista de Derecho Social*, 57/2012
- Márquez Prieto, A., "Formación profesional innovadora para el empleo juvenil"; VV.AA. (Monereo, Coord.) *Retos del Derecho del Trabajo frente al desempleo juvenil (XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales)*; CARL, 52/2014.
- Mendoza Navas, N. / Serrano García, J., *Derechos y política social*, Editorial Bomarzo, Albacete, 2012.
- Miñarro Yanini, M.; "El contrato a tiempo parcial con vinculación formativa para el fomento del empleo juvenil: la formación como excusa de la precarización incentivada del trabajo"; VV.AA. (MONEREO, Coord.) *Retos del Derecho del Trabajo frente al desempleo juvenil (XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales)*; CARL, 52/2014.
- Mirón Fernández, M.M., *El derecho a la formación profesional del trabajador*, Consejo Económico y Social de España, Madrid, 2000. (This is the most comprehensive monograph on the right of workers to vocational training.)
- Moreno de Toro, C., "Formación profesional y medidas de incentivo económico para la inserción laboral de los jóvenes"; VV.AA. (MONEREO, Coord.) *Retos del Derecho del Trabajo frente al desempleo juvenil (XXXII Jornadas Universitarias Andaluzas de Derecho del Trabajo y Relaciones Laborales)*; CARL, 52/2014.
- Poquet Catalá, R., "La actividad formativa en el contrato para la formación y el aprendizaje tras las últimas reformas"; *Relaciones Laborales*, 6/2013.
- Rodríguez-Piñero Y BRAVO FERRER, M., "El contrato de aprendizaje y formación dual: El Real decreto 1529/2012"; *Relaciones Laborales*, 1/2013
- Rodríguez-Piñero/ Casas Baamonde/ Valdés Dal-Ré; "La huida del Derecho del Trabajo hacia el 'emprendimiento', las reformas de la Reforma Laboral de 2012 y otras reformas: la L. 11/2013 y el RDL 11/2013"; *Relaciones Laborales*, 10/2013
- Romero Burillo, A.M., "La actividad formativa en el contrato para la formación y el aprendizaje: nuevas cuestiones"; *Revista Doctrinal Aranzadi Social*, 9/2014 (BIB 2014\68)
- Selma Penalva, A., "Dudas sobre los incentivos económicos para la "contratación con vinculación formativa" de la Ley 11/2013"; *Revista Doctrinal Aranzadi Social* no. 8/2013 (BIB 2013\2372).

The Italian list of bibliographical references is also significant, with sources from both the public area and academia. The following chart shows a sample of this list:

Italy. Publications on training in social dialogue

- Isfol - Ministero del Lavoro e delle Politiche Sociali, *XIV Rapporto sulla formazione continua: annualità 2012-2013*, Ministero del Lavoro, Rome, 2013 (<http://sbnlo2.cilea.it/bw5ne2/opac.aspx?WEB=ISFL&IDS=19686>)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *XIII Rapporto sulla formazione continua: annualità 2011-2012*, Ministero del Lavoro, Rome, 2012 (<http://sbnlo2.cilea.it/bw5ne2/opac.aspx?WEB=ISFL&IDS=19214>)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *XII Rapporto sulla formazione continua: annualità 2010-2011*, Ministero del Lavoro, Rome, 2012 (http://isfolo2.isfol.it/bitstream/123456789/263/1/Rapporto_Formazione%20continua.pdf)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *Rapporto annuale sulla formazione continua 2010*, Ministero del Lavoro, Rome, 2010 (http://www.fondir.it/sites/default/files/RAPPORTO_FC_2010.PDF)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *Rapporto 2009 sulla formazione continua*, Ministero del Lavoro, Rome, 2010 (<http://sbnlo2.cilea.it/bw5ne2/opac.aspx?WEB=ISFL&IDS=13557>)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *Rapporto 2008 sulla formazione continua*, Ministero del Lavoro, Rome, 2009 (http://formazioneelavoro.regione.emilia-romagna.it/lavoro-e-competenze/allegati/Rapporto_FC_2008.pdf)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *Rapporto 2006 sulla formazione continua*, Ministero del Lavoro, Rome, 2007 (<http://programmaleonardo.net/llp/cd/cd2/dati/documenti/Rapporto%20Formazione%20Continua%202006.pdf>)
- Isfol - Ministero del Lavoro e delle Politiche Sociali, *Rapporto 2005 sulla formazione continua*, Ministero del Lavoro, Soveria Mannelli (CZ), Rubbettino Editore, 2006 (<http://programmaleonardo.net/llp/cd/cd2/dati/documenti/Rapporto%20Formazione%20Continua%202005.pdf>)

- *Isfol, La formazione dei rappresentanti delle parti sociali per lo sviluppo della formazione continua, ISFOL, Rome, I Libri del Fondo Sociale Europeo, 2008.*
- *Faioli M. (a cura di), Indagine sulla bilateralità nel terziario, Giappichelli Editore, Turin, 2010.*
- *Sandulli P, Pandolfo A. e Faioli M. (a cura di), Bilateralità, lavoro e turismo, Turin 2011.*
- *Faioli M., "I fondi paritetici per la formazione continua. Bilateralità di scopo, contribuzione, natura privatistica", in Massimario di giurisprudenza del lavoro, 2012, 5, 395 ff.*

By way of a preliminary conclusion, we can say that in view of the existence of this list of works, particularly well-developed in Spain and Italy, and its follow-up by means of high-quality official publications such as those in Argentina, social dialogue on vocational training and the link between this training and the world of work have maintained a strong presence in certain countries, which reveals their significance in the current productive and labour contexts.

1.3 Social dialogue and vocational training in international labour standards

Since its constitution in 1919, tripartism has been one of the cardinal principles of the ILO, and it is a constant practice in nearly all of its bodies.

The ILO's normative function is based on a process by means of which agreements and recommendations are designed and produced, and which follows a number of stages involving consultations and discussion, with the full participation of government and social partners.

Given ILO's unique composition, tripartism is none other than a form of exercising social dialogue, a term that did not exist at the time when Part XIII of the Treaty of Versailles, which gave birth to this international agency, was drafted.

Moreover, in addition to being a basic structural element of the organization, the ILO itself disseminates and promotes tripartism – that is, social dialogue – at national levels of its member countries, to which end it implements policies and cooperation programmes and devotes a number of specific conventions and recommendations on the matter.

We should not fail to mention, in this regard, the Tripartite Consultation Convention (No. 144),¹⁷ adopted in 1976, and the Consultation Recommendation (No. 113),¹⁸ of 1960, on national and industrial-level consultation.

In cooperation programmes and actions, the promotion of social dialogue and tripartism has a prominent position.

Because of this, oversight bodies such as the Committee of Experts on the Application of Conventions and Recommendations has developed an extensive 'jurisprudence' on the scope and meaning of Convention No. 144, which is considered by ILO to be a priority convention.

The importance of social dialogue is such that the ILO views it as one of the components of the 'Decent Work' idea, which was promoted and brought into play by the Report of the Director-General to the

17 The Convention is available from: http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312289:NO

18 The Recommendation is available from: http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312451:NO

International Labour Conference of 1999, and was supported at that time by Amartya Sen, one of the thinkers who gave birth to the concept.

According to ILO,

“Social dialogue is defined as all types of negotiation, consultation or simply the exchange of information between representatives of governments, employers and workers on issues of common interest. It covers tripartite processes and institutions of social dialogue, such as social and economic councils; institutions, such as trade unions and employers’ organizations; and processes such as collective bargaining.

Autonomous, independent and strong workers’ and employers’ organizations are critical for effective social dialogue. The quality of that dialogue is determined by the extent to which the social partners are able to negotiate collective agreements that govern terms and conditions of employment and regulate labour relations. The emphasis of this particular inquiry is therefore on primary industrial relations indicators, that is, membership of organizations and the coverage of collective bargaining agreements.”¹⁹

Among the most recent and significant tools available is the ILO’s Declaration on Social Justice for a Fair Globalization,²⁰ of 2008, which includes this statement with regard to the issue in hand:

“social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards.”

“The Conference recognizes and declares that:

In the context of accelerating change, the commitments and efforts of Members and the Organization to implement the ILO’s constitutional mandate, including through international labour standards, and to place full and productive employment and decent work at the centre of economic and social policies, should be based on the four equally important strategic objectives of the ILO, through which the Decent Work Agenda is expressed and which can be summarized as follows: (...) (iii) promoting social dialogue and tripartism as the most appropriate methods for:– adapting the implementation of the strategic objectives to the needs and circumstances of each country;– translating economic development into social progress, and social progress into economic development;– facilitating consensus building on relevant national and international policies that impact on employment and decent work strategies and programmes; and– making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems;

(...) The four strategic objectives are inseparable, interrelated and mutually supportive. The failure to promote any one of them would harm progress towards the others. To optimize their impact, efforts to promote them should be part of an ILO global and integrated strategy for decent work. Gender equality and non-discrimination must be considered to be cross-cutting issues in the above-mentioned strategic objectives.”²¹

19 See: <http://www.ilo.org/ifpdial/information-resources/dialogue-data/lang--en/index.htm>

20 ILO Declaration on Social Justice for a Fair Globalization. 97th International Labour Conference, Geneva, 10 June 2008. http://ilo.org/global/meetings-and-events/campaigns/voices-on-social-justice/WCMS_099766/lang--en/index.htm

21 Ibid, pages 9 to 11.

For its part, vocational training has been included in the order of business of the International Labour Conference with the adoption of the Human Resources Development Recommendation, 2004 (No. 195).²² This instrument is valuable in itself in respect of the issue we are addressing, but the concept that arises from it in relation to the link between training and social dialogue in its different expressions makes it worth an even closer look.

Some of the clauses of this recommendation are particularly indicative of its significance: According to the Recommendation:

"I.4 Members should:

recognize that education and training are a right for all and, in cooperation with the social partners, work towards ensuring access for all to lifelong learning;

recognize that the realization of lifelong learning should be based on the explicit commitment: by governments by investing and creating the conditions to enhance education and training at all levels; by enterprises in training their employees; and by individuals in developing their competencies and careers.

(...)

II.5 Members should: (f) strengthen social dialogue and collective bargaining on training at international, national, regional, local, and sectoral and enterprise levels as a basic principle for systems development, programme relevance, quality and cost-effectiveness;"

It should be noted that the commitment of social and government stakeholders is strongly emphasized in both paragraphs. The diversity of social partner roles is indicated in I.4, while the importance of collective bargaining as the preferred form of social dialogue is featured in II.5

Other international standards we should mention are:

- Paid Educational Leave Convention, 1974 (No. 140)²³ the purpose of which is to promote the lifelong education and training of all workers by means of paid educational leave, which is defined as "leave granted to a worker for educational purposes for a specified period during working hours, with adequate financial entitlements". This leave "may include national laws and regulations, collective agreements, arbitration awards, and such other means as may be consistent with national practice". As regards the period to be granted, the Convention stipulates that: "A period of paid educational leave shall be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation, as provided for by national laws or regulations, collective agreements, arbitration awards or such other means as may be consistent with national practice." Conditions of eligibility for paid educational leave may vary according to whether such leave is intended for training at any level, general, social or civic education, or trade union education. The general

²² Recommendation 195 concerning Human Resources Development: Education, Training and Lifelong Learning. Geneva, ILO, 2004.
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312533:NO

²³ The Convention is available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312285:NO

terms in which the convention is expressed often make it advisable to regulate this benefit by means of a collective agreement, as in the case of countries like Argentina and Uruguay.²⁴

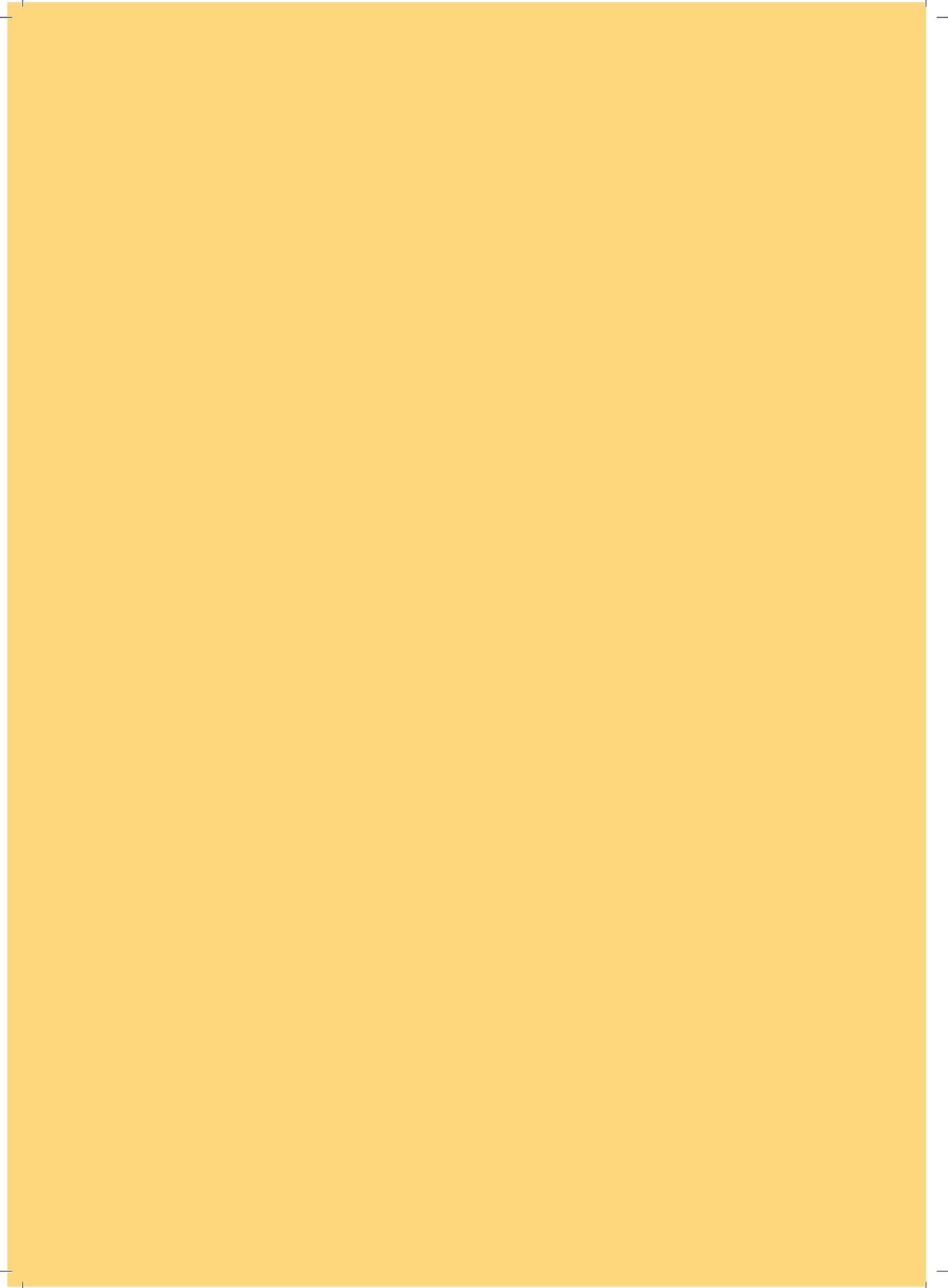
- Human Resources Development Convention, 1975 (No. 142)²⁵ stipulates that: “Each Member shall adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.” Regarding the engagement of social stakeholders, the Convention establishes that: “Policies and programmes of vocational guidance and vocational training shall be formulated and implemented in co-operation with employers’ and workers’ organisations and, as appropriate and in accordance with national law and practice, with other interested bodies.” Recommendation No. 195, reviewed above, acted as a complement to this Convention, which had been expressed at one time by Recommendation No. 150.

²⁴ Barretto Ghione, Hugo. Op. cit, p. 80 and Topet, Pablo, Op.cit.

²⁵ The Convention is available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312287:NO

2

Vocational training in social dialogue:
social pacts



2. VOCATIONAL TRAINING IN SOCIAL DIALOGUE: SOCIAL PACTS

The purpose of the second part of the survey was to discover whether vocational training had been included in social dialogue processes in the region in recent years.

In a previous contribution on the subject²⁶ it was established that:

“Vocational training emerged some time ago from the traditional seclusion to which it had been consigned owing to prejudice or the lack of an updated vision of its value to current productive processes. That it was restricted exclusively to training for young people who were unable to gain access to other educational opportunities, or specific training for workers during the industrial expansion of the fifties, is now no more than a historical fact.

(...) If training is an essential component in the competitiveness and productivity of enterprises, if it is an employment policy instrument and if, in addition, it is, (basically) a right of workers, it is natural that social pacts or agreements, collective bargaining and the various regional or industrial arrangements at the level of production should take note of its flexibility and significance and incorporate it in their proposals to move toward solutions to key aspects of production and employment.”

With this approach in mind, this study had compiled the experiences of the Framework Agreement for Employment, Productivity and Social Equity (1994) in Argentina, which incorporated the government’s commitment to establish vocational training as a “national priority”, triggering regional agreements (ARENA)²⁷ and, almost simultaneously, and in parallel, generating what was known as the “Tripartite Forum”, which would “produce input for the positions and proposals that the country would give rise to regionally. Likewise, the Industry-Based Tripartite Forums also emerged, in an attempt to put into practice experiences in the area of labour skill certification.”²⁸

Also mentioned was Brazil’s strongly participatory National Qualification Plan, and Colombia’s constitutional amendment of 1991, which provided for the establishment of a tripartite “permanent commission” for the advancement of labour relations. This was regulated in 1996 and made it possible to reach a Tripartite Social Partnership Agreement, which established a number of commissions, one of which addressed the issue of vocational training.

In the case of this survey, answers were mainly intended to provide information on whether the country’s experience in social dialogue was a policy practice in common use.

²⁶ Barretto Ghione, H. 2007. Op. cit. p. 66-67

²⁷ Regional Agreement for Employment in Northern Argentina (ARENA for its acronym in Spanish). San Miguel de Tucumán, 5 November 1994. Argentina. Ministerio de Trabajo y Seguridad Social. Buenos Aires: MTSS, 1994

²⁸ Barretto Ghione, H. 2007. Op. cit, p. 67

This single and vital circumstance resulted, in some cases, in disregarding any possibility of addressing the matter of vocational training in social agreements.

In Argentina, the recovery from the economic crisis of the early years of the 2000s triggered strongly institutionalized social dialogue in labour relations, by updating or establishing tripartite partnership bodies, which were slanted towards promoting discussion on issues related to vocational training.

In this context, consensus was specific, and there is no record of a comprehensive framework agreement, such as the one reached in 1994. Nonetheless, this restriction did not prevent dialogue and consensus achieved under these conditions from including wage clauses, labour conditions, vocational training strategies and gender equity policies, as well as other socio-labour issues.

The principal venues for social dialogue on vocational training mentioned in the report of the specialist answering the survey on this occasion were:

- a) The National Board of Employment, Productivity and Minimum, Vital and Mobile Wages, with representatives from trade union federations and all of the corporate productive sectors. This body has been revitalized since 2004 and regulates the minimum wages of the private sector. One of the Board's working committees handles vocational training, with jurisdiction, basically, in matters related to education and training for employment. The Committee provides information and advisory services, and through it, the MTEySS has presented management reports on national, industrial and territorial planning as regards vocational training. Two of the participating trade union organizations, from the construction and the metallurgical industries (UOCRA²⁹ and UOM³⁰) have likewise presented their training experiences in trades and job training. With regard to project discussions, the MTEySS presented a project on "Guidelines for Designing a National System for Lifelong Learning", which promotes a body of law on institutionality, resources and all of the other components of the system:
- b) The Tripartite Sectoral Councils for Lifelong Learning and Skills Certification, whose aim is to move towards the establishment of a National Lifelong Learning System.

In Brazil, Mexico and Venezuela there were no social agreements in this area, although there were vocational training initiatives arising mainly from the State's official sector, according to the specialists consulted.

In Colombia, Carlos Patiño's report addresses the case of an agreement reached on 16 May 2013 in the area of public administration, between the government and the sector's trade union federations, which provides for two training programmes, with their respective governmental commitments. The respective regulations are reproduced in the following chart:

29 Unión Obrera de la Construcción de la República Argentina (Construction workers trade union) - UOCRA

30 Unión Obrera Metalúrgica de Argentina (Metal workers trade union) - UOM

Colombia. “**COLLECTIVE BARGAINING AGREEMENT. UNIFIED STATE SPECIFICATION DOCUMENT**”, signed on 16 May 2013.

- **Point 8:** *[The Government] shall issue a Decree establishing payment for educational support, to the amount of 50% of the value of the advanced courses taken by the employee or his or her children, without prejudice and respecting all acknowledged rights.*
 - **AGREEMENT on educational support:**
The National Government shall issue a directive that will ensure that institutional programmes involving welfare, incentives and training include programmes aimed at providing educational support, respecting the principle of progressiveness and vested rights, pursuant to the law on this matter and bearing budgetary availability in mind.
 - **Point 17:** *The President of the Republic will formulate public policy in the matter of job plants...*
 - **AGREEMENT on circular for compliance with Constitutional Court decisions** C-614105 and 171112, in relation to job plants, decent work and training:
(...)
Training policy for competitive recruitment for the civil service shall be revised and to this end, links will be established with the Higher School of Public Administration (ESAP), the National Service of Apprenticeship (SENA) and family compensation funds.
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In Costa Rica, Mauricio Castro's report provides information regarding three social pacts or framework agreements that significantly included vocational training, as we shall see below. However, we should point out that, in addition, a National Employment Strategy incorporating a number of vocational-training related aspects was about to be launched when this survey was answered.

The first of the processes reported is linked to a failed structural tax reform attempt, resulting from a proposal made by part of the trade union sector in partnership with cooperative sectors, rural workers' organizations and a business chamber, which formed a Mixed Legislative Commission (that is, a Costa Rican Parliamentary Commission, with the non-voting participation of civil society stakeholders). The purpose of this commission was to undertake a needed tax reform by agreeing on a project which incorporated a number of amendments to vocational training legislation, in the area of expenditure and public investment. Among other aspects, these amendments were intended to generate increased linkages between regional and industry levels on the one hand and policy-defining processes and the available supply of vocational training on the other. The law was eventually annulled, since the Constitutional Chamber discovered that some of the bill's legislative proceedings violated the constitution.

The second agreement originated in 2004, with the presentation of the National Employment Policy for Costa Rica initiative, drafted by the Higher Labour Council, a tripartite body for social dialogue, which included vocational training as a component of the activities planned. Subsequently, and with the ILO's support, separate National Employment Plan proposals (2008) were produced, with the purpose of establishing a strategy for the execution of employment policy. Eventually, this social dialogue process was interrupted, mostly due to the polarization generated by the adoption of the Free Trade Agreement with the USA, in October 2007.

The third process entails a Decent Work Plan, a programme which once again proposes the development and execution of a national employment policy, containing mechanisms for the implementation of vocational training strategies.

In Peru, we should note the work of the National Council for Labour and Job Promotion, a tripartite body with consultative functions, which is composed of representative workers' and employers'

organizations, and is chaired by the Ministry of Labour and Job Promotion (MTPE). This is a typical example of consensus-building or social dialogue, which provides for the participation of experts in labour relations and academics.

The Council engages in its activities by means of permanent technical committees. One of these is the Vocational Training Committee, and its purpose is to propose policies and legal or institutional solutions to improve workers' competitiveness and employability. The committee has reached consensus in the matter of analysing the Law on Work Training Modalities and has developed proposals for labour training incentives.

In relation to training, the Council has adopted some interesting documents, such as one on Diagnóstico de la formación profesional en el Perú [A diagnosis of vocational training in Peru], and another on Políticas de información sobre el mercado de trabajo en el Perú [Policies regarding labour market information in Peru], as well as the policy guidelines contained in the Propuesta de política de sistematización de los programas de formación y diseño de programas focalizados a sectores vulnerables de la población [Proposal for a systematization policy for training programmes and the design of programmes focusing on vulnerable population groups], and Propuestas de políticas de normalización y certificación laboral [Proposals for standardization and work certification policies].

The Vocational Training Technical Committee has also adopted the contents of the regulations that refer to the job training modalities provided for in the draft bill on labour (Ley General del Trabajo, LGT), an initiative which ultimately did not prosper, despite years of political and technical work.

For the issue in hand, the most significant aspect involves the consensus reached by the Council with regard to the contents of what later became a bill on work training modalities (Law Nº 28,518).³¹

Peru Law Nº 28518 on Work Training Modalities

- *Article I. Principles*
 - 1.1 *Individuals are at the core of any training process; in consequence, the principal goal of the training modalities to be developed must be that persons should be able to understand their social environment in general and their labour environment in particular, which will ensure that they are able to impact these settings both individually and collectively.*
 - 1.2 *All individuals have the right to gain access to vocational training on an equal footing and without any kind of discrimination, and their engagement in the various approved training modalities should enable them to improve their employability.*
 - 1.3 *It is essential that training received should be complemented by adequate practical experience within an enterprise, duly programmed by the parties taking part in the approved training modalities, thus confirming the need for the principle of adjusting the training process to reality, in order to ensure its quality and relevance.*
 - *Article II. Objectives*

The objectives of this law are:

 - a. *To contribute to an adequate and effective connection between the supply of training and labour market demand.*
 - b. *To foster work and skills training related to production and services, as a means of improving employability and work productivity.*
 - c. *To provide training that can develop people's capacity for work, improves flexibility and favours the adaptation of persons who benefit from training to a variety of work situations.*
 - *Article III. Scope of application*

This law's scope of application includes all enterprises covered by the private activity labour regime.
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³¹ The law is available from: <http://www.leyes.congreso.gob.pe/Documentos/Leyes/28518.pdf>

- *CHAPTER I
ON TRAINING MODALITIES
Article 1. Training modalities
Training modalities are special types of agreement that link theoretical and practical learning by means of programmed training and capacity-building tasks.*

 - *Article 2. Types of training modalities
Training modalities are:
1. Apprenticeships:
 a. Predominantly within the company.
 b. Predominantly within the vocational training centre:
 b.1 Pre-vocational practices.
2. Vocational practice.
3. On Youth Labour Training.
4. On Internships:
 a. On in-company internships.
 b. On teacher and instructor-based internships.
5. On Upgrades for Reintegration into the Labour Market*
-

Among the outputs of the committee are also the adoption of the provisional action plan to follow-up on the ILO's Resolution concerning tripartism and social dialogue in Peru, with the objective of facilitating adjustments "between the demand of the markets involved in the labour dynamics and the vocational training supply" (2005), and the approval of guidelines on standardization and certification policies.

In relation to this last aspect, the Committee has recommended that the Council should:

- I, Recognize the need for the standardization and certification policy to respond to the requirements of the socio-economic agents, by establishing technical job skills standards with the various industries. Likewise, it should reinforce the role of the MTPE in its preferential support of the more vulnerable population groups and in promoting social concertation among stakeholders involved in vocational training.
- II. Base the standardization of job skills on three basic focal points: establishing and defining the functions of a work standardization and certification committee; developing an occupational structure analysis which will make it possible to identify the contents of occupations, in addition to selecting a methodology for the identification of labour skills inherent to a strategic productive function and the design of technical labour competency standards, followed by validation and the production of a skills and job profiles matrix.
- III. In order to achieve labour competency certification, the Council should seek to determine the assessment procedures through which it will be determined whether a person is in possession of the skill defined in the technical standard; establish accreditation mechanisms for vocational training institutions and companies interested in certifying their workers and/or be qualified as evaluation centres, and specify the criteria on the basis of which accreditation should be granted to bodies offering labour competency certification services.
- IV. These labour standardization and certification processes should be based on a sectoral perspective or be initiated by human resources management, and should foster experiences incorporating the identification

of labour skills which will facilitate the strategic alignment of companies and the upgrading of vocational training centres.³²

The Council has also submitted contributions to the MTPE's Lifelong Learning Programme, in the context of Law N° 29,498 on Promoting Investment in Human Capital³³ and in 2011 it adopted by consensus some strategies and action lines concerning vocational training, for the National Plan for Decent Work proposal.

Similarly, Chile's Law N° 20,267³⁴ of 25 June 2008 relied on social dialogue and participation bodies for the establishment of its National System for Labour Competency Certification, while at the same time it upgraded its labour training statute.

The aim of the system is:

"the formal acknowledgement of people's labour skills, regardless of how they have been acquired or whether or not they have an academic degree granted by formal education (...) as well as facilitating, recognizing and valuing lifelong learning opportunities. Individuals may voluntarily request the certification of their labour skills in compliance with the System established by this law, and without this implying any obligation or requirement to fulfil any specific economic or occupational activities, without prejudice to the specific regulations that may govern them, in particular, those established by laws and regulations that require authorization or clearance to engage in a specific activity or occupation. Certification will be granted through accredited bodies in accordance with a common methodological framework accepted by the various productive sectors. No body or agency can be required to seek accreditation under the system established by this law, for the purpose of certifying labour skills. In this latter case, these bodies will not be able to aspire to the means of public funding established by this law." (Art. 1).

With regard to the participation of social partners, Art. 3 establishes a National System for Labour Competency Certification Committee, whose duty it is to implement the actions regulated by the law, with a plural composition, but a demanding technical profile:

"The Committee will be composed of nine members of recognized technical quality in the field of labour skills, appointed in accordance with regulatory requirements, as follows:

- a) One member appointed by the Minister of Labour and Social Security;*
- b) One member appointed by the Minister of Finance, Promotion and Reconstruction;*
- c) One member appointed by the Minister of Education;*
- d) Three members appointed by the most representative employers' organizations in the country from among the representatives of the productive sectors participating in the system;*
- e) Three members appointed by the most representative workers' organizations in the country" (Art. 5).*

The social partners' functions are not restricted to this managerial role, but also encompass Industry-Based Labour Skills Agencies, with full powers as regards standardization:

32 Propuestas de Política de Normalización y Certificación Laboral [Proposals for a Labour Standardization and Certification Policy]. Comisión de Formación Profesional y Capacitación para el Trabajo [Vocational Training and Job Training Committee]. Page 11 http://www.mintra.gob.pe/archivos/file/CNTPE/norm_cert_lab.pdf

33 The law is available from: <http://www.leyes.congreso.gob.pe/Documentos/Leyes/29498.pdf>

34 The law is available from: <http://www.leychile.cl/Navegar?idNorma=272829>

Chile. Law N° 20,267

- *Title Three
On industry-based labour skills agencies*
 - *Art. 13 For the process of generating, acquiring and upgrading labour units of competency, the Committee must request the participation of related industries, by means of an industry-based labour skills agency, which shall be formed for that purpose alone, and whose opinion must be heard by the Committee, pursuant to the provisions of Art. 4, paragraph 4 of this law. Productive sectors and workers' organizations may request the Committee in writing to initiate procedures for the identification of labour units of competency by means of these industry-based agencies.*
 - *Art. 14. It is the responsibility of industry-based certification agencies:
a) To produce strategic guidelines related to labour units of competency, with regard to their development and common methodological guidelines to make the system coherent.
b) To generate and update labour units of competency, as well as to propose their acquisition to the Committee.
Industry-based agencies should be composed of, at least, representatives of the State's central administration, of the productive sector and of the workers, and they shall operate with the methodological and administrative support of the Administrative Secretariat. The Committee will establish the regulations that will govern their operations and duration.*
-

In Spain, the issue of occupational vocational training has been, since the eighties, a matter of concern for nationwide social dialogue, and because of this, for the purposes of this paper; it is advisable to look into the experience of this country in further depth, by quoting directly from the report of the expert consulted, Antonio Baylos Grau.

We should recall from the answer to the survey that,

"The Spanish system was very clearly based on bipartite and tripartite interprofessional agreements which launched a mechanism related to a Tripartite Foundation which handled the resources derived from training payments collected together with social security and unemployment, and organized the expenditure of these funds, preferably on training courses and activities. The system was managed at State level, until a decision of the Constitutional Court made it compulsory to include the Autonomous Communities (regions). This resulted in framework agreements or interprofessional agreements being carried out at this autonomous level. In any case, the Vocational Training for Employment Agreement, of February 2006, may be the most significant tripartite agreement in this area and led to government regulation (...). In addition, in general terms, in the nationwide framework agreements on collective bargaining, which have been developing in an uninterrupted series since 2002, the issue of vocational training and qualification has been part of the rubric for negotiation. This same trend is reinforced in the respective regional – autonomous – framework agreements, which usually replicate the commitments achieved at national levels, with specific features.

This specialist is highly critical of the evolution of these matters since 2012, "since the issue has moved away from collective bargaining and is led directly by the government, without being open to social dialogue".

In Italy, conciliation with social stakeholders is a consolidated practice, with particular reference to employment and training policy, at multiple national and regional levels of consultation, which in many cases has led to agreements being reached, as reported by Franca Fiacco. Among the forms of agreement concerning lifelong learning, two instruments are noted: collective agreements or contracts, and interprofessional funds for lifelong learning.

Several different types of institutional arrangements are reached through collective contracts (with equal representation, coordinated by trade unions, autonomous institutions, etc.), which in general

terms represent the establishment of bilateral bodies with autonomous management, with or without their own legal status, and which are responsible for analysing, monitoring and directing training policy at national or regional levels, administrating vocational training schools and promoting in-company lifelong learning. Signing up is voluntary, since the link and the contribution emerge from the application of the collective contract.

For their part, interprofessional funds are partnership-based bodies promoted by organizations representing nationwide social parties by means of interconfederal agreements. There are currently 18 funds in operation, which in accordance with Law N° 388/2000, are allowed to finance in-company, industry and territorial training plans.

In Uruguay, the government, with ILO's support, called for a National Dialogue on Employment³⁵ in 2011, in which over 60 public and private institutions took part. After a process devoted to design and consultation, the dialogue was organized on the basis of five thematic focal points, including: a) youth employment and training; b) policies to confront the current inadequate job supply; c) adjustments in the qualification structures of work supply and demand; d) employment policies for different phases of the economic cycle; and e) employment and micro and macroeconomic policies.

Each of these focal points, in turn, was broken down into basic or cross-cutting agreements, into sub-thematic focal points and, if needed, provided for specific agreements. The first of these included a subordinate focal point on Education and Vocational Training, which led to a number of specific agreements for the establishment of a Comprehensive National System for Vocational Training. It was, in fact, this initiative that led to one of the most significant effects of the Dialogue, resulting in the establishment of an Interinstitutional Commission within the National Vocational Training System.

Uruguay. Responsibilities of the Interinstitutional Commission of the National Vocational Training System:

- c) Synchronize the existing vocational training and capacity-building supply according to criteria involving relevance and quality.*
 - d) Promote research into current and anticipated needs, based on the productive sector, the labour market, and the country's productive and social development strategies.*
 - e) Facilitate the crossover between training modalities and paths by means of acknowledging know-how and validating knowledge, regardless of the manner in which they were acquired, including labour competency certification in order to facilitate their recognition in productive and labour settings.*
 - f) Define criteria and procedures for continuous assessment, with the purpose of ensuring the quality of the training being offered.*
 - g) Maintain open lines of discussion with agencies involved in the country's productive development in order to ensure the relevance of training.*
 - h) Have an information and dissemination system in place in order to communicate the training supply to interested stakeholders, promoting the lifelong right to education.*
 - i) Promote a communication strategy which will ensure that effective and potential users of the system are targeted; with a view to providing support in their decision-making when they are determining or continuing their training path.*
-

35 Further reading: http://www.ilo.org/santiago/pa%C3%ADses/uruguay/WCMS_191884/lang--es--index.htm

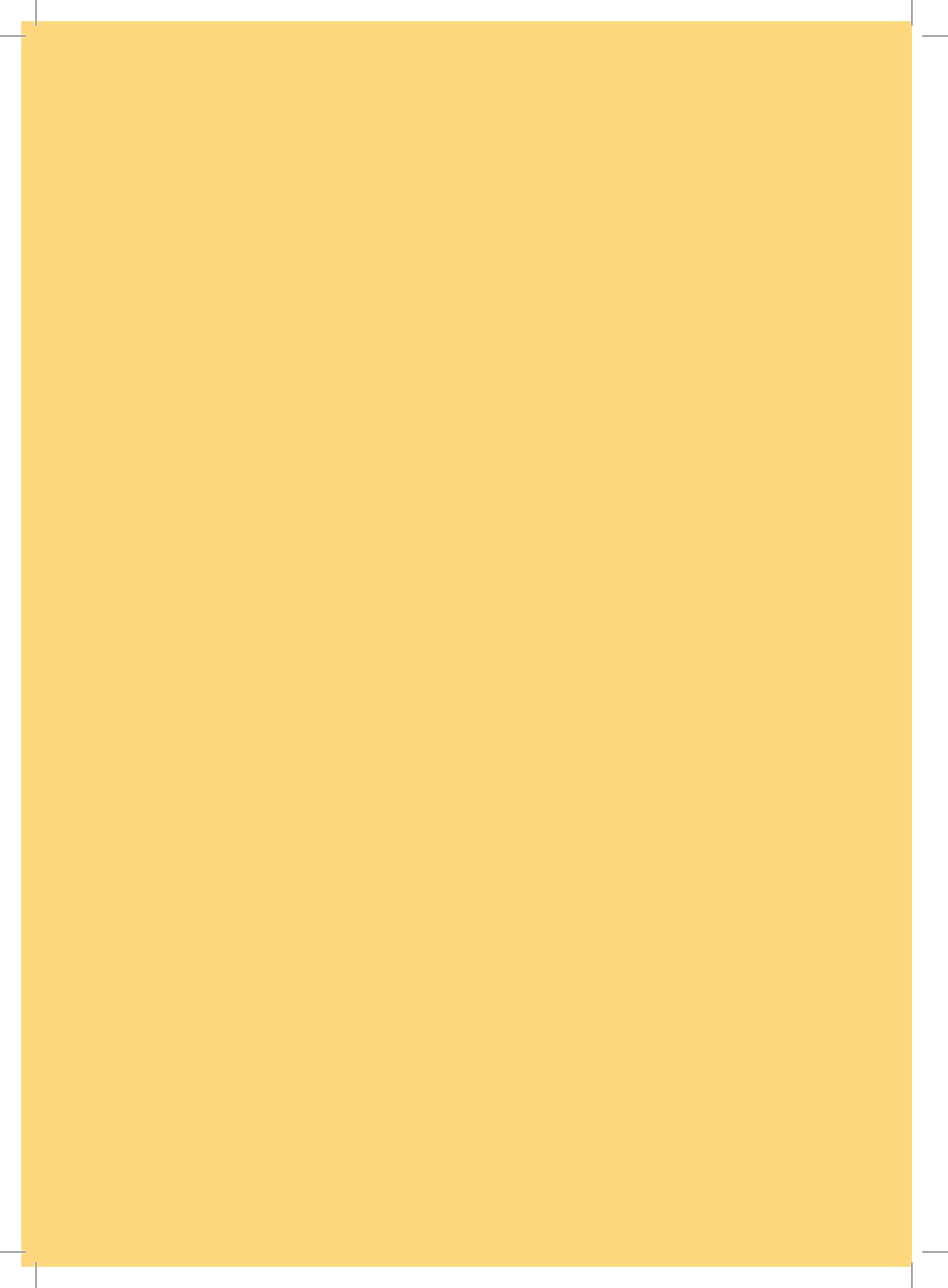
Another of the effects of the agreements was the drafting and approval of Law Nº 19,133 on youth employment;³⁶ a law tending to promote decent work for young people, linking jobs to education and vocational training. We shall refer to this again below.

The Ministry of Labour and Social Security (MTSS) added to the dialogue the matter of Employment policies in the field and rural issues, addressed by means of a workshop held in the rural areas of the country.

³⁶ The law is available from: <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=19133>

3

Collective bargaining and vocational training: recent developments



3. COLLECTIVE BARGAINING AND VOCATIONAL TRAINING: RECENT DEVELOPMENTS

3.1 Collective bargaining on vocational training: background and content systematization

In their classic and fundamental study on the subject, Oscar Ermida Uriarte and Jorge Rosenbaum³⁷ ask themselves why collective bargaining can – and should – regulate vocational training.

The issue merits a number of different answers, which the authors summarize in six reasons:

“firstly, because within certain limits, collective autonomy seeks to regulate all labour-related issues, every aspect of individual and collective labour relations. Even further, some currents of thought grant it a higher standing than heteronomous sources, in view of its consensus-based and flexible features. And as regards this last feature, it could be said that modern training needs, which are malleable and changing, can be more swiftly anticipated by collective agreements than by laws and regulations.

(...)

Secondly, and diving fully into the most purely legal terrain, it should be noted that in legal dogma, the existence of workers’ subjective right to vocational training is now practically beyond discussion (...) if we are, therefore, referring to a workers’ right, clearly they must have participation in and control over its development, to which end collective bargaining is a fundamental tool.

(...)

Thirdly, vocational training brings into play many specific aspects of traditional working relationships, such as categories, remuneration and functional mobility, generating or affecting a number of employers’ and workers’ rights and obligations.

(...)

Fourthly, the increasing significance of on-the-job training is well-known. Vocational training is no longer a problem to be addressed only by the education system, but is also, and increasingly, part of the world of work, emerging in the workplace, within the specific job.

(...)

37 Ermida Uriarte, Oscar and Rosenbaum Rímolo, Jorge. Formación profesional en la negociación colectiva. ILO/Cinterfor, 1998. P. 15 – 17. <http://www.oitcinterfor.org/node/2167>

Fifthly, an argument emerges in favour of convenience, on the grounds of expediency. On occasion, a stand-alone standard, precisely because of its consensus-based and endogenous nature, is more effective than a law or decree.

(...)

And in sixth and last place, collective bargaining can be a good tool to aid the “relabourization” of apprenticeships, internships and other contractual modalities which, under the pretext of their training purpose, are sometimes deprived of their quality as work contracts protected by Labour Law.”³⁸

While somewhat extensive, this transcription provides an adequate basis with which to return to addressing vocational training in collective bargaining, that remarkable form of social dialogue.

In a general and preliminary consideration, we should remember that vocational training is quite a “recent” issue in collective bargaining (despite the fact that apprenticeship contracts were frequently included in the past) and, in a way, a rather “sophisticated” matter, since the primary and fundamental issue addressed in collective agreements or contracts (depending on the term used in the country) is the fixing of wage rates.

When they emerge in collective bargaining, debates on training serve to reveal the wealth and level of evolution of these labour relations in particular, evidence that working relations in a company, industry or country have attained a “superior” phase.

Positioning the issue on the agenda of social stakeholders implies that labour relations are elevated from the mere consideration of basic wage conditions, to encompassing other working conditions and aspects related to work organization, innovation, competitiveness, management, promotion and mobility policies, and adaptability to the changes caused by market transformations, as well as a break with the assembly line production paradigm and its transition to lean production.

Pablo Topet³⁹ has systematized and classified clauses on vocational training in collective bargaining, making a distinction between “a number of fields that can be identified as the core around which regulations have settled” (such as safeguards for the right to training, ways of funding actions and of managing assets devoted to training, the establishment of bipartite agencies with a variety of powers, etc.), and others with more indirect links (paid educational leave, occupational retraining, etc.).

This author’s classification of clauses to be found in collective agreements is shown in the following chart:

³⁸ Ibid.

³⁹ Topet, Pablo. Op.cit p. 94 to 136.

1. *Expository, general or programmatic;*
2. *On time off for training;*
3. *Engaging in training activities outside working hours;*
4. *Special training programmes;*
5. *Institutionalized bipartite vocational training commissions;*
6. *Lifelong learning;*
7. *Funding for training and capacity-building;*
8. *Establishment of the employer's duty to train;*
9. *Linked to civic participation;*
10. *Training programmes linked to staff layoffs for financial reasons;*
11. *The relationship between training and remuneration or productivity;*
12. *Vocational training and functional flexibility;*
13. *Training and disabilities;*
14. *Economic incentives for the individual training or capacity-building of workers;*
15. *Clauses that stipulate a duty to issue certification of courses or training during the period of the working relationship;*
16. *Development of labour-related aspects of apprenticeship or internship contracts;*
17. *The duty of workers to train;*
18. *Training provided to workers' family members;*
19. *Promotion and advancement dependent on training;*
20. *Voting regime in application and follow-up committees;*
21. *A preference for training and capacity-building linked to technological aspects;*
22. *Criteria for synchronization with smaller units regarding vocational training;*
23. *Clauses that provide for employers' right to training;*
24. *Clauses that place a value on knowledge-building;*
25. *On information about vocational training;*
26. *Vocational training in trade union training;*
27. *Specific to rural workers;*
28. *The duty of the company to provide training for laid-off workers.*

All of these implications arise from, or can arise from inserting vocational training into collective bargaining: it is a key element in the appreciation of the depth of the issues that are the object of the negotiation and a revealing indicator of the democratization of company discussions involving a wide range of progressively diversified matters that entail a greater involvement of stakeholders with the fortunes of the establishment and, consequently, of their jobs.

These very brief considerations make it possible to foresee that any analysis of labour relations systems will show that advanced negotiation traditions and processes (and, therefore, collective working relationships), like those that take place in countries of the Southern Cone, such as Argentina and Uruguay, are light-years away from cases in which a country's experiences are beset with difficulties of different kinds.

3.2 Forms of state intervention in collective bargaining. A brief reference to Bipartite Training Committees in Chile (Law N° 19,518)

Among the greatest obstacles to the development, in collective bargaining, of "sophisticated" elements such as vocational training, the most prevalent in Latin America are systems that are highly affected by legislative intervention, leading to excessive bureaucracy and top-heavy proceedings in collective bargaining processes, and strongly restricting trade union freedom and the autonomy of negotiation.

The ILO's Committee of Experts on the Application of Conventions and Recommendations has repeatedly admonished most Latin American countries for their adherence to laws that restrict trade union activity and collective bargaining, or that protect practices that deny such rights.

Trade union weaknesses in many countries lead to these types of disproportionate and heteronomous bodies of law and become hostage to "agreements" or "collective contracts" that protect management and entirely degrade the right to collective bargaining, transforming it into mere appearance.

A further form of excessive interventionism emerges when, sheltering behind the need to mediate mechanisms in order to acknowledge the "greater representativity" of trade unions in plural trade union systems, the labour administration (usually, the Ministries of Labour) affects the establishment of representativity in a discriminatory manner, bestowing exclusive rights upon trade unions that are compatible with the government in office.

The practice of granting exclusive rights to the most representative trade union has been deemed by the Committee of Experts on the Application of Conventions and Recommendations to be in violation of International Labour Convention No. 87.⁴⁰ It should also be said that many trade unions go along with this ploy in order to maintain their positions of power, at the cost of resigning their autonomy to the State and party politics.

These contextual elements are indispensable in order to build an appropriate frame for the "systemic" issues by the light of which the ways in which collective bargaining receives vocational training should be examined.

Clearly, in countries where negotiation undergoes greater restrictions, or is tainted in any way by the mechanisms we have mentioned, little can be found in the way of training negotiation.

Therefore, vocational training in collective bargaining depends on the recognition of and respect for trade union freedom; this assumption entirely determines the negotiation of any aspect in particular, such as vocational training.

The level of maturity of labour relations and of the venues in which the stakeholders of the world of work reach agreements in autonomous activities – aspects that are much confined by State control in

⁴⁰ The Convention is available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_INSTRUMENT_ID:312232

most of the countries in Latin America – are, therefore, circumstances that must be taken into account in any study on negotiation content.

Chile, with one of the most interventionist legislations in the matter of collective bargaining, is of particular interest, to such an extent that it has been the object of repeated comment on the part of the ILO's regulatory control agencies.

Nonetheless, it is useful to examine the highly complex features of the specific body of law governing the collective bargaining of vocational training at company level, which shows certain interesting points and others which cannot, in truth, be allowed to escape some serious criticism.

At least in part, legislative intervention in this case, at the level of collective labour relations, aims to promote collective bargaining on vocational training.

Specifically, Law Nº 19,518 (1997) creates opportunities for dialogue between social stakeholders; such as the National Training Council, Regional Training Councils and, fundamentally, Bipartite Training Committees at company level.

These committees are compulsory for companies with fifteen workers or more, and their objective is "to promote the development of workers' labour skills in order to contribute to an appropriate employment level, and improve productivity and the quality of processes and products"⁴¹. The functions of the committees include agreeing on the company's occupational training programme or programmes and their assessment and advise company management on training issues. The agreements reached within the committee have an effect on the amount of the subsidy received for training activities, as in these cases, the company will be able to deduct in its training actions, up to an additional 20% from the amount chargeable to that item.

Committee members are representatives of the company and of the workers, both union members and non-union members. This is the point of the law which gives rise to the greatest number of questions.

The rather excessively interventionist tone is apparent in the regulation of the selection of the workers' representatives, which combines the categories of trade union members and non-union members according to percentages fixed by law.

Specifically, in the case of trade union members, if they represent more than 75% of the total, three representatives are chosen. If they represent between 75% and 50%, two representatives are chosen and if they represent fewer than 50% and more than 25%, they choose one representative. Conversely, non-union members can have three representatives if union members represent fewer than 25% of the company's workers, or when there is no trade union. They have two representatives if the number of union members is fewer than 50% and more than 25% and one representative if the number of trade union members is between 51% and 74%.

Decisions are adopted by agreement of the majority of representatives of both categories.

41 This information was taken from the paper *Evaluación de resultados e impacto del accionar de los Comités Bipartitos de Capacitación en la gestión de capacitación de empresas privadas* [Impact and outcomes assessment of the action of Bipartite Training Committees in the training management of private enterprises], produced by Guernica consultants at the request of Chile's National Training and Employment Service (SENCE).

The stipulation that non-union workers must take part detracts from the recognition of trade union organizations and raises questions regarding whether Convention No 154⁴² is being strictly observed, inasmuch as the representation of elected workers should not be enabled to the detriment of the existence of organized trade unions.

Stakeholders' opinions on the system's operation are divided and the critical tone that emerges is based on different grounds.

While it is acknowledged that these are participation opportunities for workers and that they contribute to a more equitable distribution of existing training resources, the fact is that for some managers, the system affects the right of the company to make decisions in keeping with its strategic interests and, furthermore, the need for consensus does not lead to the best decisions. From the point of view of the workers, they claim that they do not have enough information, that the system reproduces power asymmetries within the company and that it has not acted to safeguard workers' own time by ensuring that training is held during regular working hours.

3.3 Some good practices in training negotiation

The research suggested in the survey did not enquire into global social dialogue, the most characteristic output of which has been the global framework agreements entered into by professional associations and multinational companies, with content often based on the ILO's Declaration regarding fundamental rights and principles.⁴³

Although these agreements show similarities to traditional collective bargaining and, in addition, often include clauses on vocational training, it was not deemed to be the right moment to analyse them, and a more limited objective was chosen on this occasion.

In relation to the analysis of some of the country cases, it should be said that in Argentina, the inclusion of training issues in collective bargaining has been maintained, despite the ups and downs undergone in the early years of the 2000s, as the specialist consulted has reported.

At labour policy level, legislative measures were taken after the crisis, which tended to rebuild the negotiation scenario, focusing or refocusing it by industry, imposing the inalterability of conventional clauses to the detriment of in-company negotiation and posing a return to the "ultra-activity" of collective contracts.

The revitalizing of collective bargaining led to the scope of application of conventional norms being broadened considerably in the period starting in 2004.

In this context, to the traditional and prevailing wage-related issue, other subjects have increasingly been added, such as vocational training, certainly with a majority bias within the concept of "labour conditions", negotiated in 64% of the cases, according to official data. It is not possible to specifically determine the participation of training in the "labour conditions" concept, as the report does not contain broken down data.

42 The Convention is available from: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_INSTRUMENT_ID:312299

43 For ILO, framework agreements constitute a "response to today's world of global production chains, greater international trade and increased economic interdependence. While they do not fit neatly into any single category of labour relations, framework accords can be viewed as a form of international social dialogue". International Labour Conference, 92nd Session, 2004, "A fair globalization. The role of the ILO", Report of the Director-General. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I (B), p. 77.

The promotion policy emerging from the MTEySS itself is very interesting. It provides model clauses for collective bargaining on vocational training and promotes “Labour Training Committees” as a setting in which to achieve equal treatment, and at the same time, facilitate agreement on clauses concerning the funding of vocational training and capacity-building activities.

Collective bargaining in Spain contains clauses on vocational training, both in industry-based – Statewide, autonomous or provincial – and in company-based agreements. The country report cited above makes it clear that

“the problem of training is related to the problem of employment, and therefore, vocational training is included within the so-called ‘employment clauses’ of collective bargaining, which have a long contractual tradition”.

To job placement formulas such as apprenticeship contracts, are also added commitments with certain similarities, such as work-study scholarships; cases in which the training content they must contain is regulated, as is their external control and use in “non-abusive terms”, and their transition from training stages to full job placement for an indefinite period.

The report goes on to say that:

“In other very specific sectors, such as temporary employment agencies, collective bargaining specifies the training obligations undertaken between the user company and the provider.”

This is a vitally important issue in terms of the rights of persons involved in outsourcing operations, which often imply precarious labour relations.

Finally, the report indicates that:

“the field of professional qualifications is enmeshed with that of vocational training, as is the development of workers’ rights to training and to occupational promotion, regarding which there are frequently conventional regulations governing some of the aspects focused”.

In the case of Uruguay, employers’ duty to train has been understood as one of the obligations emerging from the work contract, based on, among other considerations: a) the employer’s duty to provide the necessary elements – material and intangible – to make it possible to deliver the work involved, and b) the by no means minor circumstance that the right to vocational training is recognized in human rights standards and that these norms have a “horizontal” effect in labour relations, compelling employers to comply with the them in their role as passive subjects in the relationship.⁴⁴

Returning to the case of Spain, industry-based agreements continue to be significant in the current critical situation – industry-based, Statewide, collective agreements – “whose specific contents are vocational training for work”, such as the case of the last one agreed in the air transportation industry, published in August 2014. At company level, and in the case of the larger companies, agreements are frequently found that develop training plans for specific centres or production lines.

44 Barretto Ghione, Hugo. La obligación de formar a cargo del empleador. Una revisión del derecho del trabajo en clave de formación. Montevideo, FCU, 2001

In Uruguay, collective bargaining is based on a source that establishes that minimum wages are fixed by means of Tripartite Sectoral Councils (Wage Councils), which include since their adoption by law in 1943, the power to regulate apprenticeships. The various Wage Council sessions have frequently given rise to agreements on educational leave and even, in one case, agreements with bipartite training institutions and an agreement to establish training programmes, as has occurred in the construction industry. Incipient processes are taking place in other sectors, such as in the metallurgic industry, cellulose and paper, etc.

In Brazil, the answers to the survey give an account of, for example, the agreement between the ABC Metal Workers Trade Union and the multinational Mercedes-Benz, which includes vocational training clauses for workers in the factory of São Bernardo do Campo, in the state of São Paulo.

The agreement is put into practice through the company's adherence to the programme Trabalho e Cidadania, created by the trade union on the basis of Canadian experiences. This programme means that one day a year, workers are freed from their work duties in order to devote the time to studying and discussing training and labour relations, an activity carried out by the trade union. Wages are paid by the company.

The objective is for workers to be better informed about aspects such as collective contracts, trade union policy, job security, wage expenditure calculations and other matters related to individual and collective relations.

The agreement appears to remit to International Convention No. 140 on paid educational leave, in its "trade union training" aspect.

In Colombia, according to the opinion of a trade union source consulted by Carlos Patiño,

"workers continue to focus mainly on their financial and trade union demands, and fields involving such aspects as occupational retraining and technical capacity-building appear very infrequently in the documentation of trade unions."

However, the research conducted by this expert shows some interesting data gathered in trade union information systems:

Colombia. Conventions that include standards on education benefits for children and beneficiaries. 30 September 2010: see http://ens.org.co/apc-aa-files/40785cb6c10f663e3ec6ea7ea03aaa15/11_SISLAB_2013_1.pdf

- *Benefits noted:*
 - *Educational aid for the workers' dependants or pensioners*
 - *Educational aid for children attending primary education*
 - *Educational aid for children attending secondary education*
 - *Educational aid for children attending preschool*
 - *Educational aid for children attending university*
 - *Scholarships granted to workers' dependants*
 - *Educational aid for children attending technical education*
-

- *Educational aid or special education scholarships for workers' children*
- *Establishment of educational aid funds for workers' dependants.*
- *Safeguards for continuing aid or scholarships in the case of workers' disability or death*
- *Aid for school supplies and books*
- *Establishment of educational loan funds for workers' dependants.*
- *Establishment of joint committees to design policies in support of the education of workers and their families*
- *Educational aid or scholarship for education or non-formal capacity-building*
- *Determining support for educational centres on the part of companies*
- *Educational aid for husbands or wives attending secondary education*
- *Educational aid for husbands or wives attending university*
- *Educational aid for husbands or wives attending technical education*
- *Determining what type of education programmes receive funding*
- *Establishment of childcare and crèches for workers' children*
- *Partial or total aid for school transport for workers' children*
- *Educational aid for husbands or wives attending primary education*
- *Establishment of support for educational centres or programmes*
- *Educational aid for courses to prepare for ICFES tests and for entry into university*
- *School transport services provided by company*
- *Educational aid or special scholarships for workers' children achieving the highest marks in ICFES tests*
- *Establishment of company-financed fund for the benefit of aids, scholarships and/or loans to the best high school graduates.*

Source: National Trade Union School, Trade Union and Labour Information System (Sislab), Collective Work Agreements Sub-System (Siscon), on the basis of a sample of 166 collective work agreements.

In Costa Rica, negotiation focuses on the public sector, where we find collective work agreements that have addressed vocational training and capacity-building from the viewpoint of educational and training leave, the development of vocational training and capacity-building institutional programmes, scholarships, career-related financial incentives, etc.

In Italy, the joint interprofessional funds for lifelong learning, to which we have already referred, and which were still in force at the time of Franca Fiacco's report, are listed below:

| INTERPROFESSIONAL FUNDS | SPONSOR ORGANIZATIONS |
|---|---|
| Fon.Coop <i>Fondo per la formazione continua nelle imprese cooperative</i> | A.G.C.I.; Confcooperative; Legacoop; Cgil; Cisl; Uil |
| Fon.Ter <i>Fondo per la formazione continua del terziario</i> | Confesercenti; Cgil; Cisl; Uil |
| Fond.E.R. <i>Fondo per la formazione continua negli enti ecclesiastici, associazioni, fondazioni, cooperative, imprese e aziende di ispirazione religiosa</i> | Agidae; Cgil; Cisl; Uil |
| Fondimpresa <i>Fondo per la formazione continua (delle imprese)</i> | Confindustria; Cgil; Cisl; Uil |
| Fondir <i>Fondo per la formazione continua dei dirigenti del terziario</i> | Confcommercio; Abi; Ania; Confetra; ManagerItalia; FederDircredito; Sinfub; Fidia |
| Fondirigenti <i>Fondo per la formazione continua dei dirigenti delle aziende produttrici di beni e servizi</i> | Confindustria; Federmanager |
| Fondo Artigianato Formazione <i>Fondo per la formazione continua nelle imprese artigiane</i> | Confartigianato; Cna; Casartigiani; Cgil; Cisl; Uil; Clai |
| Fondo Dirigenti PMI <i>Fondo dei dirigenti delle piccole e medie imprese industriali</i> | Confapi; Federmanager |
| Fondo Formazione PMI <i>Fondo per la formazione continua nelle PMI</i> | Confapi; Cgil; Cisl; Uil |
| Fondoprofessioni <i>Fondo per la formazione continua negli studi professionali e nelle aziende ad essi collegate</i> | Confprofessioni; Confedertecnica; Cipa; Cgil; Cisl; Uil |
| For.Te <i>Fondo per la formazione continua del terziario</i> | Confcommercio; Confetra; Cgil; Cisl; Uil |
| For.Agri <i>Fondo per la formazione continua in agricoltura</i> | Confagricoltura; Coldiretti; Cia; Cgil; Cisl; Uil; Confederdia |
| FonArCom <i>Fondo per la formazione continua nel comparto del terziario, dell'artigianato e delle piccole e medie imprese</i> | Cifa – Confederazione italiana federazioni autonome; Conf.s.a.l. – Confederazione sindacati autonomi lavoratori |
| Fondo Banche Assicurazioni <i>Fondo per la formazione continua nei settori del credito e delle assicurazioni</i> | Abi; Ania; Cgil; Cisl; Uil |
| Formazienda <i>Fondo per la formazione continua nel comparto del commercio, del turismo, dei servizi, delle professioni e delle piccole e medie imprese</i> | Sistema Commercio e Impresa; Conf.s.a.l. |
| Fonditalia <i>Fondo per la formazione continua nei settori economici dell'industria e piccole e medie imprese</i> | Federterziario; Ugl |
| Fondo Formazione Servizi Pubblici Industriali <i>Fondo per la formazione continua nei Servizi Pubblici Industriali</i> | Confservizi (Asstra-Federambiente Federutility); Cgil; Cisl; Uil |
| Fo.In.Coop <i>Fondo per la formazione continua nei settori economici della cooperazione</i> | Unci – Unione nazionale Cooperative italiane; Conf.s.a.l. – Confederazione sindacati autonomi lavoratori |
| Fondolavoro <i>Fondo per la formazione continua delle Micro, Piccole, Medie e Grandi Imprese</i> | Unsic – Unione Nazionale Sindacale Imprenditori e Coltivatori; Ugl |

Mexico's is a unique case: its Federal Labour Act⁴⁵ (LFT) has historically focused on "capacity-building and instruction" for workers, from that viewpoint, constituting a pioneering piece of legislation in Latin America.

However, Alfredo Sánchez Castañeda indicates in his report that there is some backsliding and practices that impoverish those promising legal contents.

The report says, specifically, that there is no right to collective bargaining in the LFT, rather, the employer has a legal obligation to enter into a collective contract, in accordance with the provisions of Art. 387 of this law:

"...Employers who employ workers who are members of a trade union are obliged to sign a collective contract with them, when required to do so. Should employers refuse to sign this contract, workers may exercise their right to strike..."

According to this premise, which the expert attributes to the influence of continental European law, the LFT regulates collective contracts, but does not refer to the right to collective bargaining, a term which is not mentioned in this body of law. As regards the contents of collective contracts, the LFT expressly includes clauses related to capacity-building and instruction in addition to other, more "typical" clauses, such as the duration of a contract for a definite or indefinite period, the working day, wage amounts, clauses related to the establishment and operation of committees, which must be formed in accordance with the law, and, in general terms, stipulations to determine autonomously the parties to a collective contract (Art. 391).

Despite the law's positive statement regarding employers' obligation to negotiate capacity-building and instruction plans and programmes, what actually happens is that the absence of effective collective bargaining prevents, in practice, the applicability of the training rights which are so explicitly recognized.

The report points out that: "Safeguarding capacity-building and instruction, without the means to make it effective, results in undermining it." This is because workers, "are not permanently involved," but "only on a yearly basis, or every two years, through their trade unions in entering into a collective contract, thereby resigning their rights, because they do not participate in enjoying them and putting them into practice".

As we can see, the genuine shape of collective work relations systems in their practical application determines the fate of negotiations on vocational training, despite the prior existence of "well-meaning" laws. In fact, clauses on training lack effectiveness.

This weakness of the Mexican collective bargaining system has a strong impact on vocational training that can be generated by means of autonomous mechanisms, which will always be weak and restricted to unilateral initiatives carried out by large corporations, as the expert consulted has concluded.

The labour reform of 2012 has also restricted the scope of employers' obligation to agree clauses on capacity-building and instruction, as we shall see in the next section.

45 The law is available from: <http://www.diputados.gob.mx/LeyesBiblio/pdf/125.pdf>

4

Changes in vocational training institutions
and in apprenticeship contracts



4. CHANGES IN VOCATIONAL TRAINING INSTITUTIONS AND IN APPRENTICESHIP CONTRACTS

The survey also set out to verify the existence of recent legal reforms in the area of labour relations, which contained regulations on vocational training.

The Mexican case we have just mentioned is quite illustrative of the interaction between labour reform and vocational training, but there are still some aspects to be developed which have a bearing on our issue.

We refer to the changes that have taken place in the relationship between apprenticeships (not always labour-based) and tripartite vocational training institutions.

Naturally, in this last case we shall only address aspects that are strictly related to training in social dialogue and participation, leaving aside the whole universe of modifications which have been taking place in these institutions in recent years.

From the answers we received we conclude that both extremes – the regulation of apprenticeships and the institutionality of vocational training – have undergone a multitude of changes which have had an impact on training, social dialogue and labour relations.

4.1 Apprenticeships and job placement for young people

Vocational training issues have a strong presence in regulations regarding youth employment incentives, with a vaguer and more general presence in education laws and in laws that bring the concept of decent work into the orbit of legislation. The reasons behind this prevalence of proposals on youth employment incentives seem obvious if we consider the difficulties encountered when people between the ages of 18 and 25 or 29 attempt to enter the labour market. In every country, their unemployment rates are higher than average, particularly in the case of women.

Depending on tradition and on the configuration of each legal system, youth training and work have tended to be guided by apprenticeship contracts or more general norms regulating youth employment incentives, an approach which admits greater contractual typologies, many of which lack training components and are simply reduced to granting tax benefits or subsidies to employers, or variable labour flexibility margins as a means to promote hiring.

Among apprenticeship modalities, we should recall that Barbagelata, in another of his essential contributions to studies on training and work, outlined the current features of his legal regulations:⁴⁶

46 Barbagelata, Héctor Hugo. 2003. Op.cit. p. 68 to 77

- a) *In many legal systems, the process whereby apprenticeships have come to be recognized as a variety of the work contract has been completed.*
- b) *As a corollary to acceptance of this condition, apprentices are protected by law in the matter of social security.*
- c) *In some States, however, although apprentices are workers, the law admits some restrictions to their rights, mainly in the area of social contingencies.*
- d) *Legislations provide for “very deep concern regarding aspects related to training,” such as, for example, the existence of devices to endorse the professional qualifications obtained by means of apprenticeships.*
- e) *In many countries, the apprenticeship relationship is subject to double consideration under the law: in the work setting and in the setting of training and its institutions.*
- f) *The legal sources of contracts include not only legal instruments, but also decrees and even agreements in Vocational Training Institutions, which come together jointly in order to regulate apprenticeships. In the case of the European Union, the author mentions the importance of collective recruitment.*
- g) *In some States (the author refers to Colombia, for example), stipulations on apprenticeships “are very copious and constant corrections and additions take place, in an attempt to contemplate all of the elements of this modality and regulate every complementary aspect relevant to training”.*
- h) *Finally, the author records that “within the provisions that are usually encountered in regulations concerning apprenticeships, there is the imposition of a compulsory duty for enterprises to train a specific number of apprentices”. He adds that: “This formula, which continues to prevail in some countries, particularly in Latin America, as a result of the influence of the Brazilian model, is reproduced, to a varying extent, in the legal texts adopted in recent years.”*

Modifications that have taken place in recent years in training and work contracts appear to follow these trends identified by Barbagelata.

In Colombia, a country with a long experience in the subject of apprenticeship contracts, much influenced by the National Apprenticeship Service (SENA), Law N° 789 (2002)⁴⁷ defines it as:

“a special category within labour law, by means of which a natural person shall receive practical and theoretical training in an authorized agency, and in exchange, a sponsoring enterprise shall provide the means to acquire the full and methodical vocational training required for the trade, activity or occupation. This implies that the person shall perform duties in the administrative, commercial or financial operations inherent to the regular course of business of the enterprise, for any specific period not exceeding two (2) years, and for this shall receive a monthly maintenance, which shall in no case constitute wages” (Art. 30).

It should be noted that although it is acknowledged that this constitutes a form of working contract (paragraph a. of the features mentioned by Barbagelata), it is also true that the compensation received by the young person is not to be considered “wages”, and is referred to as “monthly maintenance”,

⁴⁷ The contents of the law are available from: <http://historico.presidencia.gov.co/leyes/2003/enero/leylabo.htm>

an unprecedented semantic device in the field of labour law, which inclines the apprenticeship thus regulated towards certain forms of flexibility which the author indicates in paragraph c. of the work we have cited.

In Colombian law, apprenticeships continue to depend on a “quota” to be met by employers, which, as Barbagelata also noted, is typical of some legal systems which inherit the tradition of Brazil’s National Industrial Apprenticeship Service (SENAI):

“Private enterprises operated by natural or legal persons, engaging in any kind of economic activity other than construction, employing a number of workers not fewer than fifteen (15), are obliged to retain apprentices in the trades or occupations that require full and methodical academic or vocational training in the economic activity in which they are involved” (Art. 32).

Maintaining, therefore, the “orthodoxy” of the apprenticeship contract model with a compulsory quota for employers, Colombian law establishes conditions to reach the percentages, which will depend on the existence of the trades stipulated in a list:

“All of the trades or occupations that require full and comprehensive academic training for their performance and are recognized as being included in educational training, be it technical-vocational, technological or professional for which a university degree is awarded, can be the object of an apprenticeship contract in any of its forms, pursuant to the general parameters established by Laws 30 of 1992 and 115 of 1994 (...). SENA shall regularly publish the list of trades and specializations by region, regarding which it offers comprehensive vocational training programmes, without prejudice to the trades or occupations for which, while requiring training in accordance with the first sub-paragraph of this article, this institution delivers no training programmes and courses, also being the object of this apprenticeship contract.

The academic or comprehensive vocational training stage of such trades can be delivered by SENA, in educational or specialized institutions recognized by the State, or directly by the enterprise, so long as they are duly authorized by SENA, in compliance with the provisions of this regulation” (Arg. 36).

This is an appropriate moment to highlight once again the similarities between the trends indicated by Barbagelata and Colombia’s model of apprenticeship contract, which indissolubly links the trade to be performed by the young person to those offered by educational institutions.

Incidentally, we should observe that the apprenticeship contract is regulated in more than one way: firstly, by Law N° 789, which is the object of these comments, but also by SENA’s internal regulations during the “academic” period and by the circumstance, which is, in fact, decisive, of whether the trade being considered is included in the list provided for by educational institutions.

This strong influence of vocational training institutions in labour relations and their recruitment methods can also be seen in existing provisions for cases of in-company training:

“Companies that wish to deliver educational training directly to their apprentices need to be authorized by SENA in order to deliver the appropriate courses, for which they should comply with the following conditions:

1. *Offer academic and practical training content in keeping with the needs of comprehensive vocational training and the labour market.*

2. *Provide qualified human resources in the areas implementing the comprehensive vocational training programmes.*
3. *Ensure, directly or by means of agreements with third parties, the existence of technical, educational and administrative resources that will ensure that they are appropriately implemented (...)" (Art. 38).*

As regards regulations concerning vocational training for youth in broader and more ambitious bodies of law on youth employment, we have found two recent laws with very different proposals, which were issued at practically the same time.

Firstly, Law N° 30,288 (2014)⁴⁸ in Peru, establishes a special labour regime for the recruitment of young people between the ages of 18 and 24.

The law states that:

"...its object is to improve the employability and promote the recruitment of unemployed youth in order to provide them with better opportunities to gain access to the labour market by means of quality jobs with social protection" (Art. 1).

This is a highly flexible form of recruitment offering "a way out", since from the point of view of time periods, it stipulates that:

"Youth work contracts must be established in writing, for a period of at least one (1) year, with a trial period of sixty (60) calendar days.

Once the period of the contract has expired, it may be renewed for periods of at least six (6) months. The maximum duration of a youth work contract, including extensions within the same company, is three (3) years, so long as the young person is still aged between eighteen (18) and twenty-four (24)" (Art. 7).

Workers' rights suffer further restrictions, mainly in relation to social security:

"It is mandatory that young workers enrol in the social security healthcare system, and, when appropriate, must be insured by the Complementary Occupational Risk Insurance, in compliance with the regulations that govern it" (Art. 15).

Among their responsibilities, employers must:

"f) Provide work training to young people, with the purpose of improving their labour training and their capacity to perform their tasks and increase their employability and productivity, to which end they can apply for the incentives provided for in Article 20 of this law" (Art. 19).

As regards the benefits received by the company, Art. 20 establishes that:

"Companies that hire young people under this special regime, have the right to claim a tax deduction against

⁴⁸ Law N° 30,288 was revoked after the editing stage of this book, on 26 January 2015. However, we have kept the remarks made regarding this law, as we have deemed it interesting to discover the scope of a labour policy that linked training and employability with solutions seeking flexibility in labour legislation.

The law is available from: <http://www.mintra.gob.pe/normaCompletaSNIL.php?id=3812>.

their Income Tax, equivalent to the amount spent on training the young people recruited under this regime, so long as this amount does not exceed two per cent (2%) of their yearly workers' payroll during the tax year in which such expenditure is made."

This law has been criticized by Peruvian labour law theorists on the grounds that it follows a flexible line without compensation, as it is very doubtful that any improvement can be expected in youth employment conditions.

Uruguayan Law Nº 19,133 (2013) on decent work for youth is more complex. Its object is to:

"promote decent work for young people, linking employment, education and vocational training from the perspective of fundamental rights.

To this end, it regulates instruments tending to generate opportunities to gain access to the world of work in a dependent relationship, as well as the completion of labour-related practices within the framework of educational and training programmes and the promotion of autonomous youth undertakings" (Art. 1).

Actions and programmes to promote "decent" jobs for young people are to be coordinated by the Ministry of Labour and Social Security (MTSS), in addition to a number of public agencies associated with training and education. A further series of public agencies at different levels can promote the recruitment of young people by private enterprises according to the contract forms established by the law itself. Companies may benefit from recruitment subsidies, depending on the form of the contract.

Youth job placement contracts as provided for in Law Nº 19,133 are for a first work experience, for working practices for graduates, for protected work for youth, and on-the-job training practices, which is the method with the greatest training component, similar to traditional apprenticeships:

"In-company training practices are those performed within the context of educational, training and/or work capacity-building proposals or courses offered by educational or training centres, with the purpose of strengthening and broadening knowledge and enabling young people to apply and develop the skills, knowledge and abilities they acquired during training, and which are required in a genuine productive situation.

The Executive Branch will establish the requirements to be fulfilled by the education, training and/or capacity-building proposals or courses in order to take part in this system" (Art. 19).

"The educational institution and the company shall agree upon the young person's working conditions in writing, and they must be approved by the Ministry of Labour and Social Security.

The training practice may not exceed a maximum of sixty hours nor represent more than 25% (twenty-five per cent) of the total work load of the course, and remuneration for the work performed is not required.

Young people who engage in these training practices must be covered by the Banco de Seguros del Estado [State Insurance Bank].

The company must contribute to the young person's training while he or she engages in the training practice in the company. Upon the conclusion of the practice, the company should provide the young person with

proof of completion, as well as a performance assessment. The latter will also be provided to the educational institution involved” (Art. 20).

Although there is no “list of trades”, as emerges from a look at comparative law, in fact, “training practices” can only be authorized if the educational institution taking part has previously complied with the requirements established by the Executive Branch, and the relationship established is of a “triangular” type, since to the training practice contract must be added the “agreement” between the educational institution and the company, with the supervision of the MTSS.

The law also provides for a form of contract within the State, or for non-State public entities and establishes facilities to set up youth enterprises and ensures education continuity by prohibiting rotating shifts and providing for special leave for young workers.

Some critical opinions have noted that prohibiting rotating shifts in order to facilitate workers’ education implies excessive labour rigidity which can lead to the reluctance of companies to hire young people.

Apart from this, the law has not encountered any very negative viewpoints, but it should also be said that it has not yet been submitted to practical application, due to a lack of regulation (at the time of writing, the relevant regulatory decree was under the consideration of the Executive Branch).

4.2 Vocational training institutionalality and social stakeholders

Still to be explored is what has occurred in other operating areas of vocational training, such as those constituted by the very significant tripartite vocational training institutions existing in Latin America, such as SENAI, SENAC,⁴⁹ SENA, etc., and in the ministries of labour, which as from the nineties began to assume responsibility regarding employment and training policies.

The changes which have occurred in these two fields have had an impact on vocational training and on forms of participation and social dialogue established in each case.

The reports of the experts surveyed have provided some data on the processes that have been taking place in the region.

In the case of Colombia, there has been extensive activity in legal and regulatory terms. In that country, vocational training falls within the jurisdiction of the Ministry of Labour. Law N° 1,444 (2011)⁵⁰ and its regulatory decree N° 4,108⁵¹ of the same year, has established the Labour Mobility and Training Directorate, answering to the Under Secretary for Employment and Pensions, as well as the Management Group for Labour Training Policy.

Other regulations mentioned in the report as being relevant to the evolution of vocational training institutionalality are:

- Decree N° 1,953 (2012), establishing the Cross-Sectoral Commission on Human Resource Management (CIGERH), an agency which will be in charge of guiding and coordinating policies, plans, programmes and actions necessary for the execution of the National Human Resource Management Strategy. Among

49 Brazil’s National Service for Commercial Apprenticeship (SENAC).

50 The law is available from: http://www.mintrabajo.gov.co/component/docman/doc_download/158-ley-1444-de-2011.html

51 The law is available from: http://www.mintrabajo.gov.co/component/docman/doc_download/173-decreto-4108-de-2011.html

other bodies, the Ministry of Labour is also part of this conglomerate (in a presiding role), as well as the Ministry of National Education (responsible for the technical secretariat) and SENA.⁵²

- Law N° 1,064 (2006)⁵³ provides regulations to support and strengthen education for work and human development established as non-formal education by the General Education Act.
- Decree N° 2,020 (2006)⁵⁴ by means of which the Work Training Quality System is organized.

The case under analysis is useful as it presents a feature which is present in vocational training regulations: legislative change processes often have the effect of transforming training territories, sometimes continuously, weighting solutions in order to endow institutional tripartism with greater responsibilities or in their place, and alternatively, empowering or granting responsibilities (more flexible) to the Executive Branch (usually, the ministries of labour), in an almost ceaseless movement that centralizes and decentralizes education management, depending on the opposing viewpoints involved.

In Latin America, debate on the relevance of the training delivered by vocational training institutions has not ceased in recent years. In some cases, criticism even attributes to these bodies the productivity problems that the work force is undergoing.

In a display of dynamism, Colombia's own SENA, by means of Agreement N° 005 (2014) of its National Directing Council, approved the guidelines of the Specialized Lifelong Learning Programme and the general criteria used to guide financial resources.⁵⁵ This programme establishes that:

"The Specialized Lifelong Learning Programme will aim to improve competitiveness by means of designing and implementing projects based on training actions for the improvement of labour skills, technological upgrading, and the transfer and appropriation of human resource knowledge at different occupational levels."

Beneficiaries of this programme are "Companies, trade unions, trade federations or associations representing companies or workers' federations or legally constituted workers' associations, contributing to SENA, by means of staff involved at all occupational levels or belonging to the productive chain, who require upgrades and specialized training, for the purpose of increasing their qualifications and the company's competitiveness."

In Costa Rica there have been no significant legal changes in recent years, although it is reported in the survey that there is a bill in Parliament for the development of dual training (including in-company vocational training), which has the support of the corporate sector.

Spain is (again) unique in this area in that, added to the wealth of its regulations via collective agreements is the complexity of its labour reform, enacted in recent years under the umbrella of its employment policy.

52 The law is available from: <http://wsp.presidencia.gov.co/Normativa/Decretos/2012/Documents/SEPTIEMBRE/19/DECRETO%201953%20DEL%2019%20DE%20SEPTIEMBRE%20DE%202012.pdf>

53 The law is available from: http://www.mineducacion.gov.co/1621/articles-104704_archivo_pdf.pdf

54 The law is available from: http://www.mineducacion.gov.co/1621/articles-105280_archivo_pdf.pdf

55 The law is available from: http://normograma.sena.edu.co/docs/acuerdo_sena_0005_2014.htm

The report provides a historical review which makes it possible to put the current situation of linkage between training and work into context.

Strictly with regard to vocational training, the paradigmatic legal text is Royal Decree Nº 395/2007,⁵⁶ which establishes a vocational training for employment sub-system, described in the report as “a very broad and interesting regulatory standard, which ensures the institutional participation of trade unions and employers’ associations by means of the Tripartite Foundation for On-the-Job Training”.

However, it is in the field of employment policy where “the regulatory escalation” is endless, according to the report.

When it was issued, Law Nº12/2001⁵⁷ concerning the reform of the labour market “to increase employment and improve its quality”, was included in a model for programmes to foster employment for collectives with special job placement difficulties, a scenario in which vocational training took on “a significant role regarding youth employment, female workers, mature workers and, in general, for the placement of all kinds of unemployed individuals”. This model was consolidated by means of Law Nº 43/2006, and after this, the “regulatory whirlwind of the years 2010 and 2011” was unleashed, addressing vocational training in its links to unemployment, with regard to its protective benefits, as occurred in other countries, such as Uruguay. It demanded the implementation of training activities as a condition to receiving a financial subsidy, a programme established in this case by Royal Decree Nº 133/2010⁵⁸ and extended by successive regulations up to Royal Decree Nº 133/2010, which stipulates its own automatic extension for six-monthly periods, so long as the unemployment rate exceeds 20%.

Labour Reform in Spain and Training Contracts

- *With respect to labour market reform, employment safeguards “have been at the centre of the two great labour reforms that the country has undergone, under two governments with different ideological leanings. Law Nº 35/2010⁵⁹ and Law Nº 3/2012.⁶⁰ In both cases, the reform has affected very sensitive points of the right to work, reducing its scope and causing the collapse of a large proportion of its legal safeguards, among which the whole wide-ranging issue of training contracts, which have a clear impact on training, has been redesigned. Specifically, Royal Decree 1529/2012, of 8 November, develops a (reformed) contract for training and apprenticeships and establishes the foundations for dual training.”*

(Excerpt from the Spanish report in response to the CINTERFOR survey.)

4.3 Labour reform and capacity-building: the case of Mexico

In addition to the legal transformations affecting vocational training institutional or ministerial structures, it is interesting to note the labour reform processes that have usually included some formative component as a result of its close links to employment. With regard to all of which, a paradigmatic case was Argentina’s National Employment Act, of the nineties.

The latest and most significant labour reform in Latin America took place in Mexico in 2012. This was a reform which followed the “tradition” of flexibility and adjustment and, as a result, has been the focus of debate.

56 The law is available from: http://www.sepe.es/contenidos/personas/formacion/centros_formacion/pdf/REAL_DECRETO_395-2007_para_web_SPEE_FPE.pdf

57 The law is available from: <http://www.boe.es/boe/dias/2001/07/10/pdfs/A24890-24902.pdf>

58 The law is available from: <http://www.boe.es/boe/dias/2010/02/16/pdfs/BOE-A-2010-2527.pdf>

59 The law is available from: http://noticias.juridicas.com/base_datos/Anterior/r2-135-2010.html#dt3

60 The law is available from: http://noticias.juridicas.com/base_datos/Laboral/rd13-2012.html#dt1

With regard to the issue in hand, the expert we consulted, Prof. Alfredo Sánchez Castañeda, recalls that Mexican labour law did not contain the term “vocational training”, since it was common practice in the country to refer to “capacity-building and instruction”.

The amendment of the Federal Labour Act (LFT) which took place in 2012 introduced into that body of law for the first time, the notion of vocational training, by adding a paragraph to article 3 and pointing out that it is of social interest to promote and watch over capacity-building, instruction and training for and on the job, labour competency certification, productivity and work quality, environmental sustainability and other benefits that these should generate for both workers and employers.

As we can see, what the reform seeks to make clear is that vocational training is a right that generates benefits for workers and employers and legislators ventured in that direction in order to modify some of the essential pieces of the historic LFT.

Sánchez Castañeda points out that the whole of chapter II-bis of Title IV of the LFT, in relation to the rights and obligations of workers and employers, was amended to include some specific items in the matter of capacity-building and productivity.

In the past, the issue of capacity-building and instruction was included in collective contracts and the Joint Committee on Capacity-Building and Instruction, also provided for by the LFT, was acknowledged in such contracts and regulated by agreement of the parties.

We should remember this background information in view of the fact that the amendments introduced refer henceforth to this chapter by the title, “On worker productivity, training and capacity-building”, and this change in name implies a significant conceptual transformation, which is visible in the semantic terms employed.

The author thus highlights the elimination of the term “instruction” and the use of the term “training”, and indicates other novel features of the 2012 text, such as “labour skills and competencies”, notions which, while they have been in common use in Mexico’s speech for some time (see, for example, the work of CONOCER⁶¹) as well as internationally, had not put in an appearance in the field of the LFT.

Moderating his critical view of the reform, the author of the report states, however, that “there is no great difference between, capacity-building and instruction and vocational training”,⁶² although the introduction of the term “labour skills” in the very traditional context of the LFT can, in fact, have consequences in the future that we cannot yet entirely foresee.

On another level, the author adds that Art. 153-H included the obligation of submitting capacity-building and instruction plans and programmes – the term that had been banished from the chapter is used again – every two years, and not every four, as the previous law required.

He also draws our attention to the suppression of employers’ obligation (established in the previous Art. 153-B) to meet the quotas arising from adherence to a training centre. The new Art. 153-B establishes that the purpose of capacity-building is to prepare workers for entry and those interested in filling

61 Consejo Nacional de Normalización y Certificación de Competencias Laborales de México [Mexico’s National Council on Labour Competency Standardization and Certification] - CONOCER

62 Sánchez-Castañeda, Alfredo, “La capacitación y adiestramiento en México: Regulación, realidades y retos”, *Revista Latinoamericana de Derecho Social*, No. 5. July-December 2007, pp. 191-228.

vacancies or newly-created jobs, and understands capacity-building to be “the support that employers provide to their workers in order to begin, continue or complete school cycles at basic, middle or higher levels”.

The labour reform also established, in Art. 153-E, that companies with over fifty workers are obliged to form Joint Committees on Capacity-Building, Instruction and Productivity, composed of equal numbers of workers’ and employers’ representatives, thus modifying the conditions for the establishment of these bodies, since previously, no minimum number of workers was indicated for the creation of these participation venues.

Finally, it should be noted that among the new functions of the Joint Committees on Capacity-Building, Instruction and Productivity are included:

- a) Proposing the measures agreed by the National Committee and the State Productivity Committees, with a view to promoting capacity-building, measuring and increasing productivity, and ensuring the equitable distribution of their benefits;*
- b) Watching over the fulfilment of productivity agreements; and*
- c) Resolving any objections that workers may submit with regard to the distribution of the benefits of productivity.*

In short, vocational training, which now appears as such in the Mexican labour reform, paradoxically loses strength, despite becoming visible, since the obligation of companies to train and instruct even without a collective contract has been suppressed, which can surely be counted as backsliding.

On the other hand, the linkage formed between “training and capacity-building” and “productivity” is nothing if not significant, inasmuch as it appears to reflect the introduction of a rationale which is much influenced by the entrepreneurial profile within a body of law that aims to acknowledge the rights of the individual in a working relationship. Art. 153-I defines productivity in terms of the amended law:

Mexico. The legal definition of productivity in the labour reform of 2012

- *“In the context of this law, productivity is understood to be the result of optimizing human, material, financial, technological and organizational factors which come together in an enterprise, trade or industry, for the production of goods or the provision of services, with the purpose of promoting at industry, state, regional, national and international levels, and in keeping with the market to which it has access, its competitiveness and sustainability, improving its capacity, its technology and its organization, increasing its income and the welfare of its workers and distributing its benefits equitably.”*
-

The regulation also stipulates that employers, workers, trade unions, governments and academia will intervene in the establishment of agreements and systems used for measuring and increasing productivity.

Reynoso Castillo and Sánchez Castañeda underline in this definition the fact that “the distributive element is one of the most significant concepts, since it opens the possibility of reaching agreements on bilateral mechanisms that will make it possible to increase the income of workers as a result of improving and increasing productivity”.

Even so, they acknowledge that “in the matter of productivity according to this approach, the Mexican experience is to a large extent unknown. With the exception of specific areas and enterprises which have been moving forward in this area for years, in most companies, this is unknown. However, it opens opportunities, not only for collective bargaining, but also to improve rights and, in this case, the income of the workers of this country”.⁶³

The contemporary nature of the “novel features” that the Mexican labour reform introduces in the LFT should not be disregarded: the terms “training” and “competencies” are accompanied by “productivity”, thus pointing to the unusual evolution of labour law.

In this regard, the authors cited have said:

“The most significant change in chapter II-bis of Title IV, with regard to the rights and obligations of workers and employers was the inclusion of the issue of productivity. The Joint Committees on Capacity-Building and Instruction became Joint Committees on Capacity-Building, Instruction and Productivity. The subject of productivity has now been endowed with a legal content, which appears as one of the objectives of capacity-building and instruction. At the same time, the obligation is established of forming joint committees on capacity-building, instruction and productivity as bilateral and joint bodies with responsibility in a number of tasks in this field. Among them is that of proposing the necessary changes to enable the increase of productivity, watch over productivity agreements (and) address the objections submitted by workers with regard to the distribution of the benefits of productivity.”⁶⁴

In relation to certification, Art. 153-V establishes that evidence of **competencies** or labour skills constitutes a document by means of which workers will prove that they have successfully completed a training course. With this reference, the chapter on “training” (previously “instruction”) takes on an undeniably contemporary dimension in keeping with the latest developments in the search for relevance between the world of work and that of training adapted to the labour market, thus opting for an approach which is consistent with that of “labour skill”.

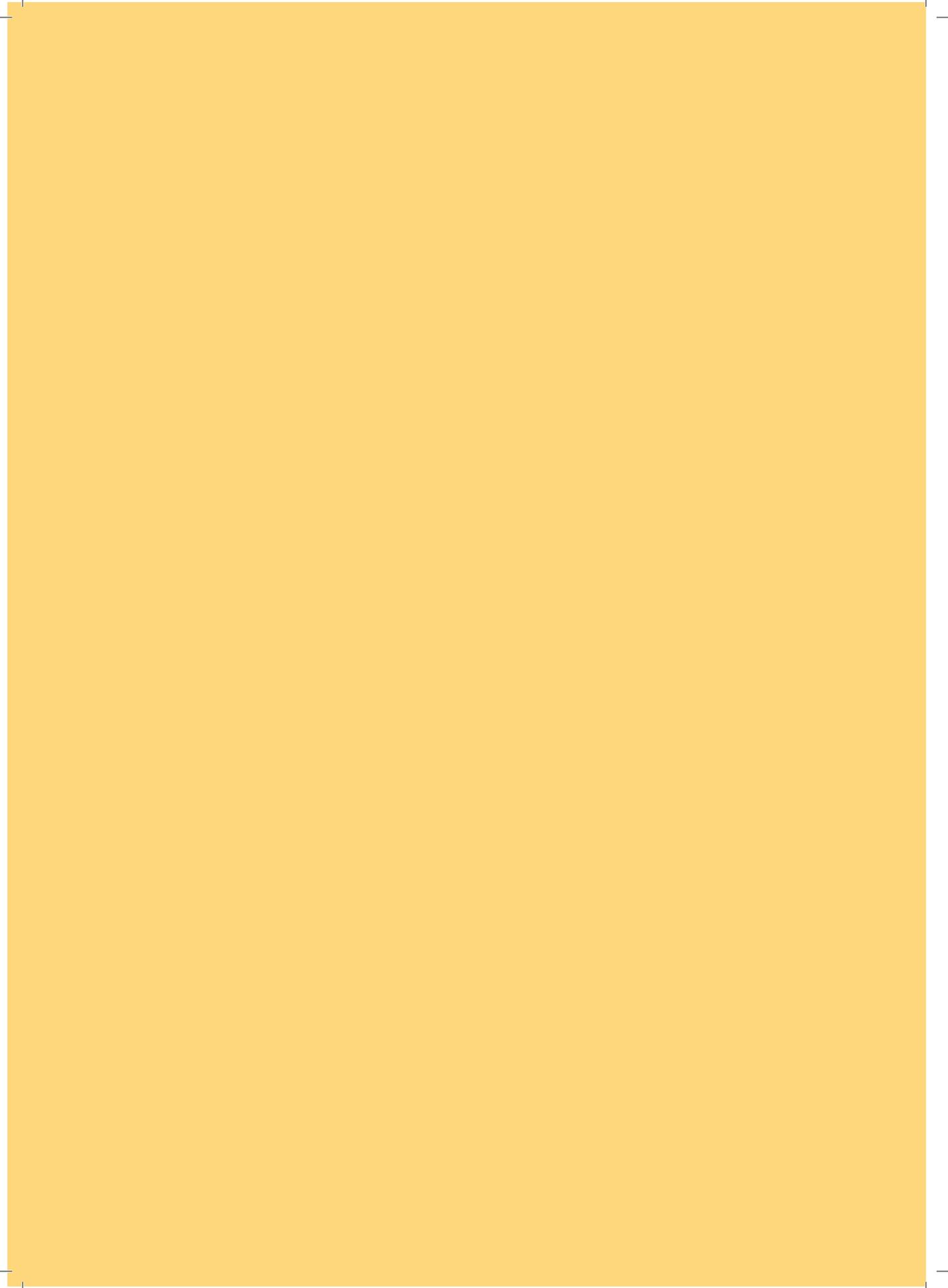
However, the Mexican report underscores the fact that the suppression of the third paragraph of the law has not been explained. This paragraph stipulated that certificates would take full effect with the purpose of functional promotion within the company where the capacity-building or instruction was provided, which shows a new weakness of the training statute in the rationale of the LFT, after its amendment.

63 Sánchez Castañeda, Alfredo and Reynoso Castillo, Carlos. La Nueva Legislación Laboral mexicana. UNAM, 2013, p. 54 - 55

64 Sánchez Castañeda, Alfredo and Reynoso Castillo, Carlos. 2013. Op cit. p. 52

5

Employment formalization and social dialogue. Between criticism and innovative initiatives



5. EMPLOYMENT FORMALIZATION AND SOCIAL DIALOGUE. BETWEEN CRITICISM AND INNOVATIVE INITIATIVES

Finally, the survey enquired about the existence of employment policies to address inclusion and formalization, which involved vocational training actions.

It seems entirely possible that as the lack of basic and vocational training is one of the deficiencies of informal work, formalization plans and programmes might contain provisions regarding vocational training in order to overcome this weakness.

In Argentina, Cappelletti's report quotes the law on combating unregistered work N° 26.940/2014,⁶⁵ on rural work, N° 26.727/2011⁶⁶ and on working in private houses, N° 26.844/2012,⁶⁷ in addition to the experiences we have already cited involving the Technical Committees of the National Board of Employment, Productivity and Minimum, Vital and Mobile Wages, which provide information and consultation services on issues involving formalization and vocational training.

In other cases, such as in Brazil, there are some distinctive institutional arrangements. In fact, the Departamento Intersindical de Estudos Sindicais (DIEESE) is developing a project on Redução da Informalidade por meio do Diálogo Social (Reducing Informality through Social Dialogue) with IDB funding (Inter-American Development Bank), with the purpose of promoting action coordinated institutionally to encourage formalization by means of social dialogue and the synchronization of a system of local, national and regional organizational networks.

The report on Colombia mentions the experience of the Permanent Commission on Wage and Labour Policy Mediation (CPCPSL), which has recently gained strength through the inclusion in 2012 of a Technical Secretariat, with a director appointed by consensus between social parties, offices at the Ministry of Labour and funding from a budget allocated by the ministry.⁶⁸

A law on Employment Formalization and Generation was passed in 2010, recognizing the importance of vocational training as an instrument for active policy and laying the foundations for the development of "human capital".

65 The law is available from: http://www.trabajo.gob.ar/downloads/legislacion_ley/ley26940.pdf

66 The law is available from: http://www.trabajo.gob.ar/downloads/agrario/reg_trabajoagrario_ley26727.pdf

67 The law is available from: http://www.trabajo.gob.ar/downloads/domestico/ley_26844.pdf

68 Further information on this Commission: <http://www.mintrabajo.gov.co/comision-permanente.html>

Colombia. Law N° 1,429 of 29 December 2010, Employment Formalization and Generation

- *Art. 1. The objective of this law is to formalize and generate employment, with the purpose of generating incentives to formalization at the initial stages of enterprise establishment, in such a way that benefits increase and the cost of formalization is reduced.*
 - *Art. 2. The Government must:
(...) Design and promote training, capacity-building, technical assistance and specialized consultancy programmes, leading to the formalization and generation of enterprises, jobs and teleworking.
(...) Strengthen relations between University, Enterprise and the State, establishing initiatives throughout the country that will tend to encourage these three sectors to work jointly on the innovative development of their regions.
(...) Improve the employability of young people, by designing, managing and evaluating a training provision that contemplates all of the training needs of socially excluded individuals and address all of the stages they require in order to achieve vocational and labour integration.*
 - *Art. 60. The National System for Human Capital Training. The national Government will strengthen the National System for Human Capital Training by promoting training for good quality work in keeping with the demands of the productive sector and the needs of the economy.
It will promote the adequate and sufficient provision of training, bearing in mind both public and private training providers, including the National Service of Apprenticeship – SENA.
It will also facilitate the incorporation of the more vulnerable groups into the training for work system, where learning is combined with in-company practice and entrepreneurial activities.*
-

The National System for Human Capital Training referred to in Art. 60 has been targeted for a project funded by the Inter-American Development Bank with the purpose of increasing the relevance of training in relation to the needs of the productive sector, and improving labour qualifications, while at the same time optimizing productivity. The project indicates that it will be up to the productive sectors to define “human capital” skills, to which end a Cross-Sectoral Human Resource Management Commission will be established, involving public and private institutions in the implementation of a National Human Resource Management Strategy.⁶⁹

In Uruguay, reference has already been made to the conclusions arising from the “National Dialogue on Employment”, which led to the adoption of Law N° 19,133 on youth employment and to the work being carried out on a bill concerning a “National Vocational Training System”.

According to this initiative, the objective of the Executive Branch is to provide a systemic approach to vocational training, committing the action of ministries and education agencies in order to coordinate efforts and generate coherent policies that can ultimately lead to the standardization and certification of knowledge and labour skills.

The outlook is more sombre in Spain, a country where employment policy had evolved into a tradition of social dialogue until 2010, when the implementation of austerity policies resulted in labour and employment reforms being decided upon unilaterally by the government, a move which generated a great deal of resistance from the trade unions.

Disagreements between the government and the trade unions had a respite with the reform of the pension system, achieved by means of an agreement with social partners in 2011,

“but the successive reforms of collective bargaining brought about by the PSOE government in June 2011, renewed the conflict between trade unions and government. The arrival in power of the Popular Party, after the elections of November 2011, intensified this tension and again the unions organized two general strikes

⁶⁹ See at www.iadb.org/es/proyectos

over the course of 2012. The last, in November of that year, attained the scope of a day of conflict in Europe, with calls for general strikes in Greece, Italy, Portugal and Cyprus. A broad network of collective resistance was set up, expressed in conflict and demonstrations concerning enterprises or sectors affected by the crisis."

Baylos points out that between 2011 and 2014, legal reform was carried out through the "pressing need route", avoiding parliamentary debate:

"...not only has it been performed without social dialogue, but the collective and individual rights of workers have also been clearly restricted. The Spanish trade unions turned to the ILO with their complaints against the labour reform of 2012, and the 371st Report of the ILO's Committee on Freedom of Association, Case N° 2947, submitted to the Governing Body at its 320th Session held in March 2014, establishes that the government did not respect the procedures for consultation of social partners regarding labour and employment norms and requests that social dialogue be promoted in order to attempt to reach consensus concerning the essential regulations of the labour relations system."⁷⁰

Finally, it states that,

"...legal reforms entail significant changes in the matter of training contracts and collective bargaining. Furthermore, while it is beyond the scope of this comment, the educational content of basic vocational training has also just been significantly modified by means of Royal Decree N° 127/2014, of 28 February, which regulates specific aspects of basic vocational training in the education system's teaching of vocational training, approves fourteen basic professional qualifications, establishes its basic curricula and modifies Royal Decree N° 1850/2009, of 4 December, on the issuance of academic and professional qualifications corresponding to the teaching established in Organic Law N° 2/2006, of 3 May, on Education"

In Mexico, informality was not a concern of public policies, as the country report notes, critically. Some programmes began to be implemented over the last two years, despite which, at present, the Employment Formalization Programme (2013) grants no participation at all to social stakeholders.

An innovative and recent experience is the establishment of "Sub-National Agendas on Decent Work". By means of tripartite social dialogue, these initiatives attempt agreements, policies and programmes in order to facilitate access to employment and promote decent work, with a presence in some of the states in Brazil (Bahía, Mato Grosso) and reproduced in provinces, regions, departments and municipalities in Argentina, Chile, Paraguay and Uruguay.

These Agendas generate opportunities for consultation and negotiation between local or regional social partners, giving rise to their own significant dynamics in the dimension of diagnostics, the definition of priorities, the proposal of solutions to address the problem of decent work shortages in the world of labour and the execution of these alternatives by means of programmes and services to provide access to employment, standards, budgetary funds, etc. Along these lines, the Agendas have contributed to improving work conditions in areas such as employment promotion, the reduction of informality, work security and health, and the prevention and eradication of child labour and forced labour.

In particular, the establishment in 2009 of the Decent Work Agenda of Santa Fe (Argentina) made it possible for over sixty organizations of workers, employers and civil society in the province to agree on

⁷⁰ A summary of this report can be found in Guaman, A., "Las críticas del Comité de Libertad Sindical de la OIT a la reforma laboral del 2012: una nueva muestra de la importancia del derecho laboral internacional", *Revista de Derecho Social* 66/2014.

and consolidate an unprecedented participation opportunity in the territory. The Agenda identified five priority objectives in the area of decent work: a) the formalization of work for all workers in Santa Fe; b) the establishment of healthy and secure working conditions in order to preserve the life and psycho-physical health of workers; c) the promotion of equality of opportunities and treatment in work settings; d) the prevention and eradication of child labour and the worst forms of juvenile labour; and e) the assurance of universal, comprehensive and improved social security coverage for workers in the public area.

In 2013, an agreement was signed for the promotion of a new Provincial Decent Work Agenda, to include the implementation of proactive employment and vocational training policies; emphasize the promotion of more and better jobs for inclusive growth; generate jobs and the development of labour skills for young people; promote productivity and decent working conditions in SMEs; and contribute to formalizing the informal economy and protecting workers from unacceptable forms of work, including child labour and forced labour.

In the case of Paraguay, the experience has become a reality in its Central Department, which received help from ILO to analyse the implementation of a Decent Work Agenda through social dialogue with organizations of employers and workers.

Paraguay. Decent Work Agenda

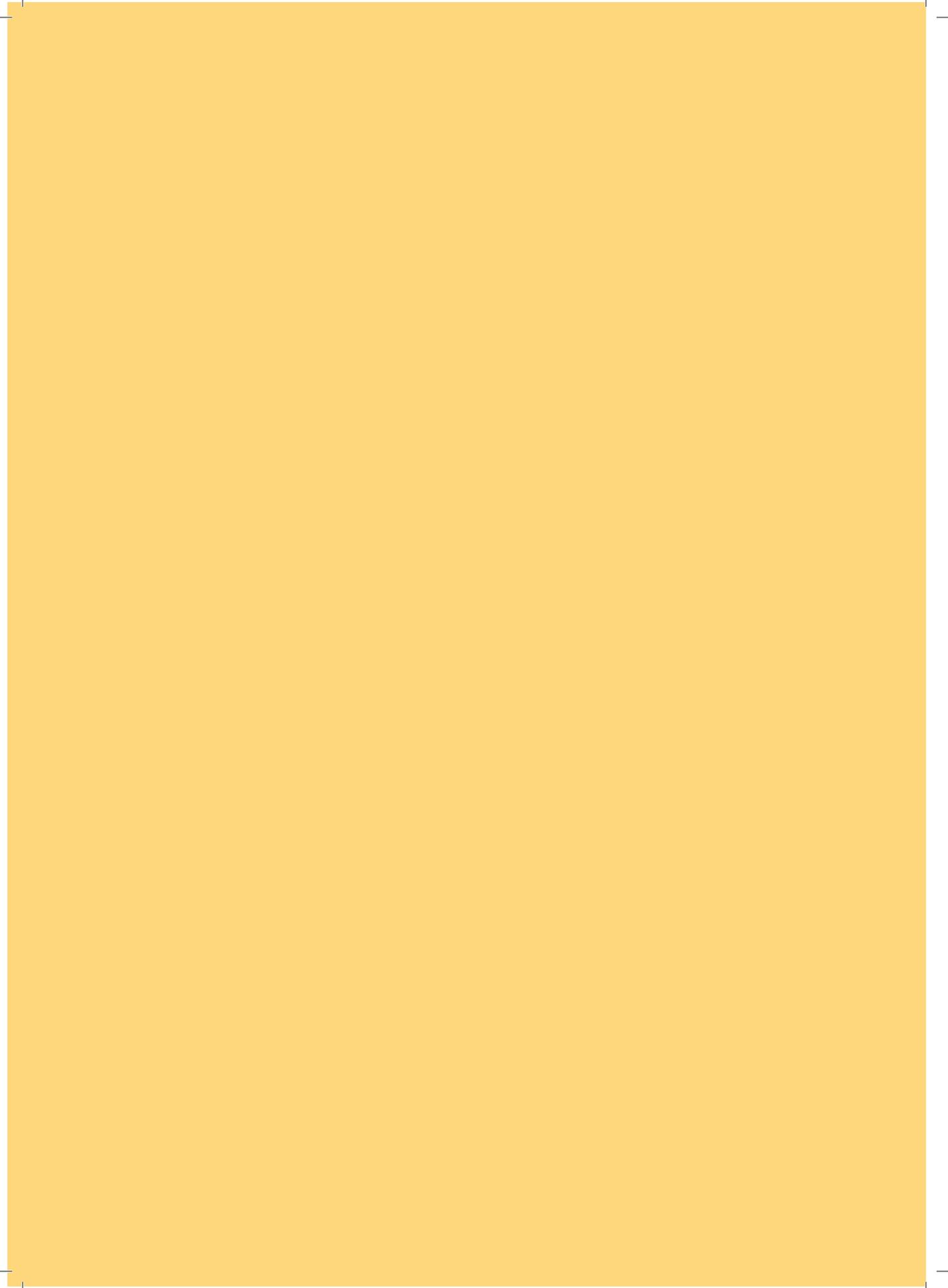
- *At an event held in November 2013 in the Central Department, with the participation of representatives of the Decent Work Agendas of Argentina, Chile, Brazil and Uruguay, social partners worked on the identification of key topics, united in their concern regarding job quality, entrepreneurship and job creation, job placement and capacity-building for jobs. The proposals that emerged with a view to drafting a thematic Agenda were the establishment of a Governmental Labour Secretariat, plans for SME strengthening, greater institutional coordination and the establishment of a capacity-building platform for jobs.*
-

The culmination of these initiatives was that a Sub-National Decent Work Agendas Network was formed in 2013, with the technical support of ILO, as a way to share and provide feedback, and with the objective of understanding existing experiences, promoting their advancement and sharing good practices.⁷¹

71 Further information on the Sub-National Decent Work Agendas Network:
http://www.oit.org/santiago/temas/promoción-del-empleo/WCMS_240486/lang--es/index.htm

6

Vocational training and social
engagement



6. VOCATIONAL TRAINING AND SOCIAL ENGAGEMENT

In a publication that we have already cited concerning social dialogue on vocational training, a triple classification was attempted of the object of our analysis, on the basis of a number of criteria or variables:

- a) According to the stakeholders taking part in the dialogue, there are bipartite experiences (traditional collective bargaining), tripartite (vocational training institutions or working and social agreements) and even multipartite, when social participation extends beyond labour-related interlocutors.
- b) According to territorial or geographic criteria, social dialogue on training can take place regionally (the most significant example of which is within Mercosur), within country borders (social agreements) and locally. Regarding the latter, the study we cited stated that it is here that training achieves “the greatest innovative potential, as it calls upon locally-based stakeholders, addresses diagnoses and proposals of solutions to issues involving unemployment, the development of production and services, or labour skills, combining local and industry-based approaches”.
- c) Finally, the third classification variable focused on the legal instrument employed (declarations, social pacts, collective agreements at different levels, etc.).⁷²

This categorization makes it possible to appreciate with a fair amount of accuracy the experiences we describe below, since they involve several of the notes we have just explained.

In fact, these are initiatives deriving on the whole from vocational training institutions, and as a result we shall be facing:

- a) Proposals in which tripartite or multipartite stakeholders participate, depending on the organization of the bodies promoting these actions.
- b) From the territorial point of view, actions carried out locally or by industry.
- c) From the point of view of the instrument employed, they originate in the decisions of institutionalized bodies, under the form of “acts”, “decrees” or “resolutions”.

With regard to the functions fulfilled by the different initiatives, it may be said that they have an element in common, which is the need to find and adopt mechanisms to validate the demand for training, in order to ensure the relevance of occupational profiles, curricula and, in short, of the training actions being implemented. This is a major challenge for training institutions, and a significant opportunity for employers and workers to contribute their knowledge and experience to improving the conditions of vocational training.

These initiatives also agree regarding the statement that only the plural participation of interested

⁷² Barretto Ghione, Hugo. 2007, Op.cit. p. 47

parties can lead to virtuous interaction for the definition of requirements, skills and profiles on the basis of which training policies and programmes can be structured.

We shall now examine some of the most representative cases which show social dialogue on training moving in this direction, in the knowledge that we are witnessing the most singular forms of participation; that is, cases that exceed classic bipartite or tripartite manifestations and open up to experiences tinged with greater pluralism by incorporating other stakeholders in the field of training.

a) SENAI's Sectoral Technical Committees (Brazil)

SENAI has, historically, been managed by Brazilian industrialists – the National Confederation of Industries – and is the founding body of the Brazilian “S system”. Recently, (bearing in mind its long history – it was created in the early forties, in the last century), its Governing Council has incorporated workers’ representatives, thus achieving its tripartite features.

Sectoral Technical Committees are plural bodies of SENAI that operate in the context of defining occupational profiles in order to feed the production of curriculum design.

They are constituted by SENAI, its technical experts and its operational units, plus corporate specialists, representatives of employers’ associations and trade unions, of academia and public institutions from the areas of education, labour and/or science and technology, with responsibility in information and knowledge-sharing with a view to giving shape to occupational profiles.

The experience began some twelve years ago in the state of Rio de Janeiro and gradually extended to the whole country.

The profiles defined by the Committees make it possible to contribute to drawing up a curriculum design and the provision of training, thus linking the needs of the market to vocational education.

The objective of the Committees is, therefore, “to contribute to the identification and permanent updating of workers’ occupational skills, with a particular responsibility in the production of occupational profiles relevant to the qualifications demanded by the labour market within the industrial segments addressed by SENAI”⁷³

The main functions related to these objectives are the definition and updating of competency-based profiles, with the validation of parameters with which to assess expected performance.

This eminently technical task explains the constitution of the committees by specialists in the technological area under analysis, from SENAI’s Operational Unit, vocational education, the industry’s enterprises, employers’ and workers’ unions, academia, plus one technical expert appointed by the public authority, related to the area of work, industry, education or science and technology.

SENAI’s paper, which we have cited, acknowledges that this is a “delicate balance between having an excessively large Committee, which can lead to dispersal or sluggish work, and a reduced Committee which may not be representative. The priority should be the constitution of a Committee which is able to act efficiently”.

⁷³ Information for this heading is taken from ILO/Cinterfor material and from the paper *Certificación Profesional basada en Competencias*, SENAI, 2002, as well as information on SENAI’s own website.

As regards the responsibilities of the social stakeholders (or of the technicians associated with the social stakeholders, given the specialized nature of the committees), it should be noted that:

"The technological specialists from enterprises, trade unions, and other institutions are responsible for suggesting alternatives that will make it possible to increase knowledge in the operating area of the committee. To identify and diagnose trends related to the sector, the type of training needed and future perspectives. To point out the impact caused by technological trends and organizations in the sector and how they reflect upon occupational performance. To contribute to the analysis of the labour market, offering the information required to produce occupational profiles, bearing in mind among other information, the activities, functions, responsibilities, level of autonomy and performance required, considering the professional context and bearing in mind procedures and guidelines in the paper Methodology for the Production of Occupational Profiles, and to approve the occupational profiles produced."

In addition, SENAI has been implementing a Programme in Support of the Competitiveness of Brazilian Industry,⁷⁴ which encourages innovation and the technological development of industry and increases the vocational education supply in the country.

Until 2014, the object of the programme was to broaden and update SENAI's physical structure, by reforming schools and establishing 23 innovation institutes and 63 technology institutes, as well as purchasing 81 mobile units.

SENAI's 24 Innovation Institutes (ISI) will operate in a network, together with the Technology Institutes. It is anticipated that they will "strongly partner enterprises in the comprehensive development of products and processes, applied research, complex problem-solving and technological trend anticipation. These units will also train qualified personnel in order to build knowledge and develop technologies which will address industry's present and future needs".

All industrial sectors will be addressed in a cross-cutting manner, as will the specific demands of every region in the country. These SENAI Innovation Institutes will target eight areas of knowledge: of the twenty-four units foreseen for the programme, nine will focus on production, one on microelectronics, two on surface engineering and photonics, four on materials and components, two on information and communication technology, one on building technologies, three on energy and one on defence.

With respect to vocational training, the programme aims to achieve four million enrolments for training, as it is understood that "innovation requires qualified human resources" and, in consequence, the "fifty-three Vocational Training Centres will focus on vocational education at a technical level, on regular courses and on distance education. For their part, the eighty-one new mobile units will take short qualification courses to micro-regions where there is industrial demand for qualified professionals, but no established SENAI schools".

b) SENA's Sectoral Committees (Colombia)

SENA is one of Latin America's most influential and long-standing institutions in its field. It is governed by a National Council, and in addition to government representatives, it is composed of business chambers and trade union representatives, as well as other civil society organizations (notably, the Church).

⁷⁴ It can be consulted at: <http://www.portaldaindustria.com.br/senai/iniciativas-senai/programas/programa-senai-de-apoio-a-competitividade/2012/06/1,3956/institutos-de-inovacao.html> (consulted on 10 January 2015).

These Sectoral Committees were established some fifteen years ago and are defined as nationwide social or cross-cutting consensus-building bodies, “which contribute to enhancing human talent qualification, the relevance of training for work and the competitiveness of the productive sectors”.

The Committees, composed of representatives of the government, the productive sector and academia, have a sectoral and national scope.

SENA's National Governing Council's Agreement 06 of 27 May 2010 governs the operation of the Sectoral Committees, which constitute a stage upon which “policies are proposed for human resource training and qualification, by means of labour competency standardization and certification, with national, sectoral and/or cross-cutting features” (Art. 1).

The law establishes criteria for the constitution of Sectoral Committees: a) bearing in mind the significance of the sector. This significance is determined on the basis of the priorities of the productive sector, on those established by development plans, by free trade agreements, by GDP share, by national aggregates and/or country development foresight; b) bearing in mind support, understood as entrepreneurs' and workers' interest in and manifest commitment to taking part in the committee; and c) bearing in mind coverage; that is, for a population of at least 5000 workers.

The functions or purposes of the Committees include:

- a) propose strategies and contribute to structuring a national labour competency standardization and certification plan, led by government agencies; b) propose to the technical teams the production and updating of labour competency standards and assessment tools for the area under analysis; c) propose to the technical teams the study of labour competency standards produced and applied in other countries, with a view to adopting such standards in our country, after fulfilling the procedures established for the approval of labour competency standards; d) propose new training programmes to SENA and other bodies for work and human development training; e) promote in companies the use of competency standards for Human Resource Management and to support projects on certification in labour competency standards directed by SENA to independent and unemployed workers; and f) strengthen networks of standard-setters, evaluators and auditors promoted by the National Training for Work System directorate.

The Committees are composed of representatives of multiple sectors, since they include the productive sector, corporate representatives, workers' organizations or independent workers of acknowledged technical standing in the sector, SENA pensioners of acknowledged technical standing, vocational and human development training institutions that deliver training programmes relevant to the sector, research and technological development centres involved in subjects related to the sector, SENA Training Centres leading the provision of services to the sector, and government bodies that regulate the sector.

The Committee's most senior authority is its General Council, whose decisions are made by a simple majority. The Council approves annual operational plans for competency standardization and certification and the promotion of standard use, validates standardization and certification products and identifies training needs in order to request the design of new programmes.

Finally, we should add that SENA provides consultancy services and has systematized the productive sector's demand for human resources, by means of a Labour Competency System (SCL), on the basis

of which it has established 70 sectoral committees and produced over 2,200 labour competency standards.

c) CONOCER's Competency-Based Management Committees (Mexico)

These are defined as groups of persons, enterprises or organizations representing a productive, social or government sector, which, in view of the number of its workers, its labour market share and/or nationwide recognition in the sector, validated by CONOCER, operate as a body with responsibility in promoting the competency-based management model in the organizations of the sector they represent.

The functions of these bodies are to promote the development and implementation of the National Competency-Based System in their sectors; define the human capital agenda for the competitiveness of their sectors; develop and upgrade competency standards, competency evaluation tools and consequence mechanisms to encourage worker certification in their sectors; and follow-up on and promote excellence in the operation of evaluation and certification solutions in their sectors.

Committees are empowered to:

- appoint one or more technical groups to develop competency standards, to be composed of managers, middle management and workers from different business areas (operations, logistics, sales, acquisitions, production, human resources, administration, maintenance, etc.) of the organizations they represent;
- document the development process of functional maps, competency standards and competency evaluation tools, as determined by the relevant technical guides;
- submit competency standards and their evaluation tools for approval and registration by CONOCER;
- promote the training, evaluation and certification of people's competencies, based on competency standards;
- promote competency-based management in the productive, social and government sectors, labour organizations, companies and institutions that they represent;
- pinpoint and propose relevant evaluation and certification solutions for the different competency standards that are relevant to the sectors they represent (identify institutions responsible for worker evaluation and certification in the sector).

An initiative to establish a Competency-Based Management Committee can emerge at the request of corporate or workers' organizations, or other civil society bodies. CONOCER follows certain internal proceedings for the approval and validation of the Committee requested.

d) Sectoral Councils for Competency Certification and Vocational Training (Argentina)

For over fifteen years, Argentina's MTEySS has been incorporating into its active employment policies, action concerning vocational training that includes standardization, training, quality and certification. An ILO/Cinterfor⁷⁵ paper highlights the fact that one of the tools used to encourage relevance is Sectoral

⁷⁵ Diálogo social institucionalizado en la formación profesional argentina 2003-2013. Buenos Aires, ILO, Ministry of Labour, Employment and Social Security, 2013. http://www.ilo.org/buenosaires/publicaciones/WCMS_235756/lang-es/index.htm

Councils for Competency Certification and Vocational Training, which are defined as,

“an institutional area in which stakeholders representing a sector of activity define and implement short and mid-term strategies, with the support of the ministry. Consensus is sought among the various stakeholders for the implementation of action related to:

Identifying and selecting lifelong learning institutions in the sector, in order to strengthen them;

Calling upon workers to take part in certification and lifelong learning activities;

Linking trained workers to enterprises in the sector.”⁷⁶

The Councils' lines of action include:

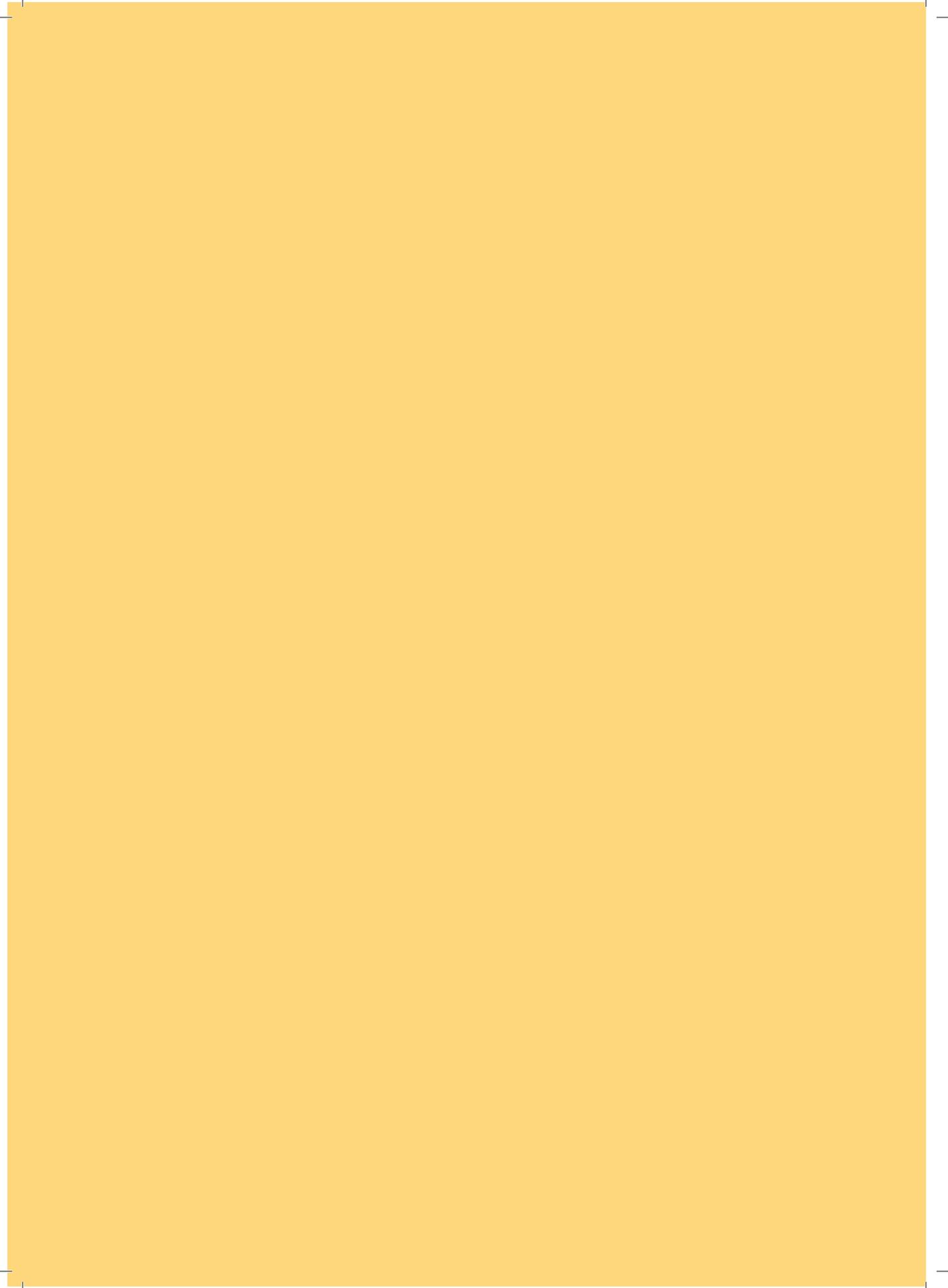
- Training, which implies the identification by the sector of the demand for worker qualification and training localization;
- Certification, which constitutes the recognition of workers' experience and skills and optimizes investment in training and human resources management;
- Institutional strengthening, which promotes the Quality Management model in Vocational Training Institutions as a strategic factor in active employment policies, giving rise to Sectoral VTI Networks.

The Sectoral Council's functions entail the performance of a “diagnosis of the sector which will give an account of qualification, certification and institutional strengthening issues, making it possible to identify the principal strategies for resolving them; legitimize actions tending to achieve greater sectoral and national recognition; produce and implement a management plan and evaluate its outcomes”.

Technical Management Units are composed of a sector representative, who will promote certification, training and institutional strengthening activities in fulfilment of the goals established by the Council.

⁷⁶ This information can be consulted on the MTEySS's official website: <http://www.trabajo.gov.ar/consejossectoriales/index.asp?cat=4>

7 Final considerations



7. FINAL CONSIDERATIONS

Some evidence emerges from this overview of the upgrade of training in social dialogue which, while not attempting to pass as “conclusions” arising from the work performed, could nonetheless serve as lines of research to provide continuity and follow-up for the object of this analysis.

We consider appropriate to point out that:

- a) The greatest wealth of studies on training, social dialogue and labour relations is to be found in academic or government media in countries where the issue is an object of common practice among social partners, as in Spain, where academic production is particularly copious, as we have shown. However, it is also interesting to observe that countries such as Argentina, which promote negotiation on training, at the same time continuously follow the matter up through the publications that the MTEySS itself issues, such as the journals cited in chapter II, which enjoy well-earned prestige.
- b) Social dialogue and collective bargaining on training in the region undergo some challenges and restrictions deriving from the structural problems that affect collective rights and trade union freedom in a number of countries. In fact, the existence of legislation that greatly restricts the autonomy of social partners (particularly trade unions) leads to the slowdown of collective bargaining and trade union activity in general, which hinders progress in negotiation and social dialogue on vocational training. At this juncture, the case of Chile merited consideration, in view of the existence of a body of law that specifically addresses negotiation on training, to which we should add the compulsory features mandated in the constitution of specific bipartite bodies. All of which, without disregarding the negative aspect of the law, as we have mentioned.
- c) Despite the restrictions we have described, in some countries, greater weight is given to clauses on training in the thematic spectrum of collective bargaining, which leads to interesting expectations with regard to their intensification, as occurs in Argentina, Uruguay and Colombia (to a lesser extent).
- d) Given that training is an essential element in individual working relationships, it could be anticipated that it would be affected, to varying degrees, by the process of labour reform. In some cases, training was a tool deployed by employment policies, and in others, it was included in the very content of the reform. This is the case in Mexico, where the 2012 law affected the chapter on “capacity-building and instruction” of the Federal Labour Act, opening up the conceptualization of the law, for the first time, towards new trends concerning labour competencies and certification. Incidentally, it also showed how training, by being fully introduced into the world of labour relations, becomes fully engaged and transformed, no longer by means of a specific body of law, but by the regulations governing work contracts. The novelty of including definitions and regulations on productivity as an objective for training was also underlined by the analysis of the Mexican labour reform, giving rise to contradictory opinions.

- e) The means of implementing social dialogue on vocational training can originate, however, not only in the strictly work-related setting (as in the case of National and Sectoral “Councils” in Argentina, and Wage Councils in Uruguay, as well as a number of different examples in Spain, now somewhat at a standstill), but also in areas generated within the very core of tripartite vocational training institutions in Latin America. Through their governing councils, these institutions exercise social dialogue while at the same time, generating innovative initiatives locally or sectorally, incorporating a number of different stakeholders beyond those typically seen in the world of work.
- f) This double “institutional” path that social dialogue on training takes – one deriving from the labour relations system and the other from the vocational training system itself – displays different dynamics and features which should be borne in mind when exploring social dialogue on this subject.
- g) These very distinct contexts lead to experiences and modalities that are hardly comparable. In fact, we consider that they deserve to be treated differently, since they have their own sources and conditioning factors, in addition to interlocutors who do not always agree, as we have seen. This distinction between styles and stakeholders in social dialogue on training has led to a number of unique traditions, characteristic of each different country. In brief, (collective) bargaining mechanisms in the labour relations system have no connection or parallel to the negotiation mechanisms that are shaped in tripartite vocational training institutions, and even less with those arising in local or sectoral agencies that these institutions promote as instruments with which to fine-tune the relevance of occupational profiles and curriculum design in relation to the requirements of the productive system. In fact, in the pioneering work that Héctor Hugo Barbagelata produced for ILO/Cinterfor, tripartism was analysed exclusively from the point of view of institutions, without any consideration of collective bargaining. Certainly, some future studies should follow in the wake of Barbagelata’s research, since institutional reality has changed sufficiently to justify a new approach.
- h) Finally, it is also interesting to note that youth employment policies continue to resort to contractual arrangements with strong links between work and training. This is another of the issue’s traditional features, and its historical configuration depends on the circumstances and on every economic and social context. Work and training found their original synthesis in the apprenticeship contracts driven by leading vocational training institutions (clearly, SENAI), but the relationship then suffered continuous transformations and reversals, since apprenticeships were included in policies to “create” youth employment and as such, were accused of producing labour flexibility. These ups and downs still exist and the example of the recent Peruvian law (2014) gives eloquent evidence of the currency of this debate, as do other cases in which apprenticeship, far from positioning itself beyond labour flexibility, reinforces the rigidity of labour law, as in the Uruguayan case that we have analysed. In short, this is a further profile or constant feature in an issue whose interest continues to renew itself and is far from being exhausted.

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