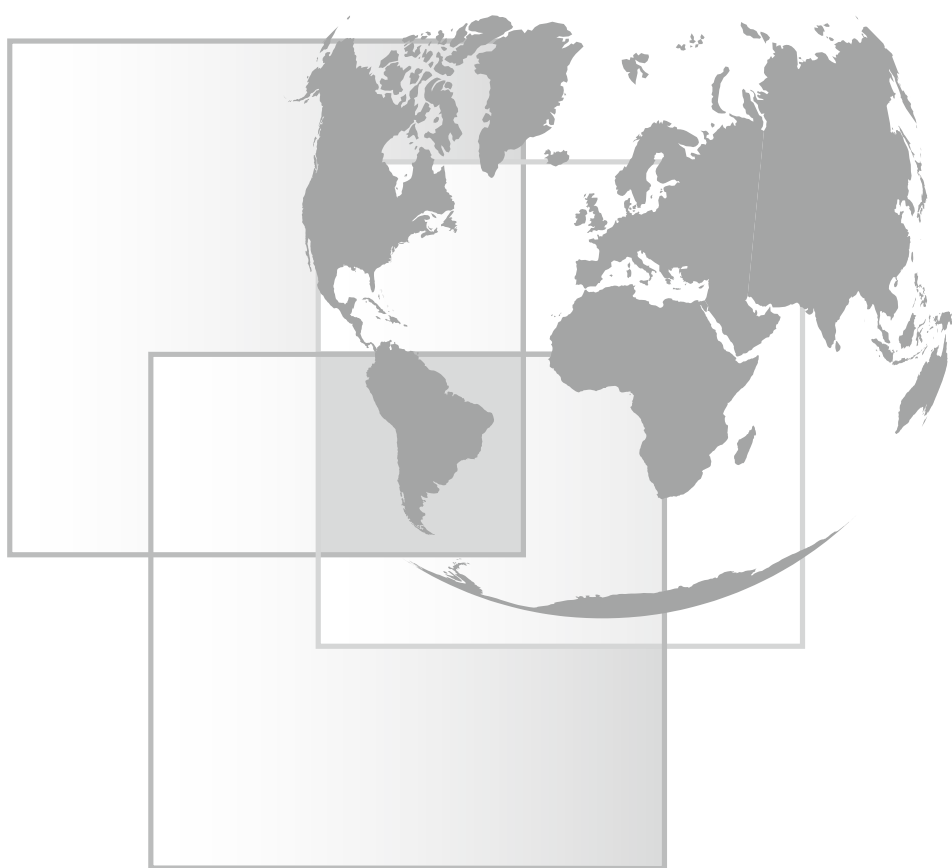




International  
Labour  
Organization



# **Handbook** of procedures relating to international **labour Conventions** and **Recommendations**



**Centenary Edition 2019**

International  
Labour  
Standards  
Department



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Labour  
Organization

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1919-2019

# **Handbook of procedures relating to international labour Conventions and Recommendations**

**International Labour Standards Department**

**International Labour Office Geneva**

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## Introduction

This Handbook describes the procedures operating within the International Labour Organization in relation to the adoption and implementation of Conventions and Recommendations. The present edition takes account of the adjustments to the system for the supervision of international labour standards decided on by the Governing Body of the International Labour Office up to its October–November 2018 session.<sup>1</sup>

The Handbook is designed in the first place to help officials of national administrations responsible within their governments for the discharge of obligations under the ILO Constitution relating to international labour standards, by setting out the provisions laying down the procedures to follow and the practice established within the Organization for giving effect to those provisions. It is also intended for use by organizations of workers and employers, which have their own distinct roles to play in the procedures.

The International Labour Office's functions include that of providing information and training for officials of governments and employers' and workers' organizations on all aspects of the procedures described in this Handbook. This is done in part through seminars held in the various regions, at ILO headquarters in Geneva, at the ILO's International Training Centre in Turin (Italy), and in members States, as well as through advisory missions carried out by officials of the International Labour Standards Department and the standards specialists in the field. The Office is in any event at the disposal of the governments and organizations for further explanations of any of the matters dealt with here. This Handbook is issued and further assistance and advice are given by the International Labour Office on the understanding that the Office has no special authority under the ILO Constitution to give interpretations of the Constitution or instruments adopted by the Conference.<sup>2</sup>

The International Labour Standards website ([www.ilo.org/normes](http://www.ilo.org/normes)) contains numerous information and links to relevant documents. In particular, it hosts the NORMLEX database, which brings together information on the ILO standards system (such as the list of standards, information on ratification and on reporting obligations, comments of the ILO's supervisory bodies, etc.) as well as information on national labour legislation.

<sup>1</sup> See [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#).

<sup>2</sup> See Chapter VIII of this Handbook.



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## I. Adoption of international labour standards

### Nature and constitutional basis of Conventions and Recommendations

1. Conventions are instruments which on ratification create legal obligations. Recommendations are not open to ratification, but give guidance as to policy, legislation and practice. Both kinds of instrument are adopted by the International Labour Conference,<sup>1</sup> and article 19 of the [Constitution](#) provides:

1. When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.

2. In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

### Placing an item on the Conference agenda

2. The agenda of the Conference is settled by the Governing Body (Constitution, article 14). In cases of special urgency or other special circumstances (this has been the case, for example, where a draft Protocol is being considered) the Governing Body may decide to refer a question to the Conference with a view to a single discussion ([Standing Orders](#) (SO),<sup>2</sup> article 34(5)); but otherwise there will be a double discussion (i.e. discussion at two sessions of the Conference) (SO, article 34(4)). The Governing Body may also decide to refer a question to a preparatory technical conference (Constitution, article 14(2); SO, articles 34(3) and 36). The Conference itself may also, by two-thirds of the votes cast by the delegates present, decide to include a subject on the agenda of the following session (Constitution, article 16(3)).

### Double discussion procedure

3. These are the stages in a *double discussion*:<sup>3</sup>
  - (a) The Office prepares a report on law and practice in the different countries, together with a questionnaire. The report and questionnaire request governments to consult the most representative organizations of employers and workers before finalizing their

<sup>1</sup> As, occasionally, are Protocols, which are partial and optional revisions or amendments of earlier Conventions.

<sup>2</sup> Standing Orders of the International Labour Conference, incorporating relevant Standing Orders of the Governing Body.

<sup>3</sup> The normal time limits for the various stages in this procedure may be varied where a question has been included on the agenda less than 18 months before the opening of the session at which the first discussion is to take place or where less than 11 months separate the two sessions concerned (SO, article 39(5) and (8)).

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replies and are communicated to governments at least 18 months before the relevant session of the Conference (SO, article 39(1)).

- (b) To be reflected in the report, governments' replies must reach the Office not less than 11 months before the relevant session (SO, article 39(2)). In the case of federal countries and countries where it is necessary to translate questionnaires into the national language, the period of seven months allowed for the preparation of replies shall be extended to eight months if the government concerned so requests.
- (c) The Office prepares a further report on the basis of replies received, indicating the principal questions for consideration by the Conference. This report is communicated to governments normally not less than four months before the relevant session (SO, article 39(3)).
- (d) These reports are considered by the Conference – usually in committee – and if the Conference decides the matter is suitable for a Convention or Recommendation it adopts conclusions and either decides to include the question on the agenda of its following session or asks the Governing Body to include it on the agenda of a later session (SO, article 39(4)(a), (b)).
- (e) On the basis of both the replies and the first Conference discussion, the Office drafts Conventions or Recommendations and communicates them to governments within two months of the end of the Conference session (SO, article 39(6)).<sup>4</sup>
- (f) Governments are again asked to consult the most representative organizations of employers and workers and have three months to suggest amendments and make comments (SO, article 39(6)).
- (g) On the basis of further government replies, a final report containing the amended text of Conventions or Recommendations is communicated to governments at least three months before the session of the Conference at which they are to be discussed (SO, article 39(7)).
- (h) The Conference decides whether to base its second discussion on the Conventions or Recommendations drafted by the Office and how to consider them – usually in committee in the first place. Each clause of a Convention or Recommendation is placed before the Conference for adoption, and the drafts thus adopted are referred to the Drafting Committee for preparation of final texts.<sup>5</sup> Texts of instruments approved by the Drafting Committee are submitted to the Conference for final adoption in accordance with article 19 of the Constitution (see paragraph 1 above and SO, article 40).
- (i) The Conference may, if it rejects a Convention contained in the report of a committee, refer it again to the committee for transformation into a Recommendation (SO, article 40(6)).

<sup>4</sup> If there is less than 11 months between the two sessions, a programme of reduced intervals may be approved by the Governing Body or its Officers (SO, article 39(8)). At the same time as it asks governments for their comments on proposed Conventions and Recommendations, the Office consults the United Nations and other specialized agencies as to any proposed provisions affecting their activities and brings any comments they make before the Conference together with the government replies (SO, article 39bis).

<sup>5</sup> See SO, article 6.

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- (j) If a Convention fails on a final vote to obtain the necessary two-thirds majority but does obtain a simple majority, the Conference decides whether to refer it to the Drafting Committee for redrafting as a Recommendation (SO, article 41).

## Single discussion procedure

### 4. These are the stages in a *single discussion*:<sup>6</sup>

- (a) The Office prepares a summary report on law and practice in the different countries, together with a questionnaire with a view to the preparation of Conventions or Recommendations,<sup>7</sup> for communication to governments at least 18 months before the relevant Conference session. Governments are requested to consult the most representative organizations of employers and workers (SO, article 38(1)).<sup>8</sup>
- (b) Governments' replies must reach the Office not less than 11 months before the relevant session (SO, article 38(1)).
- (c) On the basis of governments' replies, a final report containing the text of Conventions or Recommendations<sup>9</sup> is communicated to governments at least four months before the opening of the Conference session (SO, article 38(2)).
- (d) If the question has been considered at a preparatory technical conference, the Office may either, according to Governing Body decision, communicate to governments a summary report and questionnaire (see (a) and (b) above); or, on the basis of the work of the preparatory technical conference, draft a final report (see (c) above – SO, article 38(4)).
- (e) The final consideration and adoption of Conventions and Recommendations under the single-discussion procedure follow paragraph 3(h) to (j) above.

## Review of international labour standards

- 5. The Standards Review Mechanism Tripartite Working Group (SRM TWG) was established in 2015 with a mandate to review the international labour standards to ensure that the body of standards is robust and responsive to the constantly changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.<sup>10</sup> Its initial programme of work is composed of 235 international

<sup>6</sup> The normal time limits for the various stages in this procedure may be varied where a question has been included on the agenda less than 26 months before the opening of the session at which the discussion is to take place, and a programme of reduced intervals may be approved by the Governing Body or its Officers (SO, article 38(3)).

<sup>7</sup> Or a Protocol.

<sup>8</sup> At the same time as it asks governments for their comments on proposed Conventions and Recommendations, the Office consults the United Nations and other specialized agencies as to any proposed provisions affecting their activities and brings any comments they make before the Conference together with the government replies (SO, article 39bis).

<sup>9</sup> Or Protocols.

<sup>10</sup> See the terms of reference of the SRM TWG: [GB.325/LILS/3](#).

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labour standards,<sup>11</sup> 68 of which were referred to the Special Tripartite Committee established for addressing matters relating to the Maritime Labour Convention (MLC, 2006).<sup>12</sup> Pursuant to its terms of reference, the SRM TWG's mandate is to review standards with a view to making recommendations to the Governing Body on:<sup>13</sup>

- (a) the status of the standards examined, including up-to-date standards, standards in need of revision, outdated standards, and possible other classifications;
- (b) the identification of gaps in coverage, including those requiring new standards;
- (c) practical and time-bound follow-up action, as appropriate.

## **Revision of Conventions and Recommendations**<sup>14</sup>

6. Separate procedures for the revision of Conventions and Recommendations are included in articles 43–45 of the Standing Orders. However, they are substantially the same as those described in paragraphs 3 and 4 above, and in practice reference is made to the same articles of the Standing Orders.

## **Abrogation or withdrawal of Conventions and Recommendations**

7. At its 85th Session (June 1997), the Conference adopted amendments to the Constitution of the Organization adding a ninth paragraph to article 19 and to the Standing Orders of the Conference (a new article 11 and a new article 45bis of the Standing Orders). A Convention is considered as being obsolete “if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation” (article 19, paragraph 9, of the Constitution).<sup>15</sup> The abrogation procedure applies to Conventions that are in force. Withdrawal applies to Conventions that are not in force and to Recommendations. Abrogation and withdrawal are covered by the same procedural guarantees and have the same legal effect of removing the standard in question from the body of international labour standards.<sup>16</sup>

<sup>11</sup> Note that the number of instruments included in the SRM TWG's initial programme of work was amended from 231 to 235 at the second meeting of the SRM TWG.

<sup>12</sup> [GB.326/LILS/3/2](#).

<sup>13</sup> Para. 9 of the terms of reference of the SRM TWG.

<sup>14</sup> See also Chapter IX of this Handbook.

<sup>15</sup> See also section 5.4 of the [Standing Orders of the Governing Body](#) establishing the procedure for the placing of an item on the agenda of the Conference concerning the abrogation or withdrawal of instruments.

<sup>16</sup> For information on abrogation and withdrawal of specific instruments, see [NORMLEX](#).

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## Languages

8. French and English authentic texts of Conventions and Recommendations <sup>17</sup> are adopted. Official translations may be drawn up by the Office and considered by governments concerned as authoritative (SO, article 42).

## Special circumstances taken into account

9. Article 19 of the Constitution also provides:

3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

For this reason the law and practice reports and questionnaires, prepared by the Office in accordance with paragraphs 3 and 4 above, request governments to indicate national particularities which might make practical application of instruments envisaged difficult; and to suggest ways of dealing with this. Employers', workers' and governments' delegates at the Conference are also able to draw attention to special national conditions which should be taken into account when new standards are drafted.

## Flexibility devices

10. Various means have been used by the Conference to ensure the flexibility of international labour standards. For example:
- (a) clauses laying down modified standards for named countries. <sup>18</sup> These have not been used recently by the Conference;
  - (b) adoption of a Convention laying down principles together with (or later supplemented by) a Recommendation giving guidance on technical and practical details of implementation;
  - (c) definition of standards in broad wording – for example, fixing aims of social policy – which leaves it to national conditions and practices, often after consultation of employers' and workers' organizations, to determine the methods of application (laws, regulations, collective agreements, etc.);
  - (d) division of Conventions into Parts or Articles, the obligations of only some of which need to be accepted at the time of ratification, thus allowing future extension of obligations as social legislation and ability to implement improve; <sup>19</sup>

<sup>17</sup> And Protocols.

<sup>18</sup> See, for example, Articles 9 to 13 of the [Hours of Work \(Industry\) Convention, 1919 \(No. 1\)](#).

<sup>19</sup> See, for example, Article 2 of the [Social Security \(Minimum Standards\) Convention, 1952 \(No. 102\)](#).

- 
- (e) division of Conventions into alternative Parts, the extent or level of obligation varying according to which Parts are accepted;<sup>20</sup>
  - (f) clauses allowing (sometimes temporarily) acceptance of a specified lower standard by countries where, for example, no legislation on the subject in question existed prior to ratification or where the economy or administrative or medical facilities are insufficiently developed;<sup>21</sup>
  - (g) clauses allowing exclusion of, for example, specified categories of occupations or enterprises or sparsely populated or undeveloped areas;<sup>22</sup>
  - (h) clauses allowing separate acceptance of obligations in respect of persons employed in specified economic sectors;<sup>23</sup>
  - (i) clauses designed to keep abreast of advances of medical science by referring to the most recent edition of a reference work, or keeping a matter under review in the light of current knowledge;<sup>24</sup>
  - (j) adoption of an optional Protocol to a Convention, either enabling ratification of the Convention itself with increased flexibility or extending the obligations of the Convention;<sup>25</sup>
  - (k) clauses in a Convention which partially revise an earlier Convention, by introducing alternative and more modern obligations, while leaving the Convention open to ratification still in its unrevised form.<sup>26</sup>

## **Conventions and Recommendations as minimum standards**

### **11. Article 19 of the Constitution further provides:**

8. In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

<sup>20</sup> See, for example, Article 2 of the [Fee-Charging Employment Agencies Convention \(Revised\), 1949 \(No. 96\)](#).

<sup>21</sup> See, for example, Article 2 of the [Minimum Age Convention, 1973 \(No. 138\)](#).

<sup>22</sup> See, for example, Article 17 of the [Protection of Wages Convention, 1949 \(No. 95\)](#).

<sup>23</sup> See, for example, Article 3 of the [Weekly Rest \(Commerce and Offices\) Convention, 1957 \(No. 106\)](#).

<sup>24</sup> See, for example, Guideline B4.1.1, paragraph 2, of the [Maritime Labour Convention, 2006, as amended \(MLC, 2006\)](#).

<sup>25</sup> See, for example, the [Protocol of 1982 to the Plantations Convention, 1958](#) and the [Protocol of 1995 to the Labour Inspection Convention, 1947](#).

<sup>26</sup> See, for example, Article 3(6) and (7) of the [Protection of Workers' Claims \(Employer's Insolvency\) Convention, 1992 \(No. 173\)](#).

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## Consultation of employers' and workers' organizations

12. In addition to the provisions of the Standing Orders referred to under paragraphs 3 and 4 above, Article 5(1)(a) of the [Tripartite Consultation \(International Labour Standards\) Convention, 1976 \(No. 144\)](#) and Paragraph 5(a) of the [Tripartite Consultation \(Activities of the International Labour Organisation\) Recommendation, 1976 \(No. 152\)](#), provide that consultations of employers' and workers' representatives should be held on government replies to questionnaires concerning items on the agenda of the Conference and government comments on proposed texts to be discussed.

### Calendar of action – Adoption of Conventions and Recommendations

(this describes the double-discussion procedure and will be simplified in cases of single discussion)

Period	ILO action	Action by national administrations
November (year 1) and March (year 2)	ILO Governing Body considers and decides agenda of ILO Conference in <i>year 4</i>	
November–December (year 2)	ILO circulates report on law and practice, with questionnaire on content of possible new instrument	Consult employers' and workers' organizations on replies (articles 38 and 39 of Conference Standing Orders and – for States parties to it – C.144)
By 30 June (year 3)		Prepare replies to questionnaire and send to the ILO by <i>30 June (year 3)</i> , at the latest
January–February (year 4)	ILO circulates report analysing replies, with proposed conclusions	Prepare position for Conference discussion
June (year 4)	International Labour Conference – <i>first discussion</i> of item	Participate in work of technical committee, as appropriate
August–September (year 4)	ILO circulates draft texts on basis of first discussion	Consult employers' and workers' organizations on comments (articles 38 and 39 of the Conference Standing Orders and – for States parties to it – C.144)
By 30 November (year 4)		Send any comments to the ILO by <i>30 November (year 4)</i> , at the latest
February–March (year 5)	ILO circulates revised texts, in light of comments received	Prepare position for Conference discussion
June (year 5)	International Labour Conference – <i>second discussion</i> and adoption	Participate in work of technical committee, as appropriate

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## II. Submission to the competent authorities

### Constitutional obligations

13. Conventions come into force for any State only through an act of ratification duly registered by the Director-General of the ILO. However, all member States have an obligation to submit Conventions and Recommendations <sup>29</sup> to the competent national authorities. The relevant provisions of article 19 of the Constitution are as follows:

5. In the case of a Convention:

- (a) the Convention will be communicated to all Members for ratification;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

...

6. In the case of a Recommendation:

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;

...

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system in whole or in part, for action by the constituent states provinces, or cantons rather than for federal action, the federal government shall –
  - (i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the

<sup>29</sup> And Protocols in as much as they constitute partial revisions of and can thus be assimilated to Conventions.



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session of the Conference to the appropriate federal, state provincial or cantonal authorities for the enactment of legislation or other action;

- (ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;
- (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them.<sup>30</sup>

...

## Governing Body Memorandum

14. In order to facilitate the uniform presentation of information supplied by governments as to measures taken to comply with the provisions cited in paragraph 12 above, the Governing Body adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*. A revised version of the Memorandum was adopted by the Governing Body in March 2005.<sup>31</sup> The Memorandum recalls the relevant provisions of the Constitution and cites extracts from reports of the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards intended to clarify the aims and objectives of submission, the nature of the obligation and a series of requests for information. The tripartite consultations that should be held in relation to the obligation of the submission to national competent authorities of the instruments adopted by the Conference are also recalled. The content of the Memorandum<sup>32</sup> is as follows:

### I. AIMS AND OBJECTIVES OF SUBMISSION

- (a) The main aim of submission is to promote measures at the domestic level for the implementation of Conventions and Recommendations. Furthermore, in the case of Conventions, the procedure also aims to promote ratification.
- (b) Governments remain entirely free to propose any action which they may judge appropriate in respect of Conventions or Recommendations. The aim of submission is to encourage a rapid and responsible decision by each member State on instruments adopted by the Conference.
- (c) The obligation of submission is a fundamental element of the standards system of the ILO. One purpose of this obligation was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body.
- (d) The obligation of submission reinforces the relations between the Organization and the competent authorities and stimulates tripartite dialogue at the national level.

<sup>30</sup> In addition, article 35, para. 4, of the Constitution provides: “Where the subject-matter of the Convention is within the self-governing powers of any non-metropolitan territory the Member responsible for the international relations of that territory shall bring the Convention to the notice of the government of the territory as soon as possible with a view to the enactment of legislation or other action by such government ...”.

<sup>31</sup> GB.292/LILS/1(Rev.) and GB.292/10(Rev.), Appendix I.

<sup>32</sup> *Memorandum concerning the obligation of submission to the competent authorities*, ILO, Geneva 2005.

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## II. NATURE OF THE COMPETENT AUTHORITY

- (a) The competent authority is the authority which, under the Constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations.
- (b) The competent national authority should normally be the legislature.
- (c) Even in cases where, under the terms of the Constitution of the Member, legislative power is held by the executive, it is in conformity with the spirit of the provisions of article 19 of the Constitution of the ILO and of practice to arrange for the examination of the instruments adopted by the Conference by a deliberative body, where one exists. Discussion in a deliberative assembly, or at least information of the assembly, can constitute an important factor in the complete examination of a question and in a possible improvement of the measures taken at the domestic level to give effect to the instruments adopted by the Conference. With respect to Conventions, it could lead to a decision as to their ratification.
- (d) In the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the issues addressed by the Conference. This process ensures that the instruments are widely disseminated among the public, which is one of the purposes of the obligation of submission.

## III. EXTENT OF THE OBLIGATION TO SUBMIT

- (a) Article 19 of the Constitution lays down the obligation to place before the competent authorities *all* instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations.
- (b) Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments and on the effect that they consider it appropriate to give to the instruments adopted by the Conference. The obligation to submit the instruments does not imply any obligation to propose the ratification of Conventions or to accept the Recommendations.

## IV. FORM OF SUBMISSION

- (a) Since article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities, the submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments.
- (b) The essential points to bear in mind are: (a) that, at the time of or subsequent to the submission of Conventions and Recommendations to the legislative authorities, Governments should either indicate what measures might be taken to give effect to these instruments or propose that no action should be taken or that a decision should be postponed; and (b) that there should be an opportunity to take up the matter for debate within the legislature.

## V. TIME LIMITS

- (a) In order that the competent national authorities may be kept up to date on the standards adopted at the international level which may require action by each State to give effect to them at the national level, submission should be made as early as possible and in any case within the time limits set by article 19 of the Constitution.
- (b) In virtue of the formal provisions of article 19 of the Constitution, the submission of texts adopted by the Conference to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference. This provision applies not only to non-federal but also to federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal Government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that States Members have respected the prescribed time limits, the Committee considers that it would be advisable for the date on which the decisions of the Conference have been submitted to the competent authorities to be indicated in the communication to the Director-General.

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## VI. OBLIGATIONS OF FEDERAL STATES

As regards federal States, the Committee wishes to point out that under article 19 of the Constitution, paragraph 7(b)(i), whenever action by the constituent states, provinces or cantons is considered “appropriate”, the Government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the “appropriate authorities” of the constituent states, provinces or cantons for the enactment of legislation or other action.

## VII. TRIPARTITE CONSULTATIONS

- (a) For those States which have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of Convention No. 144).
- (b) The representative organizations of employers and workers must be consulted beforehand. The effectiveness of consultations presupposes that the representatives of employers and of workers have at their disposal sufficiently in advance all the elements necessary for them to reach their opinions before the Government finalizes its definitive decision.
- (c) Members which have not ratified Convention No. 144 may refer to the relevant provisions of that Convention and to those of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).
- (d) The representative organizations of employers and workers will be requested to make known their point of view on the action to be taken with regard to new instruments independently. Fulfilment of the submission procedure is an important moment of dialogue among government authorities, the social partners and parliamentarians.

## VIII. COMMUNICATION TO THE REPRESENTATIVE ORGANIZATIONS OF EMPLOYERS AND WORKERS

- (a) Under article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must be sent also to the representative organizations of employers and workers.
- (b) This provision is designed to enable the representative organizations of employers and workers to formulate their own observations on the action that has been taken or is to be taken with regard to the instruments in question.

## Office procedures

- 15. (a) Copies of Conventions and Recommendations are sent to governments, immediately after the Conference adopts them, by letter or email communication recalling the obligations as to submission under article 19 of the Constitution. The Governing Body Memorandum is attached to this communication. Copies of the same documents are also transmitted to the most representative organizations of employers and workers.
- (b) One year after the close of the session of the Conference at which the instruments were adopted, a reminder is addressed to all governments which have not supplied the information requested.
- (c) When 18 months have elapsed since the close of the relevant session of the Conference and the information has still not been supplied, a further reminder is sent.
- (d) In response to the Committee of Experts’ request, the Office, when it receives information as to submission of instruments to the competent authorities, checks to see whether the information and documents requested in the Governing Body Memorandum – including replies to any observations or direct requests of the Committee of Experts or to observations made by the Conference Committee – have been supplied. If they have not been transmitted, the Office will, as a routine

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administrative step, request the government concerned to convey the requested information. The information supplied is then examined by the relevant supervisory bodies.

### **Consultation of employers' and workers' organizations**

16. Article 5, paragraph 1(b), of Convention No. 144 and Paragraph 5(b) of Recommendation No. 152 require consultation of representatives of employers' and workers' organizations on the proposals to be made to the competent authorities in connection with the submission of Conventions and Recommendations. Part V of the questionnaire at the end of the revised Memorandum asks the governments concerned to indicate whether prior consultations took place and, if applicable, the nature and scope of those consultations.

### **Communication to representative organizations and observations received from them**

17. Article 23, paragraph 2, of the Constitution provides that all governments must communicate to the most representative organizations of employers and workers copies of the information supplied under article 19. Moreover, under Part VI of the questionnaire at the end of the Governing Body's Memorandum, governments should inform the Office of the organizations to which copies of the information have been transmitted. The Memorandum also requests governments to provide information concerning any observations received from employers' or workers' organizations as to the effect given or to be given to the instruments submitted.

### **Summary**

18. Article 23, paragraph 1, of the Constitution provides for summaries of the information supplied under article 19 to be presented to the next meeting of the Conference. Those summaries appear in Appendices IV, V and VI to Report III (Part A).

### **Office assistance**

19. Governments and representative organizations of employers and workers may, on request, obtain from the International Labour Office information and sample documents showing the manner in which other countries fulfil their submission obligation.

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**Calendar of action – Submission of Conventions, Protocols,  
and Recommendations to the competent authorities**

<b>Period</b>	<b>ILO action</b>	<b>Action by national administrations</b>
August	ILO circulates newly adopted standards, with Governing Body Memorandum on submission to the competent authorities	Study instruments and compare national legislation and practice. States parties to C.144: consult employers' and workers' organizations on the proposals to be made Prepare document summarizing the position and proposals for further national action (if appropriate) and on possible ratification of Conventions
By June (or, exceptionally, December) of following year		Submit to the competent legislative authorities by <i>June</i> (or, exceptionally, <i>December</i> ) of following year Report to the ILO, in accordance with questionnaire in Governing Body Memorandum, on measures taken to submit the instruments to the competent authorities. Send copies to employers' and workers' organizations

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### III. Ratification of Conventions and acceptance of obligations

#### Procedure

20. Article 19 of the Constitution provides:

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...

- (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention.

#### Form of communication of ratifications <sup>33</sup>

21. No specific requirements as to form are laid down in the Constitution. Each State will have its own constitutional provisions and practice. In order to be registered, an instrument of ratification must nevertheless:

- (a) clearly identify the Convention being ratified;
- (b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Labour);
- (c) clearly convey the Government's intention that the State should be bound by the Convention concerned and its undertaking to fulfil the Convention's provisions, preferably with a specific reference to article 19(5)(d) of the ILO Constitution.

An instrument of ratification must always be communicated to the Director-General of the ILO, in order for the ratification to become effective in *international* law. If this is not done, it may be that a Convention is regarded by a State as "ratified" in its *internal* legal system, but this will be of no effect in the *international* legal system. An instrument of ratification might thus contain the following statement: "The Government of ... hereby ratifies the ... Convention and undertakes, in accordance with article 19, para. 5(d), of the Constitution of the ILO, to fulfil its obligations in this respect".

#### Compulsory declarations to be included in or accompany the instrument of ratification

22. Several Conventions require *declarations* to be made either in the instrument of ratification itself or in an accompanying document. If no such *declaration* is received by the Office, the ratification cannot be registered. In some cases, a compulsory *declaration* will define the scope of the obligations accepted or give other essential specifications. In all these cases, the substance of the *declaration* has to be considered before the instrument of ratification is prepared and the necessary indications either included in or attached to the instrument of ratification. The Conventions in question that are open for ratification are as follows:

<sup>33</sup> See Appendix I for a model instrument.

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- (i) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 2(b);
  - (ii) Convention No. 115: Radiation Protection, 1960 – Article 3, paragraph 3(c);
  - (iii) Convention No. 118: Equality of Treatment (Social Security), 1962 – Article 2, paragraph 3;<sup>34</sup>
  - (iv) Convention No. 123: Minimum Age (Underground Work), 1965 – Article 2, paragraph 2;
  - (v) Convention No. 128: Invalidity, Old-Age and Survivors' Benefit, 1967 – Article 2, paragraph 2;
  - (vi) Convention No. 132: Holidays with Pay (Revised), 1970 – Article 3, paragraphs 2 and 3, and Article 15, paragraph 2;
  - (vii) Convention No. 138: Minimum Age, 1973 – Article 2;
  - (viii) Convention No. 160: Labour Statistics, 1985 – Article 16, paragraph 2;
  - (ix) Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992 – Article 3, paragraph 1;
  - (x) Convention No. 183: Maternity Protection, 2000 – Article 4, paragraph 2;
  - (xi) Maritime Labour Convention, 2006, as amended (MLC, 2006) – Standard A4.5, paragraph 10.

### **Optional declarations to be included in or to accompany ratifications**

23. In the case of some Conventions (and Protocols) a *declaration* is needed only where the ratifying State wishes to make use of permitted exclusions, exceptions or modifications. When this applies, the *declaration* must be included in or attached to the instrument of ratification: if the instrument of ratification is received by the Office without any qualifying *declaration*, the ratification will be duly registered as it stands and the exclusion, exception or modification will no longer be available. The Conventions in question that are open for ratification are as follows:

- (i) Convention No. 77: Medical Examination of Young Persons (Industry), 1946 – Article 9, paragraph 1;

<sup>34</sup> (a) When a member State ratifies this Convention, it should also communicate to the Office a confirmation in terms of Article 2, para. 1, that it has “in effective operation legislation covering its own nationals within its own territory” in the branch or branches of social security in respect of which it is accepting the obligations of the Convention. A similar confirmation should be given in the case of a notification of acceptance of further obligations under Article 2, para. 4. (b) Each Member accepting the obligations of the Convention in respect of *any* branch of social security which has legislation providing for benefits of the type indicated in Article 2, para. 6(a) or (b), must at the time of ratification communicate to the Office a *statement* indicating such benefits. Under Article 2, para. 7, a similar statement should be made on any subsequent notification of acceptance of the Convention's obligations under Article 2, para. 4, or within three months of the adoption of relevant legislation. Though such *statements* are compulsory, they are for information purposes and failure to make them does not invalidate the ratification or notification.

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- (ii) Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946 – Article 9, paragraph 1;
  - (iii) Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946 – Article 7, paragraph 1;
  - (iv) Convention No. 81: Labour Inspection, 1947 – Article 25, paragraph 1; Protocol of 1995 – Article 2, paragraph 1;
  - (v) Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948 – Article 7, paragraph 1;
  - (vi) Convention No. 97: Migration for Employment (Revised), 1949 – Article 14, paragraph 1;
  - (vii) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 3, paragraph 1;
  - (viii) Convention No. 106: Weekly Rest (Commerce and Offices), 1957 – Article 3, paragraph 1;
  - (ix) (a) Convention No. 110: Plantations, 1958 – Article 3, paragraph 1(b);  
(b) Protocol to Convention No. 110 – Article 1;
  - (x) Convention No. 119: Guarding of Machinery, 1963 – Article 17, paragraph 1;
  - (xi) Convention No. 121: Employment Injury Benefits, 1964 – Article 2, paragraph 1, and Article 3, paragraph 1;
  - (xii) Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967 – Article 4, paragraph 1, Article 38 and Article 39;
  - (xiii) Convention No. 130: Medical Care and Sickness Benefits, 1969 – Article 2, paragraph 1, Article 3, paragraph 1, and Article 4, paragraph 1;
  - (xiv) Convention No. 138: Minimum Age, 1973 – Article 5, paragraph 2;
  - (xv) Convention No. 143: Migrant Workers (Supplementary Provisions), 1975 – Article 16, paragraph 1;
  - (xvi) Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977 – Article 2;
  - (xvii) Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979 – Article 9, paragraph 2;
  - (xviii) Convention No. 168: Employment Promotion and Protection (Unemployment), 1988 – Article 4, paragraph 1, and Article 5, paragraphs 1 and 2;
  - (xix) Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992 – Article 3, paragraph 3;
  - (xx) Convention No. 185: Seafarers' Identity Documents (Revised), 2003 – Article 9.



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## Optional declarations concerning the scope of a Convention

24. For all the cases referred to in paragraphs 21 and 22 above, a Member which has made use of the option to limit the scope of the Convention's application to it may subsequently modify, cancel or withdraw such limitation: this is done by a further *declaration, notification or statement of renunciation in a report under article 22 of the Constitution*, as the case may be according to each Convention. In addition, the following provide for *declarations* to extend the scope of the Convention's application by the State concerned either at the time of ratification or at any subsequent time:<sup>35</sup>
- (i) Convention No. 129: Labour Inspection (Agriculture), 1969 – Article 5, paragraph 1;
  - (ii) Convention No. 146: Seafarers' Annual Leave with Pay, 1976 – Article 2, paragraphs 4, 5 and 6;
  - (iii) Convention No. 172: Working Conditions (Hotels and Restaurants), 1991 – Article 1, paragraphs 2 and 3;
  - (iv) Protocol of 1996 to Convention No. 147: Merchant Shipping (Minimum Standards), 1976 – Article 3;
  - (v) Convention No. 176: Safety and Health in Mines, 1995 – Article 2;
  - (vi) Convention No. 181: Private Employment Agencies, 1997 – Article 2, paragraph 5;
  - (vii) Convention No. 183: Maternity Protection, 2000 – Article 2, paragraph 3;
  - (viii) Convention No. 184: Safety and Health in Agriculture, 2001 – Article 3;
  - (ix) Convention No. 188: Work in Fishing, 2007 – Article 3.

## Ratification of Protocols

25. A Protocol is an instrument which partially revises a Convention. It is open to ratification by a State already bound by or simultaneously ratifying and becoming bound by the Convention in question. Two Protocols so far adopted by the Conference effectively introduce greater flexibility into the two respective Conventions. They are:

- (i) P089 – Protocol of 1990 to the Night Work (Women) Revised Convention, 1948;
- (ii) P110 – Protocol of 1982 to the Plantations Convention, 1958.

Four other Protocols extend the obligations under the corresponding Conventions:

- (iii) P081 – Protocol of 1995 to the Labour Inspection Convention, 1947;
- (iv) P147 – Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976;

<sup>35</sup> This does not include cases where *determinations* by a member may have the effect of extending the obligations of a Convention, although there is no provision for a formal *declaration*, such as in the case of Convention No. 111, Article 1, para. 1(b).

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- (v) P155 – Protocol of 2002 to the Occupational Safety and Health Convention, 1981;
  - (vi) P029 – Protocol of 2014 to the Forced Labour Convention, 1930.

### **Inadmissibility of reservations**

26. Conventions contain various provisions ensuring flexibility (see paragraphs 8 and 9 above), including some specifically enabling ratifying States to limit or qualify the obligations assumed on ratification (paragraphs 21–24). However, no limitations on the obligations of a Convention other than those specifically provided for (i.e. no *reservations*) are possible.

### **Registration of ratifications and acceptances of obligations**

27. The final provisions of all Conventions contain Articles on the registration of ratifications by the Director-General, their notification to member States and the communication of particulars to the Secretary-General of the United Nations for registration in accordance with article 102 of the United Nations Charter. All ratifications are reported to the Governing Body and are notified to member States through publication in the *Official Bulletin*. *Declarations* and other acts accepting or modifying obligations referred to in paragraphs 21–24 above are dealt with in the same way.

### **Entry into force**

28. Each Convention contains a provision as to how it comes into force. Most often, since 1928, Conventions come into force 12 months after registration of the second ratification and afterwards for each State 12 months after its ratification. Several maritime and some other Conventions contain different provisions. For instance, to come into force, the MLC, 2006, had to be ratified by at least 30 member States with a total share in the world gross tonnage of ships of 33 per cent. Until a Convention comes into force, it can have no effect in international law.

### **Obligations arising out of ratification**

29. The obligation under article 19, paragraph 5(d), of the Constitution is to “take such action as may be necessary to make effective the provisions” of a ratified Convention.<sup>36</sup> This means ensuring their implementation in practice, as well as giving them effect in law or other means that are in accordance with national practice (such as court decisions, arbitration awards or collective agreements).

### **Incorporation in internal law**

30. In some countries, the Constitution gives the force of internal law to ratified Conventions. In those cases, it will still be necessary to take specific measures:

<sup>36</sup> See also the obligation to report under article 22 of the Constitution (paras 35–46 below). With regard to the termination of obligations under a ratified Convention through *denunciation*, see paras 79–83 below.

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- (a) to eliminate any conflict between the provisions of the Convention and earlier national law and practice;
  - (b) to give effect to any provisions of the Convention which are not *self-executing* (e.g. provisions requiring given matters to be prescribed by national laws or regulations or determined by the competent authorities, or requiring special administrative arrangements);
  - (c) to prescribe penalties, where appropriate;
  - (d) to ensure that all interested persons and authorities (e.g. employers, workers, labour inspectors, courts, tribunals, other administrative bodies) are informed of the incorporation of the Convention into internal law and where necessary given guidance.

### **Consultation of employers' and workers' organizations**

31. Paragraph 5(c) of Recommendation No. 152 provides for consultation of representatives of employers' and workers' organizations, subject to national practice, on the preparation and implementation of legislative or other measures to give effect to Conventions – especially when ratified – and Recommendations. This applies in particular as regards measures implementing provisions as to consultation and collaboration with employers' and workers' representatives.

### **Non-metropolitan territories**

32. Article 35 of the Constitution provides for *declarations* to be made by member States as to the application of Conventions to non-metropolitan territories for whose international relations they are responsible.

### **Effect of withdrawal from the ILO**

33. Article 1, paragraph 5 (last sentence), of the Constitution provides:

... When a Member has ratified any international labour Convention, ... withdrawal (from the Organization) shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.

### **Information on ratifications**

34. Regularly updated information on ratifications and denunciations is available on the Office's website ([NORMLEX database](#)).

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## IV. Reports on ratified Conventions

### Obligation to report

35. Article 22 of the Constitution provides: <sup>37</sup>

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

### Reporting system

36. Over the years, <sup>38</sup> the Governing Body has approved the following arrangements for the submission of article 22 reports:

- (a) *Types of reports.* Detailed reports drawn up in accordance with the [report form](#) approved by the Governing Body of the ILO for each Convention are required in the following cases: <sup>39</sup>
  - (i) in the case of the first report which is requested the year following the entry into force of a Convention for a particular country;
  - (ii) at member States' own initiative if there have been significant changes in the application of a ratified Convention (for example, the adoption of substantial new legislation or other changes affecting the application of a Convention); and
  - (iii) where they are explicitly requested by the supervisory bodies, in particular the Committee of Experts on the Application of Conventions and Recommendations (by means of a footnote in an observation or direct request) <sup>40</sup> or the Conference Committee on the Application of Standards (when adopting its conclusions).

<sup>37</sup> The obligation under article 22 to report on the application of ratified Conventions is distinct from various other obligations laid down by individual Conventions, requiring information (such as statistics or labour inspection reports) to be regularly supplied to the International Labour Office. The obligations under individual Conventions are independent and remain unaffected by changes in the article 22 reporting system described here.

<sup>38</sup> The most recent Governing Body decisions on the reporting system were adopted in November 2018 (see [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#), para. 288). For previous decisions, see in particular: [GB.310/LILS/3/2](#) and [GB.310/11/2\(Rev.\)](#) (2011); [GB.298/LILS/4](#) and [GB.298/9\(Rev.\)](#) (2007); and [GB.282/LILS/5](#), [GB.282/8/2](#) and [GB.283/LILS/6](#) (2001 and 2002).

<sup>39</sup> For the content of a *detailed* report, see para. 37 below.

<sup>40</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part A), General Report, International Labour Conference, 108th (Centenary) Session, Geneva, 2019, paras 75–79.

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Except where a *detailed* report is expected, *simplified* reports can be submitted in accordance with the report form for simplified reports adopted by the Governing Body at its November 2018 session (see Appendix II of [GB.334/INS/5](#)).<sup>41</sup>

(b) *Reporting cycle*.<sup>42</sup> Reports are requested periodically on one of the following bases, on the understanding that the supervisory bodies may request reports outside the regular reporting cycle:

(i) *Three-year cycle*. Reports are requested every three years for the following 12 Conventions, which are considered to be *fundamental or governance Conventions*.<sup>43</sup>

Fundamental Conventions:

- *freedom of association and collective bargaining*: Conventions Nos 87 and 98;
- *abolition of forced labour*: Convention No. 29 and its Protocol, and Convention No. 105;
- *equality of opportunity and treatment*: Conventions Nos 100 and 111;
- *child labour*: Conventions Nos 138 and 182.

Governance Conventions:

- *employment policy*: Convention No. 122;
- *labour inspection*: Convention No. 81 and its Protocol, and Convention No. 129;
- *tripartite consultations*: Convention No. 144.

(ii) *Six-year cycle*. Reports are requested every six years for the other Conventions, in accordance with their arrangement by subject matter:

- *freedom of association (agriculture, non-metropolitan territories)*: Conventions Nos 11, 84 and 141;
- *industrial relations*: Conventions Nos 135, 151 and 154;
- *protection of children and young persons*: Conventions Nos 5, 6, 10, 33, 59, 77, 78, 79, 90, 123 and 124;
- *employment promotion*: Conventions Nos 2, 88, 96, 159 and 181;
- *vocational guidance and training (skills)*: Conventions Nos 140 and 142;

<sup>41</sup> For the content of a *simplified* report, see para. 38 below.

<sup>42</sup> See Appendix II (reporting cycle, as adopted in November 2018).

<sup>43</sup> The Governing Body may periodically review the list of Conventions for which reports are required every three years.

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- *security of employment*: Convention No. 158;
  - *social policy*: Conventions Nos 82, 94 and 117;
  - *wages*: Conventions Nos 26, 95, 99, 131 and 173;
  - *working time*: Conventions Nos 1, 14, 30, 47, 52, 89, 101, 106, 132, 153, 171 and 175;
  - *workers with family responsibilities*: Convention No. 156;
  - *migrant workers*: Conventions Nos 97 and 143;
  - *occupational safety and health*: Conventions Nos 13, 45, 62, 115, 119, 120, 127, 136, 139, 148, 155, 161, 162, 167, 170, 174, 176, 184 and 187;
  - *social security*: Conventions Nos 12, 17, 18, 19, 24, 25, 42, 102, 118, 121, 128, 130, 157 and 168;
  - *maternity protection*: Conventions Nos 3, 103 and 183;
  - *labour administration*: Conventions Nos 63, 85, 150 and 160;
  - *seafarers*: Conventions Nos 7, 8, 9, 16, 22, 23, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 134, 145, 146, 147, 163, 164, 165, 166, 178, 179, 180, 185 and the MLC, 2006;
  - *fishers*: Conventions Nos 112, 113, 114, 125, 126 and 188;
  - *dockworkers*: Conventions Nos 27, 32, 137 and 152;
  - *indigenous and tribal peoples*: Conventions Nos 107 and 169;
  - *other specific categories of workers*: Conventions Nos 110, 149, 172, 177 and 189.

(iii) *Non-periodic reports*. Reports on the application of a ratified Convention may be requested outside of the regular reporting cycle in the following cases:

- when the Committee of Experts (by means of a footnote in an observation or direct request) <sup>44</sup> or the Conference Committee (when adopting its conclusions) so requests;
- when the Governing Body so requests, following proceedings instituted under articles 24 or 26 of the Constitution or before the Committee on Freedom of Association; <sup>45</sup>
- when a report requested is not submitted or when no reply is provided to comments made by the supervisory bodies (it should be noted that compliance with reporting obligations is supervised by the Committee of Experts and the Conference Committee and that failure to supply reports or information does not

<sup>44</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., paras 75–79.

<sup>45</sup> In this respect, see paras 84–95 below.

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prevent examination of the application of ratified Conventions by the supervisory bodies, as explained in paragraph 38 below).

- (c) *Exemption from reporting.* The following Conventions are not subject to reporting under article 22 of the Constitution: Conventions which have been abrogated (Conventions Nos 4, 15, 21, 41, 50, 64, 65, 67, 86 and 104); Conventions which have been withdrawn (Conventions Nos 31, 46, 51, 61 and 66); Conventions which have not entered into force (Conventions Nos 54, 57, 70, 72, 75, 76, 93 and 109); and Conventions on the final Articles (Conventions Nos 80 and 116). Moreover, subject to the conditions and safeguards laid down by the Governing Body,<sup>46</sup> no reports are requested on certain Conventions, particularly those which have been shelved.<sup>47</sup>

## Detailed reports

37. A *detailed* report should be in the [form approved by the Governing Body for each Convention](#). The form sets out the substantive provisions of the Convention, information on which has to be supplied. It includes specific questions as to some of the substantive provisions, designed to aid in the preparation of information which will enable the supervisory bodies to appreciate the manner in which the Convention is applied. A typical report form also contains questions on the following matters:

- (a) *Laws, regulations, etc.* All relevant legislation or similar provisions should be listed and – unless this has already been done – copies supplied.
- (b) *Permitted exclusions, exceptions or other limitations.* Several Conventions allow given categories of people, economic activities or geographical areas to be exempted from application, but require a ratifying State which intends to make use of such limitations to indicate *in its first article 22 report* the extent to which it has recourse to them. It is therefore essential for the first report to include indications in this respect, since, if it does not, the limitations will no longer be possible. The same Conventions may call for information to be included in subsequent article 22 reports indicating the extent to

<sup>46</sup> In March 1996, the Governing Body confirmed the suspension of requests for reports on certain Conventions which no longer appeared to be up-to-date, subject to the conditions and safeguards established at its 229th Session (February–March 1985). Para. 4 of document GB.229/10/9 reads as follows:

- “(a) Should circumstances change so as to give renewed importance to any of the Conventions concerned, the Governing Body could again require detailed reports to be presented on their application.
- (b) Employers’ and workers’ organizations would remain free to present comments on problems encountered in the fields covered by the Conventions concerned. In accordance with established procedures, these comments would be considered by the Committee of Experts on the Application of Conventions and Recommendations, which could request such information (including a detailed report) as it might deem appropriate.
- (c) On the basis of information given in the general reports or otherwise at its disposal (for example, legislative texts), the Committee of Experts would be free at any time to make comments and to request information concerning the application of the Conventions concerned, including the possibility to ask for a detailed report.
- (d) The right to invoke the constitutional provisions relating to representations and complaints (articles 24 and 26) in respect of the Conventions concerned would remain unaffected.”

<sup>47</sup> The following Conventions have been shelved and reports are no longer requested on them on a regular basis: Conventions Nos 20, 28, 34, 35, 36, 37, 38, 39, 40, 43, 44, 48, 49, 60 and 91. The shelving of Conventions is without incidence as to their effects on the legal systems of the member States which have ratified them.

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which effect is nevertheless given to the Convention in respect of the excluded persons, activities or areas.

- (c) *Implementation of the Convention.* Detailed information should be given *for each Article* on the provisions of legislation or other measures applying it. Some Conventions ask for particular information to be included in reports (as to the practical application of the Convention or certain Articles).
- (d) *Effect of ratification.* Information is asked for as to any constitutional provisions giving the ratified Convention the force of national law and any additional measures taken to make the Convention effective.
- (e) *Comments by the supervisory bodies.* The report must contain replies to any comments regarding the application of the Convention which have been made by the Committee of Experts (observations or direct requests) or by the Conference Committee (in its conclusions). Where follow-up to other supervisory procedures (articles 24 or 26 of the Constitution; CFA) is sent to the Committee of Experts, the requested information should also be provided.
- (f) *Enforcement.* Governments are asked to indicate the authorities responsible for administration and enforcement of the relevant laws, regulations, etc., and to supply information on their activities. Copies of the authorities' own reports may be appended or – if they have already been supplied – referred to.
- (g) *Judicial or administrative decisions.* Governments are asked to supply either a copy or a summary of relevant decisions.
- (h) *General appreciation.* Governments are asked to give a general assessment of how the Convention is applied, with extracts from any official reports, statistics of workers covered by the legislation or collective agreements, details of contraventions of the legislation, prosecutions, etc.
- (i) *Observations by employers' and workers' organizations.* Any observations made by or received from these organizations should be provided with any government response.
- (j) *Communication of copies of reports to employers' and workers' organizations.* The names of the organizations to which copies of the report are sent should be given.

## Simplified reports

38. In November 2018, the Governing Body adopted a new [report form for simplified reports](#).<sup>48</sup> Simplified reports will contain only:

- (a) *Replies to the comments of the supervisory bodies.* The report must contain replies to any comments regarding the application of the Convention which have been made by the Committee of Experts (observations or direct requests) or by the Conference Committee (in its conclusions). Where follow-up to other supervisory procedures (article 24 or 26 of the Constitution; CFA) is sent to the Committee of Experts, the requested information should also be provided.
- (b) *Laws, regulations, etc.* Information on whether any changes have occurred in legislation and practice affecting the application of the Convention and on the nature

<sup>48</sup> See Appendix III.



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and effect of such changes (if the changes are significant, a *detailed* report should be provided).

- (c) *Implementation of the Convention.* Statistical or other information and communications prescribed by the Convention in question (including required information on any permitted exclusions).
- (d) *Communication of copies of reports to employers' and workers' organizations.* The names of the employers' and workers' organizations to which copies of the simplified report have been addressed should be given.
- (e) *Observations of employers' and workers' organizations.* Any observations made by or received from these organizations should be provided with any government response.

## Addressing failure to report

- 39. Both the Committee of Experts and the Conference Committee supervise the respect by member States of their reporting obligations.
- 40. Each year, based on the information contained in the report of the Committee of Experts, as updated at the time of the Conference, the Conference Committee examines cases of failure to comply with reporting obligations, with particular reference to:
  - failure to supply reports for the past two years or more on the application of ratified Conventions;
  - failure to supply first reports on the application of ratified Conventions;
  - failure to supply information in reply to the comments of the Committee of Experts;
  - failure to submit to the competent authorities the instruments adopted by the Conference during at least seven sessions;
  - failure to supply reports for the past five years on unratified Conventions and Recommendations.
- 41. During its 88th (2017) and 89th (2018) sessions, the CEACR examined the way in which the question of serious failure to report was being addressed with a view to strengthening the supervision of ratified Conventions. The Committee decided to implement a new practice of “urgent appeals” where reports are not sent for a number of years. In all cases where article 22 reports have not been received for three consecutive years, the Committee of Experts will be issuing urgent appeals to the governments concerned. As a result, repetitions of previous comments will be limited to a maximum of three years, following which the Convention’s application will be examined in substance by the Committee on the basis of publicly available information, even if the government has not sent a report, thus ensuring a review of the application of ratified Conventions at least once within the regular reporting cycle.<sup>49</sup> The Conference Committee will have its attention drawn to the serious reporting failure and the urgent appeal when examining compliance with reporting obligations in June.

<sup>49</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 10.

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## Consultation of employers' and workers' organizations

42. Article 5, paragraph 1(d), of Convention No. 144 and Paragraph 5(e) of Recommendation No. 152 provide for consultation of representatives of employers' and workers' organizations on questions arising out of reports to be made on ratified Conventions.

## Communication of reports to employers' and workers' organizations

43. Under article 23, paragraph 2, of the Constitution, copies of all reports on the application of ratified Conventions should be communicated to representative organizations of employers and workers. This may be done either prior to finalization of the report, inviting comments which can yet be taken into account, or at the same time as the reports are sent to the ILO. In any event, when forwarding their reports to the ILO, governments should indicate the organizations to which communication has been made. Those organizations may make any observations they wish on the application of ratified Conventions.

## Observations of employers' and workers' organizations

44. Where observations from employers' and workers' organizations on the application of ratified Conventions are received by a government, full details – including, normally, a copy of the observations – should be sent in the government's report, together with the government's response, if any. Employers' and workers' organizations may also send observations directly to the Office for submission to the Committee of Experts; in this case, the Office acknowledges receipt and simultaneously forwards a copy to the government concerned, so that it might respond. Detailed information on the treatment of observations from employers' and workers' organizations received directly by the Office can be found in the General Report of the Committee of Experts.<sup>50</sup>

Employers' and workers' organizations wishing to transmit their observations directly to the Office should use the following contact: [ORGS-CEACR@ilo.org](mailto:ORGS-CEACR@ilo.org).

## Office procedures for requesting reports

45. (a) At the beginning of each year (usually in February/March), the Office sends a communication to each government requesting the reports due on the application of ratified Conventions for the year in question, clearly indicating whether the reports due are *detailed* or *simplified* reports. Copies of the requests for reports are also sent to national organizations of employers and workers.

Detailed reports should follow the [report form](#) adopted for each individual Convention. In November 2018, the Governing Body adopted a new [report form for simplified reports](#).

<sup>50</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., paras 94–104.

- (b) In accordance with the Governing Body decision, reports are requested to reach the Office between 1 June and 1 September at the latest each year.<sup>51</sup> Reminders are sent to governments which do not transmit their reports on time. ILO field offices and standards specialists in the field may also be asked to assist by contacting governments concerned. With a view to reinforcing the deadlines for receipt of article 22 reports, the Committee of Experts decided to distinguish more clearly between article 22 reports received after the 1 September deadline, the examination of which might be deferred due to the late arrival, and reports received by this deadline, the examination of which might be deferred for other reasons (for example, need for translation into the ILO working languages).<sup>52</sup>

Reports should be sent to the following contact: [NORM\\_REPORT@ilo.org](mailto:NORM_REPORT@ilo.org).

- (c) When it receives governments' reports, the Office verifies whether reports are accompanied by copies of relevant legislation or other documentation and, if not and these are not otherwise available, asks them to send such documentation. The same applies in case of failure to indicate the names of the employers' and workers' organizations to which copies of the report have been addressed, pursuant to article 23, paragraph 2, of the Constitution. The substantive content of the report is examined by the Committee of Experts.

## Summary

46. Under article 23, paragraph 1, of the Constitution, a summary of reports on the application of ratified Conventions has to be laid before the next meeting of the Conference. Such summary appears in an abbreviated, tabular form in Report III (Part A). In addition, the Office (through the secretariat of the Committee on the Application of Standards) makes copies of reports on ratified Conventions available for consultation at the Conference, if required.

### Calendar of action – Reports on ratified Conventions

Period	ILO action	Action by national administrations
February/March	ILO sends request for reports due that year	
From March		Prepare reports States parties to C.144: consult employers' and workers' organizations on questions arising out of reports to be made Send copies of reports to employers' and workers' organizations
Between 1 June and 1 September		Send reports to reach the ILO between 1 June and 1 September at the latest
November–December	Committee of Experts on the Application of Conventions and Recommendations meets	

<sup>51</sup> Governments may transmit their reports all together or in batches. The reports should cover the period up to the time when they are transmitted.

<sup>52</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 11.

<b>Period</b>	<b>ILO action</b>	<b>Action by national administrations</b>
February/March of the following year	Publication of the report of the Committee of Experts	Study with a view to initiating measures needed to ensure compliance, as well as in preparation for Conference Committee
30 days before Conference	Publication of preliminary list of cases	Prepare information (as appropriate) for Conference Committee, in writing or to be given orally
June	Conference Committee on the Application of Standards meets	Participate in proceedings and, as appropriate, in discussion of any cases concerning own country selected for consideration
Following CAS		If case examined by the Conference Committee, review conclusions with a view to considering any action called for, including reporting to the CEACR

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## **V. Reports on unratified Conventions and on Recommendations – General Surveys**

### **Obligation to report on unratified Conventions**

47. Under article 19, paragraph 5(e), of the Constitution, a member State undertakes, in respect of any Convention which it has not ratified, to:

... report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

### **Obligation to report on Recommendations**

48. Under article 19, paragraph 6(d), of the Constitution, member States undertake to:

... report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

### **Federal States**

49. Special provisions in respect of federal States as to the obligation to report on unratified Conventions and on Recommendations are laid down in article 19, paragraph 7(b)(iv) and (v), of the Constitution.

### **Choice of instruments for reports under article 19 (General Surveys) <sup>53</sup>**

50. Article 19 reports submitted by member States are the basis for the preparation by the Committee of Experts of annual General Surveys which are then discussed by the Conference Committee. The General Surveys and the results of their examination by the Conference Committee are helpful in many respects, including when drawing up the Organization's programme of work, particularly in relation to the adoption of any new or revised standards, in assessing the impact and continuing usefulness of the instruments to be reviewed and in providing governments and the social partners with the opportunity to review their policies and implement other measures in areas of major interest, as well as deciding on new ratifications, where appropriate. The Governing Body selects the instruments on which reports are to be requested each year. Following the adoption of the

<sup>53</sup> In practice, the article 19 reporting procedure described here has been used by the Governing Body rather than the separate clause included in the final provisions of all Conventions, whereby the Governing Body may at any time present to the Conference a report on the working of the Convention and examine the desirability of placing on the Conference agenda the question of its revision in whole or in part.

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2008 [ILO Declaration on Social Justice for a Fair Globalization](#) and the setting up of recurrent item discussions on the ILO strategic objectives on the agenda of the Conference, the Governing Body aims at aligning the topic of the General Survey with that of the corresponding recurrent item discussion so as to ensure that General Surveys and the related discussion by the Committee on the Application of Standards contribute to the recurrent discussions as appropriate.

51. In the framework of the Standards Initiative, the Governing Body has been examining the use of article 19, paragraphs 5(e) and 6(d), of the Constitution. In November 2018, it decided to continue to explore concrete and practical measures to improve the use of this, including with the purpose of enhancing the functions of General Surveys and improving the quality of their discussion and follow-up.<sup>54</sup>

## Report forms

52. When deciding the theme for the annual General Survey, the Governing Body also adopts a specific questionnaire for reports on the instruments selected.

## Office procedures for requesting reports

53. Upon the Governing Body's decision on the General Survey and the adoption of the corresponding report form, the Office sends a communication to governments requesting the reports due under article 19. Copies of the requests are sent to national organizations of employers and workers. By decision of the Governing Body, reports are requested to reach the Office by the end of February of the year of their examination by the Committee of Experts, at the latest. Reminders are sent to governments which do not transmit their reports by the due date.

Reports should be sent to the following contact: <a href="mailto:NORM_REPORT@ilo.org">NORM_REPORT@ilo.org</a> .
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## Consultation of employers' and workers' organizations

54. Paragraph 5(e) of Recommendation No. 152 calls for consultation of representatives of employers' and workers' organizations on questions arising out of reports to be made on unratified Conventions and on Recommendations. In addition, Article 5, paragraph 1(c), of Convention No. 144 and Paragraph 5(d) of Recommendation No. 152 provide for tripartite consultations at appropriate intervals to consider what measures might be taken to promote implementation and ratification as appropriate of Conventions which have not been ratified and Recommendations to which effect has not been given.

## Communication of reports to employers' and workers' organizations

55. Under article 23, paragraph 2, of the Constitution, governments have to communicate copies of all reports on unratified Conventions and on Recommendations to representative organizations of employers and workers and indicate, when forwarding their reports to the ILO, the organizations to which communication has been made. Those or any other employers' or workers' organizations may make any observations they wish on the subjects

<sup>54</sup> See [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#), para. 288.

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in question. Employers' and workers' organizations may send observations directly to the Office for submission to the Committee of Experts; in this case, the Office acknowledges receipt and simultaneously forwards a copy to the government concerned.

## Summary

56. Under article 23, paragraph 1, of the Constitution, a summary of reports on unratified Conventions and on Recommendations has to be laid before the next meeting of the Conference. Such summary appears in an abbreviated form in Report III (Part A), as a list of reports received. In addition, the Office (through the secretariat of the Committee on the Application of Standards) makes copies of the reports available for consultation at the Conference, if required.

### Calendar of action – Reports on unratified Conventions and Recommendations

Period	ILO action	Action by national administrations
July	ILO sends request for reports, with report forms	Prepare reports Send copies to employers' and workers' organizations
By end of February of the following year		Send report to ILO by <i>end of February</i> of the following year, at the latest
November–December	Committee of Experts on the Application of Conventions and Recommendations prepares General Survey	
February/March of the following year	Publication of Committee of Experts' General Survey	Study, in preparation for discussions in Conference Committee and consideration of general issues and comments
June	Conference Committee on the Application of Standards discusses the General Survey	Participate in proceedings

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## VI. Reports on the follow-up of the 1998 Declaration

57. The follow-up of the [ILO Declaration on Fundamental Principles and Rights at Work](#), adopted by the International Labour Conference on 19 June 1998, is based on reports requested from member States under article 19, paragraph 5(e), of the Constitution. The forms for these reports are designed to obtain information on any changes in their law and practice from governments which have not ratified one or more of the fundamental Conventions, including the Protocol of 2014 to the Forced Labour Convention.<sup>55</sup> The organizations of employers and workers may voice their opinions on the reports. The information received is examined by the Governing Body and published in the Introduction to the Annual Review of reports, focusing on new developments and trends.
58. In the framework of the Standards Initiative, the Governing Body has been examining the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including in relation to the Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.<sup>56</sup>

<sup>55</sup> The eight fundamental Conventions concern freedom of association (Conventions Nos 87 and 98), the abolition of forced labour (Convention No. 29 and its Protocol, and Convention No. 105), equality of opportunity and treatment (Conventions Nos 100 and 111) and child labour (Conventions Nos 138 and 182). Member States which have ratified fundamental Conventions have to provide reports on their application every three years under article 22 of the Constitution.

<sup>56</sup> See [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#), para. 288.



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## **VII. Regular machinery for supervising the observance of obligations deriving from Conventions and Recommendations**

### **Regular supervisory bodies**

59. On the basis of a resolution adopted by the Eighth Session of the International Labour Conference in 1926, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards were given responsibility for regular supervision of the observance by member States of their standards-related obligations.

#### **A. Committee of Experts**

##### Composition and terms of reference <sup>57</sup>

60. The Committee of Experts is composed of 20 members appointed by the Governing Body on the proposal of the Director-General for renewable periods of three years. Appointments are made in a personal capacity among completely impartial persons of technical competence and independent standing. They are drawn from all parts of the world, in order that the Committee may enjoy first-hand experience of different legal, economic and social systems. The Committee's fundamental principles are those of independence, impartiality and objectivity in noting the extent to which the position in each State appears to conform to the terms of the Conventions and the obligations accepted under the ILO Constitution. In this spirit, the Committee is called on to examine:
- (i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;
  - (ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
  - (iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

##### Organization of the Committee's work

61. (a) The Committee meets on dates determined by the Governing Body. <sup>58</sup>
- (b) The Committee meets in private. Its documents and deliberations are confidential.
- (c) The Committee assigns to each of its members initial responsibility for groups of Conventions or subjects. Their preliminary findings are then submitted to the Committee as a whole in the form of draft observations and direct requests.

<sup>57</sup> *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit.

<sup>58</sup> The meetings are held at the end of Nov.–beginning of Dec. each year.

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- (d) The Committee may appoint working parties to deal with general or especially complex questions, such as General Surveys. Working parties include members with knowledge of different legal, economic and social systems. Their preliminary findings are submitted to the Committee as a whole.
  - (e) Documentation available to the Committee includes the information supplied by governments in their reports or in the Conference Committee on the Application of Standards; relevant legislation, collective agreements and court decisions; information supplied by States on the results of inspections; observations of employers' and workers' organizations; reports of other ILO bodies (such as commissions of inquiry or the Committee on Freedom of Association) and reports of technical assistance activities.
  - (f) The comments of the Committee are traditionally adopted by consensus.
  - (g) The secretariat which is necessary to the work of the Committee is placed at its disposal by the Director-General of the ILO.

### The Committee's report

**62.** The results of the work of the Committee of Experts are published in February/March on the ILO website. The final findings take the form of: <sup>59</sup>

- a *general report* (giving an overview of the Committee's work and drawing the attention of the Governing Body, the Conference and member States to matters of general interest or special concern);
- individual *observations* on: <sup>60</sup> (i) the application of ratified Conventions in member States; (ii) the fulfilment of reporting obligations; and (iii) the submission of Conventions and Recommendations to the competent national authorities;
- a series of *direct requests*: <sup>61</sup> further individual comments addressed to governments by the Committee of Experts;

<sup>59</sup> The General Report (Part I) and the individual observations (Part II) appear in a single volume, Report III (Part A), submitted to the subsequent session of the International Labour Conference.

<sup>60</sup> *Observations* are generally used in more serious or long-standing cases of failure to fulfil obligations (see para. 70 of the [Report of the Committee of Experts on the Application of Conventions and Recommendations](#), op. cit.).

<sup>61</sup> *Direct requests* are available on NORMLEX. They are also listed in the Committee's report, after the individual observations for each group of Conventions, but their full texts do not appear in the report of the Committee of Experts to the Conference. They allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions (see para. 70 of the [Report of the Committee of Experts on the Application of Conventions and Recommendations](#), op. cit.).

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- a series of *replies received to the issues raised in a direct request which do not give rise to further comments*:<sup>62</sup> when a government has given a reply to a direct request and there is no need for further comment;
  - a *General Survey* of national law and practice in regard to the instruments on which reports have been supplied on unratified Conventions and on Recommendations under article 19 of the Constitution.<sup>63</sup>

**63.** The report of the Committee of Experts is in the first place submitted to the Governing Body for information (at its session in March). It is then submitted to the Conference (which usually meets in June each year).<sup>64</sup>

## **B. Conference Committee on the Application of Standards**

### Composition and officers

**64.** The Committee is set up under article 7 of the Standing Orders of the Conference. It is tripartite, consisting of representatives of governments, employers and workers.<sup>65</sup> The Committee holds elections from among each of the three groups to the Chairperson and two Vice-Chairpersons and to the office of the Reporter.<sup>66</sup>

### Terms of reference<sup>67</sup>

- 65.** (i) The Committee has to consider:
- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
  - (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
  - (c) the measures taken by Members in accordance with article 35 of the Constitution.

<sup>62</sup> *Replies received to the issues raised in a direct request which do not give rise to further comments* are registered in NORMLEX. They are also listed in the Committee's report after the observations for each group of Conventions.

<sup>63</sup> This forms a separate volume, Report III (Part B). The *General Survey* also covers information received under article 22 from countries which have ratified the Conventions in question. *General Surveys* allow the Committee, in addition to reviewing national law and practice in member States, to examine difficulties raised by governments as standing in the way of the application of instruments, clarify their scope and indicate possible means of overcoming obstacles to their implementation.

<sup>64</sup> The Office posts on the ILO website the General Report of the Committee of Experts and its observations on the application of Conventions. The entire findings of the Committee of Experts, including *direct requests*, are accessible on the ILO website (NORMLEX database).

<sup>65</sup> Any voting is weighted so as to yield equal strength for each group (SO, article 65, and the standing practice of the Conference).

<sup>66</sup> SO, article 57.

<sup>67</sup> SO, article 7.

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- (ii) The Committee has to submit a report to the Conference.

#### Organization of the Committee's work <sup>68</sup>

**66.** Following the independent, technical examination of documentation carried out by the Committee of Experts, the proceedings of the Conference Committee present an opportunity for representatives of governments, employers and workers to meet and review the manner in which States are discharging their obligations under and relating to Conventions and Recommendations. Governments are able to amplify information previously supplied; indicate further measures proposed; draw attention to difficulties met with in the discharge of obligations; and seek guidance as to how to overcome such difficulties.

- (a) *Documents before the Committee.* The Committee has to consider Report III (Parts A and B), which is the report of the Committee of Experts. It may also receive written information from the governments on the list of cases selected for examination. It also takes into account information received by the Office since the meeting of the Committee of Experts. <sup>69</sup>
- (b) *General discussion.* In an opening general discussion, the Committee reviews the matters covered by the General Report of the Committee of Experts. It then discusses the *General Survey* published in Report III (Part B). <sup>70</sup>
- (c) *Consideration of individual cases*
- (i) The Officers of the Committee prepare a list of observations contained in the Committee of Experts' report, in respect of which they consider it desirable to invite governments to supply information to the Committee. The list is submitted to the Committee for adoption. <sup>71</sup>
- (ii) The governments concerned have an opportunity to submit written information to the Committee.
- (iii) The Committee invites representatives of the governments concerned to attend one of its sittings to discuss the observations in question. Governments which are not members of the Committee are kept informed of its agenda and the date on which it wishes to hear statements from their representatives through the Conference *Daily Bulletin*.

<sup>68</sup> For detailed information, see document [C.App./D.1](#) (Work of the Committee) reproduced in Annex 1 of the report of the Conference Committee on the Application of Standards (107th Session of the Conference, 2018).

<sup>69</sup> In addition, subject to the decision of the Governing Body and the Conference, the Committee may have before it a report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers.

<sup>70</sup> And, as the case may be, the report of the Joint ILO–UNESCO Committee.

<sup>71</sup> Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2015, the preliminary list of cases has been made available 30 days before the opening of the International Labour Conference.

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- (iv) Following statements of government representatives, members of the Committee may put questions or make comments, and the Committee may reach conclusions on the case.
  - (d) *Cases of serious failure by member States to respect their reporting and other standards-related obligations:* The Committee also examines cases of serious failure to respect reporting or other standards-related obligations. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.
  - (e) *Report of the Conference Committee:*<sup>72</sup> the Committee's report is submitted to the Conference and discussed in plenary, which gives delegates a further opportunity to draw attention to particular aspects of the Committee's work. The report is published in the *Record of Proceedings* of the Conference and as a separate publication.

<sup>72</sup> The content and structure of the Committee's report is being examined in the context of the informal tripartite consultations on the working methods of the Committee on the Application of Standards (see the summary of the discussions and decisions of the meeting held in November 2018: [GB.334/INS/12\(Rev.\)](#), appendix).

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## **VIII. Role of employers' and workers' organizations**

### **Communication of reports and information to employers' and workers' organizations**

**67.** By virtue of the constitutional obligations on all member States, representative organizations of employers and workers have to receive copies of:

- (a) information communicated to the Office concerning measures taken to submit Conventions and Recommendations to the competent national authorities;
- (b) reports on the application of ratified Conventions;
- (c) reports on unratified Conventions and on Recommendations.

In addition, the Office procedures in relation to these obligations endeavour to ensure that national organizations receive copies of relevant comments of the supervisory bodies and the requests for reports.

### **Consultation of representative organizations**

**68.** Convention No. 144 and Recommendation No. 152 provide for tripartite consultations on:

- (a) government replies to questionnaires and comments on proposed new instruments to be discussed at the Conference;
- (b) proposals to be made to the competent authorities when Conventions and Recommendations are submitted to them;
- (c) questions arising out of reports on ratified Conventions;<sup>73</sup>
- (d) measures relating to unratified Conventions and Recommendations;<sup>74</sup>
- (e) denunciation of Conventions.

### **Transmission of observations by employers' and workers' organizations**

**69.** Any employers' or workers' organization, whether or not it has received copies of government reports, may at any time transmit its observations on any of the matters arising in connection with the implementation of international labour standards. The Committee of Experts and the Conference Committee have emphasized the value of such contribution as

<sup>73</sup> Under Recommendation No. 152, consultations should also take place on questions arising out of article 19 reports (on submission to the competent authorities and on unratified Conventions and Recommendations); and, subject to national practice, on questions of legislation to give effect to Conventions (particularly when ratified) and Recommendations.

<sup>74</sup> This question should be re-examined "at appropriate intervals".

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a means of assisting them, in particular, in assessing the effective application of ratified Conventions.

### **Participation in the Conference**

70. Through their presence at the International Labour Conference, and particularly in the Committee on the Application of Standards, representatives of employers' and workers' organizations may raise matters concerning the discharge of standards-related obligations.

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## IX. Interpretation of Conventions and Recommendations

### Constitutional provisions

71. The International Court of Justice is, by virtue of article 37, paragraph 1, of the Constitution, considered to be the only body competent to give authoritative interpretations of ILO Conventions and Recommendations. It reads as follows:

Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.

72. Furthermore, according to article 37, paragraph 2, of the Constitution, the Governing Body can, after approval of the Conference, set up a tribunal in order to settle a dispute related to the interpretation of a Convention:

Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgement or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organization and any observations which they may make thereon shall be brought before the Conference.

73. While no such tribunal has ever been set up, it should be noted that the possible implementation of article 37, paragraph 2, of the Constitution is part of the Governing Body discussions in the framework of the Standards Initiative.<sup>75</sup>

### Informal opinion of the International Labour Office

74. Governments which are in doubt as to the meaning of particular provisions of an ILO Convention or Recommendation may request the Office to provide an informal opinion. The Office, always with the reservation that it has no special authority under the Constitution to interpret Conventions and Recommendations, has assisted governments when asked for an opinion.<sup>76</sup> Where the request is for a formal or official opinion or the issue raised is likely to be of general interest, a *Memorandum by the International Labour Office* will be published in the *Official Bulletin*, containing the Office's opinion. A simple letter of reply will normally be sent by the Office in cases where a formal or official opinion is not specifically requested.

<sup>75</sup> See [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#), para. 288(7)(a).

<sup>76</sup> In practice, the Office endeavours to assist employers' and workers' organizations similarly.



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## Opinions and recommendations of the supervisory bodies

75. When examining the application of international labour standards, the supervisory bodies (Committee of Experts,<sup>77</sup> Conference Committee on the Application of Standards, commissions of inquiry appointed under article 26 of the Constitution, committees established under article 24 of the Constitution, Committee on Freedom of Association, Fact-Finding and Conciliation Commission on Freedom of Association) may be called upon to express opinions on the scope and meaning of ILO standards. Their reports therefore contain important guidance in this respect.

<sup>77</sup> On the mandate of the Committee of Experts, see its *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 32.

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## X. Revision of Conventions and Recommendations

### Nature of revision of Conventions

76. The formal revision (including the “*partial*” revision) of one, or sometimes several Conventions, results in most cases in the adoption of an entirely new Convention. The Conference may also undertake the *partial* revision of a Convention through the adoption of a Protocol or of provisions in a new Convention, the acceptance of which brings to an end the obligations under the corresponding provisions of an earlier Convention.<sup>78</sup> Certain Conventions also provide for specific procedures for the amendment of annexes.<sup>79</sup> Finally, without formally constituting a revision, the updating of certain technical or scientific data is envisaged in certain Conventions through a technique of reference to the most recent data published on the subject.<sup>80</sup>

### Method and effect of revision of Conventions

77. A Convention is not regarded as revising an earlier instrument unless the intention to revise is explicitly or implicitly stated in the title, preamble or operative provisions of the later Convention.
- (a) *Conventions Nos 1–26.* These contain no provisions as to the consequences of the adoption or ratification of a revising Convention. The adoption of a revising Convention by the Conference in itself therefore neither closes the earlier one to further ratifications nor involves automatic denunciation of it.<sup>81</sup>
  - (b) *Conventions Nos 27 and after.* These contain a final Article specifying that, *unless the new revising Convention provides otherwise*, the following are the consequences of the ratification and coming into force of a later revising Convention:
    - (1) ratification by a Member of the revising Convention will involve the automatic denunciation by it of the earlier Convention from the date on which the revising Convention comes into force;

<sup>78</sup> For example: following the ratification of Conventions Nos 121, 128 and 130, and where appropriate the acceptance of certain parts of those Conventions, the corresponding provisions of Convention No. 102 cease to apply; however, the term “revision” is not explicitly used in this context. The Final Articles Revision Conventions (Nos 80 and 116) are other specific examples of *partial* revisions.

<sup>79</sup> See Conventions Nos 83, 97, 121 and 185. The procedure provided for in Convention No. 185 differs from that of the other Conventions.

<sup>80</sup> See, for example, Conventions Nos 102, 121, 128 and 130, which refer to the International Standard Industrial Classification of All Economic Activities, adopted by the Economic and Social Council of the United Nations, “as at any time further amended”, and Convention No. 139, which refers to “the latest information contained in the codes of practice or guides which may be established by the International Labour Office”.

<sup>81</sup> A revising Convention may provide that ratification, under given conditions, constitutes an act of denunciation of the earlier Convention (e.g. Convention No. 138 (Article 10, para. 5), as regards Conventions Nos 5, 7, 10 and 15, and Convention No. 179 (Article 9) in relation to Convention No. 9).

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- (2) from the date when the new revising Convention comes into force, the earlier Convention will be closed to further ratification;
  - (3) the earlier Convention, once it has come into force, will remain in force as it stands for Members which have ratified it but not the later revising Convention.
- (c) *Alternative provisions.* The final Articles of each Convention have to be referred to in order to determine whether the above provisions apply.

## **Revision of Recommendations**

**78.** The revision or replacement (the two terms have been used synonymously) of a Recommendation, or sometimes several Recommendations, has given rise in almost all cases to the adoption of a new Recommendation. Moreover, certain Recommendations envisage specific procedures for the amendment of annexes. As Recommendations do not have the binding force of Conventions, their revision or replacement has lesser consequences. Nevertheless, a Recommendation which revises or replaces one or more earlier Recommendations replaces the earlier instrument(s). In such cases, reference should only be made to the new Recommendation.

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## **XI. Denunciation of Conventions**

### **Conditions for denunciation**

79. Every Convention<sup>82</sup> contains an Article determining the conditions in which States which have ratified it may denounce it (i.e. terminate their obligations).<sup>83</sup> Each Convention's precise terms have to be referred to, but in general:
- (a) *Conventions Nos 1–25.* Denunciation is possible *at any time* after an initial period of five or ten years (as indicated) of the Convention first coming into force;
  - (b) *Conventions Nos 26 and after.* Denunciation is possible after an initial period of five or (more often) ten years (as indicated) of the Convention first coming into force, but only *during an interval of one year*. Denunciation similarly becomes possible again after subsequent periods of five or ten years, as indicated.

### **Consultation of employers' and workers' organizations**

80. (a) The Governing Body has stated as a general principle that, in any case in which the denunciation of a ratified Convention may be contemplated, it is desirable for the government, before taking a decision, fully to consult the representative organizations of employers and workers on the problems encountered and the measures to be taken to resolve them.<sup>84</sup>
- (b) Article 5, paragraph 1(e), of Convention No. 144 requires the consultation of representatives of employers' and workers' organizations on any proposals for the denunciation of ratified Conventions.<sup>85</sup>

### **Form of communication of denunciation**

81. Denunciation, according to the relevant Article in each Convention, is effected by an act communicated to the Director-General of the International Labour Office for registration. The instrument of denunciation must:
- (a) clearly identify the Convention being denounced;
  - (b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Labour);
  - (c) clearly indicate that it constitutes a formal denunciation of the Convention concerned.

<sup>82</sup> Except the Final Articles Revision Conventions Nos 80 and 116.

<sup>83</sup> Such an Article is additional to one providing for automatic denunciation by virtue of the ratification of a revising Convention. In three cases (Conventions Nos 102, 128 and 148), denunciation is possible also in respect of separate Parts only.

<sup>84</sup> *Minutes of the Governing Body*, 184th Session (November 1971), pp. 95 and 210.

<sup>85</sup> For States which have not ratified Convention No. 144, see Para. 5 of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

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## Office procedures

82. (a) On becoming aware of any case in which the denunciation of a Convention is contemplated, the Office will draw the attention of the government concerned to the general principle as to consultation referred to in paragraph 70(a) above.
- (b) In any case in which a government communicates the denunciation of a Convention without any indication of the reasons which have led to its decision, the Office will request the government concerned to provide such indications for the information of the Governing Body. States which have ratified Convention No. 144 are under the obligation to include information on the tripartite consultations held prior to a denunciation in the reports provided under article 22 of the Constitution.
- (c) *Registration of denunciations.* Every denunciation registered by the Director-General is notified to the Secretary-General of the United Nations, reported to the Governing Body and published in the *Official Bulletin*.

## Effect of denunciation

83. Denunciations take effect in accordance with the final Articles of each Convention (usually one year after they are registered by the Director-General).

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## **XII. Special procedures**

### **A. Representations as to the observance of ratified Conventions**

#### ***Constitutional provisions***

84. Articles 24 and 25 of the Constitution read as follows:

##### Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

##### Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

#### ***Procedure for the examination of representations***

85. When adopting amendments to the [Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization](#) in November 2004, the Governing Body decided that the Standing Orders should be preceded by an Introductory note summarizing the various stages of the procedure and indicating the options available to the Governing Body at each stage: <sup>86</sup>

- (a) the Office acknowledges receipt of communications submitted under article 24 of the Constitution and informs the government concerned;
- (b) the matter is brought before the Officers of the Governing Body;
- (c) the Officers report to the Governing Body on the receivability of the representation; the criteria for receivability, as contained in article 2 of the Standing Orders, provide that the representation must:
  - (i) be communicated to the ILO in writing;
  - (ii) come from an industrial association of employers or workers;
  - (iii) make specific reference to article 24 of the Constitution;

<sup>86</sup> Document GB.291/9(Rev.) contains the text of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization and the Introductory note referred to above. The Standing Orders and the Introductory note are available on the ILO website. Offprints are also available.

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- (iv) concern a Member of the ILO;<sup>87</sup>
  - (v) refer to a Convention to which the Member in question is a party;
  - (vi) indicate in what respect it is alleged that that Member has failed to secure the effective observance within its jurisdiction of that Convention;
- (d) the Governing Body reaches a decision on the receivability without discussing the substance of the matter;
  - (e) if the representation is receivable, the Governing Body either sets up a tripartite committee to examine the matter according to rules laid down in the Standing Orders; or, if the matter relates to a Convention dealing with trade union rights, it may refer it to the Committee on Freedom of Association; if the representation relates to matters and allegations similar to those which have been the subject of a previous representation, the Governing Body may decide to postpone the appointment of the committee to examine the new representation until the Committee of Experts has been able to examine the follow-up to the recommendations that were adopted by the Governing Body in relation to the previous representation;
  - (f) the Committee reports to the Governing Body, describing the steps taken to examine the representation and giving its conclusions and recommendations for decisions to be taken by the Governing Body;
  - (g) the government concerned is invited to be represented in the Governing Body consideration of the matter;
  - (h) the Governing Body decides whether to publish the representation and any government statement in reply and notifies the complainant organization and government concerned.

**86.** In November 2018, the Governing Body approved a number of measures concerning the operation of the representations procedure under article 24 of the Constitution,<sup>88</sup> including arrangements to allow for optional voluntary conciliation or other measures at the national level, leading to a temporary suspension for a maximum period of six months of the examination of the merits of a representation by the ad hoc committee. The suspension would be subject to the agreement of the complainant as expressed in the [complaint form](#),<sup>89</sup> and the agreement of the government. These arrangements would be reviewed by the Governing Body after a two-year trial period.

<sup>87</sup> Or a former Member which remains bound by the Convention in question.

<sup>88</sup> [GB.334/INS/PV](#), para. 288(1).

<sup>89</sup> See Appendix IV.

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## **B. Complaints as to the observance of ratified Conventions**

### ***Main constitutional provisions***

**87.** Article 26 of the Constitution reads as follows:

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

### ***Other constitutional provisions***

**88.** The following articles of the Constitution deal with other aspects of the complaints procedure:

*Article 27:* Members' cooperation with a Commission of Inquiry;

*Article 28:* report of the Commission of Inquiry, embodying its findings and recommendations;

*Article 29:* communication and publication of the report of a Commission of Inquiry, indication of governments concerned whether they accept its recommendations, and possible reference to the International Court of Justice (ICJ);

*Article 31:* decision of the ICJ to be final;

*Article 32:* power of the ICJ over the findings or recommendations of a Commission of Inquiry;

*Article 33:* Governing Body recommendation as to action by the Conference in the event of failure to carry out recommendations of the Commission of Inquiry or the ICJ;

*Article 34:* verification of compliance with recommendations of the Commission of Inquiry or the ICJ and subsequent Governing Body recommendation as to discontinuance of action by the Conference.



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## **Commission of Inquiry procedure**

89. At present, there are no standing orders for the procedure of Commissions of Inquiry: the Governing Body has in each case left the matter to the Commission of Inquiry itself, subject only to the Constitution's and its own general guidance. The reports of the respective Commissions of Inquiry describe the procedure followed for the examination of complaints, including the procedure for receiving communications from the parties and other interested persons or organizations, and holding hearings.<sup>90</sup>
90. However, it should be noted that, in the framework of the Standards Initiative, consideration is being given to the possible codification of the article 26 procedure.<sup>91</sup>

### **C. Complaints as to the infringement of freedom of association**

#### **1. Governing Body Committee on Freedom of Association<sup>92</sup>**

##### Composition and terms of reference

91. The Committee is a tripartite organ of the Governing Body, comprising nine of its members and nine deputy members sitting in a personal capacity, plus an independent Chairperson. Its sittings are private, its working documents confidential and, in practice, its decisions are taken by consensus. The Committee examines complaints of infringement of freedom of association and collective bargaining principles and submits its conclusions and recommendations to the Governing Body. Complaints may be entertained regardless of whether the country concerned has ratified any of the Conventions in the field of freedom of association.<sup>93</sup>

##### Receivability of complaints

92. (a) Complaints must be in writing, signed and supported by proof of allegations relating to specific infringements of freedom of association and collective bargaining principles.
- (b) Complaints must come from organizations of employers or workers<sup>94</sup> or from governments. An organization may be:

<sup>90</sup> See, for example, *Official Bulletin*, Vol. LXXIV (1991), Series B, Supplements 2 and 3.

<sup>91</sup> See [GB.334/INS/5](#) and [GB.332/INS/5\(Rev.\)](#), as well as [GB.334/INS/PV](#).

<sup>92</sup> The procedures of the Committee on Freedom of Association – in their most recent version approved by the Governing Body at its 306th Session (2009) – are set out in Annex II of the Compendium of rules applicable to the Governing Body of the ILO (“Special procedures for the examination in ILO of complaints alleging violations of freedom of association”). These procedures are also published as Annex I to the [Compilation of decisions of the Committee on Freedom of Association](#). Furthermore, the Committee regularly adopts decisions concerning its working methods and reports to the Governing Body.

<sup>93</sup> This is because of the obligation on all member States, by virtue of their adherence to the ILO Constitution, to recognize the principle of freedom of association.

<sup>94</sup> The Committee itself decides whether a complainant may be deemed an organization for this purpose. The Office is authorized to request further information from a complainant organization in order to ascertain its precise nature.

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- (i) a national organization directly interested in the matter;
  - (ii) an international organization of employers or workers which has consultative status with the ILO;<sup>95</sup>
  - (iii) another international organization of employers or workers, where the allegations relate to matters directly affecting affiliated organizations.

**93.** The Committee has a full margin of appreciation to decide on the receivability of complaints regarding the applicant. In fact, according to the special procedures for the examination of complaints alleging violations of freedom of association, the Committee has full freedom to decide whether an organization may be deemed to be an employers' or workers' organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term. The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorization, to establish organizations of their own choosing. Finally, the fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a de facto existence.<sup>96</sup>

#### Organization of the Committee's work

- 94.** (a) The Committee meets three times a year.
- (b) The Office may at any time ask a complainant to specify what infringements are complained of, where a complaint is not sufficiently detailed.
  - (c) The Office informs complainants that they should supply any supplementary information intended to substantiate their complaints within one month.<sup>97</sup>
  - (d) The allegations are transmitted by the Office to the government concerned for reply within a given period.
  - (e) In cases concerning enterprises, the Office requests governments to seek information from the representative employers' organization concerned.
  - (f) The Committee decides whether to examine the complaint and reach a conclusion or ask the government concerned for additional information.
  - (g) The Committee may invite the Governing Body to draw the attention of the government concerned to the Committee's recommendations, which may include requests to take remedial measures and to keep it informed of developments.
  - (h) The Committee issues "definitive" reports when it feels that the matters do not call for further examination and are effectively closed, "interim" reports where it requires

<sup>95</sup> At the time of printing, the International Organisation of Employers; the International Trade Union Confederation; the Organization of African Trade Union Unity; and the World Federation of Trade Unions.

<sup>96</sup> Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association.

<sup>97</sup> Only new evidence which could not have been adduced within that month will subsequently be receivable.

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further information from the parties to the complaint and “follow-up” reports where it requests to be kept informed of developments. Follow-up cases are subsequently “closed” when the matters have been resolved or the Committee considers that they do not call for further examination.

- (i) The Committee may also recommend referral to the Fact-Finding and Conciliation Commission.
- (j) The Committee’s Report is published in the *Official Bulletin*.
- (k) The Committee may invite its Chairperson to hold consultations with a governmental delegation, to draw their attention to the seriousness of some problems and to discuss the various means that would allow their resolution.
- (l) If a country has ratified the relevant Conventions on freedom of association, the Committee can draw the legislative aspects of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.
- (m) In the course of the procedure, it is possible to undertake various missions (direct contacts, technical assistance, etc.) with the government’s consent.
- (n) The Governing Body has instructed the Committee on Freedom of Association to examine representations referred to it according to the procedures set out in the Standing Orders for the examination of article 24 representations, to ensure that representations referred to it be examined according to the modalities set out in the Standing Orders.<sup>98</sup>

## **2. Fact-Finding and Conciliation Commission on Freedom of Association**

### Composition, terms of reference and procedure

- 95.** The Commission is composed of nine independent persons appointed by the Governing Body, who normally work in panels of three. It examines complaints of infringements of freedom of association referred to it by the Governing Body, including on the request of a government against which allegations are made.<sup>99</sup> The Commission’s procedure is comparable to that of a Commission of Inquiry, and its reports are published.

<sup>98</sup> See [GB.334/INS/PV](#).

<sup>99</sup> These may relate to: (i) Members which have ratified the Conventions on freedom of association; (ii) Members which have not ratified the relevant Conventions and which consent to the referral; (iii) non-members of the ILO which are member States of the United Nations, where the Economic and Social Council of the UN has transmitted the matter to the ILO and the State has consented to the referral.

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### **XIII. Assistance available from the International Labour Office in relation to international labour standards**

#### **International labour standards and technical assistance**

96. The International Labour Office undertakes various kinds of activities designed to assist governments and employers' and workers' organizations in fulfilling their obligations and roles in the standard-setting and supervisory system.

#### **Informal advisory services**

97. The International Labour Standards Department of the International Labour Office in Geneva works together with the regional and subregional offices, and especially the specialists in international labour standards in those offices, in the field, to give all kinds of training, explanations, advice and assistance on the matters dealt with in this Handbook. These services are offered both in response to specific requests received from governments or employers' or workers' organizations and through routine advisory missions and informal discussions initiated by the Office. Matters which may be dealt with include questionnaires on items on the agenda of the Conference for possible new standards; comments of the supervisory bodies and measures they might call for; new legislation; government reports to be drafted; documents prepared for submission to the competent authorities; arrangements for consultations between governments and employers' and workers' organizations in relation to labour standards and ILO activities; ways in which employers' and workers' organizations might fully participate in standard-setting and supervisory procedures.

#### **Direct contacts**

98. Direct contacts missions are undertaken in support of the procedures of the supervisory bodies (Committee of Experts, Committee on the Application of Standards, Committee on Freedom of Association and ad hoc committees established under article 24 of the Constitution).
99. They consist of sending a representative of the ILO Director-General to a country involved in a supervisory procedure with a view to seeking a solution to the difficulties encountered in relation to the application of ratified Conventions or compliance with the recommendations of the supervisory bodies. When the issues raised concern questions of practice, the direct contacts mission focuses in particular on determining the situation in practice. Direct contacts have also been used on many occasions to provide countries with technical assistance in the form of advice on the type of measures to be taken and assistance in the drafting of amendments to the national legislation, as well as in the establishment of procedures to facilitate compliance with the obligations deriving from the ILO's standards-related activities.
100. The representative of the Director-General may be an ILO official or an independent person appointed by the Director-General (magistrates of supreme courts, professors, a member of the Committee of Experts, etc.) and her or his mission consists of ascertaining the facts, as well as examining on the spot the possibilities for resolving the problems in question.

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- 101.** The representative of the Director-General and the composition of the mission have to give all the necessary guarantees of objectivity and impartiality and, following the completion of the mission, a report has to be submitted to the corresponding supervisory body.
- 102.** Direct contacts can only be established at the invitation of the government concerned, or at least with its consent. The government may request them directly, or they may be proposed by the supervisory bodies. The representative of the Director-General must be able to interview freely all the parties concerned, so as to be fully and objectively informed of all the aspects of the case or the situation in question. The principal counterpart of the mission is normally the Ministry of Labour and the confederations of workers and employers, although with a certain regularity, and depending on the nature of the problems raised, the mission may interview the legislative authorities, the judicial authorities or even the Head of State. The national organizations of employers and workers are also associated with this process through interviews with the mission, as well as through tripartite meetings.
- 103.** Direct contacts are an effective means of dialogue, negotiation and establishing the facts. The objective is to create a climate of confidence so as to be able to find a rapid and positive solution to the problems.

## Appendix I

D.33 (A).1995

### **MODEL INSTRUMENT**

#### **CONCERNING THE RATIFICATION OF AN ILO CONVENTION**<sup>1</sup>

Whereas the ..... (title of the Convention)  
.....was adopted by the International Labour Conference at its  
.....Session in (place) .....on (date) .....  
.....

The Government of ....., having  
considered the aforesaid Convention, hereby confirm and ratify the same and  
undertake, in accordance with Article 19, paragraph 5 (d) of the Constitution of the  
International Labour Organisation, faithfully to perform and carry out all the  
stipulations therein contained.

(signed) \_\_\_\_\_  
President of the Republic

\_\_\_\_\_  
Minister of Foreign Affairs

<sup>1</sup> This model may call for adaptation to take account particularly of:

- (a) any provisions in the Convention concerned requiring specified indications to be included in the ratification;
- (b) national provisions and practice concerning ratification on international instruments.

## Appendix II

### Regular reporting cycle under article 22 of the ILO Constitution

2019	2020	2021	2022	2023	2024	2025
<b>Fundamental and governance Conventions</b> (three-year reporting cycle)						
C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)
C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)
C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)
C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)
C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)
C122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C.122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C122 (countries G–N)
<b>Technical Conventions</b> (six-year reporting cycle)						
Freedom of association and collective bargaining (A–B)	Freedom of association and collective bargaining (G–K)	Freedom of association and collective bargaining (O–S)	Freedom of association and collective bargaining (C–F)	Freedom of association and collective bargaining (L–N)	Freedom of association and collective bargaining (T–Z)	Freedom of association and collective bargaining (A–B)
Industrial relations (A–B)	Industrial relations (G–K)	Industrial relations (O–S)	Industrial relations (C–F)	Industrial relations (L–N)	Industrial relations (T–Z)	Industrial relations (A–B)
Protection of children (O–S)	Protection of children (A–B)	Protection of children (G–K)	Protection of children (T–Z)	Protection of children (C–F)	Protection of children (L–N)	Protection of children (O–S)
Workers with family responsibilities (G–K)	Workers with family responsibilities (O–S)	Workers with family responsibilities (A–B)	Workers with family responsibilities (L–N)	Workers with family responsibilities (T–Z)	Workers with family responsibilities (C–F)	Workers with family responsibilities (G–K)
Migrant workers (G–K)	Migrant workers (O–S)	Migrant workers (A–B)	Migrant workers (L–N)	Migrant workers (T–Z)	Migrant workers (C–F)	Migrant workers (G–K)
Indigenous and tribal peoples (G–K)	Indigenous and tribal peoples (O–S)	Indigenous and tribal peoples (A–B)	Indigenous and tribal peoples (L–N)	Indigenous and tribal peoples (T–Z)	Indigenous and tribal peoples (C–F)	Indigenous and tribal peoples (G–K)
Other specific categories of workers (G–K)	Other specific categories of workers (O–S)	Other specific categories of workers (A–B)	Other specific categories of workers (L–N)	Other specific categories of workers (T–Z)	Other specific categories of workers (C–F)	Other specific categories of workers (G–K)
Working time (T–Z)	Working time (L–N)	Working time (C–F)	Working time (O–S)	Working time (G–K)	Working time (A–B)	Working time (T–Z)
Wages (T–Z)	Wages (L–N)	Wages (C–F)	Wages (O–S)	Wages (G–K)	Wages (A–B)	Wages (T–Z)
OSH (T–Z)	OSH (L–N)	OSH (C–F)	OSH (O–S)	OSH (G–K)	OSH (A–B)	OSH (T–Z)
Maternity protection (T–Z)	Maternity protection (L–N)	Maternity protection (C–F)	Maternity protection (O–S)	Maternity protection (G–K)	Maternity protection (A–B)	Maternity protection (T–Z)
Social security (T–Z)	Social security (L–N)	Social security (C–F)	Social security (O–S)	Social security (G–K)	Social security (A–B)	Social security (T–Z)

2019	2020	2021	2022	2023	2024	2025
Labour administration and inspection (T-Z)	Labour administration and inspection (L-N)	Labour administration and inspection (C-F)	Labour administration and inspection (O-S)	Labour administration and inspection (G-K)	Labour administration and inspection (A-B)	Labour administration and inspection (T-Z)
Skills (L-N)	Skills (C-F)	Skills (T-Z)	Skills (G-K)	Skills (A-B)	Skills (O-S)	Skills (L-N)
Employment policy (L-N)	Employment policy (C-F)	Employment policy (T-Z)	Employment policy (G-K)	Employment policy (A-B)	Employment policy (O-S)	Employment policy (L-N)
Employment security (L-N)	Employment security (C-F)	Employment security (T-Z)	Employment security (G-K)	Employment security (A-B)	Employment security (O-S)	Employment security (L-N)
Social policy (L-N)	Social policy (C-F)	Social policy (T-Z)	Social policy (G-K)	Social policy (A-B)	Social policy (O-S)	Social policy (L-N)
Seafarers Fishers Dockworkers (C-F)	Seafarers Fishers Dockworkers (T-Z)	Seafarers Fishers Dockworkers (L-N)	Seafarers Fishers Dockworkers (A-B)	Seafarers Fishers Dockworkers (O-S)	Seafarers Fishers Dockworkers (G-K)	Seafarers Fishers Dockworkers (C-F)
<b>Total number of reports requested</b>						
1 270	1 384	1 434	1 445	1 356	1 368	1 270



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## Appendix III

### ***Simplified reports to be sent under article 22 of the ILO Constitution for [name of country]***

The present report form has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: “Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.”

Every year, based on this report form, the Office sends to each member State a single request for all the simplified reports which are due that year. In addition, the Office communicates to each member State the list of detailed reports which may also be due the year in question.

- (a) Please provide information on any new legislative or other measures affecting the application of ratified Conventions; where this has not already been done, please forward copies of any relevant texts to the International Labour Office with this report.
- (b) Please reply to the comments which have been addressed to your government by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards, as contained in the annex to this form. <sup>1</sup>
- (c) Insofar as it has not already been supplied in reply to question (b), please provide information on the practical application of the Conventions concerned (for example, copies or extracts from official documents including inspection reports, studies and inquiries, statistics); please also state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Conventions concerned. If so, please supply the text of these decisions.
- (d) Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization. <sup>2</sup> If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.
- (e) Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Conventions concerned. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

<sup>1</sup> The annex is established on the basis of the regular reporting cycle and any additional requests for reports addressed to your country by the supervisory bodies for the year in question. It also includes cases in which your country has failed to submit the simplified reports requested the previous year. It does not cover any simplified report due under the Maritime Labour Convention, 2006 (MLC, 2006), as amended, for which a specific form will be sent to your country, as appropriate.

<sup>2</sup> Article 23, paragraph 2, of the Constitution reads as follows: “Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22.”

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## Appendix IV

### Model electronic form for the submission of a representation under article 24 of the ILO Constitution

Information and further instructions on the [article 24 procedure](#) and its implications, as well as on other available ILO supervisory mechanisms, may be found on the [web page](#) of NORMES. For further support you may contact: for employers' organizations – ACT/EMP ([ACTEMP@ilo.org](mailto:ACTEMP@ilo.org)) and for workers' organizations – ACTRAV ([ACTRAV@ilo.org](mailto:ACTRAV@ilo.org)).

(Please provide information on why you are submitting your allegations through an article 24 representation procedure, as opposed to other procedures)

### Receivability

1. Please indicate the name of the industrial association of employers or workers making the representation:

(Please provide information on the organization concerned, its statutes, contact details, etc.)

2. Please indicate the Member of the Organization against which the representation is made:

3. Please indicate the ratified Convention(s) of which non-observance is alleged:

(Please also specify the ratification date(s).)

4. Please use the [expandable] space below to inform the ILO Director-General in what respect it is alleged that the Member against which the representation is made has failed to secure the effective observance within its jurisdiction of the Convention(s) indicated above, making specific reference to article 24 of the ILO Constitution. Please provide any relevant information in support of your allegations:

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### ***Other information***

5. Please indicate whether the issue has already been examined by, or submitted to, the national competent authorities (including national courts, social dialogue mechanisms or mechanisms to resolve disputes before the ILO that may exist in the country) and provide any information on the state and outcome of the procedures engaged. Exhaustion of national procedures is not a prerequisite for the submission of a representation. However, in certain cases, the procedure to examine the representation may allow for conciliation or other measures at the national level – see the following question:

6. Please indicate if: (i) your organization would wish to explore the possibility of seeking conciliation or other measures at the national level for a maximum period of six months from the date of the ad hoc tripartite committee's decision to suspend the examination of the merits of the representation in order to address the allegations (subject to the agreement of the government; with the possibility for your organization to request the procedure to resume at an earlier moment should the conciliation/other measures fail; and with the possibility for the tripartite committee to decide on a limited further extension of the suspension should the initial conciliation or other measures need a further period of time to successfully resolve the issues raised in the representation); (ii) if so, please indicate if you would wish to have recourse to the intervention or technical assistance of the Office or the secretariats of the Employers' or Workers' groups in this regard.

7. Please indicate whether, to your knowledge, the allegations have already been examined by or submitted to ILO supervisory bodies and, if so, in what respect any currently submitted allegations are different from those already examined or submitted.

**For more information:**

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