

# GUIDE ON EMPLOYMENT POLICY AND INTERNATIONAL LABOUR STANDARDS



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# **Guide on employment policy and international labour standards**

INTERNATIONAL LABOUR STANDARDS DEPARTMENT  
EMPLOYMENT POLICY DEPARTMENT

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# Preface

In the aftermath of the global economic crisis, the achievement of full, productive and freely chosen employment and decent work remains an elusive goal for many countries. Growing levels of international economic integration in the context of economic and financial globalization have given rise to increased economic volatility, job insecurity, labour market vulnerability and inequality in both developing and industrialized countries. The level of precarious employment remains high in many developing countries, and is substantial in post-transition European economies. Working poverty also remains significant in many poorer developing countries.<sup>1</sup>

Ensuring access to productive employment, income opportunities and decent work for all those who are seeking employment remains the most effective pathway out of poverty. However, this is yet to be achieved in many countries in the continuing context of ‘job-poor’ economic growth.

In their quest to achieve full and productive employment, member States have found valuable assistance and support from the ILO. Indeed, it is the ILO’s primary goal to help the countries attain decent work for all, including for women and young people. Full and productive employment is a vital element of decent work. This goal is embedded in the ILO’s 2008 Declaration on Social Justice for a Fair Globalization<sup>2</sup> and has now been widely endorsed by the international community. The integrated approach to achieving this goal has been further reaffirmed more recently by the ILO’s tripartite constituents, representing governments, employers’ and workers’ organizations from the world over in the Resolution adopted by the International Labour Conference in 2010 following the recurrent discussion on employment.<sup>3</sup>

The ILO is fully engaged in providing support to countries to help them place employment at the centre of their economic and social policies. It does so through a broad range of technical support and capacity-building activities, policy advisory services and policy research. The ILO’s approach in

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1. Working poverty refers to the status of workers who are working but not able to lift themselves and their family above an income of US\$1.25 a day.

2. [www.ilo.org/global/resources/WCMS\\_099766/lang--en/index.htm](http://www.ilo.org/global/resources/WCMS_099766/lang--en/index.htm)

3. [www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS\\_143164/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/99thSession/texts/WCMS_143164/lang--en/index.htm)

this respect is based on the economic efficiency argument that increased employment contributes to the more efficient use of human resources and to economic growth. The ILO also promotes the placement of employment at the heart of socio-economic policy-making through a rights-based approach.

In supporting member States and the social partners to reach this goal, the ILO pursues a Decent Work Agenda comprising four inter-related areas: respect for fundamental workers' rights and international labour standards, employment promotion, social protection and social dialogue. The framework for this integrated approach and the related challenges, with the respective explanations and theoretical justifications, is set out in a number of key ILO documents, including in particular: reports and documents explaining the concept of decent work;<sup>4</sup> the Employment Policy Convention, 1964 (No. 122); the 2003 Global Employment Agenda; and, within the context of crisis response, the Global Jobs Pact adopted by the International Labour Conference in 2009.

The purpose of the present Guide is to show, based on these instruments, how this approach, founded as it is on the development of broad agreement between all those involved in the labour market, a sound policy approach developed over many years by the tripartite constituents from countries at all levels of development, within a rights-based and binding framework, can play a vital role in ensuring that national policy efforts give sufficient importance to the vital issue of employment. In so doing, the Guide focuses on the Employment Policy Convention, 1964 (No. 122), adopted almost 50 years ago, which has been ratified by a total of 107 countries (as of early 2013) and remains highly relevant today. After outlining the principles set out in Convention No. 122, and in other relevant International Labour Standards, the Guide goes into greater detail concerning the processes involved in its ratification, implementation and supervision.

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4. See the successive Reports of the Director-General to the International Labour Conference: *Decent work*, Report IA, ILC, 87th Session, Geneva, 1999; *Reducing the decent work deficit: A global challenge*, Report IA, ILC, 89th Session, Geneva, 2001; *Working out of poverty*, Report IA, ILC, 91st Session, Geneva, 2003.



# Table of contents

<b>Preface</b> .....	3
<b>Acknowledgements</b> .....	7
<b>1. Background</b> .....	9
<b>2. The ILO standard-setting system</b> .....	11
<b>3. Recent developments in relation to the ILO's employment-related standards</b> .....	15
<b>4. Context, content and implementation of Convention No. 122</b> .....	21
4.1 The context of Convention No. 122 .....	21
4.2 The obligations under Convention No. 122 .....	23
4.3 Guidance on employment measures included in the Employment Policy Recommendation, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) ...	27
4.4 The other employment-related instruments covered by the 2010 General Survey .....	28
<b>5. Ratification and application of Convention No. 122</b> .....	35
5.1 Step-by-step preparation for the ratification of Convention No. 122 .....	36
<b>6. Reporting procedures on the implementation of conventions</b> .....	41
6.1 Timing of reporting .....	41
6.2 Contribution by the social partners to the reporting procedures on Convention No. 122 .....	47
6.3 Inputs by ILO technical departments to reports on the application of Convention No. 122 .....	49
<b>7. Conclusion</b> .....	51
<b>Appendix I.</b> ILO texts on employment policy .....	53
<b>Appendix II.</b> A country example of a national employment policy and the ratification of Convention No. 122 .....	55
<b>Appendix III.</b> Examples of comments by the Committee of Experts on the application of Convention No. 122 .....	59



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# Background

1

Against the backdrop of the ever greater importance taken on by employment in recovering from the financial and economic crisis, the aim of the present Guide is to increase awareness and understanding of the importance of placing the promotion of full, productive and freely chosen employment at the heart of socio-economic and development policies through a rights-based approach and a broad basis of agreement achieved through social dialogue, in line with the **Employment Policy Convention, 1964 (No. 122)**. It also examines the procedures for the ratification and implementation of the Convention, including the related reporting procedures.

Convention No. 122 articulates the resolve of member States to achieve full, productive and freely chosen employment. It remains the primary mechanism guiding the ILO's approach to policy coordination and cooperation on employment issues at the national level, and sets out the normative framework for the development of an employment policy. It also creates a basic obligation on ratifying States to make an explicit formal pronouncement of their employment policy.

The Convention requires national employment policy to be positioned as a major goal within the national agenda. It calls for an active employment policy to be pursued as a major goal of macroeconomic policy, with a focus on the design and implementation of such policies. Article 1, paragraph 2, of the Convention defines the goals and objectives of employment policy, which should ensure that: "(a) there is work for all who are available for and seeking work; (b) such work is as productive as possible; (c) there is freedom of choice of employment and the fullest opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin".

Convention No. 122 is supplemented by the **Employment Policy Recommendation, 1964 (No. 122)**, and the **Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)**. These Recommendations, which are non-binding instruments that do not require ratification, outline in greater detail policy approaches in support of the efforts of member States to design and implement effective employment policies and programmes.

## **Guide on employment policy and international labour standards**

The ILO's advocacy and technical work in these fields is also guided by around 20 other instruments developed and adopted by its tripartite constituents at the International Labour Conference (ILC) in such areas as skills and enterprise development, employment services, the employment of persons with disabilities and other vulnerable categories of the population, employment relations and multinational enterprises (MNEs).

# The ILO standard-setting system

# 2

Before examining Convention No. 122 in greater detail, a more general overview will be provided of the framework within which the Convention was adopted and operates, namely the ILO's standard-setting system, which is based on broad dialogue and consensus between the representatives of the social partners and governments of all member States in the adoption, implementation and supervision of international labour standards.

With its strong tripartite basis, which ensures broad social agreement and cohesion, the ILO's standard-setting system is a defining characteristic of the Organization and one of its principal comparative advantages. Over the years, the ILO's tripartite constituents have adopted and revised at the ILC a wide-ranging set of Conventions and Recommendations covering the various aspects of decent work. Conventions are treaties that become legally binding when they are ratified by States, while Recommendations, which are not open for ratification, provide further non-binding guidance.

Foremost among the ILO's labour standards are its eight fundamental Conventions, which cover the four categories of fundamental principles and rights at work.<sup>1</sup> Particularly since the adoption of the **1998 ILO Declaration on Fundamental Principles and Rights at Work**, these four categories of principles and rights at work have been promoted by special programmes and procedures. In addition, through the **2008 ILO Declaration on Social Justice for a Fair Globalization** (the "Social Justice Declaration"), the tripartite constituents identified four other Conventions for special action,<sup>2</sup> the so-called 'governance' Conventions, which include Convention No. 122.

Clearly, if they are to have the desired impact, the ratification of international labour Conventions needs to be followed by their effective implementation.

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1. Freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos. 87 and 98), the elimination of all forms of forced or compulsory labour (Conventions No. 29 and No. 105), the elimination of discrimination in respect of employment and occupation (Conventions Nos. 100 and 111), and the effective abolition of child labour (Conventions Nos. 138 and 182).

2. The so-called 'governance' Conventions also include two Conventions on labour inspection (Conventions Nos. 81 and 129) and one on tripartite consultation (Convention No. 144).

In this context, the ILO's supervisory machinery is an integral part of the standards system and is very broadly recognized as one of the Organization's great strengths. The supervisory system (see section 6 below) entails States sending regular reports to the ILO on the measures taken to give effect to ratified Conventions. The supervisory system involves a dialogue between the ILO (principally the Committee of Experts on the Application of Conventions and Recommendations – hereinafter the “Committee of Experts”)<sup>3</sup> and governments, with the participation of employers' and workers' organizations. The supervisory machinery includes a tripartite discussion of the report produced each year by the Committee of Experts in the Committee on the Application of Standards of the International Labour Conference. The standards system also includes special complaints procedures, particularly for issues relating to freedom of association, although they tend to be used less frequently for Convention No. 122.

The central importance of labour standards and employment to the work of the Organization have been reaffirmed on many occasions by its tripartite constituents, including in the **1944 Declaration of Philadelphia**, which was adopted to address the new world order emerging after the Second World War and is annexed to the ILO Constitution. More recently, in the 2008 Social Justice Declaration, they emphasized, in relation to employment and fundamental principles and rights at work (together with social protection, which is comprehensively delineated in international labour standards, and social dialogue), that the ILO's strategic objectives are “inseparable, inter-related and mutually supportive”. These elements combined make up the Decent Work Agenda,<sup>4</sup> of which the 2003 Global Employment Agenda forms part.<sup>5</sup> The approach adopted in these two Agendas is fully in line with that of other multilateral instruments adopted before and after the 1995 World Summit for Social Development, held in Copenhagen, which was in itself a watershed in terms of the global agreement reached on the centrality in policy formation of full and productive employment, in compliance with all

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3. The Committee of Experts is composed of 20 legal experts appointed by the Governing Body for three-year terms. Their composition reflects the Organization's diversity across geographic regions, legal systems and cultures. The Committee meets annually in November-December and its report contains comments on the compliance of member States with their constitutional obligations, as well as findings from the General Survey. The report of the Committee of Experts contains a substantial chapter on employment policy, which includes observations on the application of Convention No. 122.

4. The Decent Work Agenda includes the ILO's four strategic objectives: promoting rights at work; promoting productive employment for women and men; promoting social protection for all; and promoting social dialogue.

5. The Global Employment Agenda is a guidance document providing a global framework for employment policy, adopted by the ILO Governing Body in 2003.

recognized rights and instruments.<sup>6</sup> Their relevance in 2011 and beyond has been further emphasized by the ILO's constituents in the **2009 Global Jobs Pact** and the **2010 Conference Resolution concerning the recurrent discussion on employment**.

The basic insight in the ILO Constitution is that it is through institutions and rules that nations, societies and communities organize themselves, and that labour and employment are fundamental to human economic activity and development. National policies, both for employment and in other areas, depend on these institutions and on the sets of rules developed for their implementation. Institutions complement policies, and economic growth and development are essential to protect and promote human rights, including rights at work and the right to work.

In practical terms, institutions, rights and procedures offer essential opportunities and mechanisms for the accomplishment of policy goals, and are invaluable for national strategies. For example, national policies promote gender equality by directing resources to suitable training and employment measures. This is supplemented by the empowerment of women, and trade unions on their behalf, with a view to obtaining equal remuneration and equality of treatment at work either through collective labour relations or the courts. But it is difficult to ensure rights and labour standards of this kind in the absence of a sustainably growing economy, which is in turn dependent on the recognition of full, productive and freely chosen employment and decent work as a major goal, and progress in their achievement.

At the international level, within the multilateral system, the ILO's body of standards and other instruments provides a balanced and authoritative agenda for international organizations, States, financial institutions, multinational enterprises and other actors to assure the social dimension of globalization, including in development assistance. Recognition of the role of employment policy in development, in both the United Nations and the Bretton Woods system, as well as at the regional level, has continued to spread since the 1995 World Summit for Social Development in Copenhagen. This is evident, for example, in the endorsement by the United Nations Economic and Social Council (ECOSOC) in 2008 of the emphasis on full and productive employment and decent work,<sup>7</sup> and in the strengthening of

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6. Report of the World Summit for Social Development available at: [www.un.org/documents/ga/conf166/aconf166-9.htm](http://www.un.org/documents/ga/conf166/aconf166-9.htm) – see especially Commitment 3 and Chapter III.

7. ECOSOC Resolution 2008/18 available at: [www.un.org/en/ecosoc/docs/2008/resolution2008-18.pdf](http://www.un.org/en/ecosoc/docs/2008/resolution2008-18.pdf). See also the CEB *Toolkit for mainstreaming employment and decent work*, ILO, Geneva, 2007 – [www.ilo.org/public/english/bureau/pardev/relations/multilateral/toolkit.htm](http://www.ilo.org/public/english/bureau/pardev/relations/multilateral/toolkit.htm).

the employment indicators in the Millennium Development Goals.<sup>8</sup> The World Bank Development Reports have also been focussing increasingly on poverty reduction strategies and acknowledging the need for policy coherence and quality jobs in the context of the pervading economic globalization.<sup>9</sup> Nevertheless, much remains to be done by the ILO at this level to intensify the links between employment, on the one hand, and development frameworks, including those concerned with trade and the environment, on the other.

The ILO Constitution and its standards set out an agreed framework of rights, obligations and behavioural norms. They have their place in the international legal system alongside other instruments concerning human rights and the behaviour of States, and the principles and rules which govern the implementation of obligations and rights by nations. It is clear in this respect that the ILO's principles and rights, and the Conventions that embody them, are more detailed expressions of certain aspects of the International Bill of Human Rights,<sup>10</sup> and particularly the International Covenant on Economic, Social and Cultural Rights. It should also be recalled that ratified Conventions represent the formal acceptance of obligations by member States, and that the ILO plays an important role in facilitating the fulfilment of those obligations by States through its supervisory mechanisms, technical advisory services and engagement with governments and the social partners.

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8. Official list of MDG indicators, effective 15 January 2008, available at: [unstats.un.org/unsd/mdg/host.aspx?content=indicators/officiallist.htm](http://unstats.un.org/unsd/mdg/host.aspx?content=indicators/officiallist.htm).

9. See “World Bank President cites growing ties with ILO on globalization and decent work agenda” (March 2008) – [www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS\\_091493/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_091493/lang-en/index.htm), and also 2013 World Development Report on Jobs – [econ.worldbank.org/external/defaultmain?contentMDK=23044836&theSitePK=8258025&piPK=8258412&pagePK=8258258](http://econ.worldbank.org/external/defaultmain?contentMDK=23044836&theSitePK=8258025&piPK=8258412&pagePK=8258258).

10. Further information available at: [www.ohchr.org/Documents/Publications/FactSheet2Rev.len.pdf](http://www.ohchr.org/Documents/Publications/FactSheet2Rev.len.pdf).



## Recent developments in relation to the ILO's employment-related standards

# 3

Convention No. 122 illustrates the symbiosis between policy and rights. As a policy Convention, it articulates specific goals and the policies and programmes required for their achievement. But it is also a normative instrument: States which ratify the Convention make commitments and accept certain obligations (for example, that the process of formulation of employment policies has to be inclusive and participatory, and the utmost importance of tripartite consultations). The fact that employment policy goals have to be pursued as a major goal of the national agenda and of macroeconomic policy means that a very broad range of issues fall within the scope of the Convention. These include social and financial matters, as illustrated by ILO employment policy documents and discussions. The obligations related to the Convention include those deriving from membership of the ILO, and particularly engagement with the supervisory processes.

Convention No. 122 has proved an authoritative and popular statement of the role and goals of employment policy. It was conceived in an era of high levels of employment in the industrialized countries, alongside the much lower level of economic and social progress in the majority of countries that are now members of the United Nations and the ILO. Its formula was accepted by the socialist and market economies countries, and increasingly by developing countries. Convention No. 122 offered a sound foundation for the basic needs approach espoused by the ILO's World Employment Conference in 1976, and other ILO instruments adopted in the following decades developed different elements of employment policy.

As of September 2013, Convention No. 122 had been ratified by 108 countries. Over the past few decades, many other member States have also articulated or adopted policies and programmes aimed at promoting full, productive and freely chosen employment. Convention No. 122 has been ratified by many OECD countries, including Canada, the Member States of the European Union and Japan, as well as by Brazil, China, India and the Russian Federation. A fair number of developing and emerging countries have also ratified the Convention and are taking steps towards its implementation through developing and implementing employment promotion policies and measures. Indeed, the design and implementation of a national employment policy in line with the Convention remains an essential goal

### **Convention No. 122 in summary**

- Convention No. 122, a significant instrument from the viewpoint of governance, serves as a blueprint for member States to apply as they implement active employment policies in their efforts to recover from the global economic crisis.
- The realisation of the right to work as a basic human right can be attained through the promotion of full, productive and freely chosen employment as the cornerstone of economic and social policies.
- Innovative education and training policies should be designed, adopted and targeted at all jobseekers with the aim of better preparing them for those employment opportunities that will arise when the global economy recovers.
- Consultation with the social partners both at the earliest stages of policy formulation and during the implementation process is essential and enables governments to take fully into account their experience and views.

of every government, and full employment is a consensual objective for the social partners.

Important global policy instruments and frameworks adopted by the ILO's tripartite constituents have reaffirmed the relevance of international labour standards, and particularly of Convention No. 122. The Global Employment Agenda, which was adopted by the ILO Governing Body in March 2003 with strong tripartite consensus and support, provides the core elements of a framework for employment policy. Its principal aim is to ensure that employment is central in economic and social policy. In the Global Employment Agenda, the ILO's constituents reaffirmed fundamental rights as ethical imperatives, with rights and economic benefits being seen as complementary, rather than incompatible or requiring trade-offs. Discrimination and forced labour, which deprive people of freely chosen employment, are serious violations of human rights which also have economic costs and result in the failure of those affected to develop the skills required for the labour market. Freedom from forced labour and child labour is a moral imperative. Freedom of association and social dialogue facilitate adjustment to change. Individuals' rights are inherent to democracy, to a human rights and standards perspective, and to the premise that labour is not a commodity. The qualitative and quantitative dimensions of employment (decent work) are therefore inseparable, which has clear implications for business ethics and corporate social responsibility.

In response to the global and economic crisis, at the International Labour Conference in 2009, the ILO's constituents adopted the Global Jobs Pact, which views the employment effects of the crisis through the lens of the Decent Work Agenda. The Global Jobs Pact calls for strengthened respect for international labour standards and reaffirms the importance of a number of international

### 3. Recent developments in relation to the ILO's employment-related standards

labour Conventions and Recommendations, in addition to the fundamental Conventions, including the ILO's instruments on employment policy.

Each year, as part of its supervisory functions, the ILO Committee of Experts draws up a General Survey, which provides a broad overview of the application of ILO standards in a particular area. The General Survey concerning employment instruments, submitted by the Committee of Experts to the ILC in June 2010, offers an important review of employment policy. The 2010 General Survey covered four Conventions and two Recommendations,<sup>11</sup> and identified problems in their application, and accordingly priorities for Office assistance to constituents. In the General Survey, the Committee of Experts noted that, despite the changed policy paradigm of the 1980s and 1990s, "almost all countries are committed to the goal of increasing productive employment". This is reflected in references to employment creation in their Constitutions and in their social and labour legislation, the enactment of special laws and the adoption of key policy documents. Countries are increasingly developing and adopting comprehensive national employment policies which bring together the measures taken in the various policy areas, and programmes and institutions that influence the demand and supply of labour and the functioning of labour markets.<sup>12</sup>

In parallel with the 2010 General Survey, the report prepared by the Office for the so-called "Recurrent item discussion" on employment by the Conference in June 2010 identified key employment policy challenges, including the promotion of and support for the implementation of international labour standards relating to employment, with special reference to Convention No. 122.<sup>13</sup> The Recurrent item report identified the need to evaluate the impact of ILO programmes, policy advice and other interventions.

The outcome of the Recurrent item discussion on employment in 2010 took the form of a Resolution identifying the actions required to respond more effectively to the diverse realities and needs of countries for the generation of full, freely chosen and productive employment. The Resolution calls for improved policy coherence and coordination, and standards-related action around the strategic objective of employment. It reiterates the role of the

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11. The six instruments covered by the 2010 General Survey were selected by the Governing Body in November 2008 are: the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Convention, 1975 (No. 142); the Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181); the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189); and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

12. See *Employment policies for social justice and a fair globalization*, Recurrent item report on employment, Report VI, ILC, 99th Session, Geneva, 2010.

13. *Ibid.*

Global Employment Agenda in reaffirming the complementarity between rights and economic benefits and encourages governments to take the following steps:

- (i) respond positively and as a matter of priority to the ILO campaign for the ratification of fundamental labour standards and the four governance Conventions, which include the Employment Policy Convention, 1964 (No. 122), and take steps for their effective implementation;
- (ii) ratify and implement effectively the up-to-date Conventions covered by the 2010 General Survey concerning employment instruments;<sup>14</sup>
- (iii) implement effectively the Recommendations covered by the 2010 General Survey;<sup>15</sup>
- (iv) give due consideration to the relevant standards referred to in paragraph 14 of the Global Jobs Pact;
- (v) reinvigorate efforts to ensure that economic downturns do not lead to the violation or weakening of fundamental rights at work or national labour laws.

Among the normative instruments referred to in the 2010 Resolution, the Employment Relationship Recommendation, 2006 (No. 198), is viewed as important in combating disguised employment relationships. The ILO's Conventions on public and private employment agencies can assist in modernizing and strengthening employment services, and in improving best practices at the national level. The Resolution calls on the Office to strengthen capacity building and provide technical assistance to member States to assist their efforts for the effective implementation of the employment Conventions and Recommendations.

The 2010 Resolution also highlights the inter-relationship, both between the ILO's strategic objectives, and between the three elements of employment policy set out in Convention No. 122. It emphasizes that: following the preceding discussion of full employment as a major goal, a sound economic and employment base is needed to support a social floor; freely chosen employment cannot be realized without respect for the fundamental principles and rights at work; the fair sharing of the benefits of productivity gains and growth cannot be assured without social dialogue; and productivity gains and employment growth cannot be achieved without an enabling environment for sustainable enterprise. Based on the conviction that social

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14. The Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), and the Private Employment Agencies Convention, 1997 (No. 181).

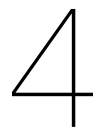
15. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

### 3. Recent developments in relation to the ILO's employment-related standards

dialogue is particularly important at times of increased social tension, the Resolution also calls for increased respect for freedom of association, as well as heightened vigilance to eliminate and prevent forced labour, child labour and discrimination at work. Companies are called upon to respect national laws or, in the absence of such laws, they should be guided by the principles agreed in international labour standards. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977, as revised in 2006, hereinafter the "MNE Declaration") is an important document for reference and guidance in this regard.



# Context, content and implementation of Convention No. 122



## 4.1 The context of Convention No. 122

The basic objective of Convention No. 122 is that a national policy for full, productive and freely chosen employment is declared and pursued as a major goal. The “freely chosen” element involves both the absence of compulsion or discrimination, and the presence of opportunities to acquire and apply skills. In terms of the relationship between the goal of full, productive and freely chosen employment and other economic and social objectives, the national level of development and other economic and social objectives are clearly important. Governmental procedures and machinery are evidently needed to give effect to the employment policy objectives. An essential element of the Convention is that the persons affected by employment policy, and particularly employers’ and workers’ representatives, as well as representatives of those engaged in the rural and informal economies, are to be consulted on the formulation of employment policy, and their cooperation enlisted in its implementation.

### (a) Realizing the right to work

The right to work, set out in Article 23 of the Universal Declaration of Human Rights, was recognized in the mid-1960s as a formal commitment by States ratifying the International Covenant on Economic, Social and Cultural Rights (Article 6). A direct connection was subsequently made between the right to work and employment policy in Recommendation No. 169. This commitment is often reflected in national constitutions, either in terms of the right to work (see, for example, Benin), the right to employment (Nepal) or the free choice of employment (Rwanda).

### (b) Full employment and development

Employment features prominently on the international policy agenda. The ILO successfully asserted the role of full employment as part of the development agenda defined at the 1995 World Summit for Social Development, and subsequently in the Millennium Development Goals. Furthermore, G20 leaders are increasingly recognizing the role of employment policy in



addressing the financial and economic crisis. The importance of the application of international labour standards in this respect is also receiving growing recognition. For example, the G20 Labour and Employment Ministers (Paris, 26-27 September 2011) made a commitment to step up their efforts to encourage the application of international labour standards.

## **4.2 The obligations under Convention No. 122**

### **(a) To declare and pursue an employment policy as a major goal**

For those States that have ratified Convention No. 122, an employment policy has to be the object of a formal declaration and has to be a major goal in the national agenda. Such a declaration may of course take various forms. In some countries, the commitment to promote employment is written into the Constitution. In Uganda, the President's Manifesto articulates the Government's pledge to take all possible measures to create employment. A "Year of Job Creation" was declared in Mongolia, while in the United Republic of Tanzania, a National Employment Policy was declared to promote decent and productive employment as a national priority. Trade is another element of national policy which, for example in the countries covered by the Central America Free Trade Agreement (CAFTA), is likely to affect employment policy. Changes in foreign trade policy may have an impact on the labour market, and the effects of trade agreements on job creation would therefore be examined in relation to the application of Convention No. 122.

### **(b) The objectives of employment policy**

While it is not always realistic to expect the full achievement of the employment goals set out in Convention No. 122, what is required is that these goals should be actively pursued, which in turn requires monitoring. Three goals are specified:

- work for all who are available for and seeking work;
- work to be as productive as possible; and
- freedom of choice of employment and full opportunities to obtain and use skills irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

#### **(i) Full employment**

The concept of full employment is not inconsistent with a degree of frictional (short-term) unemployment. ILO standard definitions and workforce surveys analysing the different aspects of this phenomenon are widely used.

#### 4. Context, content and implementation of Convention No. 122

Nevertheless, there is still likely to be a level of hidden unemployment and underemployment in many countries. China is one country where an active policy is reported to have been adopted of providing access to employment for at least one member of each family. In India, policy measures are focused on the poorly paid in rural areas. Under the 2005 National Rural Employment Guarantee Act, each rural household is entitled to 100 days of unskilled work per year on public works programmes. In its last report on Convention No. 122, the Government of India reported that in October 2009 the national policy had been renamed the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). In 2011–12, the MGNREGA provided 37.7 million households with an average of about 32 days of employment per year. ILO employment and standards specialists in Delhi have been active in giving advice to the federal and state authorities and in learning from this experience.

##### (ii) Productive employment

High value is clearly given to productivity among national economic objectives. Evidently, the greatest challenges that arise in this respect are at the informal end of the employment spectrum. Low productivity is a common feature of both rural and urban poverty. The Committee of Experts has noted in its comments on the application of Convention No. 122 that the reduction of informal work is normally followed by an increase in productivity. Measures taken in relation to the informal economy should aim to provide undertakings in the informal sector with greater access to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies. Member States provide information in their reports on Convention No. 122 on the measures adopted to reduce poverty in the informal economy with a view to ensuring a smooth and just transition to the formal sector.

##### (iii) Freely chosen employment

In addition to discrimination on grounds of sex, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), also prohibits discrimination in employment and occupation on other grounds, such as race, colour, religion, political opinion, national extraction and social origin. This prohibition encompasses discrimination in relation to engagement, promotion, termination or any other conditions of employment. But it also calls for equal opportunities to be asserted and for active steps to be taken to ensure equality of opportunity, which implies that attention needs to be given to particular categories of vulnerable workers, including youth, migrants, older workers, indigenous peoples and workers with disabilities, not only with a

view to eliminating discrimination against them, but also to enhancing their skills and employability.

Women make up around half of the population (or, in other words, half of human resources and human capital). This means that the situation of girls and women workers needs to be addressed in all countries, particularly by examining the gender relations at play in education and training, the gender division of labour and of property distribution. If employment policies are to be successful and inclusive, they need to be linked to households and social protection systems, which makes it impossible to ignore the need to improve the position of women in the labour market. Employment policies are accordingly crucial in giving practical effect to the right to freedom of choice for both women and men workers. This complements the rights-based approach to equality advocated by the ILO, in which specific importance is given to the right to equal remuneration for men and women for work of equal value, in addition to the need for maternity protection and for policies and measures for workers with family responsibilities.<sup>16</sup>

With regard to young people, the Resolution adopted by the ILC in 2012 following the discussion on the youth employment crisis emphasizes that labour market policies can facilitate the entry and re-entry of young people into the labour market. Policies need to be well targeted to benefit the most disadvantaged youth, and can yield broad economic and social benefits through greater equity, social inclusion and higher aggregate demand. The 2012 Resolution calls for labour market policies and programmes to be reviewed to ensure that they contribute as effectively as possible to job creation for young people.

### **(c) Relationship of employment policy with other economic and social objectives**

While the employment policies adopted by each country clearly have to take into account the national level of development, when the ILO's constituents adopted Recommendation No. 169 in 1984, they called for the goals set out in Convention No. 122 to be given priority among economic and social policies, and also emphasized the objective of satisfying basic needs.

In Africa (for example in the United Republic of Tanzania and Malawi), employment policies and measures are often integral to poverty reduction strategies and national development plans, and may focus on investment

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16. See also the *Guidelines on gender in employment policies*, ILO, Geneva, 2009, as well as Conventions Nos. 103 and 183 on maternity protection, and Convention No. 156 on workers with family responsibilities.

or young persons (Burundi). In Lebanon, the employment and poverty reduction strategy forms part of an overall post-conflict agenda, in which the United Nations is broadly involved. In Uruguay and Italy, the measures adopted in response to the economic crisis demonstrate a new focus on such areas as SME development and employment services. Recommendation No. 169 also emphasizes the importance of balanced regional development. The policy measures adopted in Slovakia and Japan show that this is an important issue that should also be addressed in industrialized economies. In China and Mexico, for example, special measures may be needed to address regional imbalances, accentuated by crisis-hit industries, such as automobile manufacturing. In Peru, the huge potential of public procurement is being used to promote SMEs.

#### **(d) Methods of giving effect to employment policy**

In addition to the requirement set out in Article 2 of Convention No. 122 for steps to be taken to apply employment policy measures, Recommendation No. 122 emphasizes the importance of labour market statistics and analysis. A valuable tool in this context is the ILO KILM database (Key Indicators of the Labour Market),<sup>17</sup> which helps national institutions in many countries to relate data collection to the relevant international standards. Procedures to review and assess the results of employment policy measures are of crucial importance. Such review procedures help governments and the social partners to assess the extent to which the proposed measures have been implemented and the desired results have been achieved.

#### **(e) Consultations with representatives of the persons affected by employment measures**

As described below, the steps called for in Article 3 of Convention No. 122 go beyond consultations with employers' and workers' representatives and include other "representatives of the persons affected" by employment policy measures.

##### **(i) Consultations in formulating employment policy**

Tripartite consultative bodies exist in many countries. But the question often remains of the extent to which there is real upstream involvement of the social partners and other stakeholders in the elaboration of employment policy measures. It is normal that in countries at all stages of development

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17. [www.ilo.org/empelm/what/WCMS\\_114240/lang--en/index.htm](http://www.ilo.org/empelm/what/WCMS_114240/lang--en/index.htm).

the question of consultation will require constant review, as it provides an opportunity for different approaches and priorities to be aired and offers an occasion for the adjustment of employment policy measures, for example in response to the financial and economic crisis.

Although unanimity is not required among those consulted, there is a need to seek the full cooperation and support of the social partners for employment policy. Moreover, the scope of consultations should include not only employment policy in the narrow sense, but all aspects of economic policy, and in particular macroeconomic (monetary and fiscal) and exchange rate policy, as they affect employment.

#### (ii) Actors engaged in the consultations

In relation to programmes to address informality, and as reaffirmed by the tripartite constituents in the **2002 ILC Resolution concerning decent work and the informal economy**, there is a clear need to involve the intended beneficiaries of such programmes. In some countries, this role is played at least to a certain extent by the social partners, through their relations for example with SMEs and precarious workers. Other “persons affected” might include multinational enterprises (MNEs), the role of which in relation to employment policy is elaborated in the MNE Declaration. In certain countries, including Spain, Lithuania and the United States, importance is attached to the corporate social responsibility of businesses which wish to integrate social concerns into their operations. In Brazil, the leaders of social movements and associations, churches and entrepreneurs have been brought together for consultations on employment policy issues.

#### (iii) Forums for consultations

Consultative bodies are sometimes permanent, such as the economic development councils in South Africa, Sri Lanka and China. Alternatively, they may be convened to consider specific issues, such as the global economic crisis (examples include the Netherlands and India), or other issues.

#### (iv) Support for the implementation of employment policy

Recommendation No. 122 calls on employers and workers to take initiatives for action to promote the goals of Convention No. 122. Many governments have found that the involvement of the social partners is advantageous (Benin and Zimbabwe), including in times of crisis response (Chile).

### **4.3 Guidance on employment measures included in the Employment Policy Recommendation, 1964 (No. 122), and the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)**

When the constituents adopted Convention No. 122 at the ILC in 1964, their objective was to place the goal of full, productive and freely chosen employment in the wider framework of an international programme for economic expansion. Convention No. 122 therefore lays down the broad policy aim and outlines the approach to be taken. Importantly, they are set out in an instrument that can be ratified, which entails obligations for the ratifying State and supervision of the application of the Convention by the ILO supervisory bodies. At the same time, in Recommendation No. 122, the constituents agreed on more detailed guidance on the different elements of employment policy. Recommendation No. 122 has been of great value in the dialogue developed between the ILO supervisory bodies and the governments of ratifying States on the various elements of their national policies, as the contents of the Recommendation are reflected in the report form on Convention No. 122, which constitutes the basis of the process of supervising the application of the Convention.

The 1964 instruments are supplemented by Recommendation No. 169 of 1984, as well as by other Conventions and Recommendations adopted in the interim, for example concerning workers with family responsibilities, older workers and migrant workers. As in the case of Recommendation No. 122, the text of Recommendation No. 169 is annexed to the report form for Convention No. 122.

Recommendation No. 122 covers issues such as seasonal changes and structural adjustment in the context of the need for reasonable economic stability if employment policy measures are to succeed. The references in Recommendation No. 122, for instance, to housing policy, training, leisure, hours of work and holidays illustrate the very broad range of matters that need to be taken into account in relation to employment. The Recommendation also refers to the use of approaches such as labour-intensive public works, handicraft development, rural and land development, fiscal and monetary policy and international trade as means of pursuing the aims of Convention No. 122.

In 1984, with Recommendation No. 169, the Conference took account of the basic needs approach that had been outlined by the ILO's constituents at the 1976 World Employment Conference. Recommendation No. 169 also emphasizes that the promotion of full, productive and freely chosen employment, as called for in Convention No. 122, should be regarded as the means of

realizing the right to work in practice. The Recommendation focusses attention on the informal economy and the need for its progressive “formalization”. It also dwells, in the context of the right to work and the elimination of discrimination, on the attention that needs to be given to youth and the disadvantaged, with particular reference to migrant workers. It points to ways forward through technological innovation, SME development, regional policy and renewed public investment.

Two dimensions are emphasized in both Recommendations. The first is that the involvement of employers’ and workers’ organizations is vital for a successful employment policy. The other is that (as confirmed by the accelerated globalization of recent years) international cooperation is a dimension of national employment policy that cannot be ignored.

#### **4.4 The other employment-related instruments covered by the 2010 General Survey**

##### **(a) The Human Resources Development Convention, 1975 (No. 142)<sup>18</sup>**

The importance of human resources as a major factor of economic and social development has repeatedly been reaffirmed by the ILO’s constituents, particularly in the 2003 Global Employment Agenda and the 2008 Social Justice Declaration. In 2009, the G20 and the ILO Global Jobs Pact highlighted the direct relevance of human resources development to recovery from the economic crisis. The right to education and training logically follows directly in international human rights instruments from the right to work and freedom from discrimination. This is laid out in greater detail for further guidance in the Human Resources Development Recommendation, 2004 (No. 195).

Convention No. 142 and Recommendation No. 195 set out the need, within the framework of the employment policy objectives laid down in Convention No. 122, for a national policy to ensure opportunities for workers to qualify for and use their skills in suitable jobs. For this purpose, vocational guidance and skills training should be adapted to both individual aspirations and economic requirements. While Convention No. 142 is predominantly a policy instrument, when taken together with Recommendation No. 195 it also reflects international recognition of the human right to education and training.

The thrust of Convention No. 142 is for the adoption of comprehensive policies and programmes of vocational guidance and training linked to employment, especially using public employment services (see the section

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18. Ratified by 68 member States (at July 2013).



below on Conventions Nos. 88 and 181). Indeed, many countries make this link in practice, often at the regional level (examples include Canada, Australia and Switzerland), and often with the benefit of local inputs from enterprises or local community colleges (Nepal and the United States). In some countries, vocational guidance and training policy is developed in cooperation with the education authorities (Indonesia), or with assistance from the United Nations system (Afghanistan and Nepal). Recommendation No. 195 reasserts the interdependence of human resources development with other economic, social and cultural objectives, including fiscal, social and labour market policies and sustainable development programmes. It also emphasizes the importance of the lifelong development of individuals as active participants in society, which further reaffirms the dimensions of promoting equality and the rights basis.

Convention No. 142 calls for open, flexible and complementary systems of education and training. The policy and practical assistance provided by the ILO in this respect therefore focuses on policy and programme development at the national level. In view of the skills deficits, particularly in the informal economy, Recommendation No. 195 encourages both formal and informal training and work experience. Indeed, there has been a shift in practice in many countries, such as Peru and Uganda, towards individual learning in this sense. These can then form part of a range of measures to ensure the implementation of the Convention, with the respective structures and activities usually being anchored in legislation (for example, in Argentina, Viet Nam and Niger), and even in national constitutions (Republic of Korea, South Africa and Ukraine).

The approaches adopted to human resources development have much in common with those for employment policy more generally, including the emphasis on consultation with and participation of employers' and workers' organizations, as tripartite agreements may be very helpful in reinforcing commitments in this area (examples include Romania and Chile).

#### **(b) The Employment Service Convention, 1948 (No. 88),<sup>19</sup> and the Private Employment Agencies Convention, 1997 (No. 181)<sup>20</sup>**

These two Conventions address the mechanics of the functioning of the labour market. While public employment services were seen as the ideal, as reflected in Convention No. 88, the possibility is also left open for a dualistic system of complementary public and private employment services, with both

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19. Ratified by 89 member States (at July 2013).

20. Ratified by 27 member States (at July 2013).

playing an important role in informing and implementing a full employment policy and contributing to the optimal functioning of the labour market, within the overall framework of Convention No. 122. Convention No. 181 aims to protect individual workers, including migrant workers, from abuse within such a dualistic system. The fact that structures and legal frameworks are required for both public and private employment services emphasizes the rights dimension of employment policy. The topicality of these issues has been highlighted by the G20 and in the Global Jobs Pact, which take a global view at a time of crisis response.

Most countries that have provided information to the ILO supervisory system have both public and private employment services to some extent, although in some of these countries there is not as yet an appropriate legal basis for private employment agencies. Where such legislation has been adopted, it usually shows that the necessary cooperation exists between public and private employment services, and is therefore to be encouraged. Action is also needed at the international level to eradicate abuses by intermediaries engaging in human trafficking or other violations of fundamental rights at work.

In line with the other ILO employment policy instruments, consultation with the social partners is an essential feature of the strategy governing employment services, and the existence of suitable tripartite bodies can facilitate cooperation between public and private services. Nevertheless, the important role of ensuring the best possible organization of the labour market and of collecting labour market information lies more with the public authorities than with private employment services. Knowledge of national systems for the certification of private agencies and the methods of supervising them at the national level including, for example, complaints machinery and penal measures, is being gathered by the ILO, partly through the reporting process on Conventions Nos 88 and 181.

If, under the terms of Convention No. 88, the role of public employment services can be summarized as ensuring effective recruitment, it is clear that the needs of specific categories of workers require particular attention, and that the qualifications and working conditions of employment service staff can be critical for their effective performance in that role. Convention No. 181 embraces the issue of temporary work agencies alongside other types of skills-providing agencies. It recognizes the legitimate role of private employment services and the need for the protection of the workers concerned. Both of these aims are essential and both require a clear legal framework, which should be designed to ensure decent working conditions in such areas as personal data protection, the scope of the activities of private employment agencies, the fees charged and fundamental rights at work. Convention No. 181 makes specific

provision for the protection of international migrant workers, who are especially vulnerable to abuse, which places private employment agencies in the context of the rights-based approach set out in the ILO's Multilateral Framework on Labour Migration of 2005.

**(c) The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193)**

These two Recommendations cover important components of the strategies through which national employment policies are to be implemented in line with Convention No. 122. They are conceived in terms of ensuring respect for international labour standards and fundamental rights at work, and are designed to find their place in relation to the ILO's other employment policy instruments.

One of the central matters addressed in Recommendation No. 189 is the role of the State in establishing an environment conducive to the creation and growth of small and medium-sized enterprises (SMEs) and micro-enterprises, which involves a series of legal, administrative and regulatory steps. SME development is often linked to the application of Convention No. 122 (for example, in China and Costa Rica). For example, it is clear that regulations can assist in directing finance towards SMEs (see, for example, India and Bangladesh), and that microfinance programmes can be a valuable promotional tool in this area. Regulations can also assist in ensuring that SMEs have the legal capacity to pursue their business (an example is Japan), although undue administrative burdens can hamper them (such as in France and Latvia). Governments can further assist by providing advisory services and investment in appropriate training, helping to build an "enterprise culture" (see, for example, the situation in Mexico, Tunisia and New Zealand), and sometimes by addressing the situation of specifically disadvantaged groups, such as women and persons with disabilities (one illustration of this is Greece).

The role of cooperatives in development, and especially in agriculture, has been acknowledged by the United Nations system, including the Food and Agriculture Organization (FAO). They are widely recognized as having a unique capacity for the creation of jobs, income and general opportunities where other structures do not succeed. Recommendation No. 193 updates the existing ILO standards on cooperative development and emphasizes the need for a supportive national framework for their promotion. The economic and financial autonomy of cooperatives, under an internally democratic governance system, is essential for their successful operation, which requires

the establishment of appropriate legal structures and institutions by governments including, for example, model statutes or especially adapted financial and tax regimes (as is the case, for example, in Canada). Cooperative development can benefit from consultancy services provided through governments, for instance on management and marketing, as well as assistance in appropriate skills development.

Employers' and workers' organizations play an indispensable role in relation to both SMEs and cooperative development. This role includes involvement in the development and execution of policies and programmes, as well as the provision of advice or, as appropriate, representational assistance where the interests of cooperatives or small businesses are at stake in central or local discussions.

#### **(d) Other relevant ILO instruments**

Several other ILO instruments have an important impact on specific aspects of employment policy formulation and implementation. These include:

- The **Minimum Age Convention, 1973 (No. 138)**, which is one of the ILO's eight fundamental Conventions. Based on their personal right to development and freedom from child labour, it links the question of the admission of children and young persons to employment with the issues of education and training, which are integral to the areas of youth employment and human resources development policy. The exploitation of children through child labour is also a form of social dumping that can divert work, especially decent work, away from legitimate members of the workforce. This is a clear indication of the need to integrate the rights-based approach into socio-economic policy.
- The **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**, directly addresses one of the necessary focus areas of employment and vocational guidance and training policies and measures in light of the well-established human rights dimension of disability.<sup>21</sup>
- The **Older Workers Recommendation, 1980 (No. 162)**, covers issues relating to the employment situation of older workers. New aspects of this issue have arisen in the current context in which job opportunities are becoming scarcer against the background of increased unemployment in general, particularly among young persons. In response to demographic changes, long-term unemployment for older workers and severe pressure on pensions systems, there is a trend for the retirement age to be raised, which

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21. See the United Nations Convention on the Rights of Persons with Disabilities, 2006.

has the effect of tightening labour markets even more. In these conditions, there is a clear need for the concerns of older workers to be integrated into employment policies in terms of training, re-skilling and job security (examples include Finland, the Republic of Korea and New Zealand).

- The **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**, raises issues relating to the right of indigenous and tribal peoples to equality, land rights and coverage by employment policies. Convention No. 169 includes provisions on vocational training and education that have an impact on the participation of indigenous peoples in the labour market. The Convention also contains specific provisions on the consultation and participation of indigenous peoples, who are among those who are likely to be affected by the measures taken in the context of employment policies.
- The **Migration for Employment Convention (Revised), 1949 (No. 97)**, contains detailed provisions addressing the situation of a category of workers that has become more numerous and vulnerable as globalization has accelerated. Moreover, many women migrant workers, for example those engaged as domestic workers, are particularly vulnerable. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), against the background of a strong policy content, places labour migration in its employment policy context and reaffirms the human rights of migrant workers. This is in line with the ILO's Multilateral Framework on Labour Migration, under the terms of which governments in both countries of origin and destination should give due consideration to licensing and supervising recruitment and placement services for migrant workers, in accordance with Convention No. 181.
- The **Labour Administration Convention, 1978 (No. 150)**, brings together the functions of government relating to employment policy, human resources development, employment services and labour inspection. It also calls for the extension of these functions to workers who are not otherwise considered as "employed persons", who may include those engaged under various forms of informality. This aspect is addressed more specifically in the Employment Relationship Recommendation, 2006 (No. 198).
- With regard to the **Termination of Employment Convention, 1982 (No. 158)**, and Recommendation No. 166, at a tripartite meeting of experts convened by the Governing Body in April 2011<sup>22</sup> the employers' representatives recalled that Convention No. 122 sets out full, productive and freely chosen employment as the overall objective for employment policies and that any ILO objectives in the field of protection against unfair dismissal should

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22. The final report of the meeting and the decision of the Governing Body on Convention No. 158 and Recommendation No. 166 are available at: [www.ilo.org/gb/decisions/GB312-decision/WCMS\\_168107/lang--en/index.htm](http://www.ilo.org/gb/decisions/GB312-decision/WCMS_168107/lang--en/index.htm).

be aligned to these objectives and priorities and contribute to them. Convention No. 158 and Recommendation No. 166, while recognizing the right of employers to dismiss workers for valid reasons, aim to ensure the right of workers not to be deprived of work unfairly. The purpose of the instruments is therefore to strike a balance between the interests of employers and those of workers, and to promote the use of social dialogue as a means of achieving that balance.

- The **Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)**, reaffirms the commitment to full, productive and freely chosen employment set out in Convention No. 122 and in that light addresses an essential consideration of employment policy, namely unemployment protection.<sup>23</sup>
- The **Social Protection Floors Recommendation, 2012 (No. 202)**, recalls that, when designing and implementing national social protection floors, member States need to promote productive economic activity and formal employment through a range of policies, including labour market policies.

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23. And it formed the basis for the closely related ILC discussion in June 2011 on social security for social justice and a fair globalization.

# Ratification and application of Convention No. 122

# 5

Convention No. 122, like all ILO Conventions and Recommendations, is a legal instrument that has gone through a process of formal elaboration and adoption by the ILO's constituents in the International Labour Conference. In this respect, there is clearly a constant need for the Organization as a whole to hone its instruments and procedures to ensure that they are adapted to contemporary needs, and for the Office to enhance its own skills and capacities to make best use of these instruments.

The process of the elaboration of international labour standards in some cases leads to the early ratification of the Conventions concerned. However, it is more usual for the ratification and implementation of Conventions to require a prolonged period of reflection at the national level, accompanied in some cases by encouragement and support from the Office. In the case of Convention No. 122, which has so far been ratified by 107 member States, as well as the related Conventions considered here, the support that can be provided by the Office includes analysis of national socio-economic policies and the institutional and legal environment with a view to identifying any barriers to ratification and the corresponding measures. Especially for Convention No. 122 and other policy Conventions, ILO support does not end with ratification, but responds to the on-going need to pursue the goal of implementation (the same applies to Recommendations). This process continues through ILO reporting procedures and the operation of the supervisory system, and takes the following considerations into account:

- Employment policy and macroeconomic policy are closely linked and mutually dependent. The international financial institutions, in particular, through their influence on the national and international financial and economic environment in its broadest sense, can have a powerful and even determining impact on national employment and social agendas. Under these conditions, the normative and legal frameworks offered by the ILO and its standards provide an important basis for asserting the central importance of the social aspects of financial viability, development and sustainability at the national level, and more generally the social dimensions of globalization.

- In the support provided by the ILO, the requirements of the Convention are therefore analysed in terms of how they can be applied in a given national socio-economic context, and practical assistance is provided to facilitate the identification of barriers to ratification and/or implementation and the requirement for national capacity-building.
- In view of the importance of Convention No. 122, which is identified in the 2008 Social Justice Declaration as one of the four so-called ‘governance’ Conventions, as well as its central role in pursuing development and decent work, its ratification is encouraged and furthered whenever possible.
- Once analysis of the national context has been completed, the steps to be taken for the ratification of Convention No. 122 are identified through a process involving cooperation between ILO staff at headquarters and in the field, government officials in the various ministries, representatives of workers’ and employers’ organizations and other stakeholders.

## **5.1 Step-by-step preparation for the ratification of Convention No. 122**

When playing its role of promoting the ratification and implementation of Convention No. 122, the Office therefore, based in particular on the initiatives and cooperation of employment and standards specialists in the field and at headquarters, normally adopts a step-by-step approach along the following lines:

**Step 1.** The Office’s examination of the employment situation in individual countries takes place against the background of existing ILO materials. In particular, the vision set out in the 2003 Global Employment Agenda determines the way in which national conditions are analysed and the subsequent measures proposed. In this respect, themes such as economic globalization, undeclared work and the informal economy, poverty reduction and decent work are universally relevant. A checklist is drawn up of the key policy areas identified in the Global Employment Agenda, including: economic policies for employment expansion (the demand side); skills, technology and employability; enterprise development; labour market institutions and policies; governance, empowerment and organizational capital; and social protection. To these are added the cross-cutting issues of youth, gender equality, non-discrimination, migration/demographic factors and older workers, as well as the movement towards green jobs, which is gaining momentum in the ILO and the G20. All of these aspects are analysed in the context of the national socio-economic environment through the lens of the ILO objective of decent working conditions with full respect for fundamental principles and rights at work.



## 5. Ratification and application of Convention No. 122

- For example, an ILO study of employment policy in Burkina Faso in 2006 noted the severe poverty in the country, especially the situation of women and children in rural areas, and the need to link employment policy more closely to other national policies. The programmes and activities listed coincided with many of the main features of Convention No. 122 and Recommendations Nos. 122 and 169 and other related standards. The aim of improving the functioning of the labour market through the enhancement of the regulatory framework was seen as being furthered by the ratification of Conventions Nos. 122 and 142. The study's conclusions on an implementation framework for the national employment plan, with monitoring and evaluation, made a substantive contribution to the national policy-making process. Burkina Faso ratified Conventions Nos. 122 and 142 in October 2009.

**Step 2.** One of the most vital aspects of the preliminary work undertaken by the ILO is that it gives rise to an informed national debate, during which national employers' and workers' organizations and other persons affected by employment policy are fully consulted and their views obtained. During the process, various types of obstacles to ratification may be identified, which may in turn lead to measures being taken to overcome them.

- At this preliminary stage, or during the ILO's periodic reviews of the situation in countries that have not ratified the Convention, some member States have indicated that their national policy or legislation diverges from Convention No. 122. However, in some of these cases it is apparent that many measures of the type envisaged in the Convention are applied in practice (examples include Luxembourg, Malta and Mexico). The extension of such measures through all parts of the country may create a problem (Indonesia). In some cases, the current political situation may be unfavourable (for example, in Nepal). In others, and particularly very small States (such as Eritrea), the view may be that national administrative machinery is inadequate. In many cases, there may be a lack of clear information on the requirements of the Convention. For instance, while a policy of full employment has to be declared and actively pursued, it is not essential to show that full employment is achieved within any given time limit. In other cases (including Benin, Mauritius, Malawi and Sri Lanka), the ILO has responded with the assistance called for either expressly or implicitly.

**Step 3.** The first fundamental measure that has to be taken by a State to ratify and apply Convention No. 122 is to make a political commitment to achieving full, productive and freely chosen employment, which is normally reflected in legislation or major declarations, such as national plans. The domestic political process needs to follow the characteristic ILO approach of

keeping the social partners informed and obtaining their views at all stages, while stimulating social dialogue among national constituents.

- Sometimes the political commitment represented by ratification precedes the provision of policy advice. For example, in 2008, the ILO sent a multi-disciplinary mission to Gabon, including specialists from the ILO office in Yaoundé, and employment specialists from headquarters. That team was able, with the participation of the tripartite national constituents, to present a final comprehensive document to the Government with, for the first time in Gabon, a national plan of action on employment.<sup>24</sup> Gabon ratified Convention No. 122 in October 2009 and provided its first report on the application of the Convention in August 2011.<sup>25</sup>

**Step 4.** The second fundamental measure is to build the institutions necessary to ensure the realization of the objective of full employment. These institutions may include: mechanisms for consultation with the social partners and others affected by policy measures; labour market institutions, such as public employment services and private placement agencies, including for migrant workers; educational and training institutes; and regulatory regimes for SMEs and cooperatives.

- In 2009, the ILO assisted the Ethiopian Government in the preparation of its National Employment Policy and Strategy. In view of the size of the informal economy in the country, it was determined to be important to extend the legislation to protect the rights of workers in the informal economy, supported by mechanisms and institutions within the competent ministry, such as employment and counselling services and support for unions and associations. Support for the establishment of unions and associations of self-employed persons was considered an important part of the employment policy. To oversee implementation, a national employment council with union and business representation has been envisaged. Nevertheless, the country has not yet adopted the national employment policy discussed in 2009, nor has it ratified Convention No. 122. Conventions Nos. 88 and 181 on employment services are in force in Ethiopia.

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24. ILO, Employment Working Paper No. 80, *Evaluation des emplois générés dans le cadre du Document de Stratégie de Croissance et de Réduction de la Pauvreté au Gabon*, 2011.

25. The direct request adopted in 2011 by the Committee of Experts on the application of Convention No. 122 in Gabon is reproduced in Appendix III.

**Step 5.** The third fundamental measure is to make the best possible effort to achieve and maintain full employment. This includes ensuring that macro-economic, trade, investment and industrial promotion policies all take into account and support the objective of full employment. As indicated in the 2010 General Survey on the employment instruments, adequate programmes should be put in place to support the training, retraining and redeployment of workers; measures should be taken to promote SMEs and cooperatives; targeted programmes should be established to overcome the barriers faced by vulnerable groups and to remove labour market discrimination; and labour market information databases should reflect regional variations in the situation.

- The 2008 draft national employment plan in Costa Rica, prepared with ILO assistance, emphasized the need to stimulate the employability of workers and called for the plan to be incorporated into the broader national economic policy. Training and education were identified as priorities, in part through the National Apprenticeship Institute and the national system for technical education and competitiveness. For microenterprises and cooperatives, training was seen as a major factor in increasing productivity and employment opportunities, with funding through the competent bank. The vulnerable groups identified were women, young people and people with disabilities, while the importance was emphasized of maternity protection. Younger workers need appropriate training for entry into the labour market, while persons with disabilities can be helped by granting tax breaks to hiring businesses.

**Step 6.** Formal ratification of Convention No. 122 may in some cases come earlier rather than later in the process of considering employment policies at the national level. However, it occurs most frequently at the stage when the employment situation has been duly analysed and debated by the social partners and in other appropriate national bodies, and when a firm political commitment has emerged to full, productive and freely chosen employment as a major goal.

- In the elaboration of its national employment policy, the Government of Ghana conducted comprehensive consultations involving international organizations, such as the ILO, and national organizations, including employers' and workers' organizations. The national employment policy makes reference to the legal and institutional framework and to international labour standards. One of the resulting actions was the engagement of an ILO expert in October 2011 to undertake an analysis of the national situation with a view to the ratification of Conventions Nos. 122 and 181. A national tripartite workshop was held in 2012 to review the draft National Employment Policy and Action Plan.

**Step 7.** In terms of the formal ratification process, under article 19 of the ILO Constitution,<sup>26</sup> if the government obtains the consent of the national competent authorities, it will communicate an instrument of ratification to the ILO. The instrument of ratification needs to clearly identify the Convention, be an original document signed by a person with authority to engage the State (such as the Head of State or a responsible minister) and should clearly convey the Government's intention to be bound by and fulfil the provisions of the Convention. Ratifications must not contain any reservations. The Office of the ILO Legal Advisor, the International Labour Standards Department and ILO field standards specialists are available to provide advice and assistance, where necessary, on the completion of the formal ratification procedure.

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26. It should be noted that, in the case of recent Conventions and Recommendations adopted by the International Labour Conference, such as for the HIV and AIDS Recommendation, 2010 (No. 200), and the Domestic Workers Convention, 2011 (No. 189), and its accompanying Recommendation, 2011 (No. 201), ILO member States have the obligation to make a submission to parliament with their proposals on whether to ratify or apply the instrument, and to report on this to the ILO.

# Reporting procedures on the implementation of Conventions



## 6.1 Timing of reporting

Once a ratified Convention has come into force for the country concerned, twelve months after ratification, the ILO's regular supervisory system starts to operate based, on the one hand, on the governments' reports and, on the other, on the comments of the supervisory bodies. The year following ratification, a detailed first report (due under Article 22 of the ILO Constitution) is requested by the Office (the International Labour Standards Department). Reports are requested from all governments at the same time each year, namely in February, and should be supplied between the 1st of July and the 1st of September of that year, at the latest. For Convention No. 122 and the other three 'governance' Conventions, as well as for the eight fundamental Conventions, reports are normally requested every three years (this has been the case since 2012). After the first report, simplified periodic reports are requested on Convention No. 122 as follows (although where necessary a non-periodic report may also be requested):

- For countries of which the names in English begin with the letters from G to N – in 2013, 2016, etc.;
- For countries of which the names in English begin with the letters from A to F – in 2014, 2017, etc.;
- For countries of which the names in English begin with the letters from O to Z – in 2015, 2018, etc.

The first report is prepared on the basis of the report form for Convention No. 122 adopted by the Governing Body, and needs to show in detail the manner in which each provision of the Convention is applied, with supporting references and documentation. After the first report, a further detailed report is only required if so requested by the Committee of Experts, or may be made by the government at its own initiative in cases where significant changes warrant a further detailed report. Otherwise, a regular report is due.

The first, or any other "detailed" report, should follow closely the information requested in the report form on Convention No. 122 approved by the

Governing Body, and should therefore provide information on the following matters:<sup>27</sup>

- I. Laws and regulations applying the Convention and whether ratification of the Convention has caused their enactment
- II. The provisions of plans, programmes or other measures applying the different provisions of the Convention. These should show:
  - (a) how the active employment policy was declared;
  - (b) what the levels and trends of employment, unemployment and underemployment are, including for particular categories of workers (women, young workers, older workers, people with disabilities), and how far employment objectives are attained;
  - (c) the main policies and measures to ensure there is work for all those available for and seeking it, having regard especially when relevant to:
    - (i) over-all and sectoral development policies (e.g. investment, fiscal and monetary policies, trade, prices, incomes and wages); policies for regions, infrastructure, rural and industrial development;
    - (ii) labour market policies (matching the supply and demand for labour, adjustment to change and international trade or technology); measures for particular categories, such as young workers, women, people with disabilities, older workers); and
    - (iii) education and training policies (vocational training aligned with employment opportunities);
  - (d) how productivity is ensured;
  - (e) how freedom of choice and opportunity are ensured;
  - (f) how any difficulties encountered are addressed;
  - (g) how employment policy objectives relate to other economic and social objectives;
  - (h) how labour force data are collected and analysed as a basis for employment policy;
  - (i) how employment policy measures are kept under review within the framework of a coordinated socio-economic policy;
  - (j) how employers' and workers' organizations and representatives of other persons affected such as those in the rural sector and the informal economy are consulted;
- III. The authorities responsible for applying the Convention and how they do so;

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27. The texts of Recommendations No. 122 and 169 are also annexed to the report form on Convention No. 122.

## 6. Reporting procedures on the implementation of Conventions

- IV. Any court decisions relevant to the Convention;
- V. Any assistance received from the ILO on employment policy and the consequent action taken; and
- VI. Reports, studies, inquiries and data relevant to the application of the Convention should be transmitted if possible. Under article 23, paragraph 2, of the ILO Constitution, copies of reports on the application of Convention No. 122 should be communicated to representative organizations of employers and workers. This may be done either prior to the finalization of the report, inviting comments that can still be taken into account, or at the same time as the report is sent to the ILO.

Subsequent simplified reports need only contain:

- Replies to the comments (observations/direct requests) made by the Committee of Experts;
- Information on any new legislative changes, as well as on the adoption/implementation of the national employment policy;
- Updated labour market statistics and other data;
- Information on the employers' and workers' organizations that have received copies of the report; and
- Remarks made by employers or workers, and any comments by the government in response.

In practice, much of the value of the supervisory system lies in the establishment of a constructive dialogue between governments that are bound by the Convention, as well as national employers' and workers' organizations and other stakeholders concerned with employment policy, and the Committee of Experts, including other concerned ILO units, with a view to assisting the country in the implementation of its national employment policy. In this connection, the assistance available from the ILO can include help in preparing the reports due on the application of Convention No. 122, in which it is important to address the comments made by the Committee of Experts and the Conference Committee, which may well involve gathering statistical or other data. Policy advice and practical help is also available to deal with substantive aspects of the Convention which do not seem to be sufficiently understood or implemented.

### **Brief overview of the ILO supervisory machinery**

The regular ILO machinery for supervising the application of Conventions and Recommendations consists of two bodies:

- I. The Committee of Experts on the Application of Conventions and Recommendations:
  - (a) is an independent, impartial and objective body of international legal experts of high standing and recognized competence in a variety of legal, economic and social systems. It is appointed by the ILO Governing Body. Its task is to examine the regular reports required under Article 22 of the ILO Constitution on the effect given by States to ratified Conventions, as well as reports under article 19 of the Constitution on the effect given to unratified Conventions and Recommendations;
  - (b) meets, in private, in November-December each year;
  - (c) examines the information gathered in the reporting process, along with the Office's comparative analysis of the application of each provision of the respective Convention;
  - (d) adopts a general report with an overview of its work in which it draws attention to particular issues, a series of individual observations concerning the most important points on the application by member States of ratified Conventions, a further series of direct requests concerning more secondary matters and a general survey on a particular group of Conventions or Recommendations selected by the Governing Body;
  - (e) transmits its report for consideration by the International Labour Conference in the Committee on the Application of Standards.
- II. The Committee on the Application of Standards of the International Labour Conference is a tripartite body which:
  - (a) considers the measures taken by States to give effect to their standards-related obligations;
  - (b) bases its consideration on the report of the Committee of Experts, and any further information communicated by governments in reply;
  - (c) holds a general discussion based on the general report of the Committee of Experts;
  - (d) considers individual cases on the basis of a list prepared by the Officers of the Committee, which is approved by the Committee; further written information from the governments concerned and supplementary oral information may be received by the Committee; members of the tripartite Committee may make oral comments; the Committee may reach conclusions;
  - (e) reports on its discussions to the Conference plenary, including information on countries which have failed to apply ratified Conventions, or which have made progress in overcoming serious difficulties of application.



## 6. Reporting procedures on the implementation of Conventions

The findings of the Committee of Experts on the examination of government reports take the form of *observations* and *direct requests*. The observations and direct requests made by the Committee of Experts on Convention No. 122 (and for all other Conventions), for each ratifying country, are available on the ILO website (NORMLEX).<sup>28</sup> Observations are also published annually in March in the report that the Committee of Experts submits to the International Labour Conference.

The observations made by the Committee of Experts on Convention No. 122 generally measure the progress made in the application of the Convention and serve a useful diagnostic function. Good performance in achieving employment goals is evidence that the country's commitment and effort to apply the Convention are adequate. Countries in this category are noted by the Committee of Experts in its observations on Convention No. 122 as positive examples. The comments of the Committee of Experts note the difficulties encountered by countries in the application of the Convention, and may propose ILO assistance to overcome such difficulties.

Direct requests are individual comments addressed to governments by the ILO on behalf of the Committee of Experts. The full texts of direct requests do not appear in the report transmitted by the Committee of Experts to the Conference. Direct requests may relate to matters of secondary importance or technical questions, or seek clarification to enable a fuller assessment to be made of the effect given to the provisions of the Convention. Direct requests are also accessible on the ILO website.

Certain specific terms are often used by the Committee of Experts and the Conference Committee in their comments on the application of Conventions. While they frequently simply *note* information, they sometimes note *with regret* what may appear to be specific problems of application. On the other hand, positive developments are often *noted with interest*. And when a problem has been referred to in earlier comments and then resolved by the government, such cases may be *noted with satisfaction*.

A few recent examples are provided below of the sort of dialogue that the ILO supervisory machinery enters into with member States:

- In 2010, the Committee of Experts made an *observation* on the application by Honduras of Convention No. 122. The Government submitted written information to the Conference Committee the following June in response to the questions raised concerning the creation of productive employment as part of the Decent Work Country Programme, and on the tripartite consultations held on alleviating the impact of the economic crisis, as well

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28. [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0)

as issues relating to policy coordination and the impact of trade agreements. The Conference Committee decided to discuss the matter orally, giving the floor first to the Government representative, then the Employer and Worker groups, followed by the Employer and Worker members of Honduras and a number of other members of the Committee. After the Government representative had made a closing statement, the Committee noted in its conclusions the information provided, including the serious concerns expressed, and urged the Government to intensify its efforts and supply full details for the next session of the Committee of Experts.

- In 2010, the Committee of Experts *noted with interest* the positive information provided by the Government of China in an oral discussion in the Conference Committee in 2009. It returned to such issues as the impact of the measures taken to generate employment, the participation of the social partners in the design and implementation of an active employment policy, employment security under the new legislation, the employment of vulnerable categories of workers and the role of small businesses and employment services. The Government replied on these subjects in the report that it provided in 2011.

The ILO supervisory system also includes other mechanisms, including special complaints procedures under articles 24 or 26 of the ILO Constitution, which may be invoked concerning the application of a ratified Convention by a member State. An article 24 representation may be made at any time by a workers' or employers' organization. A representation is examined by the Governing Body, which may set up an ad hoc tripartite committee to consider it. An article 26 complaint may be made by a ratifying State or a delegate to the Conference, and may lead to the Governing Body setting up a Commission of Inquiry. These procedures call for more detailed reporting and action.<sup>29</sup>

In 2008, in the Social Justice Declaration, the tripartite constituents called on the Office, in addition to the eight fundamental Conventions (see section 2 above), to also give priority to promoting the four so-called 'governance' Conventions, that is Conventions Nos. 81 and 129 (on labour inspection), Convention No. 144 (on tripartite consultation) and Convention No. 122. The Plan of Action (2010-2016) for the widespread ratification and effective implementation of the governance Conventions was adopted as a consequence and provides a framework, approved by the Governing Body, for the Office's work on employment policy, including the allocation of a certain level of resources

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29. The complaints procedures are explained in detail in the *Handbook of procedures relating to international labour Conventions and Recommendation*, (rev. 2012).

## 6. Reporting procedures on the implementation of Conventions

to explore and exploit synergies between the Organization's employment and normative strategic objectives.

The website at <http://www.ilo.org/normes> gives access to key resources concerning standards, such as the general surveys of the Committee of Experts and the reports prepared for the recurrent discussions under the Social Justice Declaration of the Organization's strategic objectives, which of course include employment. The website also contains detailed information on the application of standards by individual countries, the current state of ratification and reporting for any given country and numerous national legal texts on labour, social security and related human rights. A special page on "Employment policy" is available under the heading "Subjects covered by International Labour Standards".

### **6.2 Contribution by the social partners to the reporting procedures on Convention No. 122**

Tripartism and social dialogue are included among the ILO's four basic strategic objectives, and constitute the founding principle of the Organization's modus operandi at both the international and national levels. The International Labour Conference and the Governing Body are tripartite. The right of employers and workers freely to establish and participate in organizations of their own choosing is a very fundamental right protected by the ILO Constitution, the 1998 Declaration on Fundamental Principles and Rights at Work and Conventions Nos. 87 and 98. The widely ratified Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), (it has been ratified by 133 countries), which is one of the four governance Conventions identified in the 2008 Social Justice Declaration, also calls for tripartite consultations when preparing the reports due on the application of ratified Conventions.

The social partners therefore have an impact on employment policies and international labour standards throughout the processes described in this Guide. In terms of the reporting procedures on the application of international labour standards, in particular:

- Governments have an obligation under the ILO Constitution to transmit to national organizations of employers and workers copies of their reports on ratified Conventions and of the reports requested by the Governing Body on unratified Conventions and Recommendations;
- When the ILO's International Labour Standards Department sends its requests for reports to governments (together with the related comments of the supervisory bodies), it also sends copies of those documents to national organizations of employers and workers;

- In terms of the application of Convention No. 122 (as is the case for many other Conventions), Article 3 specifically provides for consultation with employers' and workers' organizations with a view to taking into account their experience and enlisting their support for the employment policy, and the government's report is expected to include information on how this obligation has been met;
- Governments also have to indicate in their reports the national organizations of employers and workers to which they have transmitted copies of their report, as well as information on any comments made by them and any response by the government;<sup>30</sup>
- Employers' and workers' organizations have the right to make their own observations on the application of a ratified Convention by their government, or in relation to a report due under Article 19 of the ILO Constitution;
  - Employers' or workers' organizations' may make their observations directly to the government or to the ILO (when the ILO receives such observations, it forwards them to the government for comment);
  - such observations may be made at any time or in connection with a government report (the timing affects how quickly the Committee of Experts is able to deal with such observations);
  - the Committee of Experts always notes and takes account of any observations made by employers' and workers' organizations;
- In the Conference Committee, the representatives of employers' and workers' organizations may, themselves or through their group spokespersons, raise any further matters concerning the employment policy standards referred to in the report of the Committee of Experts; and
- Employers' or workers' organizations may also initiate a complaints procedure concerning serious problems of application of a Convention, in the form of a representation under article 24 of the Constitution or, in extremely rare cases, as a delegate to the Conference, an employer or worker may initiate a complaint under article 26 of the Constitution.

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30. A distinction should be made between the obligation to consult representative organizations with regard to the reports to be made on the application of ratified Conventions, under the terms of Article 5, paragraph 1(d), of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the obligation to communicate reports under Article 23, paragraph 2, of the Constitution. The tripartite consultations required by Convention No. 144 have to be held during the process of preparing reports. The Government should transmit a draft report to the representative organizations of employers and workers to gather their opinions before preparing its definitive report.

### **6.3 Inputs by ILO technical departments to reports on the application of Convention No. 122**

The various departments and units of the ILO play different roles in relation to the application of Conventions. While the International Labour Standards Department acts as the secretariat for the supervisory bodies, cooperation throughout the Office is invariably beneficial, not least in the field of employment policy, as emphasized in the 2008 Social Justice Declaration. The assistance provided to member States is ideally based on a triangular partnership between the units specializing in standard-setting and employment, supplemented by field offices, which have at their disposal more specific regional and sub-regional information, analyses and contacts. Partnership between these ILO units in relation to a specific country would normally begin with a review of ratification prospects and the preparation of regular reports on the application of ratified Conventions. Assistance for the preparation of a first (or other) report on the application of Convention No. 122 might then proceed with:

- the provision of support by the field office and an employment specialist to the government, in consultation with employers' and workers' organizations and representatives of other persons affected, for the collection and presentation of information on the manner in which each provision of the Convention is applied;
- the review of this information by ILO employment specialists;
- preparation by the staff of the International Labour Standards Department of a comparative analysis and working documents for the Committee of Experts, in which closer collaboration with the employment specialists in the field and at headquarters is essential in ensuring that the documents submitted to the Committee of Experts address the most important and up-to-date issues;
- if there is a discussion of the case in the Conference Committee, ILO employment specialists may be present;
- the field office would then focus on the priorities for action identified by the Committee of Experts for the implementation of a policy that is in line with the Convention, with a view to its inclusion in national decent work programming;
- further discussion between the field specialist and the national authorities, leading to a new article 22 report and the cyclical repetition of the process.



# Conclusion



The ILO has witnessed and participated in remarkable developments around the issue of employment in the 50 years since the preparatory work began on Convention No. 122. As an international labour Convention, and therefore a binding treaty for ratifying States, Convention No. 122 is a towering achievement that has brought together many of the fundamental issues faced by States over the decades. And as the global context has changed, from post-war recovery and decolonization, the articulation of human rights and rights at work at the international level matured in the 1970s at a time when even the most prosperous nations were faced by the challenge of maintaining economic growth and improving standards of living. Convention No. 122 rose to the occasion and continued to attract even greater attention in the 1980s, precisely through its rights-based approach to employment policy.

Although contested at times in the past as being out-of-date and unrealistic, Convention No. 122 has survived and flourished in the era of economic globalization, through the 1995 World Summit for Social Development to the 2008 financial and economic crisis and beyond. Its 107 ratifications by countries of all sizes and at all stages of development, with all types of political, economic and social systems, can be seen as a major achievement alongside the endorsement by institutions in the multilateral system of the goals and guidance set out in the Convention for the development of employment policy.

The Convention also presents new challenges and opportunities for the ILO. The combination of the means of action at the Organization's disposal, which include standard-setting, technical advice on employment policy development, capacity-building and the mobilization of the social partners, is unique. It is hoped that the present guide will help in the process of developing synergy to exploit this comparative advantage in the assistance provided to constituents on employment policy issues.





## **Appendix I**

# **ILO texts on employment policy**

### **A. Basic instruments**

- ILO Constitution;
- ILO Declaration on Fundamental Principles and Rights at Work, 1998;
- ILO Declaration on Social Justice for a Fair Globalization, 2008.

### **B. Conventions and Recommendations**

- Employment Policy Convention, 1964 (No. 122);
- Employment Policy Recommendation, 1964 (No. 122);
- Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);
- Human Resources Development Convention, 1975 (No. 142);
- Employment Service Convention, 1948 (No. 88);
- Private Employment Agencies Convention, 1997 (No. 181);
- Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189);
- Promotion of Cooperatives Recommendation, 2002 (No. 193);
- Minimum Age Convention, 1973 (No. 138);
- Migration for Employment Convention (Revised), 1949 (No. 97);
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- Labour Administration Convention, 1978 (No. 150);
- Termination of Employment Convention, 1982 (No. 158);
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159);
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
- Indigenous and Tribal Peoples Convention, 1989 (No. 169);
- Older Workers Recommendation, 1980 (No. 162);

- Human Resources Development Recommendation, 2004 (No. 195);
- Social Protection Floors Recommendation, 2012 (No. 202).

### **C. Other texts on employment policy**

- Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977 (revised, 2006);
- Review of the core elements of the Global Employment Agenda, 2003 (GB.286(ESP/1(Rev)));
- Implementing the Global Employment Agenda: Employment strategies in support of decent work: “Vision” document, ILO, Geneva, 2006;
- Global Jobs Pact, 2009;
- General survey concerning employment instruments, Report III (Part 1B), ILC, 99th Session, 2010;
- Employment policies for social justice and a fair globalization, Report VI, ILC, 99th Session, 2010;
- ILC Resolution concerning the youth employment crisis: A call for action, 2012;
- ILC Resolution concerning the recurrent discussion on employment, 2010;
- A new era for social justice, Report IA, ILC, 100th Session, 2011 (Director-General’s report to the ILC).

### **D. Other documents on international labour standards**

- Handbook of procedures relating to international labour Conventions and Recommendations, (rev. 2012);
- Plan of Action (2010-2016); Toward widespread ratification and effective implementation of the governance Conventions;
- General Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 102<sup>nd</sup> Session, 2013.

## **Appendix II**

# **A country example of a National Employment Policy and the ratification of Convention No. 122**

## **Burkina Faso**

### **Employment challenges in Burkina Faso**

Over the past 15 years, Burkina Faso has enjoyed fairly sustained economic growth, averaging an annual rate of 5 per cent since 1994. However, despite the good macroeconomic performance, this has not led to a significant reduction in poverty and its social indicators are still a matter of concern.

The national demographic structure and dynamics are the source of many challenges in terms of employment in Burkina Faso. Estimated at 14 million, the population is growing fairly rapidly, with a growth rate of 3.1 per cent, which means a doubling of the population every generation. The population of Burkina Faso is extremely young (80 per cent are under 35 years of age and 57 per cent under 20). The population is three-quarters rural, and about 90 per cent of the poor live in the countryside. Despite Government efforts, the level of human capital is low. Only a quarter of the population is educated, with only 1 per cent completing higher education and 17.8 per cent completing primary education. This conceals considerable gender and environmental inequalities, and the situation is particularly unfavourable in rural areas.

With a total estimated active population of 7.4 million, which is growing rapidly, the mass influx of new entrants into the labour market raises considerable challenges. The supply of quality jobs remains insufficient to absorb the growing supply of labour, while education and training provision is inadequate. The education system is slanted more towards general education than vocational and technical training. It does not therefore respond well to the needs of the economy, especially in the context of agricultural intensification policies.

Analysis of employment patterns shows a heavy concentration of jobs in agriculture and the informal economy and a low level of wage work. Almost one-tenth of the active urban population is unemployed, and a quarter are underemployed, particularly in rural areas. Moreover, slightly under half of workers are poor, and the majority of them are vulnerable. There is an uneven distribution of jobs and occupation levels by gender and age.

## **Formulation of a National Employment Policy**

The Government is concerned that the sustained economic growth of recent years has not resulted in sufficient poverty reduction and has come to recognize the central role of employment policy as the key link between economic growth and poverty reduction. The President has made employment a key element of his programme and initiatives have been taken to develop strategies to translate this commitment into reality.

A major event was the creation in 2006 of the Ministry of Youth and Employment (MYE) as a separate entity from the Ministry responsible for labour and social security. Since 2006, the ILO has been working closely with the MYE, the Ministry of Economy and Finance and the social partners to formulate a National Employment Policy that offers a vision and framework for all national employment promotion interventions. In March 2008, the country's first National Employment Plan (NEP) was adopted by the Council of Ministers, together with an Operational Action Plan. With a view to administering and coordinating the monitoring of the NEP, the National Employment and Vocational Training Council (CNEFP) was created by decree in 2009.

Within the framework of the Highly Indebted Poor Countries (HIPC) initiative, Burkina Faso has already implemented two Poverty Reduction Strategy Papers (2000-2002 and 2004-2009) and has embarked on the formulation of a new Accelerated Growth and Sustainable Development Strategy (2011-2015). While productive employment has been an objective since 2004, the new strategy marks a further stage in the recognition of the role of employment. Indeed, "the implementation of the PRS was until then more centred on needs than capacities, giving pride of place to access to basic social services rather than the development of capacities, namely: employment, development of the productive system, improvement of incomes and self-sufficiency. Considerable investment must be directed to strengthening knowledge, promoting technical and vocational training and employment promotion".<sup>31</sup>

## **Content of the National Employment Plan (NEP)**

The 2008 NEP was the first attempt to provide a conceptual and practical framework for all national employment promotion measures, including the reduction of unemployment and underemployment. It is not limited to programmes delivered by the Ministry responsible for employment, but brings together various policies, programmes and institutions that influence labour

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31. Ministry of the Economy and Finance, *Accelerated Growth and Sustainable Development Strategy*

demand and supply and the functioning of the labour market. It has four strategic objectives, based on the ILO Global Employment Agenda:

- to create a link between employment policy and other national policies with a view to clarifying their interdependence and showing the potential contribution of macroeconomic and sectoral policies to creating and improving the quality of jobs;
- to strengthen the dynamics of job creation by using specific means of action to stimulate employment and improve its quality, which must be activated or promoted;
- to improve employability, that is to improve access to employment through vocational training and make vocational training more relevant to the labour market; and
- to improve the organization and functioning of the labour market in order to manage it better and ensure that it plays a more concrete role in facilitating access to employment.

### **The process of the ratification of Convention No. 122**

With a view to initiating the internal process for the ratification of Convention No. 122, the Government forwarded the text of Convention No. 122 to various ministries and social partners, requesting for their views and opinions on whether to ratify the Convention. A synthesis of the views of all the parties consulted was prepared by the Ministry of Youth and Employment and a report was submitted to the Council of Ministers. The proposed ratification of the Convention was submitted by the Government to the National Assembly for authorization. The National Assembly voted a law authorizing the ratification of Convention No. 122. The Government of Burkina Faso forwarded the instrument of ratification of Convention No. 122 to the International Labour Office on 28 October 2006. The Director-General of the International Labour Office registered the ratification by Burkina Faso of Convention No. 122 on 28 October 2009 and the Convention entered into force for Burkina Faso on 28 October 2010.



## Appendix III

# Examples of comments by the Committee of Experts on the application of Convention No. 122

The following are two examples of the comments made by the Committee of Experts on the application of Convention No. 122 by India and Gabon, respectively. They are included to give an idea of the content of the dialogue between the Committee of Experts and countries which have ratified Convention No. 122.

### **1. India (ratification: 1998): Observation adopted by the Committee of Experts in 2012**

*Articles 1 and 2 of the Convention. Formulation and implementation of an active employment policy.* The Committee notes the detailed information and statistics provided by the Government in a report received in August 2012 in response to the request made by the Conference Committee in June 2012. The Government indicates that, from 2004–05 to 2010–11, the Indian economy has enjoyed an unprecedented 8.5 per cent growth, despite the fact that this was a period that saw a severe global financial and economic crisis. The crisis slowed down the growth rate to 6.8 per cent in 2008–09, but the economy rebounded with a robust growth rate of 8.6 per cent in 2010–11. This was composed of 5.4 per cent growth in agriculture, 8.1 per cent in industry and 9.6 per cent in services. The performance in agriculture has been particularly satisfying, with farmers producing more than 235 million tonnes of food grains. The Government indicates that India weathered the 2008 global crisis well by using the available fiscal space for inclusive growth through higher spending for employment generation and poverty alleviation programmes. Unlike other developed countries where the measures to counter job losses were ad hoc and contained elements of protectionism, in the Indian case, the programmes for employment generation were planned with a long-term outlook free of any elements of protectionism. Employment generation programmes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) have been instrumental in creating employment opportunities and placing additional income in the hands of the poor and disadvantaged sections of society. The Government also states that it is working to develop the knowledge, skills and attitudes

of stakeholders involved in rural development so as to introduce them to the newest concepts, techniques and information to enable them to act as catalysts for qualitative development. ***The Committee invites the Government to indicate in its next report to which extent measures implemented under the Five-Year Plan 2007–12 have managed to improve the quality of the employment generated and alleviate both unemployment and underemployment. Please also provide information on the efforts made to improve the employment situation for young persons and workers in the unorganized sector and the results achieved in terms of designing targeted programmes and incentives for the promotion of sustainable job creation for the youth and for those working in the informal economy.***

***Labour market trend.*** The Government reports that underemployment in various segments of the labour force is quite high. During 2009–10, the proportion of usually employed women who were found not to be employed during the week preceding the date of the survey was 15 per cent in rural India and nearly 6 per cent in urban India. The Committee notes from the 44th Session of the Indian Labour Conference held in February 2012 that the female labour force participation rates in the country are low and have remained more or less constant over the past decades. The Government further reports that employment estimated on a usual basis has increased from 459.1 million in 2004–05 to 465.48 million in 2009–10, which shows an increase of about 6.4 million people able to find employment during that period. The number of young jobseekers in the 15–29 age group, not all of whom may necessarily be unemployed, registered with employment exchanges was 270 million on 31 December 2008. The Committee notes the information provided by the Government indicating that workers from scheduled castes, scheduled tribes and minorities are predominantly engaged in the labour market as casual workers, self-employed in agriculture, small manufactures and traders. The proportion of regularly employed workers is as low as 6.7 per cent among scheduled tribes and a little over 12 per cent among scheduled castes and minorities. ***The Committee would welcome continuing to receive relevant data on the situation and trends of the labour market disaggregated by state, sector, age, sex and skills, in particular for socially vulnerable groups, such as young persons, women jobseekers, scheduled castes and scheduled tribes, ethnic minorities and persons with disabilities (Article 1(2) and Article 2(a)).***

***Employment generation programmes.*** The Committee notes the detailed information provided by the Government on the different employment generation programmes implemented in order to create employment opportunities for unemployed persons, including young persons and rural workers. During the 11th Five-Year Plan 2007–12, a number of employment-oriented programmes like the MGNREGA have been implemented resulting in employment



generation. It further indicates that the employment generation programmes are constantly reviewed and assessed for better performance. In the 2011–12 financial year (up to December 2011), 37.7 million households were provided employment with an average of about 32 days of employment generated per household. The Government reports that the enhanced wage earnings have led to a strengthening of the livelihood resource base of the rural poor in India as 72 per cent of the funds utilized were in the form of wages paid to workers. Furthermore, the Ministry of Rural Development has decided to redesign the on-going Swarnjayanti Gram Swarojgar Yojana (SGSY) programme into the National Rural Livelihood Mission (NRLM) to make it universal in application, focused in approach, and time bound for poverty eradication by 2014–15. The idea has been conceived as a cornerstone of the national poverty reduction strategy. *The Committee invites the Government to continue to provide information on the impact of the MGNREGA and other major employment generation programmes in enhancing job growth and sustainable employment for poor workers in the rural sector.*

**Article 3. Consultation with the representatives of the persons affected.** The Committee notes with **interest** the information provided by the Government concerning tripartite consultations. The Government reports that the 44th Session of the Indian Labour Conference included discussions on issues such as the possibilities of enhancing female labour force participation, skills development for young persons, minimum wages, social security, employability and employment. Furthermore, the Government indicates that an Act like the MGNREGA, seeking to empower poor rural communities and transforming traditional hierarchical relationships through its rights-based processes, is bound to encounter a host of challenges. The Ministry of Rural Development has taken various initiatives to address these issues and strengthen the implementation of the MGNREGA through active participation by the social partners. *The Committee invites the Government to continue to provide examples of questions addressed and decisions reached on employment policy through tripartite bodies. It would also appreciate continuing to receive information on the involvement of the social partners in the implementation of the major employment generation programmes.*

**Part V of the report form. ILO technical assistance.** The Government indicates that the Decent Work Country Programme – India Document (2007–12) is being implemented in collaboration with the ILO. The National Policy on Skill Development, National Policy on Safety, Health and Environment at Work Place and National Policy on HIV/AIDS and the World of Work were also formulated with inputs and technical expertise from the ILO. *The Committee invites the Government to continue to provide information on the measures taken as a result of the assistance received from the ILO with respect to the matters covered by the Convention.*

## **2. Gabon (ratification: 2009): Direct request adopted by the Committee of Experts in 2011**

The Committee has taken note of the Government's first report on the application of the Convention.

*Articles 1 and 3 of the Contention. Elaboration and implementation of a national employment policy. Participation of the social partners.* The Government states that the objective to promote full and productive employment is contained in the social programme, on the basis of which the President of the Republic was elected. The employment policy, as well as the policy to combat social exclusion and job insecurity are also incorporated in the “Emerging Gabon” development plan 2011–16. The Committee notes the adoption, in September 2010, of an action plan for employment, which contains an overall presentation of the priority areas and expected outcomes. This action plan was discussed with the social partners and received technical assistance from the ILO. The Committee notes that the unemployment rate in Gabon is high, affecting 16.3 per cent of the population (data from 2005). Moreover, unemployment particularly affects young people, with a third of the active working population under 30 years of age being unemployed. Thirty-three per cent of the population are in a precarious working situation, with a higher incidence in the rural areas (45 per cent) than in the urban areas (30 per cent). With a view to reducing the unemployment rate to below 20 per cent, the Government intends on launching an investment programme in labour-intensive sectors of activity such as agriculture, industry and tourism. It also points out that a major public works programme designed to achieve the employment objectives defined in the development plan will be carried out in the construction and public works sectors. *The Committee would like to examine in the Government's next report the measures specifically adopted and implemented within the framework of the employment action plan, in terms of sustainable jobs creation and the reduction of unemployment. Furthermore, the Committee hopes that the Government will be in a position to provide statistics on the situation of and trends in employment, unemployment and underemployment, especially in respect to women and young people. It also requests the Government to include detailed information on consultations held with the representatives of employers' and workers' organizations, as well as with representatives from workers in rural areas and the informal economy, in order to secure their cooperation in formulating and implementing employment policy programmes and measures (Article 3).*

*Article 2. Collection and use of employment data.* In its report, the Government states that measures have been taken to collect and analyse statistical data on the size and distribution of the labour force, as well as on the nature and extent of unemployment and underemployment. According to the ILO,

surveys should be carried out among enterprises in order to better understand the demand for labour and skills, especially sectoral-level analyses with a view to drawing up jobs and skills registers in order to facilitate matching these competences to the demand of the labour market, as well as with the planning on education and vocational training. ***The Committee stresses that a system of labour market data collection is essential for determining measures to adopt to achieve the objectives of the Convention and review regularly the measures taken in this respect. The Committee asks the Government to provide information in its next report on any progress achieved in this area, as well as statistical data emerging from the economic and demographic surveys that have been carried out.***

***Coordination of employment policy with poverty reduction.*** The Committee has taken note of the working paper on the assessment of jobs created within the framework of the Poverty Reduction and Growth Strategy Paper (PRGSP) for Gabon, published in 2011 by the ILO's Employment Sector. According to this working paper, although the GDP per inhabitant in Gabon is one of the highest in Africa, the unemployment and poverty rates testify to many shortcomings in the country, with social indicators below those of countries with comparable incomes. The Committee notes that employment is not explicitly mentioned in the PRGSP. ***The Committee invites the Government to provide detailed information in its next report on the measures taken to ensure that employment, as a key element in poverty reduction, is at the forefront of its macroeconomic and social policies.***

***Vulnerable groups.*** The Government states in its report that about 55 per cent of young people are looking for a first job. The Committee notes that the action plan for employment refers to a possible adjustment of vocational training activities to the needs of young people and envisages setting up a solidarity fund for youth employment. Furthermore, according to data examined by the ILO, some areas of activity employ a majority of women, such as agriculture and trade, where more than half of the labour force is composed of women. Conversely, men make up most of the labour force in other types of activity, such as fishing and livestock farming, forestry, industry and construction. ***The Committee invites the Government to provide more information in its next report on the measures taken to consolidate the programmes aiming to facilitate the inclusion of young people and women in the labour market.***

***Promoting small and medium-sized enterprises (SMEs).*** In its report the Government refers to the establishment of a framework that might boost a dynamic private sector, which is a strong growth factor and sustainable generator of employment. The Committee notes that the action plan for employment proposes, as a priority, to promote employment by introducing

support measures for SMEs by making available to them advisers on technology to help them modernize their production processes of goods and services. ***The Committee asks the Government to provide information on the measures taken to support the development of small and medium-sized enterprises. It also requests the Government to provide information on the impact of measures taken to reduce the barriers confronted by SMEs when starting their businesses.*** The Government might find it useful to consult the provisions of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

***Coordination of education policy and training with the employment policy.*** The Committee notes that the plan envisages taking measures to ensure that the funding of the existing educational and vocational training programmes better meets the challenges facing the country in terms of economic development and social cohesion. Working document No. 80 of the ILO's Employment Sector suggests that use be made of the data emerging from the employment surveys to provide an input for the guidelines and decisions on employment policy and training. ***The Committee asks the Government to indicate in its next report the measures taken to ensure that the promotion of vocational training should be better geared towards improving employment for young people.***