



## Governing Body

309th Session, Geneva, November 2010

GB.309/LILS/6

Committee on Legal Issues and International Labour Standards

LILS

FOR DECISION

SIXTH ITEM ON THE AGENDA

## Ratification and promotion of fundamental and governance ILO Conventions

### Overview

#### Issues covered

This document sets out information regarding developments on the ratification of the fundamental and governance Conventions.

#### Policy implications

None.

#### Financial implications

None.

#### Decision required

Paragraph 34.

#### References to other Governing Body documents and ILO instruments

GB.304/PV, GB.306/PV, GB307/PV.

Fundamental and governance Conventions.

ILO Declaration on Social Justice for a Fair Globalization, 2008.

Global Jobs Pact, 2009.

## Introduction

1. Following a consensus at the 81st Session of the International Labour Conference (1994) for a more intensive promotion of fundamental rights, the Director-General began a campaign to promote ratification of the fundamental Conventions. In 2008, the International Labour Conference adopted the ILO Declaration on Social Justice for a Fair Globalization (the Social Justice Declaration), which envisages that ILO Members, in the context of the implementation of the Decent Work Agenda at the national level, review their situation as regards the ratification of fundamental ILO Conventions as well as those regarded as most significant from the viewpoint of governance. The following priority Conventions were categorized governance instruments: the Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). During the 98th Session of the Conference (2009), the governance Conventions, along with the fundamental Conventions, were acknowledged as important elements in a strategy for recovering from the crisis, as indicated in the Global Jobs Pact.<sup>1</sup> As a result of the increased emphasis on the governance Conventions, and based on the decisions of the Governing Body,<sup>2</sup> the Director-General's ratification campaign has been expanded to incorporate these Conventions. Furthermore, in the context of the follow-up to the Social Justice Declaration, at its 306th Session (November 2009) the Governing Body adopted a plan of action designed to achieve widespread ratification and effective national implementation of the four governance Conventions.<sup>3</sup>
2. At its March 2010 session, the Governing Body decided to include in the agenda of the 101st Session (2012) of the International Labour Conference a recurrent discussion on the strategic objective of fundamental principles and rights at work covering all four categories of fundamental principles and rights.<sup>4</sup> To that end, the report form on unratified fundamental Conventions under article 19 of the ILO Constitution was sent to the governments concerned. These reports for the General Survey concerning fundamental Conventions in light of the Social Justice Declaration should be transmitted to the Office by 28 February 2011. In these circumstances, it has been decided not to send out annual letters requesting information regarding developments on the ratification of the fundamental Conventions. Therefore, Part I below, organized by subject, consolidates new information received in the context of the annual review under the follow-up to the 1998 Declaration.
3. At its 99th Session (June 2010), in its conclusions on the recurrent discussion on employment, the Conference encouraged governments to respond positively and as a matter of priority to the Office campaign for the ratification of the governance Conventions. In August 2010, the Director-General sent a letter to the 148 member States that have not yet ratified all the governance Conventions, requesting information on the most recent examination of those Conventions with a view to their ratification; ratification prospects and/or obstacles to ratification; and technical assistance needs with regard to ratification and implementation. Part II sets out the information received from

<sup>1</sup> ILO: *Recovering from the crisis: A Global Jobs Pact*, International Labour Conference, 98th Session, Geneva, 2009.

<sup>2</sup> GB.304/PV, para. 210(i)(a).

<sup>3</sup> GB.306/PV, para. 208(b).

<sup>4</sup> GB.307/PV, para. 13(b).

governments<sup>5</sup> on the governance Conventions through their replies to the Director-General's letter as well as the information already provided in their replies to the questionnaire on employment instruments, that was examined by the Committee of Experts on the Application of Conventions and Recommendations in the 2010 General Survey concerning employment instruments.

## Part I. Fundamental Conventions

### Overview of progress

4. Since November 2009 three new ratifications of the fundamental Conventions have been registered.

	New ratifications	Total No. of ratifications
Convention No. 29	–	174
Convention No. 87	–	150
Convention No. 98	–	160
Convention No. 100	Namibia	168
Convention No. 105	–	171
Convention No. 111	–	169
Convention No. 138	Afghanistan	156
Convention No. 182	Afghanistan	172

5. To reach the goal of universal ratification, set for 2015,<sup>6</sup> 144 ratifications are still needed. The 144 outstanding ratifications represent 52 countries, as 131 member States have now ratified all the fundamental Conventions. Out of the remaining 52 countries, three member States have ratified none of the fundamental Conventions, two have ratified one Convention, two States have ratified two, one State has ratified three, six States have ratified four, 11 have ratified five, seven have ratified six, and 20 have ratified seven.

<sup>5</sup> It includes information received up until 8 October 2010 from the following 35 governments: Argentina, Austria, Bahrain, Bangladesh, Belarus, the Plurinational State of Bolivia, Brazil, Canada, Cuba, Cyprus, Czech Republic, Egypt, Eritrea, Georgia, Grenada, India, Israel, Jordan, Republic of Korea, the Libyan Arab Jamahiriya, Lithuania, Mauritius, Mexico, Morocco, Myanmar, Panama, Saint Vincent and the Grenadines, Saudi Arabia, Seychelles, Slovenia, South Africa, Suriname, Switzerland, the United Kingdom and the United States.

<sup>6</sup> See ILO: *Decent work: Some strategic challenges ahead*, Report of the Director-General, Report I(C), International Labour Conference, 97th Session, Geneva, 2008, para. 94.

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## Freedom of association and collective bargaining

### ***Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98)***

6. Conventions Nos 87 and 98 remain the fundamental Conventions with the lowest ratification rates.
7. The Government of *Afghanistan* indicated that ILO technical assistance was needed to support the process of ratification of Conventions Nos 29, 87 and 98. The Government of *Somalia* indicated that once a peaceful process could allow the adoption of new laws, the ratification of the ILO fundamental Conventions would be possible.
8. The Government of the *Islamic Republic of Iran* indicated that that it was working with the social partners and the ILO on amending the Labour Code in order to prepare the ground for the ratification of Conventions Nos 87 and 98. The Government of the *United Arab Emirates* indicated that the ratification of Conventions Nos 87 and 98 was being contemplated under the Decent Work Country Programme and that ILO technical assistance was needed to find an alternative scheme for workers' representation.
9. The Government of the *Republic of Korea* explained that at present, it was difficult to ratify Conventions Nos 87 and 98 because some provisions of the national labour legislation were not in conformity with the relevant international labour standards. Moreover, the ratification prospects for these instruments seemed restricted due to continuous controversies over trade union pluralism at the enterprise level and a ban on wage payment to full-time union officials.
10. With regard to Convention No. 87, the Government of *Guinea-Bissau* indicated that while the ratification instrument had been signed by the previous Head of State in 2009, due to the political change the ratification process must be repeated with ILO technical assistance. The Government of *Nepal* indicated that the process of ratification of Convention No. 87 was interrupted by the political transition period. However, the new Government was contemplating to ratify the Convention in the near future.
11. The Government of *Iraq* indicated that the national labour law of 1952 was not in conformity with Convention No. 87. However, a draft text had been submitted to the National Assembly with a view to amending the national labour legislation. Once this process was complete, the Convention could be ratified. The Government of *Jordan* indicated that the tripartite committee which had been set up two years ago proposed bringing national labour laws into a closer compliance with the requirements of Convention No. 87. The Government of *Sudan* referred to the ongoing revision of constitutional and civil laws, which must be completed before the ratification of Convention No. 87 could be considered. It further indicated that a tripartite committee had been set up to draft a new labour code.
12. According to the Government of the *United States*, federal legislation and practice appeared to be in general conformity with ILO Conventions Nos 87 and 98, although some challenges persisted and no recent in-depth tripartite analysis had been performed regarding these Conventions. The Government further indicated that to the extent that the ILO might be able to recommend relevant forms of tripartite technical cooperation, the United States would welcome such proposals.

13. The Government of *Malaysia* indicated that for the time being, the ratification of Convention No. 87 was not considered to be a priority as this instrument was not relevant to its national situation and historical background. The Government of *Myanmar* considered that the ILO should cooperate with Myanmar with regard to the ratification of the ILO fundamental Conventions and indicated that the ratification of non-ratified fundamental Conventions would be considered when appropriate.

## **Non-discrimination and equal remuneration**

### ***Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111)***

14. The positions of the Governments of *Myanmar* and *Somalia* are indicated in the previous section. The Government of *Kuwait* explained that the process of ratification of Convention No. 100 was being discussed by the Ministry of Labour and Social Affairs and the social partners, before being submitted to the Council of Ministers and the Parliament. The Government of *Timor-Leste* indicated that it had developed a plan of action for the ratification of the non-ratified ILO fundamental Conventions, including Conventions Nos 100 and 111.

## **Child labour**

### ***Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182)***

15. The positions of *Myanmar* and *Somalia* are indicated in the section on freedom of association. The Government of *Sierra Leone* reiterated its commitment to ratify Conventions Nos 138 and 182 in the near future.
16. The Government of *Australia* indicated that it was still unclear whether Australia complied with every technical requirement of Convention No. 138. To that end, it was working closely with state and territory governments, as well as with the ILO, to determine the compliance of legislation with the Convention. The Government of the *Islamic Republic of Iran* was gathering the views of the social partners and competent authorities on the need for ratification of Convention No. 138. The Government of *Bangladesh* stated that a parliamentary committee had been set up to study the question of ratification of Convention No. 138. The Government of *Cape Verde* requested ILO technical assistance to finalize the process of ratification of Convention No. 138. The Government of *Gabon* indicated that the ratification of Convention No. 138 was considered to be a national priority. The Government of *Ghana* indicated that the ratification of Convention No. 138 would be soon completed. The Government of the *United States* indicated there were no efforts under way at this time to ratify Convention No. 138.
17. The Government of *Eritrea* reiterated that the Parliament was working on the ratification of Convention No. 182.

## Forced and compulsory labour

### ***Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105)***

18. The positions of *Afghanistan* and *Myanmar* are indicated in the section on freedom of association. The Government of *Brunei Darussalam* indicated that it was still reviewing, in consultation with the employers' and workers' organizations, the possibility of ratifying Conventions Nos 29 and 105.
19. The Government of *Canada* indicated that the ratification of Convention No. 29 was currently being considered by Canadian provincial governments. The Government of the *Republic of Korea* stated that it would be difficult for it to ratify Convention No. 29 and explained that as long as the confrontation on the Korean peninsula continued, it was necessary to maintain mandatory conscription.

## Part II. Governance Conventions

### Overview of progress

20. Since November 2009 eight new ratifications of the governance Conventions have been registered.

	New ratifications	Total No. of ratifications
Convention No. 81	Tajikistan	141
Convention No. 122	Burkina Faso, Fiji, Rwanda	103
Convention No. 129	Fiji	49
Convention No. 144	Afghanistan, Israel, Singapore	126

### Employment policy

#### ***Employment Policy Convention, 1964 (No. 122)***

21. The Government of *Saint Vincent and the Grenadines* indicated that it had taken determined steps towards ratification of Conventions Nos 122 and 144 and expected that the House of Assembly would approve ratifications of these governance Conventions in October 2010. The Government of the *Kingdom of Saudi Arabia* indicated that no measures had been taken with a view to ratifying Conventions Nos 122 and 144 and referred, in particular, to the incompatibility of certain provisions of these Conventions with its national laws, directives or policy. It nevertheless stressed that it was making use of all the international labour standards to develop its legislation.
22. The Government of *Switzerland* indicated that as a country that had voted in favour of the 2008 Declaration, it felt obliged to examine the possibility of ratifying Convention No. 122. To that effect, the President of the Confederation had instructed the State Secretary for Economic Affairs to prepare a draft analysis of the Convention outlining the

possibilities of ratification in time for the October 2010 meeting of the Federal Tripartite Commission.

23. Working in close cooperation with the International Labour Standards Department, the Employment Sector coordinates the ILO response to requests for technical assistance and gathers relevant information concerning promotion and effective application of Convention No. 122, taking into account observations provided by the social partners in the framework of the implementation of the Global Jobs Pact (in that respect, *South Africa* and *Indonesia* appear to enjoy favourable conditions for the ratification of this Convention).

## **Tripartite consultation**

### ***Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)***

24. The Governments of *Morocco* and *Slovenia* indicated that they had taken formal steps to ratify Convention No. 144 and that they hoped to complete the procedure in the near future. The Governments of *Cuba* and *Georgia*, however, stated that they intended to defer ratification of the Convention. The other information received offers very promising prospects for ratification of Convention No. 144; specialists from the Social Dialogue and International Labour Standards Departments, as well as teams in the field, are working on carrying out promotional activities and providing technical assistance in the countries that have requested it.

## **Labour inspection**

### ***Labour Inspection Convention, 1947 (No. 81)***

25. Having requested and obtained an informal opinion from the Office on the conformity of its labour legislation with the Convention, the Government of the *Czech Republic* stated that it has submitted the Convention to Parliament with a view to ratification. Consultations on the desirability of ratifying Convention No. 81 are under way in *South Africa*, following an ILO mission in August 2010 during which technical assistance needs were identified. In *Canada*, where consultations are also under way, the Government points to the need for ILO technical assistance in regard to the scope of certain provisions of the instrument. In *China*, in collaboration with the ILO Office in Beijing, a labour inspection audit was carried out with the assistance of a World Bank consultant in January 2010 and an ILO technical assistance mission on labour inspection focusing on occupational safety and health was received in August 2010 to ensure conformity of national legislation with the Convention prior to ratification. In the *United States*, the Tripartite Advisory Panel on International Labor Standards (TAPILS) may consider the question of ratification of this Convention, which has been included in a shortlist of instruments for examination.
26. *Mexico* and *Georgia* refer to incompatibility of national legislation with the provisions of the Convention, while Myanmar cites the lack of human resources (in terms of number and qualifications of staff) as the main obstacle. Various obstacles were mentioned by *Eritrea* (lack of human resources and need for prior technical assistance).

***Labour Inspection (Agriculture) Convention,  
1969 (No. 129)***

27. Having requested and obtained an informal opinion from the Office on the conformity of its labour legislation with the Convention, the Government of the *Czech Republic* stated that it has submitted the Convention to Parliament with a view to ratification.
28. The Government of *Saint Vincent and the Grenadines* announced its intention to submit the question of ratification of the Convention to Parliament in October 2010 and mentioned the possibility of requesting technical assistance at a later date concerning application. The Government of *Suriname* stated that a recent review of the instrument had indicated that conditions were favourable for ratification. Consultations are under way in *Grenada* and the *Libyan Arab Jamahiriya*. In *South Africa*, consultations are being held following an ILO mission in August 2010. In *China*, in collaboration with the ILO Office in Beijing, a labour inspection audit was carried out with the assistance of a World Bank consultant in January 2010 and an ILO technical assistance mission on labour inspection focusing on occupational safety and health was received in August 2010 to ensure conformity of national legislation with the Convention prior to ratification.
29. In *Austria*, the ratification process will begin as soon as the necessary resources are available. In *Jordan*, recent amendments to the legislation may lead to favourable conditions for ratification.
30. Various obstacles were mentioned by *Eritrea* (lack of human resources and need for prior technical assistance); the *Republic of Korea* (incompatibility of legislation); *India* (structure of agricultural land tenure); and *Bangladesh* (unfavourable economic situation). In *Cyprus* and *Mauritius*, ratification would require establishing structures and mechanisms for inter-institutional cooperation which cannot be envisaged at the moment owing to the economic situation. *Panama* cites similar reasons.
31. In the *United States*, the Convention may be included among the priority instruments to be submitted to the TAPILS.
32. Incompatibility of national legislation with the Convention is seen as a major obstacle to ratification by *Georgia*, *Mexico*, *Switzerland*, *Brazil*, *Cuba* and the *Seychelles* (principle of a single labour inspection system for all the branches of the economy). This is also the case in *Japan*. In *Bahrain*, ratification is not justified in view of the small agricultural population.
33. The Governments of *Saudi Arabia*, *Canada*, *Israel*, *Lithuania* and *Myanmar* stated that they did not envisage ratification of the Convention for the time being. In the *United Kingdom*, the question of ratification is again being examined. ILO technical assistance is considered necessary in *Belarus* to improve ratification prospects.
34. ***The Committee may wish to recommend that the Governing Body:***
- (a) ***take note of the information contained in the present document; and***
  - (b) ***keep this subject on the agenda of the Committee on Legal Issues and International Labour Standards with a view to following the progress made.***

Geneva, 25 October 2010

*Point for decision:* Paragraph 34