



Governing Body

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Legal Issues and International Labour Standards Section
International Labour Standards and Human Rights Segment

LILS

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SIXTH ITEM ON THE AGENDA

Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2013

Purpose of the document

In the present document, the Governing Body is invited to discuss the theme of the General Survey that should be prepared by the Committee of Experts on the Application of Conventions and Recommendations in 2013 and discussed by the Conference Committee on the Application of Standards in 2014, and the instruments that would be covered in this General Survey (see the point for decision in paragraph 12).

Relevant strategic objective: Not applicable.

Policy implications: None.

Financial implications: The usual implications related to the preparation of a General Survey.

Decision required: Paragraph 12.

Follow-up action required: Implementation of the Governing Body decisions.

Author unit: International Labour Standards Department (NORMES).

References to other Governing Body documents and ILO instruments:

Constitution of the International Labour Organisation.

ILO Declaration on Social Justice for a Fair Globalization.

ILO Global Jobs Pact.

GB.312/INS/2/2, GB.312/LILS/5, GB.310/11/2(Rev.), GB.309/10, GB.304/PV, GB.268/LILS/5(Rev.1).

Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 99th Session, 2010; Report III (1B), 2008; Report III (1B), 2003; Report III (4B), 1992.

I. Introduction

1. According to established practice, the Governing Body is regularly invited to examine and approve proposals regarding the choice of Conventions and Recommendations on which governments might be requested to submit reports under article 19, paragraphs 5(e), 6(d) and 7(b), of the Constitution, with a view to the preparation of the annual General Surveys by the Committee of Experts on the Application of Conventions and Recommendations (hereafter “the CEACR”).
2. General Surveys allow the CEACR, in addition to reviewing national law and practice in member States, to examine difficulties raised by governments as standing in the way of application of instruments, clarify their scope and indicate possible means of overcoming obstacles to their implementation. In the context of the follow-up to the *ILO Declaration on Social Justice for a Fair Globalization*, the General Surveys have been acknowledged to be an important source of information on the law and practice of member States, from which recurrent discussion reports should benefit.¹
3. In March 2009, the Governing Body decided that the cycle of recurrent discussions to be held by the International Labour Conference under this follow-up would be seven years in length, with employment, social protection and fundamental principles and rights at work being discussed twice in the cycle.² The first two recurrent discussions took place in 2010 and 2011 and covered respectively the strategic objectives of employment and of social protection (social security). The next recurrent discussions will cover the strategic objective of fundamental principles and rights at work (in 2012) and the strategic objective of social dialogue (in 2013). As mentioned in the context of the proposals for the agenda of the 103rd Session (2014) of the Conference,³ for the purpose of a balanced cycle, the themes for the subsequent recurrent discussions should be employment in 2014, social protection (labour protection) in 2015, and fundamental principles and rights at work in 2016.
4. At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration examined inter alia the interaction between General Surveys and recurrent discussion reports. The Steering Group was of the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference as this would facilitate better consideration and integration of the standards-related aspects into the recurrent discussion.⁴
5. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no

¹ *Strengthening the ILO’s capacity to assist its members’ efforts to reach its objectives in the context of globalization*, International Labour Conference, 97th Session, 2008, Report VI, Annex I, and GB.304/LILS/4.

² GB.304/PV, para. 183(b).

³ GB.312/INS/2/2, para. 4.

⁴ GB.309/10, para. 8.

General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that should take place in 2014.⁵

6. In light of these considerations and in order to follow-up on the conclusions of the Steering Group, the Office proposes that the General Survey to be submitted to the June 2014 session of the Conference cover the theme of social protection (labour protection), as this would contribute to the preparation of the recurrent discussion on the same theme that should take place in 2015.

II. Selection of instruments

7. ILO instruments on social protection (labour protection) cover the following subjects: occupational safety and health; wages; working time; maternity protection; and social policy.⁶ While the recurrent discussion on the same theme scheduled for 2015 will have a broader scope and will address several dimensions of labour protection, the Office suggests focusing the first General Survey on social protection (labour protection) on wages-related instruments, for the following reasons.
8. When it adopted the Declaration on Social Justice for a Fair Globalization, the Conference called for the adoption and enhancement of measures of social protection (social security and labour protection) which are sustainable and adapted to national circumstances, and reaffirmed that the Declaration of Philadelphia's call for the adoption of policies in regard to wages and earnings, hours and other conditions of work, designed to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection.⁷ The Global Jobs Pact, which was adopted by the Conference in 2009 in the context of the ongoing global economic and financial crisis, aims at providing an internationally agreed basis for policy-making designed to reduce the time lag between economic recovery and a recovery with decent work opportunities. The Global Jobs Pact includes statutory or negotiated minimum wages among the options that should guide measures designed to avoid deflationary wage spirals and recalls that the Minimum Wage Fixing Convention, 1970 (No. 131), can provide guidance in this respect.⁸ In its appreciation of the relevance and application of ILO wage-related Conventions in the context of the global economic crisis,⁹ the CEACR also pointed to the need to maintain decent minimum wage levels. It also emphasized the need to tackle problems of non-payment of wages and wage arrears, as well as abusive practices in the payment of wages (such as payment in bonds or vouchers), which tend to worsen in the context of the economic crisis. The Protection of Wages Convention, 1949 (No. 95), offers clear and detailed guidance to member States on all aspects of the payment of wages (except on minimum-wage setting, which is covered by Convention No. 131 as explained above). Together with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), it also provides tools to face situations of employer's insolvency, which have unfortunately dramatically increased since the beginning of the crisis.

⁵ GB.310/11/2(Rev.), para. 59(ii).

⁶ GB.312/LILS/5, Appendix I.

⁷ *ILO Declaration on Social Justice for a Fair Globalization*, 2008, Part I(A)(ii).

⁸ *Recovering from the crisis: A Global Jobs Pact*, paras 12(3) and 23.

⁹ *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 99th Session, 2010, Report III (Part 1A), paras 105–119.

9. An overview of national laws and practices in the interconnected areas of wage protection and minimum wage fixing, and an assessment of the impact of the relevant ILO Conventions and Recommendations at the national level would certainly make a useful contribution to the discussion of the recurrent item on social protection (labour protection) that should take place during the 2015 session of the Conference. It is however suggested to narrow further the scope of the General Survey in order to enable the CEACR to make a sufficiently in-depth analysis of the instruments, their impact, potential need for ILO standards-related or other activities, technical assistance needs, etc. One should also keep in mind the chronology of the previous General Surveys on wages-related instruments:
- 2008: General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84);¹⁰
 - 2003: General Survey concerning the Protection of Wages Convention, 1949 (No. 95) and Recommendation (No. 85);¹¹
 - 1992: General Survey on the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) and Recommendation (No. 30); the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) and Recommendation (No. 89); and the Minimum Wage Fixing Convention, 1970 (No. 131) and Recommendation (No. 135).¹²
10. The protection of wages and the inclusion of labour clauses in public contracts have been the subject of General Surveys in the last decade. On the other hand, minimum wages instruments have not been reviewed by the CEACR for 20 years and an update of the last General Survey on this subject would therefore seem most appropriate. This consideration is reinforced by the role that minimum wage systems could play in the context of the ongoing global economic and financial crisis, as was recalled above. Other aspects that would deserve a careful examination include the interrelationship between minimum wage fixing and employment policy; the role of minimum wages for the achievement of the Millennium Development Goals; the concept of minimum living wage; the social and economic indicators used for fixing and adjusting minimum wages; the relationship between minimum wage and average wage; minimum wage fixing and closing the gender pay gap; minimum wages and vulnerable categories of workers such as migrant workers, young and older workers, domestic workers, etc.
11. In view of the foregoing, the Office proposes to devote the General Survey that will be submitted to the 2014 session of the Conference to ILO instruments on minimum wages. It should be kept in mind in this regard that, on the basis of the recommendations of the Working Party on Policy Regarding Revision of Standards, the Governing Body concluded in March 1997 that Conventions Nos 26 and 99 were among those instruments which might no longer be fully up to date but remained relevant in certain respects.¹³ It invited member States to contemplate ratifying Convention No. 131, which was included in the list of up-to-date instruments. Convention No. 131 provides certain improvements compared

¹⁰ *Labour clauses in public contracts – Integrating the social dimension into procurement policies and practices*, International Labour Conference, 97th Session, 2008, Report III (1B).

¹¹ *Protection of wages – Standards and safeguards relating to the payment of labour remuneration*, International Labour Conference, 91st Session, 2003, Report III (1B).

¹² *Minimum wages – Wage-fixing machinery, application and supervision*, International Labour Conference, 79th Session, 1992, Report III (4B).

¹³ GB.268/LILS/5(Rev.1), paras 67, 68 and 70.

to older instruments on minimum wage fixing, for instance, as regards its broader scope of application, the requirement for a comprehensive minimum wage system, and the enumeration of the criteria for the determination of minimum wage levels. It is indeed the most recent and comprehensive instrument on minimum wage fixing. It would therefore seem preferable to limit the scope of the General Survey to the provisions of this Convention and its accompanying Recommendation No. 135.

III. Draft decision

12. *Against this background, the Governing Body wishes to:*

- (i) request governments to submit reports for 2013, under article 19 of the Constitution, on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135); and***
- (ii) approve the report form concerning minimum wage fixing instruments referred to in the appendix.***

Appendix

Appl. 19, C. 131, R. 135
131. Minimum Wage Fixing Convention, 1970
135. Minimum Wage Fixing Recommendation, 1970

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(article 19 of the Constitution of the
International Labour Organisation)*

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:

MINIMUM WAGE FIXING CONVENTION, 1970 (No. 131)

MINIMUM WAGE FIXING RECOMMENDATION, 1970 (No. 135)

Geneva

2012

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organisation relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

5. In the case of a Convention:

...

- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

...

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

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

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal Government shall:

...

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;

- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

...

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

REPORT

to be made no later than 28 February 2013, in accordance with article 19 of the Constitution of the International Labour Organisation by the Government of, on the position of national law and practice in regard to matters dealt with in the following instruments:

MINIMUM WAGE FIXING CONVENTION, 1970 (No. 131)¹**MINIMUM WAGE FIXING RECOMMENDATION, 1970 (No. 135)**

adopted by the International Labour Conference at its 54th Session (Geneva), 1970.²

I. MINIMUM WAGE FIXING MACHINERY

- (1) Please indicate whether and, if so, the manner in which effect is given to the Convention and to the Recommendation in your country in law and in practice. As appropriate, please give a precise reference (if available, web links) to provisions of the relevant legislation.
- (2) Please indicate whether and how a system of minimum wages has been established in your country. If so, please specify whether this system applies to all economic sectors, types of establishments and categories of workers. Where this is not the case, please indicate which economic sectors, types of establishment and/or categories of workers are excluded from its scope, explaining the reasons for such exclusion. Please specify whether the decision on this matter was taken in agreement or after full consultation with the representative organizations of employers and workers concerned, and whether the extension of the coverage of the minimum wage system to any excluded economic sector, type of establishment or group of workers is envisaged.
- (3) Please indicate whether and how the term “minimum wage” is defined in national laws or regulations. As appropriate, please also indicate whether the relevant legislation makes reference to the concept of “minimum living wage”.
- (4) Please describe the method and form of minimum wage fixing, for instance by means of statute, decision of wages boards or councils, court ruling, arbitration award, collective bargaining agreements. In the latter case, please indicate if and under which mechanism public authorities make minimum wages binding.
- (5) Please indicate whether the minimum wage system currently in force entails a single minimum wage of general application or whether different minimum wage rates are fixed by geographical region, economic sector or any other criteria, such as the size of the enterprise, occupational category, apprenticeship status, age or disability. Please explain the reasons for such differentiated minimum wage rates.

¹ Governments of countries which have ratified the Convention and from which a report is due under article 22 of the Constitution will use the present form only with regard to the Recommendation. It will not be necessary to repeat information already provided in connection with the Convention. Sections II, III and V of the report form contain questions that are addressed to all member States.

² The texts of the Convention and Recommendation are appended.

- (6) Please indicate whether representative organizations or employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned are fully consulted at all stages of the minimum wage fixing process, including the determination of the groups of workers to be covered, the selection of the criteria for fixing the minimum wages level, the rate of minimum wages and its periodic readjustment. Please specify whether such consultations are held occasionally or within an institutionalized framework, such as a standing tripartite consultative body. As appropriate, please provide details on the composition and mandate of such consultative body.
- (7) Please indicate whether the minimum wage fixing machinery operates with the direct participation of: (i) representatives of organizations or employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned, on a basis of equality; and (ii) persons having recognized competence for representing the general interests of the country. Where appropriate, please indicate whether these persons are appointed upon prior consultations with the representative organizations of employers and workers concerned.
- (8) Please specify the criteria that are used for the determination of minimum wage levels (e.g. cost of living, productivity level, employment rate, proportion of workers at the minimum, etc.). Please also indicate whether minimum wage rates are adjusted from time to time, and, if so, at which frequency, on a regular or on ad hoc basis and using which criteria. Please indicate in particular whether minimum wages are indexed to a specific economic indicator such as the inflation rate, the rate of growth of GDP per capita, or value-added growth in particular sector or industry, and – if it exists – please provide the adjustment formula. Please also specify whether in setting and adjusting minimum wage rates, the ratio between the minimum wage and the mean wage or the median wage is taken into account.
- (9) Please provide information on the collection of statistical and other relevant data, as well as on any periodical surveys of national economic conditions that are undertaken with a view to facilitating the fixing and adjustment of minimum wage rates. Please explain how often such data are collected, by whom and how they are analyzed and shared with the social partners.
- (10) Please indicate whether minimum wage rates are legally binding and describe the measures taken to ensure the effective application of the provisions on minimum wages, including the dissemination of relevant information; labour inspection; adequately dissuasive penalties for non-compliance with minimum wage legislation; and means available for recovering any amounts by which workers may have been underpaid. Please also specify whether employers' and workers' organizations are associated in efforts to protect workers against abuses.
- (11) Please explain whether and how the effects of minimum wages on economic and social variables, such as the aggregate demand, wage inequality, the share of workers with low pay, the gender pay gap, or the level of unemployment, are monitored.

II. MINIMUM WAGE FIXING AND THE DECENT WORK AGENDA

- (1) Please provide information on the relationship between minimum wage fixing and the promotion and implementation of fundamental principles and rights at work in your country, in particular the effective recognition of the right to collective bargaining, the eradication of forced labour and child labour, and the application of the principle of equal remuneration for men and women workers for work of equal value.

- (2) Please indicate whether any surveys or studies have been undertaken to better understand the interaction between minimum wage fixing and policies for employment promotion and poverty eradication. Please indicate how these surveys or studies have influenced minimum wage policies.
- (3) Please indicate whether and how, in your country, minimum wage rates are used as a basis for the calculation of social security benefits, and explain any difficulties experienced in the operation of the minimum wage system as a result. Please also explain the mechanism through which minimum wage policy is coordinated with other policies aimed at providing income security for low-income groups.

III. MINIMUM WAGE FIXING AND THE GLOBAL ECONOMIC CRISIS

- (1) Please provide information on any measures taken or envisaged with respect to minimum wages, as part of efforts to reduce labour costs or in order to reinforce the protection of workers in the context of the current economic and jobs crisis.
- (2) In the same context, please describe any other wages-related measures taken or envisaged, such as measures to prevent abusive pay practices, address problems of non-payment or delayed payment of wages, or ensure the protection of wage claims in the event of employer's bankruptcy or insolvency. Please disaggregate information between private and public sector enterprises.

IV. IMPACT OF ILO INSTRUMENTS

- (1) Please indicate whether any modifications have been made in the national legislation or practice with a view to giving effect to all or some of the provisions of the Convention or of the Recommendation. Please state also whether it is intended to adopt measures to give further effect to the provisions of the Convention or of the Recommendation including ratification.
- (2) Please state any difficulties due to the Convention, to the national law or practice, or to any other reason, which may prevent or delay the ratification of the Convention. Please indicate any measures taken or envisaged to overcome these obstacles.
- (3) Please state, where appropriate, if the possible ratification of the Convention has been discussed on a tripartite basis, as provided by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and, if so, when.
- (4). Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organisation.
- (5) Please indicate whether you have received from organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.
- (6) In case your country is a federal State:
 - (a) Please indicate whether the provisions of the Convention or of the Recommendation are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action.

- (b) Where federal action is appropriate, please give the information specified in points I, II, III and IV ((1) to (5)) of this form.
- (c) Where action by the constituent units is regarded as appropriate, please supply general information corresponding to points I, II, III and IV ((1) to (5)) of the form. Please indicate also any arrangements it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Convention and of the Recommendation, giving a general indication of any results achieved through such action.

V. POSSIBLE NEEDS FOR STANDARD-RELATED ACTION
AND FOR TECHNICAL COOPERATION

- (1) What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO in the area of minimum wage fixing? (e.g. revision of existing instruments, adoption of new instruments, etc.)
- (2) Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support? If not, how could the ILO best provide appropriate assistance within its mandate to support country efforts in the area of minimum wage setting?
- (3) What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?

MINIMUM WAGE FIXING CONVENTION, 1970 (No. 131)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Convention have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention; adopts this twenty second day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of:

- (a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
- (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director General of the International Labour Office shall communicate to the Secretary General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

MINIMUM WAGE FIXING RECOMMENDATION, 1970 (No. 135)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage Fixing Machinery Recommendation, 1928, the Minimum Wage Fixing Machinery (Agriculture) Recommendation, 1951, and the Equal Remuneration Recommendation, 1951, which contain valuable guidelines for minimum wage fixing bodies, and

Considering that experience in more recent years has emphasised the importance of certain additional considerations relating to minimum wage fixing, including that of adopting criteria which will make systems of minimum wages both an effective instrument of social protection and an element in the strategy of economic and social development, and

Considering that minimum wage fixing should in no way operate to the prejudice of the exercise and growth of free collective bargaining as a means of fixing wages higher than the minimum, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, adopts this twenty second day of June of the year one thousand nine hundred and seventy the following Recommendation, which may be cited as the Minimum Wage Fixing Recommendation, 1970:

I. PURPOSE OF MINIMUM WAGE FIXING

1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.

2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

II. CRITERIA FOR DETERMINING THE LEVEL OF MINIMUM WAGES

3. In determining the level of minimum wages, account should be taken of the following criteria, amongst others:

- (a) the needs of workers and their families;
- (b) the general level of wages in the country;
- (c) the cost of living and changes therein;
- (d) social security benefits;

- (e) the relative living standards of other social groups;
- (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

III. COVERAGE OF THE MINIMUM WAGE FIXING SYSTEM

4. The number and groups of wage earners who are not covered in pursuance of Article 1 of the Minimum Wage Fixing Convention, 1970, should be kept to a minimum.

5(1). The system of minimum wages may be applied to the wage earners covered in pursuance of Article 1 of the Convention either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers.

(2). A system based on a single minimum wage:

- (a) need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in costs of living;
- (b) should not impair the effects of decisions, past or future, fixing minimum wages higher than the general minimum for particular groups of workers.

IV. MINIMUM WAGE FIXING MACHINERY

6. The minimum wage fixing machinery provided for in Article 4 of the Convention may take a variety of forms, such as the fixing of minimum wages by:

- (a) statute;
- (b) decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies;
- (c) decisions of wages boards or councils;
- (d) industrial or labour courts or tribunals; or
- (e) giving the force of law to provisions of collective agreements.

7. The consultation provided for in paragraph 2 of Article 4 of the Convention should include, in particular, consultation in regard to the following matters:

- (a) the selection and application of the criteria for determining the level of minimum wages;
- (b) the rate or rates of minimum wages to be fixed;
- (c) the adjustment from time to time of the rate or rates of minimum wages;
- (d) problems encountered in the enforcement of minimum wage legislation;
- (e) the collection of data and the carrying out of studies for the information of minimum wage fixing authorities.

8. In countries in which bodies have been set up which advise the competent authority on minimum wage questions, or to which the government has delegated responsibility for minimum wage decisions, the participation in the operation of minimum wage fixing machinery referred to in paragraph 3 of Article 4 of the Convention should include membership of such bodies.

9. The persons representing the general interests of the country whose participation in the operation of minimum wage fixing machinery is provided for in Article 4, paragraph 3, subparagraph (b), of the Convention should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy making.

10. To the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those mentioned in Paragraph 3 of this Recommendation, and their probable evolution.

V. ADJUSTMENT OF MINIMUM WAGES

11. Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions.

12. To this end a review might be carried out of minimum wage rates in relation to the cost of living and other economic conditions either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost of living index.

13(1). In order to assist in the application of Paragraph 11 of this Recommendation, periodical surveys of national economic conditions, including trends in income per head, in productivity and in employment, unemployment and underemployment, should be made to the extent that national resources permit.

(2). The frequency of such surveys should be determined in the light of national conditions.

VI. ENFORCEMENT

14. Measures to ensure the effective application of all provisions relating to minimum wages, as provided for in Article 5 of the Convention, should include the following:

- (a) arrangements for giving publicity to minimum wage provisions in languages or dialects understood by workers who need protection, adapted where necessary to the needs of illiterate persons;
- (b) the employment of a sufficient number of adequately trained inspectors equipped with the powers and facilities necessary to carry out their duties;
- (c) adequate penalties for infringement of the provisions relating to minimum wages;
- (d) simplification of legal provisions and procedures, and other appropriate means of enabling workers effectively to exercise their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid;
- (e) the association of employers' and workers' organisations in efforts to protect workers against abuses;
- (f) adequate protection of workers against victimisation.