



Governing Body

310th Session, Geneva, March 2011

GB.310/LILS/4

Committee on Legal Issues and International Labour Standards

LILS

FOR DECISION

FOURTH ITEM ON THE AGENDA

Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2012

Overview

Issues covered

The theme of the General Survey that should be prepared by the Committee of Experts on the Application of Conventions and Recommendations in 2012 and discussed by the Conference Committee on the Application of Standards in 2013, and the instruments that would be covered in this General Survey.

Policy implications

The modalities for the realignment of the discussion of the General Surveys with the recurrent discussions under the follow-up to the Declaration on Social Justice for a Fair Globalization may be considered by the Committee.

Financial implications

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

Decision required

Paragraph 17.

References to other Governing Body documents and ILO instruments

GB.301/11(Rev.), GB.303/12, GB.304/LILS/4, GB.304/9/2, GB.304/PV, GB.307/10/2(Rev.), GB.309/10, GB.309/SG/DECL/1, GB.310/LILS/3/1, GB.310/2.

Constitution of the International Labour Organization.

Labour Relations (Public Service) Convention, 1978 (No. 151) and Recommendation, 1978 (No. 159); Collective Bargaining Convention, 1981 (No. 154) and Recommendation, 1981 (No. 163).

Report of the Committee of Experts on the Application of Conventions and Recommendations, Geneva, 1950.

Minutes of the 129th Session of the Governing Body.

ILO Declaration on Social Justice for a Fair Globalization.

Introduction

1. Under article 19, paragraphs 5(e), 6(d) and 7(b), of the Constitution, member States are required to report “at appropriate intervals, as requested by the Governing Body” on non-ratified Conventions and Recommendations. These reports shall cover in particular the position of law and practice concerning the matters dealt with in these instruments, and shall indicate the extent to which effect has been given or is proposed to be given to them.
2. In 1950, the Committee of Experts on the Application of Conventions and Recommendations was called on for the first time to consider reports submitted under article 19 of the Constitution.¹ Since 1955, the Committee of Experts has carried out, on the basis of these reports as well as those submitted under articles 22 and 35 of the Constitution, “General” Surveys on the effect given to the instruments examined, both in countries that have ratified the Conventions considered and those that have not.²
3. The Committee on Legal Issues and International Labour Standards is regularly invited to make proposals to the Governing Body 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.
4. 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.³ In March 2009, the Governing Body decided that the cycle of recurrent discussions under this follow-up would be seven years in length.⁴ The first recurrent discussion took place in June 2010 and covered the strategic objective of employment. It will be followed in June 2011 by a recurrent discussion on the strategic objective of social protection (social security), and in 2012 on the strategic objective of fundamental principles and rights at work. These three strategic objectives will be discussed twice during the cycle (the second discussion on social protection will cover labour protection), while social dialogue will be discussed once.
5. The themes of the General Surveys have been aligned with those of the recurrent discussions as regards employment,⁵ social security⁶ and fundamental principles and rights at work.⁷ As was the case for employment in June 2010, the General Survey and the

¹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19 and 22 of the Constitution) and summary reports on non-ratified Conventions and Recommendations (article 19 of the Constitution)*, Geneva, 1950.

² Minutes of the 129th Session of the Governing Body, 27–28 May and 24 June 1955, Annex X. The first “General” Survey is dated 1956.

³ ILO: *Strengthening the ILO’s capacity to assist its members’ efforts to reach its objectives in the context of globalization*, Report VI, International Labour Conference, 97th Session, Geneva, 2008, Annex I and GB.304/LILS/4.

⁴ GB.304/PV, para. 183(b).

⁵ GB.303/12.

⁶ GB.304/9/2.

⁷ GB.307/10/2(Rev.)

recurrent discussion reports on social security (in 2011) and on fundamental principles and rights at work (in 2012) will be discussed the same year at the International Labour Conference, in the Committee on the Application of Standards and a technical Committee, respectively.

6. At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Declaration on Social Justice for a Fair Globalization examined the question of the coordination of the subjects of General Surveys with those of the recurrent discussions.⁸ In light of the lessons drawn from the first exercise, the Steering Group was of the view that the discussion of the General Survey by the Committee on the Application of Standards should take place one year before the recurrent discussion. The modalities for the realignment of the respective discussions were still to be determined by the Governing Body.⁹
7. The Steering Group also agreed that the recurrent discussion in 2013 should be on the strategic objective of social dialogue. The final decision on that should be taken by the Governing Body at the present session.¹⁰ It may be noted that for the purpose of a balanced cycle, the order of the themes for the three subsequent recurrent discussions could be the following: employment (2014), social protection (labour protection) (2015) and fundamental principles and rights at work (2016). In this manner, each of these three strategic objectives will be discussed alternately with an interval of either four years or three years.¹¹
8. In light of the above, it appears that the only way to establish an interval of one year between the discussion of the General Survey and the recurrent discussion on the same subject is not to link one of the next General Surveys with the subject of one of the next recurrent discussion reports: for example social dialogue or employment.

Selection of instruments

9. The Committee is presently called upon to select Conventions and Recommendations on which governments would be requested to submit reports under article 19 of the Constitution for 2012, with a view to the General Survey that should be prepared by the Committee of Experts the same year and discussed by the Conference Committee on the Application of Standards in June 2013. For this selection, different options could be considered.

⁸ GB.309/SG/DECL/1.

⁹ GB.309/10.

¹⁰ GB.310/2.

¹¹ The sequence over two cycles would be the following:

First cycle: employment (2010), social protection – social security (2011), fundamental principles and rights at work (2012), social dialogue (2013), employment (2014), social protection – labour protection (2015), fundamental principles and rights at work (2016).

Second cycle: employment (2017), social protection – social security (2018), fundamental principles and rights at work (2019), social dialogue (2020), employment (2021), social protection – labour protection (2022), fundamental principles and rights at work (2023).

10. First, it may be recalled that at its 301st Session (March 2008), the Governing Body approved a report form on the application of unratified Conventions and Recommendations under article 19 of the Constitution in relation to the Labour Relations (Public Service) Convention, 1978 (No. 151); the Labour Relations (Public Service) Recommendation, 1978 (No. 159); the Collective Bargaining Convention, 1981 (No. 154) and the Collective Bargaining Recommendation, 1981 (No. 163).¹² At its 303rd Session (November 2008), the Governing Body decided to postpone the request of the article 19 reports on the application of these Conventions and Recommendations, as well as the sending of the questionnaire, and to consider it later, in the context of a relevant recurrent discussion (for example on social dialogue).¹³
11. Conventions Nos. 151 and 154 are currently proposed to be classified under the category of fundamental principles and rights at work under the sub-category of other instruments on freedom of association and collective bargaining.¹⁴ The link however between freedom of association and collective bargaining with social dialogue more generally, particularly where the focus (as in the case of the proposed General Survey) would be on the public service, is evident and demonstrates that many of these Conventions straddle strategic objectives. It would therefore be proposed that these Conventions could be considered during the time frame for the recurrent discussion on social dialogue while maintaining it overall in the classification of fundamental principles and rights at work.
12. In these circumstances, subject to the final decision of the Governing Body to place on the agenda of the 2013 Conference a recurrent discussion on the strategic objective of social dialogue, *a first option* would be to invite governments to submit reports under article 19 of the Constitution on Conventions Nos 151 and 154 and Recommendations Nos 159 and 163, on the basis of the report form adopted in March 2008. A few questions have been added to the report form to align it with the last article 19 questionnaires adopted by the Governing Body, i.e. a question on measures taken or envisaged to overcome the obstacles to ratification and questions on possible needs for standards-related action and for technical cooperation (see appendix to this paper, where changes are marked).
13. As *a second option*, in order to give a comprehensive overview of ILO action relating to the strategic objective of promoting social dialogue and tripartism, the General Survey could focus on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), as well as the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). The General Survey on tripartite consultation submitted to the 88th Session of the Conference (June 2000) will be updated with the experience acquired by the supervisory bodies on the application of the Convention in the vast majority of the member States of the Organization. It could also be appropriate to cover in this General Survey the particular consultations required under the Indigenous and Tribal Peoples Convention, 1989 (No. 169).
14. Regarding these two options, the discussion on the General Survey on social dialogue will take place the same year as the recurrent discussion on social dialogue at the Conference.

¹² GB.301/11(Rev.), Appendix V.

¹³ GB.303/12.

¹⁴ Appendix to GB.310/LILS/3/1.

15. A *third option* could be not to link the next General Survey¹⁵ to the recurrent discussion on social dialogue, and to already prepare an article 19 report form on instruments relating to the recurrent discussion that would follow the discussion on social dialogue. As indicated in paragraph 7 above, a balanced cycle would imply a recurrent discussion on employment in June 2014.
16. In view of the considerations in paragraphs 10 to 12 above and the fact that the report forms for options two and three could only be submitted to the Committee in November 2011, which would delay preparation for the General Survey, the Office considers that the first option is the most workable at this stage.
17. ***Against this background, the Committee may wish:***
- (i) ***subject to the decision of the Governing Body to place on the agenda of the 2013 Conference a recurrent discussion on the strategic objective of social dialogue, to recommend to the Governing Body to request governments to submit reports for 2012, under article 19 of the Constitution, on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154) and the Collective Bargaining Recommendation, 1981 (No. 163), on the basis of the report form adopted in March 2008, as slightly modified (referred to in the appendix); or***
 - (ii) ***to provide the Office with other guidance that may be necessary.***

Geneva, 14 February 2011

Point for decision: Paragraph 17

¹⁵ i.e. the General Survey that will be prepared by the Committee of Experts in 2012 and discussed by the Conference in 2013.

Appendix

Reports on unratified Conventions and Recommendations

Appl. 19, C. 151, C. 154, R. 159, R. 163
151. Labour Relations (Public Service) Convention, 1978
154. Collective Bargaining Convention, 1981
159. Labour Relations (Public Service) Recommendation, 1978
163. Collective Bargaining Recommendation, 1981

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

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

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:

LABOUR RELATIONS (PUBLIC SERVICE) CONVENTION, 1978 (No. 151)

LABOUR RELATIONS (PUBLIC SERVICE) RECOMMENDATION, 1978 (No. 159)

COLLECTIVE BARGAINING CONVENTION, 1981 (No. 154) *

COLLECTIVE BARGAINING RECOMMENDATION, 1981 (No. 163) *

Geneva

2011

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organization 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:

* The report concerns Convention No. 154 and Recommendation No. 163 only as far as they relate to collective bargaining in the public sector.

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 form of report. 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 2012, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of, on the position of national law and practice in regard to matters dealt with in the following instruments:

LABOUR RELATIONS (PUBLIC SERVICE) CONVENTION, 1978 (No. 151)**LABOUR RELATIONS (PUBLIC SERVICE) RECOMMENDATION, 1978 (No. 159)**

- I. 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:
- (a) Please indicate all categories of persons employed by the public authorities to whom the legislation, regulations, collective agreements or other measures which implement the provisions of the Convention and the Recommendation apply.
 - (b) Please indicate to what extent the guarantees provided for in this Convention and the Recommendation apply to high-level employees whose functions are normally considered as policy making or managerial or to employees whose duties are of a highly confidential nature, and to the armed forces and the police.
 - (c) Please indicate in particular any provisions of national legislation, regulations, collective agreements or other measures that provide for the protection of public employees against acts of anti-union discrimination in respect of their employment, and any provisions that provide for protective mechanisms and sanctions in this regard.
 - (d) Please describe to what extent and in what manner complete independence and adequate protection against acts of interference by a public authority in their establishment, functioning or administration is ensured to public employees' organizations. Please also indicate any protective mechanisms and sanctions set out in the legislation.
 - (e) Please indicate the categories of public employees, which enjoy the right to participate in the determination of their terms and conditions of employment.
 - (f) Please specify to what extent facilities are provided to representatives of recognized public employees' organizations with a view to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.
 - (g) Please indicate if, in your country, procedures for recognition of public employees' organizations apply with a view to determining the organizations to be granted the rights under the Convention and if so, indicate on which criteria the determination of such organizations is based.
 - (h) Please describe any procedures for the determination of terms and conditions of employment of public employees:
 - (i) Please indicate matters that are open to negotiation and matters that are excluded from negotiation.

- (ii) Also please indicate if there are particular duties the parties are supposed to respect during the negotiations.
 - (iii) In case of absence of collective bargaining mechanisms please specify whether other methods exist which allow public employees to participate in determining terms and conditions of employment.
 - (i) Please provide information on any measures in place to promote the development and use of mechanisms for negotiation between the public authorities and employees' organizations or other methods allowing public employees to participate in the determination of terms and conditions of employment. Please also provide statistical data about the number and the coverage of the collective agreements concluded in the public sector.
 - (j) Please describe any mechanisms created for the settlement of disputes arising in connection with the determination of terms and conditions of employment of public employees (negotiation or other procedures such as mediation, conciliation or arbitration) and indicate any judicial decision that has been rendered in this regard.
 - (k) Please indicate if organizations of workers which are not trade unions are allowed to participate in the negotiations and, in the affirmative, if these organizations of workers are allowed to do so even if there is a representative trade union.
 - (l) Please indicate also whether there are any restrictions of civil and political rights of public employees that are essential to the normal exercise of freedom of association.
 - (m) Are the rights of public employees covered by the same legislation as those of private sector workers, or are public employees covered by specific legislation? If so, please supply the text of this legislation.
- II. (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.

- IV. 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.
- V. 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 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 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.

Possible needs for standard-related action and for technical cooperation

VI. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO? (For example, new standards, revision, etc.)

VII. 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?

VIII. 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?

COLLECTIVE BARGAINING CONVENTION, 1981 (No. 154)

COLLECTIVE BARGAINING RECOMMENDATION, 1981 (No. 163)

In accordance with the decision taken by the Governing Body in November 2006, article 19 reports will be requested for Convention No. 154 and Recommendation No. 163 with regard to the public service only.

- I. 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 with regard to employees of the public service.
 - (a) Please describe any ways in which the application of the Convention and of the Recommendation reflects special modalities for employees of all or part of the public service; please indicate also the provisions of the legislation applicable to the armed forces and the police.
 - (b) Please indicate to what extent the Convention and the Recommendation are applied to bargaining with workers' representatives, as defined in Article 3,

subparagraph (b), of the Workers' Representatives Convention, 1971 (No. 135), and in what ways workers' representatives can participate in the determination of terms and conditions of employment.

- (c) Please describe in what ways voluntary collective bargaining is promoted in the public service in the broad sense of the term.
- (i) Please specify the matters covered by collective bargaining.
 - (ii) Please indicate the level at which collective bargaining in the public service takes place and, if applicable, give information as to whether there are mechanisms providing for coordination between the different levels of collective bargaining.
 - (iii) Please indicate also if rules and procedures concerning collective bargaining in the public sector are agreed between workers' and employers' organizations.
 - (iv) Please indicate if, in your country, procedures for recognition of employers' and workers' organizations in the public service apply with a view to determining the organizations to be granted the right to collective bargaining and if so, indicate on which criteria the determination of such organizations is based.
 - (v) Please describe any training facilities available to negotiators of parties to collective bargaining and indicate if public authorities provide assistance to workers' and employers' organizations in this regard.
 - (vi) Please indicate also to what extent the collective bargaining parties have access to information about the overall economic situation of the country and the branch of activity within the public sector concerned by the negotiations.
 - (vii) Please supply statistical information on the number and the coverage of the collective agreements concluded.
 - (viii) Please describe the bodies and procedures for the settlement of labour disputes in the public service, both as regards disputes in the negotiation of agreements and disputes concerning the interpretation and application of agreements. Please also give statistical data of recourse to these bodies and procedures.
- (d) Please indicate if, in your country, there is prior consultation between public authorities and employers' and workers' organizations in the public sector on measures to encourage and promote collective bargaining, and if these measures are the subject of agreements between the public authorities and the employers' and workers' organizations.
- II. (a) 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.
- (b) 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.

- (c) Please describe any measure taken to facilitate the establishment and growth, on a voluntary basis, of free, independent and representative employers' and workers' organizations in the public sector.
- (d) 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.
- (e) 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.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.
- IV. 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.
- V. 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 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 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.

Possible needs for standard-related action and for technical cooperation

VI. What suggestions would your country wish to make concerning possible standard- related action to be taken by the ILO? (For example, new standards, revision, etc.)

VII. 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?

VIII. 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?