

## **Setting Social Security Standards in a Global Society**

An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization

The Social Security Department of the International Labour Office (ILO) is the unit through which the ILO provides technical assistance and advice to its member countries in the area of social security policy and governance; develops policies to support the extension of social security to all and social inclusion; promotes international social security standards and develops and disseminates tools to support the effective governance of social security schemes.

In 2001, the International Labour Conference (ILC) reached a consensus that high priority should be given to policies and initiatives to extend social security to those who are not presently covered. Accordingly, the ILC directed the ILO to launch a major campaign to promote the extension of social security coverage. The Social Security Policy Briefings series is produced in the framework of the Campaign; it aims to set out the views of the Social Security Department in areas of particular importance, and so provide guidance to ILO member countries in the formulation of their social security policies.

It thus complements the existing Issues in Social Protection Discussion papers series and the Extension of Social Security series published by the Social Security Department by making available a comprehensive set of information tools.

International Labour Office  
Social Security Department  
4, route des Morillons  
CH-1211 Geneva 22 – Switzerland

Tel.: (+ 41 22) 799 75 65

Fax: (+ 41 22) 799 79 62

[SECSOC@ilo.org](mailto:SECSOC@ilo.org)

<http://www.ilo.org/secsoc>

# **SOCIAL SECURITY POLICY BRIEFINGS**

**Paper 2**

## **Setting Social Security Standards in a Global Society**

An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization

**Global Campaign on Social Security and Coverage for All**

**Social Security Department  
International Labour Office**

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## Setting Social Security Standards in a Global Society

*Standards are the history of the ILO. As the international institution which has produced the largest number of binding and non-binding instruments in the field of human rights, standards remain at the very centre of the ILO's mandate and its day-to-day work.\**

Juan Somavia, ILO Director-General

### Foreword

In March 2007, the Governments of Germany and the Netherlands asked the International Labour Office to prepare a technical paper that should “on the one hand outline and analyse the present situation as regards the ratification of ILO Conventions and the current Campaign on Social Security and Coverage for All, and on the other hand contain various options of improving the present situation”, and to undertake consultations during the preparation of the paper. The present Technical Paper is the response to that request. It is a major contribution to shaping the ILO's Campaign for the Extension of Social Security to All as it delineates the possible contribution of ILO Conventions and Recommendations to the Campaign.

The Technical Paper was prepared by Ursula Kulke, Emmanuelle St-Pierre-Guilbault and Frank Hempel, under the supervision of Michael Cichon and Krzysztof Hagemeyer. As part of the consultation process, the ILO's Social Security Department organized a research Workshop on Strengthening ILO Social Security Standards, with the participation of 12 internationally recognized experts in the field of social security and legal standards, so as to obtain input from the academic world for the finalization of the paper. The workshop took place in Turin from 24 to 26 September 2007. On this occasion, the first draft of the Technical Paper was presented by the Office and discussed by the following experts: Christian Courtis, Prof. Dr. Kaseke, Stephen Kidd, Jürgen Matthes, Prof. Dr. María Patricia Kurczyn Villalobos, Prof. Dr. Angelika Nussberger, Isabel Ortiz, Prof. Dr. Marius Oliver, Dr. Ravi P. Rannan-Eliya, Prof. Dr. Eibe Riedel, Prof. Dr. Felician S.K. Tungaraza and Prof. Dr. Gijsbert Vonk. Workshop participants also included the following ILO officials: Janelle Diller, Germán López Morales and Frank Hoffer. A second draft of the Technical Paper was prepared in the light of workshop discussions and taking into account the suggestions and comments subsequently sent in by the participants. Informal consultations then took place in November 2007, when the second draft of the Technical Paper was presented to constituents (regional government coordinators, employers, workers and members of the GRULAC countries, at their request) by the Social Security Department. At the time of these consultations, written comments on the second draft were requested from ILO constituents with the aim of taking into account their needs and priorities as well as different perspectives in the analysis.

The authors of the Technical Paper are indebted to the workshop participants and to the ILO constituents for their valuable contributions, which were of central importance in the finalization of this document. Special acknowledgments are due to Germán López Morales for his valuable comments. The responsibility for any errors of judgment or factual mistakes rests with the Social Security Department.

March 2008

Michael Cichon

\* Preface to: *Les normes internationales du travail: un patrimoine pour l'avenir – Mélanges en l'honneur de Nicolas Valticos* (ILO, 2004).



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## Executive summary

In March 2007, the Governments of Germany and the Netherlands asked the Office to prepare a technical paper that should “on the one hand outline and analyse the present situation as regards the ratification of ILO Conventions and the current Campaign on Social Security and Coverage for All, and on the other hand contain various options of improving the present situation”, and to undertake consultations during the preparation of the paper. As part of the consultation process, the ILO Social Security Department organized a research Workshop on Strengthening ILO Social Security Standards, with the participation of 12 internationally recognized experts in the field of social security and legal standards (Turin, 24-26 September 2007), so as to obtain input from the academic world for the finalization of the Technical Paper. Consultations were then carried out with ILO constituents in November and December 2007 to obtain their comments on the second draft. The conclusions of the discussions held at the research workshop and the comments elaborated by ILO constituents are reflected in the final document.

Social security is declared as a human right in the major United Nations human rights instruments. However, at the beginning of the twenty-first century, access to any form of social protection remains a dream for 80 per cent of the world’s population. Social protection is a powerful tool for alleviating poverty and inequality. There are successful examples regarding the role of social transfers in combating poverty in Africa, Latin America and Asia, delivering much faster results than those expected from a trickle-down effect of economic policies. For a low-income country, even a minimum social security package provided to its people can make the difference between success and failure in achieving Millennium Development Goal 1 of halving poverty by 2015.

In accordance with the aims and purposes set out in the Preamble to the ILO Constitution (1919), the extension of social security worldwide has consistently been one of the main objectives of the Organization. This mandate, restated in 1944 in the Declaration of Philadelphia, part of the ILO Constitution, recognizes the “solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve”, among others, “the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care”, as well as “provision for child welfare and maternity protection”, thereby extending the protection from workers to all those in need. In this perspective, at the 2001 International Labour Conference, ILO constituents reaffirmed the Organization’s fundamental role in the promotion and extension of social security and its obligations in this respect.

The extension of social security to all calls for the implementation of a “social security floor” which provides a basic benefit package to all those in need. The results of recent ILO research have shown that basic social security can be afforded by virtually all countries. For example, a basic benefit package consisting of modest pensions and child benefits in Senegal and the United Republic of Tanzania could reduce the poverty head count (measured against the food poverty line) by about 40 per cent and would cost about 4 per cent of their respective GDP.

In order to effectively combat poverty and answer the most pressing social security needs of the world’s population, the basic benefit package, which could be implemented gradually, should consist of the following elements:

- all residents have access to basic/essential health care benefits, where the State accepts the general responsibility for ensuring the adequacy of the delivery system and financing of the scheme;

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- all children enjoy income security at least at the poverty level through family/child benefits aimed at facilitating access to nutrition, education and care;
  - some targeted income support for the poor and unemployed in active age groups;
  - all residents in old age and disability enjoy income security at least at the poverty level through pensions for old age and disability.

Social security Conventions and Recommendations are the main tools through which the ILO pursues its mandate for extending social security coverage to all, with the Social Security (Minimum Standards) Convention, 1952 (No. 102), as the flagship Convention. Given, on the one hand, the low social security coverage worldwide, and, on the other, the new emerging concepts in social security, the question is being asked whether existing social security instruments are effective tools for promoting the extension of social security coverage to all those in need, and hence for fulfilling the ILO's mandate with regard to social security.

The purpose of the present Technical Paper is to explore this question by examining the relevance of these instruments to providing adequate guidance for national legislation and practice in view of the changing concept of social security from the standpoint of:

- their level of ratification and prospects for future ratifications; and
- the different options available to rectify identified weaknesses and improve the level of ratification.

The analysis undertaken in the Technical Paper leads to the conclusion that Convention No. 102, as the fundamental social security Convention, constitutes a useful model benchmark for meaningful income replacement benefits. In this regard, it sets long-term objectives as to the level of protection to be reached in every country. Furthermore, the Convention plays a key role in the definition of the right to social security under international human rights instruments. Together with other social security instruments, it has had and continues to have a substantial influence on the development of national social security schemes worldwide; it also serves as a model for regional social security instruments and contributes to creating a worldwide level playing field of social conditions in a globalizing economy.

However, the analysis also demonstrates that universal access to at least minimum income security was never codified in an ILO social security Convention. The up-to-date Conventions, including Convention No. 102, as they now stand, do not require full population coverage and have gaps and limitations as regards ensuring the provision of a basic benefit package to all. Their relatively low rate of ratification, especially in developing countries, constitutes an indicator of their lack of suitability and relevance for these countries. In this regard, it appears that they are not effective in assisting countries to provide social security in harmony with their level of economic development. In addition, several States experience difficulties in fulfilling the requirements and obligations set out in the Conventions.

Thus, a new mechanism seems to be needed to ensure that ILO social security standards provide the best guidance for the establishment of a social security floor and then help countries, once the social security floor has been established, to move towards more comprehensive social security protection, including a higher level of income security and improved medical care benefits, while ensuring that levels of protection already reached are maintained. Standard-setting policy is an effective tool to prevent the levelling down of social security systems at the global level.

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Along the same lines, the participants in the Workshop on Strengthening ILO Social Security Standards concluded that, despite the pivotal importance of Convention No. 102 and the need for its continuous promotion, existing social security Conventions and Recommendations were not sufficient in order to achieve universal coverage through the implementation of a social security floor. As an alternative to existing instruments, an effective way to fulfil this objective could be the adoption of a new instrument which would accompany existing ones. The workshop emphasized the continuing relevance of Convention No. 102, which should still be actively promoted and used as a reference with regard to fundamental social security principles, and the importance of it not being affected by any eventual standard-setting activities.

There are a number of theoretical options for possible policy responses to the diagnosed potential and deficiencies in the present set of up-to-date social security standards. They range from a “do nothing” option, i.e., hoping that the globalizing world will without a normative procedure agree on decent work with decent social security practices, to a modification of the existing set of standards (“do what is necessary”), the addition of new standards (“do what you can”) or the complete revision of all social security standards and the integration of all important provisions into a new comprehensive standard (“do it all”). There are seven concrete options that were identified during the research and consultation process; they are listed in Chapter 7 of this paper. The Office is now seeking advice from ILO constituents as to an appropriate follow-up to this analytical paper.



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## 1. Introduction

It is widely recognized today that social security is fundamental to the creation of social cohesion, the furtherance of political inclusion and the development of democracy, and that it is an important tool for the prevention and alleviation of poverty through the enhancement of productivity. In conjunction with a growing economy and active labour market policies, social security constitutes an instrument for sustainable social and economic development.<sup>1</sup>

Yet, vast numbers of the world's population still lack access to adequate levels of social protection and, in some countries, to any meaningful form of social protection.

While most developed countries have succeeded in implementing comprehensive social security systems, there is a pressing need for such systems to be established in developing countries to address those various forms of insecurity. The need for increased international solidarity in order to achieve progress in the development of national social protection systems was reaffirmed by the World Commission on the Social Dimension of Globalization in 2004.<sup>2</sup>

Well-established social security schemes in industrialized countries are also facing challenges as a result of the demographic changes taking place in these countries and of the high level of unemployment and lower economic growth that they are experiencing at the same time. National social security schemes experience further pressures due to globalization that can lead to diminishing national levels of social security as a consequence of shortsighted and indiscriminate efforts to enhance national competitiveness through cutting labour costs and the overall national social expenditure.

The right to social security constitutes a basic human right and is enshrined as such in major international human rights instruments such as the Universal Declaration of Human Rights<sup>3</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>4</sup> The social security Conventions of the ILO, and more particularly the Social Security (Minimum Standards) Convention, 1952 (No. 102),<sup>5</sup> are regarded as the main instruments to realize the right to social security by establishing States' obligations for the implementation of social security schemes for each contingency. Although Convention No. 102 was recognized in recent years as an up-to-date instrument and a valuable tool for the extension of social security,<sup>6</sup> its suitability to achieve the extension of coverage in the face of today's challenges is now being questioned. It should therefore be explored whether this Convention indeed constitutes the most adequate instrument to achieve universal coverage

<sup>1</sup> Resolution and Conclusions concerning social security, International Labour Conference, 89th Session, 2001.

<sup>2</sup> In this respect, the Commission further restated that basic social security constitutes a recognized human right and a global responsibility: see ILO (2004), p. 109.

<sup>3</sup> Universal Declaration of Human Rights, UN GA res. 217A (III), 1948, Article 22.

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, UN GA res. 2200A (XXI), 1966, Article 9.

<sup>5</sup> Hereafter referred to as Convention No. 102.

<sup>6</sup> Resolution and Conclusions concerning social security, International Labour Conference, 89th Session, 2001.

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worldwide, whether it needs to be complemented by a new and more suitable instrument, or whether other measures need to be taken in order to achieve this objective.

In line with the Resolution and Conclusions concerning the right to social security as adopted in 2001 by the International Labour Conference, which is the ILO's legislative organ, and pursuant to the mandate conferred on the Organization by Article III(f) of the Declaration of Philadelphia<sup>7</sup> to promote the extension of social security coverage to all those in need, in 2003 the ILO launched a Global Campaign on Social Security and Coverage for All. Since then, the ILO's Social Security Department has explored, analysed and piloted various ways and means to extend coverage of health care systems and basic universal cash benefits, notably to people in the informal economy. In parallel, the interaction between social security transfers and economic performance in developed countries was explored with a view to identifying conditions under which social security schemes can contribute to fostering economic growth.

Against this background, this Technical Paper sets out to:

1. examine the relevance of ILO social security standards for human rights, other international legal instruments and national legislation;
2. examine the extent to which existing ILO social security standards are adequate to fulfil the ILO's mandate for extending social security to all;
3. examine whether ILO social security standards still provide adequate guidance for national legislation and practice in view of the new trends in the labour market and of the changing concept of social security;
4. establish whether the actual level of ratification and prospects for future ratifications of ILO social security Conventions are sufficient to guarantee the fulfilment of the ILO mandate to extend social security to all; and
5. based on the conclusions of (1) to (4), present and recommend different options to remedy possible gaps and weaknesses of existing ILO social security instruments in providing social security to all and to improve the level of ratification.

It should be noted that, pursuant to the request by the Governments of Germany and the Netherlands, this Technical Paper envisages the strengthening of social security from a legal point of view and in a standard-setting perspective. In this regard, it aims at presenting all possible options for reinforcing and accelerating the extension of social security through ILO standards. It thus provides a legal rather than an economic analysis of the possible ways of enhancing social security and coverage for all.

<sup>7</sup> Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia), adopted by the International Labour Conference at its 26th Session, held in Philadelphia, on 10 May 1944.

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## 2. The ILO's mandate with regard to social security

In accordance with the aims and purposes set out in the Preamble to its Constitution (1919), the extension of social security worldwide has consistently been one of the main objectives of the ILO. More precisely, the Preamble states that the Organization's mandate is to improve conditions of labour through, *inter alia*,

“the prevention of unemployment, ... the protection of the worker against sickness, disease, and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury.”

In addition, Article 1 of the ILO Constitution specifies that the ILO is established for the promotion of those goals.

This mandate was restated in the 1944 Declaration of Philadelphia, which is incorporated in the ILO Constitution. It recognizes the “solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve”, among others, “*the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care*” (Article III(f), emphasis added), as well as “provision for child welfare and maternity protection” (Article III(h)), thereby extending the protection from workers to all those in need.

Based on international human rights instruments, ILO constitutive documents and social security Conventions and Recommendations subsequently adopted by the ILO,<sup>8</sup> social security may be defined as:

“The adoption of public measures to ensure basic income security to all in need of protection, in order to relieve want and prevent destitution by restoring up to a certain level income which is lost or reduced by reason of inability to work or to obtain remunerative work due to the occurrence of various contingencies: sickness, unemployment, old age, employment injury, family responsibilities, maternity, invalidity<sup>9</sup> or death of the breadwinner.”

Social security therefore occupies a predominant place in the activities of the ILO. Pursuant to its mandate, the strengthening of social security was established as one of the four strategic objectives of the Decent Work Agenda, presented by the ILO Director-General and adopted by the International Labour Conference in 1999.<sup>10</sup> Recognizing the increased need for social security in a volatile economic situation and the pressure exercised on existing social security systems, the Decent Work Agenda underscores the necessity of:

<sup>8</sup> See more particularly: Universal Declaration of Human Rights, UN GA Res. 217A (III), 1948, Article 22; International Covenant on Economic, Social and Cultural Rights, UN GA Res. 2200A(XXI), 1966, Article 9; Constitution of the International Labour Organisation, 1919; Declaration of Philadelphia, 1944; Income Security Recommendation, 1944 (No. 67); and Social Security (Minimum Standards) Convention, 1952 (No. 102).

<sup>9</sup> The term “invalidity” is used here with reference to a person's inability to engage in any gainful activity where such inability is likely to be permanent, as it is used in ILO social security Conventions. The authors are aware that it is a contingency that is now referred to as “disability” under United Nations human rights Conventions. For purposes of consistency, however, the term invalidity will be used throughout the document.

<sup>10</sup> ILO (1999).

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- adjusting to social changes;
  - extending social security;
  - improving governance of social security; and
  - linking labour market and employment policies with social security.

In the same perspective, at the 2001 International Labour Conference ILO constituents reaffirmed the Organization's fundamental role in the promotion and extension of social security and its obligations in this respect.<sup>11</sup> On that occasion, the Conference Committee on Social Security concluded that "highest priority should go to policies and initiatives which can bring social security to those who are not covered by existing systems".<sup>12</sup> Its Conclusions further emphasized the importance for all ILO activities concerned with social security to be anchored in the Declaration of Philadelphia, the Decent Work Agenda and relevant ILO social security standards. In this regard, it was proposed, among others, that a major campaign be initiated in order to promote the extension of social security coverage.<sup>13</sup> On this basis, the Global Campaign on Social Security and Coverage for All was launched in 2003 with a view to achieving concrete improvements in social security coverage in as many countries as possible; strengthening social partners and individuals' know-how in the field of social security and developing useful tools for key actors; and placing social security at the top of the international policy agenda.

<sup>11</sup> Resolution and Conclusions concerning social security, International Labour Conference, 89th Session, 2001, para. 2.

<sup>12</sup> *Ibid.*, para. 5.

<sup>13</sup> *Ibid.*, para. 17.

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### **3. ILO social security standards as the main tools for achieving the Organization's mandate with regard to social security**

#### **3.1. ILO standard setting in the field of social security**

The principal means of action available to the ILO for the realization of its mandate to extend social security to all is the setting of international labour standards. Standards take the form of either Conventions or Recommendations and cover all areas relating to the ILO's aims and purposes. Conventions are designed with a view to being ratified, which creates legally binding obligations for ratifying States. While Recommendations are not open for ratification, they provide general or technical guidelines and often supplement corresponding Conventions. Standards therefore serve as globally backed guidelines for national social policies. When ratified, they also prevent countries from going backwards, that is, from losing what has already been achieved.<sup>14</sup>

International labour standards are by nature universal as they are meant to be applied by the 181 member States of the ILO, irrespective of their legal system or their level of economic development. This universal character does not mean however that they grant a universal right to everyone. Different Conventions and Recommendations set out different rights for different categories of persons (workers and their families, in most cases), depending on their respective scope of personal application. The ILO machinery for the preparation, formulation and adoption of international labour standards, which ensures that a consensus is formed between tripartite constituents in the overall process, also guarantees the universality of ILO standards. In addition, a great number of Conventions contain flexibility clauses which facilitate ratification. A delicate balance between universality and flexibility is therefore reflected in ILO Conventions.

A review of nearly nine decades of ILO standard-setting activities in the field of social security shows that, historically and conceptually, social security standards can be classified into three different groups or generations of standards, according to the approach of social security that they embodied at the time of their adoption.

The first generation of standards corresponds to the instruments adopted from the creation of the ILO to the end of the Second World War. Most of these standards envisage social insurance as the means for their application. They are aimed at establishing compulsory social insurance systems for specific branches and at covering the principal sectors of activity and the main categories of workers. Those standards cover the fields deemed most urgent and suited to international action at the time of their adoption (maternity,<sup>15</sup> employment injury,<sup>16</sup> sickness,<sup>17</sup> etc.).

<sup>14</sup> U. Kulke and G. López Morales (2007), p. 91.

<sup>15</sup> Maternity Protection Convention, 1919 (No. 3).

<sup>16</sup> Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), Workmen's Compensation (Accidents) Convention, 1925 (No. 17), Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), and Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

<sup>17</sup> Sickness Insurance (Industry) Convention, 1927 (No. 24), and Sickness Insurance (Agriculture) Convention, 1927 (No. 25).

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The second generation of standards corresponds to the era of social security. While no ILO Conventions were adopted between 1940 and 1945, these were years of intensive creation in the field of modern social security, with standard-setting activities taking on a more global and broader conception of social security. The new approach consisted in unifying and coordinating the various social protection schemes within a single social security system covering all contingencies and extending social security coverage to all workers. Two important Recommendations, adopted in 1944, set forth this new conception: the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).

These Recommendations opened the way for the adoption of the Social Security (Minimum Standards) Convention, 1952 (No. 102), which is the landmark Convention in the field of social security.

The third generation of standards corresponds to the instruments adopted after Convention No. 102. Modelled on the latter, they offer a higher level of protection in terms of the population covered and the level of benefits and revise first-generation standards.

Since the establishment of the ILO, the International Labour Conference has adopted 31 Conventions and 23 Recommendations on social security. The first international Convention on social security (maternity protection)<sup>18</sup> was adopted at the 1st Session of the Conference, in 1919, while the most recent one, revising earlier standards on maternity protection, was adopted in 2000.<sup>19</sup> In 2002, the ILO Governing Body confirmed six out of these 31 Conventions as up-to-date social security Conventions. These are:

- Social Security (Minimum Standards) Convention, 1952 (No. 102).
- Employment Injury Benefits Convention, 1964 (No. 121).
- Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128).
- Medical Care and Sickness Benefits Convention, 1969 (No. 130).
- Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); .
- Maternity Protection Convention, 2000 (No. 183).

Mention should also be made of the two Conventions on the social security rights of migrant workers confirmed as up to date by the ILO Governing Body, namely the Equality of Treatment (Social Security) Convention, 1962 (No. 118), and the Maintenance of Social Security Rights Convention, 1982 (No. 157). This Technical Paper will not deal with these two Conventions, however. Migrant workers, as a specific category of workers involving cross-border movements, raise particular social security issues; it is therefore believed that they deserve a distinct legal analysis that should be carried out at a further stage.

### **3.2. Main features of Recommendations Nos. 67 and 69**

The adoption of Recommendations Nos. 67 and 69 by the International Labour Conference was an important milestone in the development of international legal instruments in the

<sup>18</sup> Maternity Protection Convention, 1919 (No. 3).

<sup>19</sup> Maternity Protection Convention, 2000 (No. 183).

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field of social security. For the first time in history, guiding principles were established in a comprehensive way for eight social security contingencies and medical care, complemented by the social assistance model. This new concept was laid down in *Recommendation No. 67* by providing the main features of income security schemes. It establishes the following contingencies, for which cash benefits should be provided:

- sickness;
- maternity;
- invalidity;
- old age;
- death of the breadwinner;
- unemployment;
- emergency expenses;
- employment injuries.

The Recommendation further expressed the desire to extend social security to all workers and their families, including rural populations and the self-employed. It also established the principles of social assistance, along the following lines:

- general measures of assistance to secure the well-being of dependent children;
- special maintenance allowances at prescribed rates for invalids, aged persons and widows if they were not compulsory insured;
- general assistance for all persons who are in want and do not require internment for corrective care.

*Recommendation No. 69* is based on the principle that the availability of adequate medical care constitutes an essential element of social security. It indicates that medical care services may be provided in two ways: either through a social insurance service with supplementary provision by way of social assistance, or through a public medical care service. The latter should cover all members of the community, whether or not they are in paid employment.

### **3.3. Main features of Convention No. 102**

Convention No. 102 is the flagship of the six up-to-date social security Conventions. It is the only international Convention which defines the *nine classical branches of social security* and sets minimum standards for each. These are:

- *Medical care*: The contingencies covered include any morbid condition, whatever its cause, and the medical care required as a result, as well as the medical care necessitated by pregnancy, confinement and their consequences; medical care of a preventive nature is also covered.
- *Sickness benefit*: The contingency covered includes incapacity for work resulting from a morbid condition and involving suspension of earnings.

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- *Unemployment benefit:* The contingency covered includes suspension or loss of earnings due to inability to obtain suitable employment.
  - *Old-age benefit:* The contingency covered is survival beyond a prescribed age (normally not higher than 65 years).
  - *Employment injury benefit:* The contingencies covered include a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease.
  - *Family benefit:* The contingency covered is the responsibility for the maintenance of children, i.e., under school-leaving age or under 15 years of age.
  - *Maternity benefit:* The contingencies covered are the medical care required by pregnancy, confinement and their consequences and the resulting suspension of earnings.
  - *Invalidity benefit:* The contingency covered is the inability to engage in any gainful activity where such inability is likely to be permanent or persists after the period during which the beneficiary is entitled to benefit from temporary incapacity.
  - *Survivors' benefit:* The contingency covered is the loss of support suffered by the widow or children as a result of the death of the breadwinner.

*Minimum objectives* are set for each contingency with regard to:

- a *minimum percentage* of the population protected in case of occurrence of one of the contingencies (see table 1);
- a *minimum level of benefits* to be paid in case of occurrence of one of the contingencies (see table 1), and
- the *conditions for and periods of entitlement* to the prescribed benefits.

**Table 1. Minimum requirements for coverage and minimum rates of cash benefits under Convention No. 102**

Branches	Coverage	Benefit (%)
Sickness benefit	At least 50 per cent of all employees; or	45 <sup>1</sup>
	Economically active population constituting at least 20 per cent of all residents; or	
	All residents with means below certain limit.	
Unemployment benefit	At least 50 per cent of all employees; or	45
	All residents with means below certain limit	
Old-age benefit	At least 50 per cent of all employees; or	40
	Economically active population constituting at least 20 per cent of all residents; or	
	All residents with means below certain limit	
Employment injury benefits	At least 50 per cent of all employees	
	➤ Short term	50
	➤ Disability	50
	➤ Survivors'	45
Family benefit	At least 50 per cent of all employees; or	3 (or 1.5) <sup>2</sup>
	At least 20 per cent of all residents; or	
	All residents with means below certain limit	
Maternity benefit	All women in prescribed classes, constituting at least 50 per cent of all employees; or	45
	All women in prescribed classes of the economically active population, constituting at least 20 per cent of all residents	
Invalidity benefit	At least 50 per cent of all employees; or	40
	Economically active population constituting at least 20 per cent of all residents; or	
	All residents with means below certain limit	
Survivors' benefit	Wives and children of at least 50 per cent of all employees; or	40
	Wives and children of breadwinners of classes of economically active population, constituting at least 20 per cent of all residents; or	
	All resident widows or resident children with means below certain limit	

<sup>1</sup> Percentage of reference wage corresponding either to former earnings (earnings-related benefits) or to the wage of an unskilled male labourer (flat-rate benefits). <sup>2</sup> Percentage of reference wage multiplied by total number of children of persons protected (or of all residents).

These minimum objectives should be reached by the application of the following principles anchored in Convention No. 102, which have to be complied with irrespective of the type of scheme established:

- The *general responsibility of the State* for the due provision of the benefits and the proper administration of the institutions and services concerned in securing the provision of the benefit (Article 71, paragraph 3).
- The *collective financing of social security schemes* (Article 71, paragraphs 1 and 2).
- The *guarantee of defined benefits by the State* (Article 71, paragraph 3).
- The *adjustment of pensions in payment* (Article 65, paragraph 10 and Article 66, paragraph 8).

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- The *right of appeal in case of refusal of the benefit or complaint as to its quality or quantity* (Article 70).

Another important feature of Convention No. 102 is that it contains *flexibility clauses* allowing ratifying member States to gradually attain universal coverage. Based on the notion that each country should have the discretion to determine how best to ensure its income security, thereby reflecting in its choices its social and cultural values, history, institutions and level of economic development, the Convention fixes a set of objectives or standards based on commonly agreed principles that constitute a socially acceptable minimum for all member States. It thus prescribes certain minimum requirements to be observed by ratifying States while aiming at the progressive realization of a more comprehensive protection, both in terms of the number of contingencies covered and of that of persons protected.

This is done first by allowing ratifying States to accept as a minimum three out of the nine branches of social security, with at least one of those three branches covering a long-term contingency or unemployment and with a view to extending coverage to other contingencies at a further stage (Article 2).

In addition, the scope of personal coverage under Convention No. 102 provides alternatives that take into account differences in the employment structure and in the socio-economic situation of member States, as well as between the different categories of residents within a State. Hence, for each branch accepted the Convention gives member States the possibility to cover only a certain proportion of their population. Furthermore, in the implementation of social security branches it allows member States whose economy and medical facilities are insufficiently developed to make use of temporary exceptions relating, for example, to the proportion of people covered (Article 3).

The Convention also provides for flexibility as to the type of schemes member States may establish for implementation of the Convention and to reach its objectives. Such objectives can be reached through:

- universal schemes,
- social insurance schemes with earnings-related or flat-rate components or both, or
- social assistance schemes.

### **3.4. Main features of other up-to-date ILO social security standards**

The *other up-to-date Conventions in the field of social security* (listed in section 3.1 above) set higher standards for the different branches of social security, in particular as regards the personal scope of coverage and the minimum level of benefits to be provided.

*Employment Injury Benefits Convention, 1964 (No. 121)* – The contingency covered by Convention No. 121 includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease, and the loss of support as a result of the death of the breadwinner following employment injury. It belongs to ratifying States to define the notion of “industrial accident”, including the conditions under which this notion applies to commuting accidents. Convention No. 121 indicates the cases in which accidents should be considered by national legislation as industrial accidents and under which conditions the occupational origin of the disease should be presumed. The national list of employment-related diseases has to comprise at least the diseases enumerated in Schedule I to the Convention. Convention No. 121 envisages that all employees, including apprentices in the public and private sector, and in cooperatives,

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are to be protected. The Convention further lays down three types of benefits: medical care, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity), and cash benefits in the event of the death of the breadwinner.

*Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)* – Convention No. 128 covers all employees, including apprentices, or not less than 75 per cent of the whole economically active population, or all residents whose means during the contingency do not exceed certain limits. The periodical payment rate for invalidity benefit should amount to at least 50 per cent of the reference wage. Moreover, the Convention envisages the adoption of measures for rehabilitation services. The minimum amount of old-age and survivors' benefit should correspond to at least 45 per cent of the reference wage.

*Medical Care and Sickness Benefits Convention, 1969 (No. 130)* – This Convention covers both the contingency of medical care benefits and cash sickness benefit. All employees, including apprentices, or at least 75 per cent of the whole economically active population, or all residents whose means do not exceed certain limits should be covered for both contingencies. In relation to medical care, wives and children of employees are also covered. In addition to the medical care required under Convention No. 102, Convention No. 130 provides for dental care and medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances. Convention No. 130 provides for entitlement to benefit throughout the contingency and allows for less possibility of limiting the duration of sickness benefits: a limitation corresponding to 26 weeks is only authorized where the beneficiary ceases to belong to the categories of persons protected and if the sickness started while the beneficiary still belonged to such categories.

*Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)* – The main aim of Convention No. 168 is twofold: the protection of unemployed persons through the provision of benefits in the form of periodical payments and through the promotion of employment. The minimum replacement rate of the benefits provided in case of unemployment should amount to 50 per cent of the reference wage. Ratifying States have to adopt appropriate steps to coordinate their system of protection against unemployment and their employment policy. The system of protection against unemployment, and in particular the methods of providing unemployment benefit, have to contribute to the promotion of full, productive and freely chosen employment and must not be such as to discourage employers from offering and workers from seeking productive employment. The persons protected must comprise prescribed classes of employees, constituting not less than 85 per cent of all employees, including public employees and apprentices, or all residents whose resources during the contingencies do not exceed prescribed limits.

*Maternity Protection Convention, 2000 (No. 183)* – Under Convention No. 183, the persons protected must comprise all employed women, including those in atypical forms of dependent work. The Convention further requires a minimum period of entitlement to maternity benefits of 14 weeks (including six weeks of compulsory leave after childbirth). Women who are absent from work on maternity-related leave are entitled to a cash benefit which, generally, must be not less than two-thirds of their previous earnings. The medical benefits provided to protected persons must include pre-natal, childbirth and post-natal care. Convention No. 183 also lays down the right to work breaks for breastfeeding, as well as provisions relating to health protection, employment protection and non-discrimination.

A comparison between the minimum coverage requirements and the minimum cash benefits replacement rates of Convention No. 102 and the higher standards is illustrated in table 2.

**Table 2. Minimum replacement rate of cash benefits required by ILO social security Conventions**

Social security branches	Convention No. 102		Conventions Nos. 121, 128, 130, 168, 183	
	Coverage	Benefit (%)	Coverage	Benefit (%)
Sickness benefit	At least 50% of all employees; or Economically active population constituting at least 20% of all residents; or All residents with means below certain limit	45	All employees; or At least 75% of all economically active population; or All residents with means below certain limit.	60
Unemployment benefit	50% of all employees; or All residents with means below certain limit	45	At least 85% of all employees; or All residents with means below certain limit	50
Old-age benefit	At least 50% of all employees or Economically active population constituting at least 20% of all residents, or All residents with means below certain limit	40	All employees; or At least 75% of all economically active population All residents with means below certain limit	45
Employment injury benefits	At least 50% of all employees		All employees	
➤ Short term		50		60
➤ Disability		50		60
➤ Survivors'		45		50
Family benefit	At least 50% of all employees; or 20% of all residents; or All residents with means below certain limit	30 or 1,5	---	--
Maternity benefit	All women in prescribed classes, constituting not less than 50% of all employees; or  All women in prescribed classes of the economically active population, constituting not less than 20% of all residents	45	All employed women, including those in atypical forms of dependent work	2/3 of the woman's previous earnings
Invalidity benefit	At least 50% of all employees; or Economically active population constituting at least 20% of all residents; or All residents with means below certain limit	40	All employees, or Economically active population, constituting at least 75% of the whole economically active population; or All residents with means below certain limit	50
Survivors' benefit	Wives and children of not less than 50% of all employees; or Wives and children of breadwinners in prescribed classes of the economically active population, constituting not less than 20% of all residents; or All resident widows or resident children with means below certain limit	40	Wives and children of all employees or apprentices; or Wives and children of breadwinners in prescribed classes of the economically active population, which classes constitute not less than 75% of the whole economically active population; or All widows and children whose means do not exceed prescribed limit.	45

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## 4. Impact of up-to-date ILO social security standards on national and international legal frameworks

In order to obtain a comprehensive overview of up-to-date ILO social security standards and their general effect on the extension of social security globally, one first needs to assess their relevance to international and regional human rights instruments as well as regional social security instruments. In this regard, it is also necessary to examine the impact of these standards on national social security systems worldwide.

### 4.1. The role of Convention No. 102 with regard to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights

From the perspective of international law, the recognition of the right to social security has been developed through universally negotiated and accepted instruments that establish social security as a fundamental social right to which every human being is entitled. The right to social security is thus enshrined in several legal instruments adopted by the United Nations, which comprise the *Universal Declaration of Human Rights*,<sup>20</sup> the *International Covenant on Economic, Social and Cultural Rights*,<sup>21</sup> the *Convention on the Elimination of All Forms of Discrimination Against Women*,<sup>22</sup> the *Convention on the Rights of the Child*,<sup>23</sup> the *Convention on the Elimination of All Forms of Racial Discrimination*,<sup>24</sup> the *International Convention on the Protection of the Rights of All Migrant Workers and Their Families*,<sup>25</sup> and the *Convention on the Rights of Persons with Disabilities*.<sup>26</sup>

Two of the abovementioned instruments are of significant importance as they constitute fundamental human rights instruments, dealing expressly with the right to social security.

The first is the *Universal Declaration of Human Rights*, which lays down in its Article 22 that:

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the

<sup>20</sup> Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, Articles 22 and 25.

<sup>21</sup> International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966, Articles 9, 10(2) and 10(3).

<sup>22</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly Resolution 34/180 of 18 December 1979, Articles 11(1)(e), 11(2)(b) and 14(2).

<sup>23</sup> Convention on the Rights of the Child, adopted by General Assembly Resolution 44/25 of 20 November 1989, Articles 26, 27(1), 27(2) and 27(4).

<sup>24</sup> Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly Resolution 2106 (XX) of 21 December 1965, Article 5(e)(iv).

<sup>25</sup> International Convention on the Protection of the Rights of All Migrant Workers and Their Families, adopted by General Assembly Resolution 45/158 of 18 December 1990, Articles 27 and 54.

<sup>26</sup> Convention on the Rights of Persons with Disabilities, adopted by General Assembly Resolution [A/RES/61/106](#) of 13 December 2006.

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organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Its Article 25 provides as follows:

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

Second, the International Covenant on Economic, Social and Cultural Rights (ICESCR) states in its Article 9 that

“[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

Furthermore, in subsequent provisions the ICESCR provides for the protection of family, children and motherhood;<sup>27</sup> recognizes everyone’s right to an adequate standard of living for himself and his family<sup>28</sup> and the right to health, including occupational health and access to medical care.<sup>29</sup>

The Universal Declaration of Human Rights was designed by 58 States. The ICESCR, for its part, was set up with the contribution of 122 States, many of which emerged from the process of decolonization. The rights enshrined in these two instruments have never been questioned.

While providing for the right to social security, these general international human rights instruments and their supervisory mechanisms have remained mostly silent as to the definition of this right and its specific content. In the absence of such definition, it has been left to the ILO, as the United Nations agency responsible for the promotion of labour standards, to establish the parameters and substantive provisions of the right to social security. In this respect, ILO social security standards, and more particularly Convention No. 102, have constituted the main reference for the interpretation and definition of this

<sup>27</sup> Article 10, ICESCR: “The States Parties to the present Covenant recognize that: (1) The widest possible protection and assistance should be accorded to the family,...particularly for its establishment and while it is responsible for the care and education of dependent children...; (2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits; (3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...”.

<sup>28</sup> Article 11, ICESCR: “(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

<sup>29</sup> Article 12, ICESCR: “(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, through such steps taken by States parties as are necessary for: “(2)(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases” and “(2)(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

right, while providing guidance for its implementation in a very detailed way. As such, they have always been regarded as playing a key role by providing substantive content to the right to social security as enshrined in international human rights instruments. Indeed, in its concluding observations and comments the Committee on Economic, Social and Cultural Rights (CESCR), which is responsible for monitoring the implementation of the ICESCR by States Parties, has on several occasions over the last decade recommended to countries to ratify Convention No. 102 as a means of fulfilling their obligations under the ICESCR.

In addition, it should be noted that in its reporting guidelines for States Parties to the ICESCR on the implementation of Article 9 thereof, the CESCR makes a direct reference to Convention No. 102 and other ILO social security Conventions (Nos. 121, 128, 130 and 168), instructing States Parties to these ILO Conventions to refer to their reports on the latter when reporting on the implementation of Article 9 of the ICESCR instead of submitting a distinct report.<sup>30</sup> Such referral confirms the fundamental role of ILO social security Conventions in filling out the right to social security under the ICESCR.

**Table 3. References to Convention No. 102 by the CESCR**

Year	Country
1998	Poland
2000	Georgia
2001	Columbia, Honduras
2003	Guatemala, Yemen
2004	Azerbaijan, Chile, Kuwait, Malta
2006	Morocco

#### **4.2. The role of Convention No. 102 with regard to regional human rights and social security instruments**

One of the main human rights instruments of the Council of Europe, the European Social Charter, expressly uses Convention No. 102 as a reference for establishing the minimum level of social security that European countries must provide. Under Article 12, it requires contracting Parties to undertake to maintain a level of protection “at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security”.<sup>31</sup>

Convention No. 102 has also served as a model for the adoption of regional social security instruments. The European Code of Social Security, for example, adopted under the aegis of the Council of Europe and constituting Europe’s major social security treaty, is based on the provisions of Convention No. 102. Furthermore, it has been supplemented by a Protocol which lays down higher standards than those required by the Code and which has also been formulated along the lines of the higher ILO social security standards. Both instruments are supervised by the ILO Committee of Experts for the Application of Conventions and Recommendations so as to avoid different interpretations of identical

<sup>30</sup> See the Revised guidelines regarding the form and contents of reports to be submitted by States Parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 17/06/91, Doc. E/C.12/1991/1, reproduced in Annex 4 hereto.

<sup>31</sup> European Social Charter (Council of Europe, 1961), Article 12.

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provisions in both instruments. Apart from Estonia, all European countries which have ratified the European Code of Social Security have also ratified Convention No. 102. It may also be noted that Convention No. 102 has been ratified by a much higher number of European countries than the European Code of Social Security.<sup>32</sup>

Several social security instruments adopted in relation to specific areas of economic integration have also included specific references to Convention No. 102, as for example the Caribbean Community (CARICOM) Agreement on Social Security and the Southern African Development Community (SADC) Code on Social Security. In the same spirit, the provisions of many regional instruments have been inspired by the nine branches of social security laid down in Convention No. 102 (e.g. the Protocol of San Salvador). Besides, it should be noted that governmental policy documents of many African countries contain references to Convention No. 102.

## **Conclusions**

On this basis, it may be concluded that Convention No. 102 remains the key reference for the definition of the content of the right to social security under the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and other regional instruments in various parts of the world. As such, it has played and still plays a primary role in defining the obligations that States Parties have to comply with in order to give effect to the right to social security under these instruments. It further appears that, in spite of the changing concept of social security, Convention No. 102 still provides a widely accepted normative frame for social security systems at the regional and international level.

### **4.3. The impact of ILO social security standards on national social security systems worldwide**

The history of ILO social security standards is intrinsically linked with global developments in the field of social security. As these instruments were designed to provide a framework of standards reflecting common aims and principles on which any social security system should be based, their adoption went hand in hand with the establishment of social security systems worldwide. In this respect, in 2003, on the occasion of the 50th anniversary of Convention No. 102, the Committee of Experts on the Application of Conventions and Recommendations, which monitors the application of Conventions by ratifying States, noted that Convention No. 102 had had “substantial influence on the development of social security in the various regions of the world, and that, therefore, it was deemed to embody an internationally accepted definition of the very principle of social security”.<sup>33</sup>

To date, Convention No. 102 has been ratified by 43 ILO member States. Some further countries have indicated that ratification of the Convention is currently under discussion, e.g. Brazil, where ratification of Convention No. 102 has been adopted by the Chamber of Deputies and is now under review in the Federal Senate, or Jordan, where it is being discussed in the Cabinet. Other States have requested assistance from the ILO regarding the ratification of Convention No. 102 (e.g. Argentina, Bulgaria, Lithuania, Republic of

<sup>32</sup> The Council of Europe member States which have ratified Convention No. 102 but not the European Code of Social Security are: Albania, Austria, Bosnia and Herzegovina, Croatia, Iceland, Montenegro, Poland, Serbia, Slovakia and The Former Yugoslav Republic of Macedonia.

<sup>33</sup> ILO (2003), at 20, para. 53.

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Moldova, Mongolia, Romania) or have indicated a strong interest in its ratification and in the ratification of higher social security standards (e.g. Republic of Korea). The Conventions' impact and that of Convention No. 102 most particularly should not be measured in terms of the number of ratifications only. Technical cooperation activities carried out worldwide by the ILO in the field of social security are based on the principles laid down in Convention No. 102. As a result, when drafting social security legislation many Governments take the provisions of Convention No. 102 into account even if they have not ratified it (e.g. Latvia, Lebanon),<sup>34</sup> so as to bring their new national legislation closer to compliance with the Convention. Thus, the social security systems of nearly all European countries and many Latin American and Caribbean countries follow the pattern set out in Convention No. 102 and in the higher standards. It should be added that ILO social security standards have also exercised a great influence on the development of social security systems in North African countries such as Tunisia and Morocco and Asian countries such as Japan and the Republic of Korea.

While the practical impact of Convention No. 102 has been felt mostly in countries with a certain level of development, the Convention has also influenced the development of formal social security systems in less developed countries. In fact, more than 30 out of 44 African countries<sup>35</sup> have set up pensions schemes modelled on Convention No. 102. It must be noted, however, that as their formal social security systems cover only a small portion of the population, the Convention is of lesser relevance in these countries. Nevertheless, the Convention still constitutes a development goal for them as it sets long-term objectives with regard to the levels of protection and social security principles to be attained.

As mentioned earlier, the monitoring of the application and implementation of ratified social security Conventions by member States in their national law and practice is ensured by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). An examination of the country cases where the CEACR has observed non-compliance with ratified social security Conventions shows that, since 1964, in no fewer than 75 cases ratifying States have brought their national law and practice into conformity with Convention requirements following CEACR recommendations (see table 4). In this regard, it should be mentioned that the ILO is often required to provide technical assistance to ratifying States to ensure a better application and implementation of social security standards at the national level (e.g. Denmark and Ireland in 2006, the Netherlands in 2007, Germany in 2008).

<sup>34</sup> See Annex 5.

<sup>35</sup> Social Security Administration of the United States (2007).

**Table 4. Cases of progress in respect of ratified ILO up-to-date social security Conventions (1964-2007)**

1964	Yugoslavia	C. 102	1975	Sweden	C. 102	1986	Belgium	C.102
					C. 121	1987	Ireland	C.121
					C. 128	1988	Luxemburg	C.121
1965	Sweden	C. 102				1989	Costa Rica	C.102
1967	Israel	C. 102	1976	Yugoslavia	C. 102		Finland	C.128
				Sweden	C. 130		Mexico	C.102
1969	Denmark	C. 102				1992	Germany	C.130
1970	Belgium	C. 102	1977	Austria	C. 102	1993	Denmark	C.102
	Germany	C. 102		Netherlands	C. 128	1996	Ecuador	C.121
						1997	Senegal	C.121
1971	Peru	C. 102	1978	Cyprus	C. 121		Uruguay	C.121
1972	Belgium	C. 102		Greece	C. 102		Ecuador	C.130
	Cyprus	C. 121		Netherlands	C. 121		Switzerland	C.102
	Mexico	C. 102		Sweden	C. 121			C.128
1973	Germany	C. 102		Yugoslavia	C. 102			
	Netherlands	C. 121	1979	Cyprus	C. 128	1998	Spain	C.102
	Peru	C. 102		Norway	C. 130	2001	Costa Rica	C.130
	Zaire	C. 121		Zaire	C. 121	2002	Cyprus	C.102
1974	Germany	C. 102	1980	Japan	C. 121	2003	Croatia	C.102
1975	Austria	C. 128	1981	Ireland	C. 102		France	C.102
	Cyprus	C. 121		Norway	C. 102		United Kingdom	C.102
		C. 128		Sweden	C. 128	2006	Libyan Arab Jamahiriya	C.128
	Denmark	C. 102		Yugoslavia	C. 102	2007	Portugal	C.102
	Ireland	C. 121	1982	Cyprus	C. 128		Switzerland	C.102
	Mexico	C. 102		Peru	C. 102			C.128
	Norway	C. 102		Senegal	C. 121			
	Peru	C. 102	1983	Finland	C. 130			
	Senegal	C. 102	1984	Belgium	C. 121			
		C. 121		Costa Rica	C. 102			

## Conclusions

The above examination shows that since its adoption Convention No. 102 has had and continues to have a strong influence on the design and development of formal social security systems worldwide. While its practical impact in developing countries may not be as important as in developed countries, Convention No. 102 still constitutes the reference for the establishment and reform of social security systems globally and is thus considered as a symbol.

International experience proves that ILO social security Conventions serve as a means for preventing the levelling down of social security systems worldwide as they constitute benchmarks for assessing whether their requirements have been reached and contribute to the creation of a worldwide level playing field for social conditions.

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## 5. Effectiveness of up-to-date ILO social security standards

Through its standard-setting activities, the work of its supervisory bodies and the provision of technical assistance to member States, since its founding the ILO has greatly contributed to the application of the right to social security in practice and to the furtherance of its implementation worldwide, assuming a leading role in this respect. While Convention No. 102 has had a positive influence on the development of social security in most regions of the world, it must be underlined that more than fifty years after its adoption an estimated 80 per cent of the world's population lives in conditions of social insecurity, 20 per cent among them living in abject poverty. In view of these numbers, the effectiveness of Convention No. 102 and of the other up-to-date ILO social security instruments in ensuring universal coverage while providing guidance for national law and practice in view of the changing concept of social security and new labour trends is now being questioned.

### 5.1. Effectiveness of up-to-date ILO social security standards in achieving the extension of social security to all

Given the fundamental importance of social security for human dignity and its recognition as a basic human right, realization of the right to social security should be given appropriate priority in law and policy, even if it carries financial implications for Governments. The weaknesses and the lack of adequate resources of social protection systems and institutions in most developing countries have prompted the World Commission on the Social Dimension of Globalization to state that the insecurities associated with globalization “reinforce the need to give priority to extending unemployment insurance, income support, pensions and health systems”.<sup>36</sup> Against this background, the Commission further emphasized that “a certain minimum level of social protection needs to be accepted and undisputed as part of the socio-economic floor of the global economy”.<sup>37</sup>

From the research undertaken in recent years and the needs assessment carried out in its technical cooperation activities, the Social Security Department of the ILO has identified a minimum set of non-contributory basic social security benefits needed in order to take and keep people out of poverty. This basic benefit package consists of the following:

- all residents have access to basic/essential health care benefits, where the state accepts the general responsibility for ensuring the adequacy of the delivery system and financing of the scheme;
- all children enjoy income security at least at the poverty level through family/child benefits aimed at facilitating access to nutrition, education and care;
- some targeted income support for the poor and unemployed in active age group;

<sup>36</sup> ILO (2004), p. 65.

<sup>37</sup> *Ibid.*, p. 110.

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- all residents in old age and disability enjoy income security at least at the poverty level through pensions for old age and disability.<sup>38</sup>

The results of recent ILO assessments<sup>39</sup> show that this basic benefit package can be both affordable and effective. According to calculations, less than 2 per cent of global GDP would be necessary to provide a set of non-contributory basic benefits – consisting of the above-identified contingencies – to the world’s poorest. Six per cent of global GDP would be needed to provide a basic benefit package to all those who have no access to social security. Furthermore, ILO calculations in 12 low-income developing countries show that basic social security can be afforded by virtually all countries. For example, a minimum package consisting of modest pensions and child benefits in Senegal and the United Republic of Tanzania could reduce the poverty head count (measured against the food poverty line) by about 40 per cent and would cost less than 4 per cent of their respective GDP.

The provision of this set of basic social security benefits would contribute to the achievement of Millennium Development Goals (MDGs) 1, 4, 5 and 6, namely eradicating extreme poverty and hunger, reducing child mortality, improving maternal health, and combating HIV/AIDS, malaria and other diseases.<sup>40</sup>

Bearing in mind that the provision of this basic benefit package would extend social security to all, an examination of the effectiveness of existing social security standards in realizing such benefit package at the national level needs to be undertaken. Recommendations Nos. 67 and 69 expressly stipulate universal coverage for cash benefits under eight social security branches as well as universal health care benefits. Taken together, they appear very relevant to the implementation of the basic social security floor through the provision of a basic benefit package. Recommendations, however, are not open for ratification and therefore do not create legal obligations for member States.

As for Convention No. 102, it requires member States to provide for the protection of certain percentages of classes of the population (i.e., prescribed classes of employees, prescribed classes of the economically active population, including their wives and children, constituting a certain percentage of the population, or all residents, according to a means test) for each contingency accepted. In this respect, population coverage must correspond to a minimum of 50 per cent of the employees in the formal economy (who are a small minority in many countries, especially in developing ones), or to a minimum of 20 per cent of all residents. This implies that for countries like Senegal, where the economically active population amounts to 4.638 million, out of whom only some 635,400 are formal employees, the minimum coverage requirement for a contingency such as old-age benefit is fulfilled by covering around 317,700 employees, or 6.85 per cent of the economically active population.<sup>41</sup> Even though at the time of adoption of Convention

<sup>38</sup> The participants in the research workshop (Turin, 2007) discussed and agreed on the elements constituting a minimum set of basic benefits.

<sup>39</sup> For further information on the research carried out by the ILO’s Social Security Department on the affordability of the minimum set of basic benefits, see ILO (2006a).

<sup>40</sup> The MDGs are based on the United Nations Millennium Declaration (2000). The eight goals range from halving extreme poverty to halting the spread of HIV/AIDS by the year 2015 (for more details, see the Information folder on Decent Work and the Millennium Development Goals, available at [www.ilo.org/mdg](http://www.ilo.org/mdg)).

<sup>41</sup> See Ministère de l’économie et des finances du Sénégal (2005), Part III, pp. 44-55. The figures concern the year 2005.

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No. 102 the International Labour Conference wanted to make it possible for countries to gradually attain the objective of universal coverage in harmony with their level of development by allowing them, at the initial stage, to cover only a portion of the population, the extension of personal coverage beyond the level required by the Convention is not set out as a legal obligation for ratifying States.<sup>42</sup> In this respect, the example of Senegal shows that, as regards personal coverage, a ratifying State may be in conformity with the requirements of Convention No. 102 while providing coverage for only a very low number of persons.

In addition, as mentioned in section 3.3 above, Convention No. 102 does not require guaranteeing a full scope of benefits; it can be ratified with the acceptance by a State of a minimum of any three of the nine branches of social security. This flexibility clause also aims at laying down at one and the same time certain minimum standards to be observed and a plan for more comprehensive protection to be realized. However, States which at the outset ratify only three out of the nine contingencies are not legally obliged to extend ratification to further contingencies at a later stage. In this respect, Convention No. 102 does not provide guidance on how countries should prioritize benefits when they cannot afford to cover the full range of contingencies and how they should implement further contingencies at a later stage. A review of the ratification chart of Convention No. 102 (see Annex 3), which lists the social security branches accepted by ratifying States, shows that most countries have made use of this flexibility clause: 37 countries have ratified only parts of the Convention, while only six<sup>43</sup> have ratified all of it. Furthermore, State practice shows that this flexibility clause has been used on only very few occasions since the adoption of the Convention. Five States have extended social security to other parts of the Convention, namely Denmark in 1960 (extension to Part VI), Sweden in 1962 (extension to Parts II, III and VIII), the Netherlands in 1964 (extension to Part IX), France in 1976 (extension to Part VII), and Austria in 1978 (extension to Part IV).

In addition, the benefit levels prescribed by the Convention (e.g. 40 per cent of the previous wage or an equivalent percentage of the wage of an ordinary male labourer in the case of old-age pensions)<sup>44</sup> may appear relatively high for the provision of a basic benefit package and thus too constraining for developing countries with limited fiscal space.

Subsequent social security Conventions show limitations similar to those of Convention No. 102 with regard to the establishment of a basic social security floor. Even though these standards provide for higher levels of coverage for all contingencies (e.g. Convention No. 128 requires the coverage of all employees, or at least 75 per cent of the economically active population, or all residents whose means are below prescribed limits),<sup>45</sup> they do not require ratifying States to provide a benefit under the respective branch for all persons falling under the contingency, with the consequence that a coverage gap still remains. Furthermore, it should be underlined that these Conventions, rather than requiring States to implement a basic benefit package, set higher levels of benefits which are even more difficult for States to provide in a context of limited fiscal space.

The participants in the Workshop on Strengthening ILO Social Security Standards also perceived certain features of Convention No. 102 and of other ILO social security Conventions as limitations in the establishment of a basic social security floor. With regard

<sup>42</sup> U. Kulke and G. López Morales (2007), p. 94.

<sup>43</sup> Belgium, Germany, Libyan Arab Jamahiriya, Luxembourg, the Netherlands and Portugal.

<sup>44</sup> Article 28 of Convention No. 102.

<sup>45</sup> Articles 9, 16 and 22 of Convention No. 128.

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to the personal scope of these instruments, some of the participants indicated that they were too restricted as they provided coverage for the formal sector and for people in formal employment but not for farmers, family members and workers in the informal economy. These instruments were also said to be too limited as they did not provide detailed guidance on the implementation of social assistance schemes. It was also pointed out that they were not sufficient to provide a framework for the ILO to be actively involved in low-income countries.

## **Conclusions**

The above analysis leads to the conclusion that none of the current up-to-date ILO social security Conventions can be regarded as an appropriate tool for the ILO in pursuing its constitutional mandate to extend social security to all through the implementation of a social security floor. It is rather Recommendations Nos. 67 and 69 that lay down the relevant standards for implementing this minimum social security floor. Due to their legal nature, however, they do not provide binding obligations for ILO member States in this regard.

Nevertheless, it should be acknowledged that Convention No. 102 offers a useful model objective for a codification of the right to social security and can provide a basis for its progressive expansion during national development processes, once a social security floor has been achieved, as it provides for adequate minimum levels of benefits for the nine classical social security contingencies which are designed to guarantee the replacement of former earnings as well as access to medical care.

However, Convention No. 102 does not effectively establish a binding obligation to extend a basic but comprehensive set of priority benefits to all people in the global economy and society.

### **5.2. Limitations of up-to-date ILO social security standards in ensuring financial equivalence between contribution rates and benefit levels**

According to international standards, social security financing should be based on the principle of financial solidarity, under which contributions or taxes for financing benefits are charged on the basis of persons' ability to pay and regardless of their individual risks. Social security financing should also be established on the principle of collective financial equivalence, which requires any social security scheme to achieve financial equilibrium in the long term, allowing however redistribution between different groups, in accordance with the solidarity principle. This implies at the same time that resources envisaged for social security at the point of collection cannot be used to finance non-social security expenditure, as this could be considered a misuse of resources that were earmarked by contributors and taxpayers for the financing of social security benefits. Likewise, excessive administrative costs in public and privately operated social security schemes also clearly constitute a misuse of resources dedicated to providing people with benefits in case of need.

Looking at the developments which have taken place in several countries over the last decades in respect of social security systems, it may be concluded that many social security schemes worldwide encountered problems when this financial equivalence principle was ignored. While Convention No. 102 stresses that it is the government's responsibility to secure the necessary financing for the benefits at least at the levels stipulated by the Convention and calls for the periodical actuarial review of contributions and benefit schedule (and in any case when these schedules are modified), there is apparently a need to

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have much stronger obligations to strictly follow the principle of collective financial long-term equivalence between resources raised for social security and benefits delivered.

## **Conclusions**

In the absence of an obligation to ensure financial equivalence between contribution rates and levels of benefits under up-to-date social security Conventions, including Convention No. 102, there is a risk that social security schemes which comply with the requirements of these Conventions allow the use of resources dedicated to social security by contributors or taxpayers to finance non-social security expenditure. This would have a detrimental impact on beneficiaries and on the sustainability of the schemes.

### **5.3. Effectiveness of up-to-date ILO social security standards in responding to new social security concepts**

An examination of the effectiveness of existing standards in responding to new social security concepts is highly relevant at this stage, considering that less than 50 per cent of the working population worldwide is covered by any form of social security nets. Population coverage rates vary widely between regions: in most countries of Africa and South Asia the coverage rate (except for coverage for some basic – often under-resourced – health services) is between 5 and 10 per cent, in Latin America between 10 and 80 per cent, and in East Asia between 10 and nearly 100 per cent.<sup>46</sup>

#### **5.3.1. Trends in high income per capita countries<sup>47</sup>**

Among the major *socio-economic changes* that have taken place in high-income countries over the last three decades, the most prominent ones that impact on social security systems are the following:<sup>48</sup>

- (1) The increase in female labour force participation, including in segments with higher qualification requirements (with the gap between the level of wages between men and women remaining, however).
- (2) Population ageing (as a consequence of longer life expectancy and declining fertility rates). As a result, an increasing share of the population is in retirement while

<sup>46</sup> Positionspapier (Conceptional paper) of the Bundesministerium für wirtschaftliche Zusammenarbeit, Referat “Entwicklungspolitische Informations- und Bildungsarbeit”, November 2002, p. 5.

<sup>47</sup> There are several methods of assigning countries to the groups of highly developed countries, medium developed countries and developing countries. One method of ranking is the Gross National Income per Capita in constant prices (GNI). Another method is the Human Development Indicator (HDI), which is used in the annual Human Development Reports by UNDP. This paper uses the GNI criterion.

<sup>48</sup> See the following papers of the Commission of the European Communities: “Synthesis report on adequate and sustainable pensions”, of 27 February 2006, SEC(2006) 304, COM (2006) 62 final with the annex: Commission Staff working document; Joint Report on Social Protection and Social Inclusion 2006, Synthesis report on adequate and sustainable pensions, COM(2006) 62 final; Report by the Indicators Sub-Group (ISG) of the Social Protection Committee, “Current and prospective theoretical pension replacement rates”, of 19 May 2006; Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Joint Report on Social Protection and Social Inclusion, SEC(2005) 69.

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smaller cohorts of young people are entering the labour force. This has caused serious financial constraints on social security schemes, which had to be consolidated to a considerable extent.

- (3) Many countries have experienced lower long-term levels of economic growth than in previous decades; this overall trend has led to stagnation in the development process as well as persistent high levels of unemployment.
- (4) On the whole, globalization has contributed to economic and social wealth. However, it has also caused accelerated structural changes implying job losses in several sectors and cuts in national social security benefit levels and social expenditure, as a result of increasing competition between countries and regions.
- (5) Persistent unemployment and cuts in national social expenditure have led to increasing numbers of people being marginalized.
- (6) Up to the 1990s, entrepreneurial quest for productive efficiency coupled with individual preferences for early withdrawal from the labour market and government efforts to reduce open unemployment led to a trend towards early retirement. The labour market participation, mainly of older male workers in the cohort between 55 and 64 years, decreased considerably. Such a trend requires difficult behavioural change when current governments try to reverse it. At the same time, the labour market entrance of younger people having completed their vocational training was often delayed.
- (7) Part-time work and work based on atypical forms of employment contracts have spread in many countries. There has also been a tendency towards an increase in employment relationships without any mandatory social insurance. For the majority of the population, periods of work alternate with periods of unemployment. In countries with persistent high unemployment and reduced employment levels the proportion of long-term unemployed persons among all unemployed persons has increased steadily.
- (8) The national health services and statutory health/sickness insurance schemes in many countries came under serious financial pressure.<sup>49</sup> As a widespread trend, health sector expenditures have been growing faster than GDP. The costs of outpatient and inpatient health services have increased more than the income of the schemes (financed by contributions or by taxes). This has been caused by many different factors: stagnation or even decline in the available contributions or taxes in periods of low economic growth, rapidly rising expenditure for labour-intensive health services, medicines and other in-kind or cash benefits. Higher costs are partly the result of various innovations in the health sector. It is expected that the ageing of the population will further increase the share of health care expenditure at GDP. However, a comparison between different countries shows that the proportion of health sector expenditure as a share of GDP varies considerably. This indicates that the level of health services may vary in quality and also that there may be big differences in their efficiency.

<sup>49</sup> See Council of the European Union, Joint report by the Commission and the Council on supporting national strategies for the future of health care and care for the elderly, 7166/03 (SOC 116; ECOFIN 77; SAN 41); Joint Report on Social Protection and Social Inclusion 2007, 6694/07 (SOC 72, ECOFIN 87, FSTR 5, EDUC 37, SAN 29); MISSOC-Info-Bulletin 2/2005 "Health Care: User Charges – Introduction"; MISSOC-Info-Bulletin 2/2007, "Financing of Social Protection".

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- (9) The costs of services for the care of the elderly are rising considerably owing to the strong increase in the cohort of very old persons. In this respect, the sharp increase in the number of persons suffering from all forms of dementia is of particular concern. This tendency is set to continue due to the further ageing of the population.<sup>50</sup>

As a response to those socio-economic changes, new social *policy principles and political strategies* seem to be developing over the years and decades. The most noticeable are the following.<sup>51</sup>

#### A new understanding of solidarity in the relationship between society and the individual

This new vision seems to continue to recognize the need for social security for people who are perceived to be in need of societal support, while seeking to strike a new balance between rights and duties in social security systems and a shift of emphasis from “care and repair” (through transfers) to prevention (preventing unemployment or occupational disability). Increasing the employment rate is thus of the utmost importance as it is considered to be the best way to reduce the number of unemployment benefit recipients. The actual reforms in high-income countries are aimed at helping people go back to work and making the labour market more dynamic. They consist mainly in four types of measures.

#### Fostering self-reliance of individuals

These measures seek a new balance between individuals’ social rights and their responsibility for making full use of their own capacities. The following concepts are examples of the search for a new balance in the field of social policy and employment:

- the concept of flexicurity;
- the expectation that individuals with partial incapacity to work will make use of their remaining capabilities;
- the expectation that unemployed persons will actively seek new employment and participate in training programmes. A “self-activating social security system” does not only serve as an income replacement scheme but encourages participation in the labour market. The legal framework of many countries has been modified to achieve this goal;
- other important activation means consist of arrangements to increase employability in order to reduce the risk of unemployment and to increase preventive measures in order to minimize risks of illness, employment injury and occupational disease and invalidity;
- higher priority in all branches of social security for measures preventing dependency;
- stronger measures to prevent the abuse of social security benefits.

<sup>50</sup> MISSOC-Info-Bulletin 2/2006, “Long-term Care – Introduction”.

<sup>51</sup> All OECD Member countries agreed to the described policy directions on the occasion of the 2005 meeting of OECD Social Affairs Ministers. More details and statistics may be found in OECD (2005). See also: extracts from Schönig and Theisen (2002); Ministry of Social Affairs and Employment of the Netherlands, Policy Agenda 2006 (<http://internationalezaken.szw.nl>).

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Moreover, there is a tendency in several branches of social security (e.g. pension schemes and health and illness insurance) to strengthen elements of private insurances while the public social security institutions are partially retreating.

### Creating a dynamic labour market that offers opportunities<sup>52</sup>

As a prerequisite for the success of activating policies, the labour market has to offer sufficient prospects to those who have been marginalized. The abovementioned flexicurity concept is one *effort to create a dynamic labour market* offering increased work security rather than a possibly too restrictive job security. The main idea is to make less effort to protect concrete jobs and focus instead on fostering employability and assisting people to get jobs. Encouraging flexible labour markets and at the same time ensuring high levels of material security requires that the workers be given the means and the income security to adapt to changes on the labour market. The flexibility concept therefore requires lifelong training and education measures so that workers remain sufficiently employable but also enjoy social security during job search and retraining. Greater labour market participation is essential to maintain the welfare system.<sup>53</sup> Mobilizing under-represented groups in the labour force is seen as key to meeting the challenges of an ageing population.

Public employment services have been completely reformed in many countries with the aim of making the job search process more efficient and client oriented. New forms of cooperation between public employment services and private placing services were introduced in many countries. Some measures were taken to consolidate these instruments and to strengthen integration efforts for people facing specific hiring barriers (older workers, young persons in the transition between school and/or vocational training and the entrance into the labour market, people with handicaps, migrants, long-term unemployed). Another priority was to avoid short-term unemployment turning into long-term unemployment.

### Developing new branches of social security

Policy solutions to new social challenges also include the introduction of new social security branches adopted by a number of high-income countries:

- compulsory long-term nursing care insurance for the elderly (Austria, 1993; Germany, 1995; Japan; 2000; Luxembourg, 1999; the Netherlands, 1968). Even if the health status of the population has generally improved, given the rise in the number of very old persons there is a tendency for the number of persons that need help in coping with daily life to increase. In many cases family members cannot provide and finance this care. A new branch of social security is one possible way to mitigate this challenge;
- parental leave insurance as a means of combining work with family responsibilities (Germany, 2007; Quebec [Canada], 2006; Sweden, 1974). This new branch of social insurance facilitates the interruption of remunerated work by one parent to allow him/her to take care of the child at home for a prescribed period of time, during which a benefit is paid. As a result, men increasingly make use of parental leave, even though women still make use of it considerably more than men.

<sup>52</sup> Ton Wilthagen (Rapporteur of the European Expert Group on Flexicurity who has compiled the material), "Flexicurity Practices", 24 May 2007.

<sup>53</sup> See the Communiqué of the OECD Meeting of Employment and Labour Ministers, "Towards More and Better Jobs" (Paris, 29-30 September 2003); Council Decision of the European Union on Guidelines for the employment policies of the Member States of 12 July 2005 and of 19 June 2007, Official Journal of the European Union.

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## Achieving a new balance between expenditures and income in pension schemes

Many countries instituted pension scheme reforms aimed at restoring the balance between increased expenditures and reduced income so as to safeguard the schemes' financial viability in the future. One way was to introduce a new balance between the period of active working life and the period of pension receipt. In order to contain the demographic burden in pension schemes, many countries pursued amendments to the pension legislation so as to raise the "normal" *retirement age*, often combined with flexibility instruments with regard to the point in time at which the individual chooses to retire and the introduction of actuarial reductions or increases. The main purpose was to raise the average retirement age by abolishing incentives for early retirement. The raising of the "normal" retirement age in combination with an actuarial reduction factor can be an incentive to continue working until such higher "normal" age.

Another flexibility element consists in the option for older workers to reduce their working time and to combine part-time work with a partial old-age pension. Long transition periods are expected in all countries for the transition to higher pension ages. These new rules have already had an impact. Indeed, the trend to lower average ages stopped a few years ago and the labour market participation rate of older workers (especially of older male workers) is increasing again. At the same time, the conditions for entitlement to invalidity pensions were restricted.

On the other hand, the protection of disadvantaged groups was improved. An important step towards fostering women's own right to pensions consists in taking into account to a certain extent periods of child-raising and, under certain conditions, periods of care of the elderly. Several solutions were implemented to provide decent retirement income for low-income persons. One solution was to introduce or improve minimum income guarantees. To cope with the financial constraints of pension schemes the average replacement rates of pensions were reduced by various means. For example, pension adjustments were modified in order to moderate the increase of pensions.

In order to improve the financial sustainability of first tier pay-as-you-go defined benefit pension systems despite worsening dependency rates, the schemes were complemented by mandatory or voluntary fully funded defined contribution schemes that compensate for declining levels of protection of the first tier schemes. These schemes are by definition in automatic financial equilibrium but do not guarantee predefined benefit levels for contributors.

## Reforming the health care sector and health insurance schemes in order to moderate cost increases, improving quality through standards and equal accessibility

Efforts have been undertaken to ensure equal access to health care services for all, reduce health inequalities in outcomes to safeguard high-quality care and increase efficiency through new technological means, rationalization, qualitative analyses, organizational and other structural changes (new electronic cards for the patients, better cooperation between service providers, reduction of hospital capacities, more competition, etc.). Different approaches are applied for control of expenditure. As a result, co-payments for the individual use of health services increased considerably. Low-income groups were often exempted from co-payments. Certain types of care were excluded from solidarity-financed benefit baskets.

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### 5.3.2. Trends in middle income per capita countries<sup>54</sup>

Drawing general conclusions from trends and developments observed in several countries is rather problematic since middle-income countries are not a homogenous group. Some common trends do emerge, however. Many Latin American countries have enjoyed long periods of sound economic growth in the past. As early as the 1920s, several of them had already developed social security schemes that covered workers in the formal industrial and agricultural sector. The economic setbacks of the last few decades, high public deficits and debt have led to severe cuts in social expenditure. Owing to political instability, proper long-term orientation in social policy was lacking. As a result, the formal sector of the economy stagnated or even declined and became informalized. In the last few years there has been an economic recovery in some countries, favouring the adoption of new social benefits.

In South-East Asia and parts of East Asia the period of strong economic growth was suddenly brought to a halt by the deep and prolonged financial crisis of 1997. Since at the time these countries had no unemployment insurance schemes, a substantial share of the affected population fell into poverty. The traditional informal kinship-based social net could not absorb the negative effects of this deep depression. This experience raised awareness in the countries concerned of the importance of creating sound public social security schemes.

The transition process in Central and Eastern European countries from centrally planned to market-oriented economies since 1990 has also led to high structural unemployment, a sharp drop in the employment rate in the formal economy, the creation of an informal economy, and internal and external migration flows. The inherited inflexible social security systems were not able to compensate these effects adequately. Due to shrinking contribution and tax bases, there was no room in public budgets to counteract these effects. Severe poverty soared in the phase of transition. However, returning economic growth rates increased employment and created the fiscal space for reformed social security schemes.

In addition, the following tendencies can be observed in more or less all regions:

- a relatively high and increasing income disparity exists between small groups of people with high income and larger groups of people with very low income. Economic growth did not generate more income equality;
- within countries there is a relatively wide prosperity gap between different regions expressed in terms of income per capita, employment rate, unemployment rate, social infrastructure and the respective shares of formal and informal employment. This causes internal migratory pressures which can lead to a vicious circle since the loss of productive people will cause remote areas to fall behind even more;
- informalization of the economy in general is continuing;
- some countries are prone to weak and unstable governments and are exposed to civil wars and other unrest, serious epidemics and a high frequency of natural disasters (earthquakes, floods, droughts). People with low income are much more vulnerable as they have no reserves that enable them to cope with such catastrophes;

<sup>54</sup> W. van Ginneken (2007).

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- due to an increasing life expectancy (except in regions with very high HIV/AIDS prevalence) and improvements in the health sector, it is predictable that the percentage of people of pensionable age will increase considerably. This can cause financial problems for existing health and pension insurance schemes;
  - lack of good governance in the administration results in inadequate implementation of national regulations on social security. For example, even if people are entitled to certain benefits, in practice benefit receipt may be discretionary. In addition, strikingly high administrative costs seriously undermine popular confidence in the credibility of these institutions.

In response to the socio-economic changes described above, a number of *policies* have been developed and implemented:

Several countries with middle income per capita have attained universal coverage in at least one of the social security branches (e.g. Republic of Korea, Costa Rica, Chile) or are taking significant measures to reach it (e.g. Tunisia, Colombia, Brazil, the Philippines, Thailand). Several countries have achieved universal coverage through a combination of contributory and tax-financed social security schemes.

The Republic of Korea achieved universal health care coverage within a 12-year period (between 1977 and 1989). Tunisia managed to increase personal coverage of health insurance, pensions, maternity and work injury benefits from 60 per cent of the labour force in 1989 to 84 per cent in 1999. Both countries have designed systems to assess fairly the income position of self-employed persons so as to determine their level of contribution. In 1993, Colombia introduced – in addition to the existing contributory scheme – a subsidized health insurance scheme for workers in the informal economy. The contributions for the supplementary scheme are financed directly from the government health budget and by a “solidarity” contribution from workers in the formal sector. The result was a substantial increase in the proportion of personal coverage in relation to the whole population (from 26 per cent in 1993 to 62 per cent in 2003).

Brazil is extending coverage by using mainly tax-financed social security schemes. It has reached universal coverage through its health system. Concerning its pension schemes, it has nearly achieved universal coverage of the elderly population through its partly contributory and partly non-contributory system of pension schemes covering a large proportion of the urban and rural population.

In several countries cash benefits are conditional. One example is Mexico’s *Progres a / Oportunidades program* (benefits paid to mothers subject to an 85-per cent school attendance rate of their children). Similarly, in Brazil the *Bolsa Familia* scheme, which forms part of the welfare program *Fome Zero*, provides financial aid to poor families on the condition that their children be vaccinated and attend school regularly. Those benefits have three main targets: reducing short-term poverty, preventing epidemics and severe diseases, and combating long-term poverty by improving the educational level of the young generation. Other examples of conditional cash transfers are the *Chile Solidario* programme and Nicaragua’s *Red de Protección Social*.<sup>55</sup>

<sup>55</sup> HelpAge International, “Non-contributory pensions and poverty prevention – A comparative study of Brazil and South Africa”, September 2003 ([www.helpage.org/resources/researchreports/](http://www.helpage.org/resources/researchreports/)); Leisering et al. (2004), p. 8.

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In South Africa,<sup>56</sup> several initiatives are currently under way to ensure the provision of basic services and social grants as a first pillar of the Government's comprehensive social security framework. The grants are intended to complement other social policy initiatives aimed at building human capital and breaking the cycle of intergenerational poverty. The envisaged measures also intend to support individuals in overcoming barriers to work and are focused on the development of human capital. The objectives are similar to those pursued in Mexico and Brazil except that basic benefits are not conditional on certain forms of behaviour.

In several countries of Latin America in the 1980s, pay-as-you go public pension systems were replaced by individual capitalization schemes ran by private funds. The development of social security coverage in middle-income countries under these privatized pension schemes was not always positive. This led to the growing importance of tax-financed minimum pension guarantees and/or moves to create a basic tax-financed pension tier in several countries such as Argentina, Brazil, Chile, Costa Rica and Uruguay. The sound economic recovery in the region is favourable to further reforms of social security schemes that seek to combat old-age poverty and increase pension system coverage.

There is a tendency to direct basic first tier social assistance benefits more to households than to individuals. However, research reports on Brazil and South Africa show that even individual benefits usually benefit whole households. Older people in these countries belong mostly to households with several persons and pension benefits are usually shared within the household.<sup>57</sup>

### **5.3.3. Trends in low income per capita countries**

In low-income countries, social security challenges relate mainly to a level of economic development that is considered insufficient for poverty-alleviating redistribution and the countries' insufficient administrative and governance capacities. The social situation is still dominated by mass poverty due inter alia to extreme income disparities.

The percentage of workers and self-employed persons in the informal sector remains high and agriculture is still the most important sector of activity. Originally, traditional family- and kinship-based schemes existed in all developing countries. It can be observed that these support schemes are being increasingly weakened.

Until very recently, traditional insurance for tax-based social security income transfer schemes had never reached substantial levels of coverage. At best, there exists some form of theoretical universal access to basic health services, but these services are generally under-resourced and understaffed and their utilization often requires co-payments. However, there are cases (e.g. Ghana, India) where recent legislation covers the informal economy. In Namibia, for example, cash benefits are provided to all elderly people. This can alleviate old-age poverty but also provide social assistance, as in the case of so-called skipped-generation households, i.e., where grandparents take over the care of grandchildren.

<sup>56</sup> See Republic of South Africa, Department of Social Development, Discussion Document: "Linking social grants beneficiaries to poverty alleviation and economic activity", 1 November 2006.

<sup>57</sup> See HelpAge International, "Non-contributory pensions and poverty prevention, A comparative study of Brazil and South Africa", September 2003, and Save the Children UK, HelpAge International and the Institute of Development Studies, "Making cash count. Lessons from cash transfer schemes in east and southern Africa for supporting the most vulnerable children and households", 2005, both available at [www.helpage.org/resources/researchreports](http://www.helpage.org/resources/researchreports)

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However, in most countries that have some kind of social assistance, these schemes are often insufficient. A formal statutory basis is often lacking, with the result that persons in need are often exposed to arbitrary and discretionary selection and decision making. Population coverage generally remains haphazard.

An important starting point for social assistance in low-income countries is the *integrative approach*. Social assistance and/or other basic social benefits have to be coordinated with other supportive measures such as housing, education and health. There are already a considerable number of countries that seek to implement this approach.

Special problems arise in cases where parts of social security schemes are *privately regulated and/or administered*. More rules and better control mechanisms are often needed for privately regulated and/or administered services (e.g. private health and retirement schemes). In these cases, overarching and common goals are often missing.

Basic tax-financed social security schemes have been set up in a growing number of countries with low average income. The main focus of such schemes is to compensate households that cannot achieve minimum levels of income and consumption, as a means to cope with extreme hardship and with the aim of promoting social inclusion and cohesion.<sup>58</sup> These schemes should be gradually developed into a comprehensive social protection system.

Against this background, the principal objectives of a new, emerging social security development approach for low-income countries are:

- achieving universal access to basic benefits as fast as possible so as to combat poverty;
- reducing income insecurity to the extent possible and compatible with economic performance;
- reducing inequality (of access to opportunities);
- the provision of benefits as of right;
- ensuring the absence of discrimination on the basis of nationality, ethnicity or gender; and
- ensuring fiscal affordability, efficiency and sustainability.

#### **5.3.4. Compatibility of existing up-to-date ILO social security standards with new social policy trends**

The emerging view of the nature of solidarity with regard to the relationship between society and the individual has implications for all contingencies dealt with in Convention No. 102. This applies in particular to the overarching principle of avoiding sickness and unnecessary benefit dependency as well as the application of stronger measures against abuse of social security benefits.

The provision of preventive health care is set out as a requirement in Conventions Nos. 102, 121 and 130. Accordingly, Article 10, paragraph 3, and Article 34, paragraph 4, of Convention No. 102 state that medical care shall be afforded by the ratifying States with a view to maintaining, restoring or improving the health of the person insured and his ability

<sup>58</sup> Barrientos (2007).

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to work and to attend to his needs. Article 22, paragraph 1(f), of Convention No. 121 contains a similar requirement, while Article 26 stipulates that ratifying States have the obligation to take measures to prevent industrial accidents and occupational diseases. Similar obligations are set out in Articles 8, 9 and 13 of Convention No. 130.

The new policy objectives of achieving *greater self-reliance on the part of the individual* and the related *flexicurity* concept are also compatible with the principles of Convention No. 168 and of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169). Convention No. 168 requires member States to promote productive employment. This objective may be reached through various means, such as the establishment of employment services, the provision of vocational training and vocational guidance (Articles 7 to 9). Other important elements of these policies are contained in the general objectives of employment policy as set out in Recommendation No. 169. It explicitly recognizes the link between the right to work, the implementation of conducive economic and social policies and their connections to economic and financial policies. Furthermore, it recommends that member States adopt policies and take measures which should facilitate adjustment to structural change, including the re-employment of workers who have lost their jobs as a result of structural and technological changes. It also recommends facilitating the re-employment of workers affected by the sale, transfer, closure or relocation of an enterprise.

The implementation of self-reliance policies requires special efforts by member States and labour market partners to enable workers to find new jobs. In this respect, it should be noted that Recommendation No. 169 advises member States to adopt measures to respond to the needs of all categories of persons facing frequent difficulties in finding lasting employment (paragraph 15). It further recommends setting up education and training systems, including schemes for retraining, to offer workers sufficient opportunities for adjusting to changing labour market requirements resulting from technological change (paragraph 22). Therefore, Recommendation No. 169 would seem to be compatible with the objectives of self-reliance policies.

The new *focus of labour market and employment policies to bring more people into the labour market* is not in contradiction with Convention No. 168 and Recommendation No. 169. Both instruments contain the essential elements of labour market and training policies and give member States necessary room for manoeuvre to achieve higher employment levels. In addition, they require coherence between labour market policies, employment policies and macroeconomic policies.

With respect to the adoption of policies aimed at establishing a *new balance between expenditure and income in pension schemes*, Conventions Nos. 102 and 128 and Recommendation No. 131 offer a range of options to ratifying States. With respect to *changes in retirement age*, Convention No. 102 sets out that “the prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned” (Article 26, paragraph 1). It is obvious that the working ability of the insured persons depends on their individual health situation. In light of this provision, Convention No. 102 does not oppose such reforms as the insured persons have the right to retire earlier with a reduced level of pension if the reduction factor is suitable.

Likewise, Convention No. 128 provides that “the prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to demographic, economic and social criteria, which shall be demonstrated statistically” (Article 15, paragraph 2). It further establishes the following conditions for a retirement age of 65 years or higher: “If the prescribed age is 65 years or higher, the age shall be lowered, under prescribed conditions, in respect of persons who have been engaged in occupations that are deemed by national legislation, for the purpose of old-age benefit, to

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be arduous or unhealthy” (Article 15, paragraph 3). This does not constitute a barrier either to national reforms of the pension age as it was done in several countries. For example, there are many country cases in which lower pension ages have been set out for insured persons with health handicaps. In addition, Convention No. 128 allows retirement before reaching the “normal” retirement age with a reduced level of the pension as a consequence of the reduction factor.

The regulation of a “normal” retirement age with the possibility to receive a pension at an earlier point in time with a reduction goes in the same direction as the regulations in paragraph 6 of Recommendation No. 131. With a view to protecting persons who are over a prescribed age but have not attained pensionable age, paragraph 6 recommends that they should be entitled to benefits under prescribed conditions. The application of a reduction factor for earlier retirement can be part of those conditions.

The possibility for older workers to combine part-time work with a partial old-age pension is not mentioned either in Conventions Nos. 102 and 128 or in Recommendation No. 131. Nevertheless, these legal instruments do not exclude such options.

Reforms with the effect of reducing the average replacement rate and measures to moderate pension adjustments should respect prescribed minimum benefit levels laid down in Convention No. 102 (see, for example, Article 28 in conjunction with Articles 65, 66 or 67 for old-age benefit, and Article 56 in conjunction with Articles 65, 66 or 67 for invalidity benefit). The minimum conditions for entitlement to benefits under the Convention must also be respected when reforms are being implemented (e.g. under Article 29 for old-age benefit and Article 57 for invalidity benefit). For countries that have ratified Convention No. 128, similar provisions setting out higher standards apply (Articles 10 and 11 in conjunction with Articles 26 to 29 for invalidity benefit, and Articles 17 and 18 in conjunction with Articles 26 to 29 for old-age benefit). It should be noted that the Conventions further stipulate that the minimum pensions levels have to be maintained throughout the contingency and that they shall be reviewed “following substantial changes in the general level of earnings where these result from substantial changes in the cost of living” (Articles 65, paragraph 10, and 66, paragraph 8, of Convention No. 102) or “following substantial changes in the general level of earnings or substantial changes in the cost of living” (Article 29, paragraph 1 of Convention No. 128).

The Conventions also allow for some flexibility and self-reliance when it comes to the protection of subgroups of the population. However, some safeguards are established to protect contributors and protected persons. In order to ensure compliance with the legal requirements set out in the Conventions regarding personal coverage, a member State is allowed to take into account the protection provided under voluntary insurance schemes that fulfil the following conditions (see Article 6 of Conventions Nos. 102 and 128, respectively):

- the scheme must be supervised by public authorities or administered, in accordance with prescribed standards, jointly by employers and workers;
- it has to cover a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee;
- it has to comply, in conjunction with other forms of protection, where appropriate, with the relevant provision of the Convention.

## **Conclusions**

The up-to-date social security standards of the ILO are either compatible or at least not incompatible with most of the emerging new social security policy paradigms. While the

language of the standards with regard to labour market activation policies and the prevention of benefit dependency could surely be stronger, they explicitly support such policies as long as certain minimum conditions are respected. Strong social security benefits are, for example, the prerequisite for functioning and societally accepted flexicurity policies. One simply cannot expect individuals to constantly adapt during their working lives to the new challenges of globalizing financial, product and labour markets but not provide them with the protection they need when undergoing such phases of reorientation, or let phases of non-contribution endanger the level of income security in old age or invalidity.

There also seems to be no incompatibility between the necessity to find a new balance in the responsibility of social security between the individual and society and the international social security standards set out in ILO Conventions and Recommendations.

The basic deficiency of the existing ILO instruments lies in the lack of the requirement of universal access to at least a basic set of benefits. The standards thus lack a social security instrument to support a new development policy paradigm that is based on a simultaneous pursuit of economic growth and the reduction of poverty and inequality.

#### 5.4. Level of ratification of up-to-date ILO social security Conventions<sup>59</sup>

The relevance and adequacy of ILO social security Conventions in providing a frame that responds to current social security needs is often questioned due to their relatively low level of ratification. Thus, in order to assess the ability of these standards to achieve the ILO's mandate, their level of ratification and its evolution over time need to be examined as they constitute important indicators in this respect.

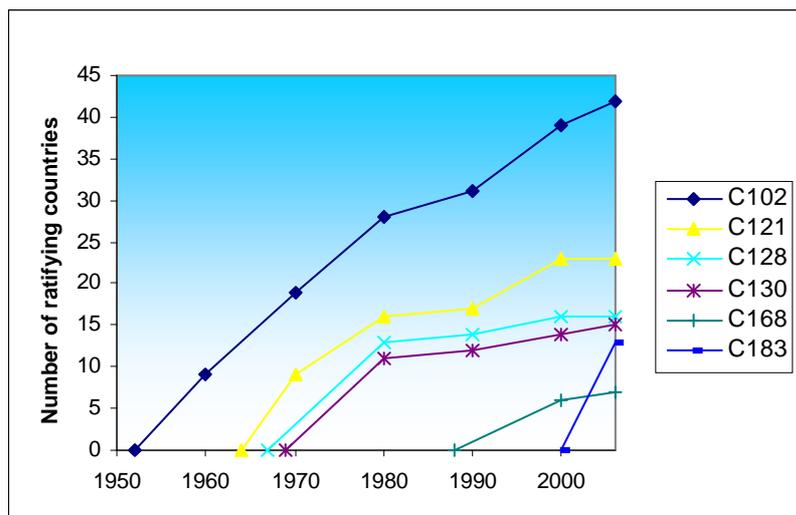
To date, *Convention No. 102* has been ratified by 43 ILO member States, *Convention No. 121* by 24 member States and *Convention No. 128* by 16 member States. *Convention No. 130* has received 15 ratifications, while *Convention No. 168* has been ratified by seven member States and *Convention No. 183* by 13 member States (see table 5 and Annex 3).

**Table 5. Ratifications of up-to-date ILO social security Conventions**

ILO Convention No.	Number of ratifications
102	43
121	24
128	16
130	15
168	7
183	13

<sup>59</sup> For a detailed list of ratifying countries and the respective dates of ratification, see Annex 3.

Figure 1. Ratification chart of up-to-date ILO social security standards (1952-2007)



#### 5.4.1. Ratification of Convention No. 102

The ratification charts displayed in figure 1 and Annex 3 show that *Convention No. 102*, adopted in 1952, received most of its ratifications prior to 1980 (28 ratifications). Between 1980 and 1990 it was ratified by only three countries, while in the following decade the number of ratifications amounted to eight. Since 2000, four more countries have ratified it. The ratifications which took place after 1990 concerned only European countries. They are partly due to the succession of countries previously bound by the Convention (e.g. Czech Republic, Slovakia, Slovenia). A number of European countries not previously bound by the Convention have ratified it thanks to the strong support provided by the European Union and the ILO in helping them to bring their national legislation and practice into line with European social standards and the requirements laid down in the Convention (e.g. Albania, Cyprus, Poland).

As mentioned earlier, it should also be pointed out that several other countries have indicated that the ratification of Convention No. 102 is currently under discussion in their Cabinet or Parliament (e.g. Brazil, Jordan). Still others have requested ILO assistance regarding ratification of the Convention (e.g. Bulgaria, Lithuania, Republic of Moldova, Mongolia, Romania) or have indicated a strong interest in ratifying Convention No. 102 or the higher social security standards (e.g. Georgia, Republic of Korea). It can thus be expected that a number of additional countries will ratify the Convention in the near future.

### Conclusions

The above assessment leads to the conclusion that the post-1990 ratifications of Convention No. 102 were mainly due to the positive effects of the transition in Central and Eastern Europe from centrally planned to market economies. This allowed the countries in the region to develop faster and to establish the foundations necessary for raising their level of social security protection.

In addition, after confirming the up-to-date status of Convention No. 102 in 2002, the ILO Governing Body decided to invite member States to contemplate ratifying the Convention and called on the Office to offer technical assistance for its ratification and implementation. The recent rise in member States' interest in ratifying Convention No. 102 may thus be attributed to greater technical assistance provided in response to the Governing Body decision in this respect.

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The low number of ratifications of Convention No. 102 by developing countries is related mainly to the insufficient level of their economic development, inadequate administrative capacities to cope with the obligations resulting from the Convention, and the unavailability of reliable statistics to monitor their economic and social development.<sup>60</sup>

#### **5.4.2. Ratification of other up-to-date ILO social security Conventions**

As shown in table 5, figure 1 and Annex 3, the other up-to-date social security Conventions have received far fewer ratifications than Convention No. 102. *Convention No. 121*, which has been ratified by 24 countries, received only five ratifications between 1990 and 2000 and two ratifications since 2000. Apart from Chile, these ratifications were received from countries which succeeded to countries previously bound by the Convention.

Concerning *Convention No. 128*, only two ratifications were received between 1990 and 2000, and there have been no ratifications since 2000. The ratification situation is similar as regards *Convention No. 130*, ratified by two countries during the 1990s and by one country since 2000. *Convention No. 168*, which was adopted in 1988, received six out of seven ratifications between 1990 and 2000; since then, only one other country has ratified it. As for *Convention No. 183*, which was adopted in 2000, to date it has been ratified by 13 countries.

### **Conclusions**

In view of the lower level of ratification of higher level social security Conventions compared to Convention No. 102, it may be concluded that these standards are of less relevance to ILO member States. However, this situation may also be due to the fact that the Office has concentrated its promotional activities mainly on Convention No. 102.

#### **5.4.3. Geographical distribution of ratifications of up-to-date ILO social security Conventions**

The geographical distribution of countries that have ratified one or more of the up-to-date ILO social security Conventions (see table 6) shows that European and Central Asian countries account for the highest number of ratifications (79), followed by countries of the Americas and the Caribbean (25 ratifications), Africa (11 ratifications) and Asia (three ratifications).

<sup>60</sup> See the replies to the questionnaire on social security Conventions (Annex 5), further examined in section 5.5.

**Table 6. Geographical distribution of ratifications of ILO social security Conventions according to ILO regional organization**

Convention No.	Africa	Arab States	Asia and the Pacific	Europe and Central Asia	Americas and the Caribbean
102	5	0	2	29	7
121	4	0	1	14	5
128	1	0	0	10	5
130	1	0	0	9	5
168	0	0	0	6	1
183	0	0	0	11	2

The fact that most ratifications have come from European countries may suggest that it is economic development that created the foundation for ratification. It should be borne in mind, however, that countries in other regions with similar level of development (e.g. Australia, Canada, Gulf Cooperation Council countries, United States) have not ratified any of the social security Conventions in question.

With regard to *Convention No. 102*, it should be mentioned that even if the majority of ratifying countries are European, table 6 and the abovementioned ratification prospects may be indicators of the Convention’s relevance for countries from other regions (e.g. Brazil, Jordan, Libyan Arab Jamahiriya, Mongolia).

## 5.5. Obstacles to ratification by ILO member States

As indicated in section 5.3 above, ILO social security instruments have been ratified by a relatively low number of States. Although they embody universally agreed principles, their impact in practice is not as strong as it should be since they are not being translated into obligations under national legislation in a sufficient number of countries. In order to develop a coherent strategy for extending social security coverage through ILO social security standards, the obstacles encountered by ILO member States with respect to the ratification of existing social security standards must be taken into account.

In this regard, the replies from member States to the questionnaire sent out by the Working Party on Policy Regarding the Revision of Standards<sup>61</sup> on the obstacles and difficulties preventing or delaying the ratification of social security Conventions and implementation of social security Recommendations, provide the basis for identifying the key concerns of States in relation to the ratification of Convention No. 102 and higher social security standards.<sup>62</sup> While the obstacles listed below relate to Convention No. 102, they have been invoked in respect of the other relevant Conventions. A summary of the replies received can be found in Annex 5.

***Non-conformity of national legislation*** – Several member States cited the non-conformity of their national legislation with certain provisions of the Convention as an obstacle to ratification (e.g. Azerbaijan, Cambodia, Kuwait), while Bulgaria clearly stated that its

<sup>61</sup> Tripartite Committee set up by the Governing Body of the ILO in 1995, in charge of examining on a case-by-case basis all ILO Conventions and Recommendations and reviewing the ILO social security Conventions and Recommendations in order to determine which of these standards were up-date and still corresponded to the current needs of the international community, with a view to strengthening their relevance, coherence and impact.

<sup>62</sup> ILO (2001), Appendix 9.

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national legislation did not meet the minimum levels required by Convention No. 102. Qatar indicated that it did not have a contributions-based social security system and that its social security legislation covered only its nationals. The Republic of Korea stated that the waiting period for entitlement to unemployment benefits under national legislation amounted to 14 days whereas Article 24, paragraph 3 of Convention No. 102 prescribes a maximum waiting period of seven days. India and Suriname cited obstacles relating to the number of persons protected by their legislation. China indicated that its social security schemes essentially covered workers in urban areas, while the majority of its population lived in rural areas. New Zealand, in addition to noting obstacles concerning specific branches of the Convention, indicated that its legislation on the qualifying period and the rate of cash benefit was not in conformity with the provisions of the Convention.

***Different societal values and political obstacles*** – As indicated earlier, Convention No. 102 is based on the model of the male breadwinner, which was the dominant structure of society and labour at the time of its adoption, in 1952. Some respondents to the questionnaire indicated that now, more than fifty years on, that model no longer corresponded to the reality in the majority of States. The gender-specific language used in the Convention was highlighted by a number of countries (e.g. Australia, Canada, Finland, United States) as being obsolete as well as discriminatory and thus constituting one of the main obstacles to ratification. For example, the Canadian Government indicated that the definition of a wife under Article 1 of Convention No. 102 (“the term wife means a wife who is maintained by her husband”) was problematic and politically and factually incorrect. Certain countries that have ratified Convention No. 102 as well as higher social security standards also refer to the male breadwinner model as outdated and claim that it does not correspond to the actual socio-economic situation prevailing in most countries (e.g. Barbados, Peru, northern European countries). In this regard, Canada expressly stated that the notion of “skilled manual male employee” referred to in the Convention was not acceptable. Finland also stated that the terms and concepts laid down in Convention No. 102 reflected an old-fashioned concept of social security. The restriction exercised by the application of Article 61 of Convention No. 102 on the payment of survivors’ benefits to the widow (and not to the widower as a beneficiary) and children of a breadwinner was also brought up as an obstacle to ratification because of its discriminatory character (e.g. Canada).

Some countries, such as Singapore, explained that their Government’s philosophy regarding social security was not compatible with that of the Convention, which constituted a barrier to ratification. As its philosophy is to get every person to be self-reliant, the Singapore Government does not guarantee the people’s future needs. In this regard, instead of providing for unemployment benefit, it subsidizes workers’ retraining.

***Lack of financial resources*** – The financial implications of ratifying ILO social security Conventions and of complying with their requirements were invoked by several low- or medium-income countries as obstacles to ratification. In this perspective, countries argued that their level of economic development (e.g. Bangladesh, Cambodia, Uganda) was insufficient to cope with the requirements of the Conventions.

***Lack of administrative and statistical capacity*** – Several countries stated that their administrative capacity was insufficient to cope with the complicated mechanisms of regular reporting set out in the Conventions (e.g. Latvia, Pakistan). In addition, the United Arab Emirates invoked structural and administrative reasons due to the diversity of institutions it would need to mobilize for the purpose of supervising the application of Convention No. 102. The unavailability of reliable statistics – sometimes due to the absence of the necessary administrative infrastructure for delivering periodical statistics and regular reports on implementation – was also perceived as an impediment to ratification (e.g. Lebanon).

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***Lack of knowledge about the Conventions*** – The fact that 94 out of 175 ILO member States did not reply to the questionnaire suggests that many of them may not be conversant with the Conventions concerned. Furthermore, many of the replies received show that the provisions of the Conventions may often be misunderstood. Certain countries, for instance, invoked as an obstacle to ratification the fact that their national legislation went beyond the personal coverage or the level of benefit required by the Conventions (e.g. Canada), or the failure of their national legislation to provide coverage for all contingencies (e.g. Algeria, Central African Republic, Jordan, Morocco, Tunisia). In this regard, Morocco stated that its social security legislation did not provide for benefits for risks related to unemployment and medical care. Some countries misinterpreted certain provisions and thus assumed that their legislation did not conform to the Convention (e.g. Tunisia, which interpreted Article 57, paragraph 1 of Convention No. 102 as requiring a qualifying period of three years of contribution for entitlement to invalidity benefit and invoked as an obstacle to ratification the fact that its national legislation requires a qualifying period of 60 months). The Government of Algeria was of the opinion that it could not ratify the Convention since its national legislation did not cover unemployment benefit.

Besides the Governments' replies to the abovementioned questionnaire, the comments made by the Committee of Experts regarding the implementation of social security Conventions need to be taken into account when assessing the obstacles encountered by States in ratifying the Conventions. In its examination of the difficulties related to the application and the prospects for ratification of Conventions Nos. 102 and 128, the Committee indicated that “[s]ome governments state in general terms that there are difficulties involved in the ratification or application of Conventions Nos. 102 and 128. Many other governments report economic, financial or administrative difficulties. The economic crisis and inflation, as well as the country’s level of development and the lack of human resources were also mentioned as factors impeding the application of the Conventions. Some governments also referred to the difficulty of collecting the statistical information required by the instruments.”<sup>63</sup>

Obstacles to the ratification and application of Convention No. 102 were also discussed during the Workshop on Strengthening ILO Social Security Standards, whose participants identified factors similar to those put forward by Governments. The lack of knowledge about the Conventions and their insufficient promotion were seen as a major obstacle to their application. In that respect, a majority of participants agreed that Convention No. 102 was a powerful and relevant instrument and that even if, together with other up-to-date ILO social security Conventions, it was not massively ratified, it was guiding countries in the right direction and helping at least some workers. It was also agreed that, if it were better promoted, Convention No. 102 would receive more ratifications and play a much bigger and stronger role.

## **Conclusions**

The above assessment shows that government replies to the questionnaire on the barriers to ratification of ILO social security Conventions as well as the comments formulated by the Committee of Experts identified similar obstacles. It also shows that the obstacles are similar with regard to all social security Conventions.

The first conclusion that may be drawn from an analysis of government replies to the questionnaire is that there seems to be a considerable lack of knowledge among member States regarding the content of social security Conventions, both in terms of their requirements and the possibilities they offer through flexibility clauses. Some replies

<sup>63</sup> ILO (1989), Chapter VII, at 113, para. 234.

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indicate that many States are not familiar with the Conventions and their provisions, which often translates into a misinterpretation of their obligations under the Conventions. A similar conclusion was reached at the Workshop on Strengthening ILO Social Security Standards, where the participants referred to the non-application of Convention No. 102 as a direct consequence of its insufficient promotion and lack of knowledge about it. Countries' lack of political will to implement the Conventions was also seen by participants as preventing their ratification.

References to the male breadwinner model as an obstacle to ratification also show a certain degree of misunderstanding of the Conventions. While the language used in the Conventions may not correspond to today's realities, the wage level of men in most countries and sectors is still higher than that of women. In this perspective, the earnings of the male breadwinner still constitute a relevant reference for calculating benefits under the Conventions while benefiting protected women by providing for higher levels of benefits than if their earnings were taken into account. Concerning the terminology of the Conventions, it should also be noted that the 1954 European Code of Social Security, which was revised in 1994 to take into account new social circumstances by, among others, adopting gender-neutral language and replacing the male breadwinner model by a more adequate one, has not been ratified by a single State and is therefore not yet in force.

As regards countries – mostly developing ones – which cite economic, financial, social and administrative limitations as obstacles to ratification, their replies to the questionnaire show that they do not seem to be aware of all the possibilities offered by the Conventions' flexibility clauses. In this regard, it should be pointed out that since the adoption of Convention No. 102 only one country (Bosnia and Herzegovina) has made a declaration under its Article 3, which allows ratifying countries whose economy and medical facilities are insufficiently developed to avail themselves of temporary exceptions in the application of certain articles of the Convention. Concerning the lack of administrative capacity more particularly, it must be underlined that it is not linked to the provisions of existing social security Conventions as such, since their requirements are rather standard in this respect.

As a result, some countries that would perhaps meet the Conventions' requirements – either by making use of the flexibility clauses or without even having to modify their national legislation – are prevented from ratifying them on account of false assumptions and misinterpretation.

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## 6. General conclusions and summary of future challenges <sup>64</sup>

From the analysis undertaken in the present paper it may be concluded that Convention No. 102 embodies an internationally accepted definition of the scope of social security and that, as such, it has been recognized as a symbol of social progress. It plays a key role by filling out the right to social security under international human rights instruments and in particular under Article 9 of the International Covenant on Economic, Social and Cultural Rights. It should be also be stressed that up-to-date social security Conventions, and Convention No. 102 in particular, have had and continue to have a positive impact on the development of social security schemes in a number of countries the world over and serve as models for regional instruments. Strengthened promotional activities confirm the interest of ILO member States in the ratification of social security Conventions and of Convention No. 102 more specifically. It also appears that greater knowledge about the Conventions and their provisions among member States would lead to a higher number of ratifications. Furthermore, by providing valuable guidelines not only for social security but also for labour protection, up-to-date ILO social security Conventions even when not ratified are still of great importance for countries in the elaboration of their social policies. At the same time, they must still be considered as appropriate tools for the worldwide extension of social security to all by setting long-term objectives in respect of the levels of protection to be reached in every country. In this regard, Convention No. 102, as the fundamental social security Convention, constitutes a useful objective for the realization of the right to the envisaged level of social security once a basic social security floor has been achieved. Comments provided by ILO constituents and the conclusions reached at the Turin workshop support these findings.

On the other hand, it should be emphasized that universal access to at least minimum income security and health care, as set out in Recommendations Nos. 67 and 69, was never codified in a Convention. As they now stand, all of the up-to-date social security Conventions show limitations as regards ensuring the prioritization and provision of a basic benefit package to all. In this respect, the low rate of ratification of social security Conventions, especially where developing countries are concerned, constitutes an indicator of their failure to ensure effective application of every person's right to social security. In addition, several States have experienced difficulties in fulfilling the requirements and obligations set out in the Conventions: some mention the complexity of the reporting mechanisms, while others refer to the problem of making the new features of their social security systems compatible with existing Conventions.

Furthermore, the major labour market developments that have taken place worldwide over the last decades, such as persistent high levels of unemployment, the informalization of employment and the emergence of other forms of labour insecurity, going hand in hand with a rise in social exclusion, have led to the consideration of social security as an indispensable tool for poverty alleviation. Moreover, as shown in section 5.3, the new concepts in the social policy of high-income countries are linked to the notion of "activation policies", shifting from passive social benefits to proactive approaches and prevention and the concept of a more integrated social policy. While these new concepts are not incompatible with social security Conventions, their principal objectives are not a major focus in existing standards.

Against this background, the international community has yet to adopt a broad orientation which will ensure that ILO social security standards provide the best guidance for the

<sup>64</sup> This section is largely based on the discussions of the Workshop on Strengthening ILO Social Security Standards held in Turin in September 2007.

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establishment of a minimum social security floor and for the extension of the basic benefit package to offer more comprehensive social security, including a higher level of income security and improved medical care benefits as economies continue to develop. The standard levels of protection already agreed upon have to be maintained and possibly strengthened to assist the global labour force, population and economies to adapt in view of the pace of change set by globalization. It is unlikely that globalization will be universally accepted and its full welfare-enhancing potential fully exploited if people are kept in constant fear of the consequences of change. The global society with its global markets requires global standards of social security more urgently than ever before. A worldwide level playing field for social conditions needs to be established through standard setting so as to prevent the levelling down of social systems at the national level.

Taking this into account, the participants in the Workshop on Strengthening ILO Social Security Standards reached the unanimous conclusion that, despite the pivotal importance of Convention No. 102 and the need for its continuous promotion, existing social security Conventions and Recommendations were not sufficient to achieve universal coverage through the implementation of a basic social security floor. An effective way to fulfil this objective could be the adoption of a new instrument which would accompany existing ones and if possible foster the ratification and application of higher level standards – at least that of Convention No. 102. The participants insisted on the continuing relevance of Convention No. 102 which should still be actively promoted and used as a reference with regard to fundamental social security principles and on the importance of it not being affected by any eventual standard-setting activities.

The new instrument should pursue a twofold objective. First and foremost, it should be an instrument of poverty alleviation. As such, it would constitute a tool for securing the basic needs of individuals. Rather than being articulated around the classic contingencies of Convention No. 102, it could be based on people's needs and designed in such a way that it can help people get out of poverty. This would allow the provision of the basic social security floor under other forms of social security. Second, it should help to provide adequate income security and access to health services to all people in the global society in line with national standards of living, values and affordability. The new instrument could follow a rights-based approach and use human rights instruments as an ethical basis and legal legitimacy while providing substance to the right to social security for all, as laid down in the Declaration of Philadelphia. At the same time, a new instrument could ensure a fair distribution of the proceeds of globalization and prevent a race to the bottom by guaranteeing that certain standards are met. The latter would require that higher levels of protection than those defined by a social security floor should be met at higher levels of economic and social development. The new policy developments and trends in the labour market and the new labour policies should also be taken into consideration and reflected in the new instrument.

As to the core principles that could be encompassed in the new instrument, they comprise: protection of those in need, inclusion, equity, solidarity, rule of law, viability (consisting of adequacy, financial sustainability and stability), good governance, priority for securing the basic needs of the most vulnerable. In addition, the new instrument should be based on the principles of Convention No. 102 (e.g. collective financing, redistribution, solidarity, periodicity of cash benefits, right of appeal, participation of protected persons in decision-making), recognized as important and necessary, but spelt out in a stronger and broader way. These principles could further be complemented by others (e.g. accountability and transparency), closely linked to its goals and objectives, so as to strengthen social security

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by taking into account new challenges.<sup>65</sup> Embodying a combination of principles and guidance that go beyond those of Convention No. 102, ILO Recommendation No. 67 appears useful in this respect.

Since flexibility in the application of the new instrument seems to be a key issue, the latter could be structured in a way that allows countries to achieve social protection progressively. The basic social security floor, however, should be achieved immediately, while flexibility could be provided in the ways and measures that need to be implemented in order to reach it. Besides, the application of the new instrument should be focused on its desirable outcomes, which should be taken into consideration in its design. In this regard, the most important outcomes should consist in the effective coverage and the level of protection provided for. In this respect, alternative means of assessing the levels of benefits could be considered. Another desirable outcome of the new instrument should be the strengthening of the position of governments in low-income countries to negotiate support from donors, in view of the role of the new standard as a poverty-alleviation instrument.

As a last remark, it should be added that in order to ensure its proper application, it is important that a new instrument provides guidance on how to achieve its goals and objectives and on how to meet the standards it sets out. In this respect, it would also be part of the ILO's role to provide its constituents with assistance in the implementation of a new instrument while the international community would have the obligation to provide the necessary resources for it.

<sup>65</sup> Mention should be made of the contribution of Prof. Gjisbert Vonk in this respect; he elaborated on these principles during the Workshop and more extensively in a written contribution sent to the Office following the Workshop.



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## 7. Potential solutions

There is a range of theoretical options for possible policy responses to the diagnosed potential and deficiencies in the present set of up-to date social security standards. These would range from a “do nothing” option, i.e., hoping that the globalizing world will without a normative procedure – agree on decent work with decent social security practices, to a modification of the existing set of standards (“do what is necessary”), the addition of new standards (“do what you can”) or the complete revision of all social security standards and the integration of all important provisions into a new comprehensive standard (“do it all”).

The first option can easily be ruled out on the basis of historical experience. Markets – let alone global markets – are not likely to adopt good social practices or rapid poverty alleviation as a policy priority without external normative guidelines or legal frameworks. Players on global markets and societies alike need a set of “rules of the game” to create a level playing field that ensures fair competition and protects private and public investments against unfair social and environmental dumping from other countries. Without social rules for private enterprises the latter would often, due to their nature, pursue short-term profit objectives that could be counterproductive to embarking on a long-term stable growth path through long-term investments. “Do nothing” is not an option in a changing global economy where individuals need protection.

Likewise, “do it all” does not appear to be a realistic option. Worldwide, social security legislation has become a rather complex set of laws and regulations over the last century. This is largely due to the complexity of the subject matter, i.e., the large number of contingencies and the vast number of different individual cases that have to be catered for. It is hard to envisage that all social security contingencies ranging from the provision of anti-poverty benefits to complex rules governing invalidity pensions can be modified in one single standard that should also be dynamic and respond to the level of economic and social development of a wide range of countries. An overarching international standard encompassing all areas of social security could thus only be of a very general nature and would have less defining influence on concrete national benefit levels than that still exercised by Convention No. 102. The provisions of the flagship Convention No. 102 have also – implicitly or explicitly (as in the case of the European Code of Social Security) – provided benchmarks for benefit levels and entitlements conditions in many pieces of national legislations or regional standard setting. Making Convention No. 102 formally obsolete would probably also weaken attained national benefit levels and conditions that are under review in many countries, often as a response to increasing competitive pressures on global markets. Removing the international benchmark could further accelerate a process of “liberalization” of legislation that could turn out to be uncontrollable.

This is one of the reasons why the opening up of the provisions of Convention No. 102 is met by unrelenting opposition from the global union movement and many social security experts. Convention No. 102 has become a symbol of social policy achievements of the twentieth century and any attempt to change its status is viewed with great suspicion in times where social security levels in many countries are being revised downwards. The opposition is so strong that any effort to modernize the social security standards through an opening of Convention No. 102 would most likely lead to an early political abortion of the

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modernization process.<sup>66</sup> Thus “do it all” is not a likely to be feasible option for the coming years.

The following options seek to explore how instruments available to the ILO can be used to pursue the mandate to extend social security coverage to all and to modernize, possibly complementing the existing standards by new elements and promotion strategies. The choice of instruments<sup>67</sup> tries to adhere to the principles of:

- poverty alleviation as a social policy priority;
- ensuring progressively higher levels of protection in line with national social and economic development;
- the creation of a level playing field in the global economy; and
- political feasibility.

The Committee on Strengthening the ILO’s Capacity, which was constituted by the International Labour Conference on 30 May 2007 to assist its Members’ efforts to reach its objectives in the context of globalization, may want to follow-up on these issues in its deliberations.

### **Option 1. Designing a promotional strategy for wider ratification and application of existing standards**

There is a discrepancy between the recognition that Convention No. 102 and the social security Conventions of the third generation are up-to-date legal instruments and the reluctance of many member States to ratify them. As shown above, this may be due to a lack of knowledge about these instruments. Some member States may not fully understand their content and importance or may overestimate the obligations resulting from ratification; others may encounter difficulties in delivering the statistical information and reports on applications required on a regular basis.

In this perspective, it may be suggested that an increase in promotional activities carried out by the ILO could lead to an increase in ratifications. The promotional measures taken in this respect should be addressed not only to the ILO constituents’ representatives, but also to a much broader audience.

While promotional activities may be costly for the ILO, it must be borne in mind that standards are the main tool available to the ILO for the realization of its mandate and, therefore, that their promotion should receive adequate financing. Besides, the fact that the impact of promotional activities is closely linked to the political will of member States

<sup>66</sup> Already in 2005 an independent group of experts, which carried out a reflection on standard setting in the field of social security, proposed the promotion of social security through a contractual mechanism that would provide a way for the ILO to lead countries to the ratification and actual implementation of Convention No. 102, rather than the revision of existing standards. See Reynaud, E, “Social Security for All: Global Trends and Challenges”, in *Comparative Labor Law & Policy Journal, University of Illinois*, Vol. 27, 2006, p. 123, and Supiot, A, “The Outlines of a Framework Agreement on the Extension of Social Protection, in *Comparative Labor Law & Policy Journal, University of Illinois*, Vol. 27, 2006, p. 273.

<sup>67</sup> For a more detailed description of ILO instruments and a summary overview of their legal implications, see Annex 6.

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should not be seen as an obstacle to their undertaking, as balanced policy decisions at the national level require a full range of information.

For such purposes, a new promotional strategy should be developed in the framework of the Global Campaign that could include activities such as:

- the promotion of the universal human right to social security, the mandate to promote universal coverage along the lines defined in the Declaration of Philadelphia and in Recommendations Nos. 67 and 69, as a basis for a social security floor and national social security design processes;
- the provision of technical assistance to member States to enable them to ratify the up-to-date social security Conventions and to prepare reports on application thereof, and if necessary to provide assistance regarding the collection of relevant statistics;
- the training of constituents on social security Conventions and on the implications and obligations linked to their ratification;
- the drafting of the relevant information material (e.g. legal commentary on Convention No. 102, guide on best practices, etc.);
- the dissemination of information on social security standards through the media.

The promotion of existing social security instruments does not exclude the elaboration of a new complementary legal instrument in the field of social security. On the contrary, it would seem more efficient to combine both, if agreed upon by the constituents.

## **Option 2. Development of a new stand-alone social security Convention providing for a universal right to a basic benefit package to everyone**

Developing a new Convention to complement existing social security instruments and providing for a basic benefit package for all would have the advantage of enabling countries which are not yet able to ratify Convention No. 102 to ratify the new Convention, thereby subscribing to the extension of social security coverage as an explicit political objective. A separate Convention providing for basic benefits may be more appealing to member States and more transparent for supervisory purposes than developing countries availing themselves of the temporary exception under Article 3 of Convention No. 102.

In addition, the new Convention complementing Convention No. 102 could be designed in such way as to serve as a tool for the progressive application and future ratification of Convention No. 102. In this regard, the Minimum Age Convention, 1973 (No. 138), in conjunction with the Worst Forms of Child Labour Convention, 1999 (No. 182), may serve as a valuable example.

## **Option 3. Development of a new instrument linked to Convention No. 102 and providing for a universal right to a basic benefit package to everyone**

This option consists in adopting a Protocol to Convention No. 102. Such a Protocol could provide for a basic benefit package to be implemented as a matter of priority so as to extend social security to all as well as strengthening the progressive element of Convention No. 102. It could also be used to rectify some of the political irritations stemming from the Convention's use of the 1950s' language that some constituents perceive to be outdated or

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even “sexist”. This option, however, bears the disadvantage that a Protocol to the Convention could only be ratified by member States which have also ratified Convention No. 102. In this respect, a Protocol would not be able to serve as an entry point that provides the basis for member States to reach the benefit levels of the nine contingencies listed in Convention No. 102.

#### **Option 4. Modernizing Convention No. 102**

This option could mean the revision of Convention No. 102 by providing universal social security benefits along the lines of Recommendations Nos. 67 and 69 while allowing for new social security concepts to be incorporated, e.g. the promotion of higher levels of economic activity and the avoidance of benefit dependency as well as closing the obvious gaps in Convention No. 102 (among others, the equivalence between contributions and benefits). Furthermore, the language of the revised Convention could reflect today’s needs and social realities and remedy the other shortcomings of Convention No. 102. This process would leave the higher up-to-date social security standards unaffected.

This option, however, carries the danger of reducing the explicit benefit levels of Convention No. 102, which constitutes a symbol for social security systems around the world. This means that there is no guarantee that a revised Convention will maintain the levels of protection already reached in Convention No. 102. This could weaken the defence of adequate minimum benefit levels at a time when national benefit levels are under review in many countries.

The opening of Convention No. 102 would also have indirect negative effects in so far as such a process would weaken the legal and political standing of other international or regional legal instruments which use Convention No. 102 as reference.

In this context, it should be recalled that the European Code of Social Security was revised in 1994 in order to respond to new challenges expressed in current social security policies. However, it has not been ratified by any member State of the Council of Europe, the consequence being that 13 years after its adoption it has not yet come into force. As a result, the Council of Europe still promotes the 1964 European Code of Social Security as its main social security instrument.

#### **Option 5. Consolidating the existing up-to-date ILO social security instruments into a single new overarching Convention**

Another alternative could be the consolidation of the up-to-date ILO social security instruments, namely Recommendations Nos. 67 and 69 and Conventions Nos. 102, 121, 128, 130 and 168, into a single new overarching social security Convention, similar to the new Maritime Labour Convention (2006). Such a Convention could take into account the need for a basic benefit package for everyone and the principle of equivalence between contributions of the insured individual and the amount of benefits. New social security conceptions could also be encompassed while the language of the new consolidated Convention could reflect the societal realities and needs of today.

However, this option has the same disadvantage as Option 4 with regard to the opening of Convention No. 102. It could also put all other up-to-date social security Conventions at risk. Furthermore, it could have similar negative effects on other international or regional instruments which use ILO social security standards as reference for filling out the right to social security or as a benchmark for minimum social security protection, as described under Option 3.

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## **Option 6. Development of an overarching Recommendation setting out core social security principles and defining the elements of a global social security floor**

This option was developed by one of the participants in the Workshop on Strengthening ILO Social Security Standards. It consists in the elaboration of a Recommendation which would set out core social security principles, namely protection, inclusion, security, solidarity, equal access and non-discrimination, rule of law, good governance and the priority of the provision of a social security floor for all. This Recommendation should serve the purpose of offering an additional source for the interpretation of existing standards, allowing for a more dynamic and policy-oriented dialogue between the ILO and its member States. It could be designed as a modernization of Recommendations Nos. 67 and 69 in the light of the discussions held at the 2001 International Labour Conference.

This instrument would still provide the ILO Global Campaign with a more explicit mandate than the Conclusions of the 2001 International Labour Conference but would not carry the same legal weight in national policy design processes and would probably fail to provide at least the potential to create a level (social) playing field for countries competing in the global economy.

## **Option 7. Development of an overarching non-binding instrument setting out core social security principles and defining the elements of a global social security floor**

This option is essentially the same as option 6 except that the instrument would not require a decision by the International Labour Conference but could be adopted by the Governing Body. As in the case of Option 6, this instrument would still provide the ILO Global Campaign with a more explicit mandate than the one formulated in the Conclusions of the 2001 International Labour Conference but it would carry less weight in national policy design processes and have less potential to create a level (social) playing field for countries competing in the global economy.

During the consultation process the employers' representatives expressed preference for exploring this option – possibly modelled after a similar framework on migration – to strengthen the ILO Global Campaign.



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## 8. Concluding remarks

Several of the constituents who have provided comments on the draft Technical Paper and the group of experts who took part in the Workshop on Strengthening ILO Social Security Standards have expressed a preference for a combination of Options 1 and 2, considering that Convention No. 102 remains a relevant instrument and are concerned that a revision of the Convention could imply a reduction of the existing levels of social protection. It would be inappropriate for the Office to propose a definite option and course of action at this stage and without further consultations with the constituents. However, the Office requires a more explicit mandate to define the basic substance of the Global Campaign for the extension of social security to all based on its constitutional obligation. That request has been accepted by all constituents that were consulted during the drafting process of this paper.

The core content of the campaign, i.e., a formulation of basic social security guarantees that are based on a human rights approach to constitute a social security floor, can be specified in a number of different types of ILO instruments. This is seen as a major contribution of the ILO to the achievement of the Millennium Development Goals. The Office now seeks guidance from the Committee on Employment and Social Policy of the Governing Body for a mandate to further explore potential options for future standard-setting action along the lines of the conclusions of this Technical Paper.

Similarly, there was no basic disagreement that the Office should continue to promote the ratification and progressive implementation of Convention No. 102 in order to address the information deficits regarding its content and ratifiability that were identified throughout the present analysis. Such activities were also explicitly requested by the tripartite regional meeting on the future of social security in Latin America, held in December 2007. In the framework of its Global Campaign, the Office will seek to respond to all requests for technical cooperation in connection with the ratification and implementation of Convention No. 102.

This Technical Paper set out to:

- (1) Examine the relevance of ILO social security standards for human rights, other international legal instruments and national legislation,

*...and confirmed their basic relevance;*

- (2) Examine the extent to which existing ILO social security standards are adequate to fulfil the ILO's mandate for extending social security to all,

*....and identified the ILO's mandate for universal coverage as expressed in the Constitution, the Declaration of Philadelphia and recommendation Nos. 67 and 69, but also clearly identified the lack of a mandate for universal coverage in the flagship ILO Convention on social security, namely Convention No. 102;*

- (3) Examine whether ILO social security standards still provide adequate guidance for national legislation and practice in view of the new trends in the labour market and of the changing concept of social security,

*...and confirmed that continuing role;*

- (4) Establish whether the actual level of ratification and prospects for future ratifications of ILO social security Conventions are sufficient to guarantee the fulfilment of the ILO's mandate,

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*...and detected clear weaknesses that the office will seek to remedy to the extent possible;*

- (5) Based on the conclusions of (1) to (4), present and recommend different options available to remedy possible gaps and weaknesses in existing ILO social security instruments and to improve the level of ratification,

*...and it did so by outlining seven options for the decision-making bodies of the ILO to consider as further course of action.*

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Social Security (Minimum Standards) Convention, 1952 (No. 102).

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*Millennium Declaration*, 2000.

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## Annex 1

### **Extract from the Conclusions concerning social security adopted by the International Labour Conference, 89th Session, 2001**

17. ILO activities in social security should be anchored in the Declaration of Philadelphia, the decent work concept and relevant ILO standards. Social security is not available to the majority of the world's people. This is a major challenge which needs to be addressed in the coming years. In that regard the Conference proposes that:

- a major campaign should be launched in order to promote the extension of coverage of social security;
- the ILO should call on governments to give the issue of social security a higher priority and offer technical assistance in appropriate cases;
- the ILO should advise governments and the social partners on the formulation of a national social security strategy and ways to implement it;
- the ILO should collect and disseminate examples of best practice.

Constituents should be encouraged to approach the ILO for special assistance to achieve outcomes which significantly improve the application of social security coverage to groups which are currently excluded. The programme is to be undertaken as soon as possible and be subject to regular reports to the Governing Body.

18. The main areas identified for future social security research and meetings are:

- the extension of coverage of social security;
- HIV/AIDS and its impact on social security;
- governance and administration of social security systems;
- equality, with an emphasis on gender and disability; ageing and its impact on social security;
- financing of social security;
- sharing of good practice.

These activities should form the basis for further development of the ILO policy framework on social security and should be clearly linked in the further work programme, technical assistance priorities and activities of the ILO in this area.



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## Annex 2

### UN Millennium Declaration (extract) - Resolution of the General Assembly, 18 September 2000, 55th Session

19. We resolve further:

- To halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.
- To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.
- By the same date, to have reduced maternal mortality by three quarters, and under-five child mortality by two thirds, of their current rates.
- To have, by then, halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.
- To provide special assistance to children orphaned by HIV/AIDS.
- By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the "Cities Without Slums" initiative.

20. We also resolve:

- To promote gender equality and the empowerment of women as effective ways to combat poverty, hunger and disease and to stimulate development that is truly sustainable.
- To develop and implement strategies that give young people everywhere a real chance to find decent and productive work.
- To encourage the pharmaceutical industry to make essential drugs more widely available and affordable by all who need them in developing countries.
- To develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication.



## Annex 3

### Ratifications by Convention

#### Convention No. 102 (43 countries)

Country	Ratification date	Accepted parts
Albania	18.01.2006	II a VI, VIII a X
Austria	04.11.1969	II, IV, V, VII, VIII
Barbados	11.07.1972	III, V, VI, IX, X
Belgium	26.11.1959	II a X
Bolivia	31.01.1977	II, III, V a X
Bosnia and Herzegovina	02.06.1993	II a VI, VIII, X; Décl.* Vol.
Congo, Democratic Republic of the	03.04.1987	V, VII, IX, X
Costa Rica	16.03.1972	II, V a X
Croatia	08.10.1991	II a VI, VIII, X
Cyprus	03.09.1991	III a VI, IX, X
Czech Republic	01.01.1993	II, III, V, VII a X
Denmark	15.08.1955	II, IV a VI, IX
Ecuador	25.10.1974	III, V, VI, IX, X
France	14.06.1974	II, IV a IX
Germany	21.02.1958	II a X
Greece	16.06.1955	II a VI, VIII a X
Iceland	20.02.1961	V, VII, IX
Ireland	17.06.1968	III, IV, X
Israel	16.12.1955	V, VI, X
Italy	08.06.1956	V, VII, VIII
Japan	02.02.1976	III a VI,
Libyan Arab Jamahiriya	19.06.1975	II a X
Luxembourg	31.08.1964	II a X
Mauritania	15.07.1968	V a VII, IX, X
Mexico	12.10.1961	II, III, V, VI, VIII a X
Montenegro	03.06.2006	II a VI, VIII, X
The Netherlands	11.10.1962	II a X
Niger	09.08.1966	V a VIII
Norway	30.09.1954	II a VII
Peru	23.08.1961	II, III, V, VIII, IX
Poland	03.12.2003	II, V, VII, VIII, X
Portugal	17.03.1994	II a X
Senegal	22.10.1962	VI a VIII
Serbia	24.11.2000	II a VI, VIII, X
Slovakia	01.01.1993	II, III, V, VII a X
Slovenia	29.05.1992	II a VI, VIII, X
Spain	29.06.1988	II a IV, VI
Sweden	12.08.1953	II a IV, VI a VIII.
Switzerland	18.10.1977	V a VII, IX, X
The former Yugoslav Republic of Macedonia	17.11.1991	II a VI, VIII, X
Turkey	29.01.1975	II, III, V, VI, VIII a X
United Kingdom	27.04.1954	II a V, VI, X.
Venezuela, Bolivarian Republic of	05.11.1982	II, III, V, VI, VIII a X

\* Vol. Decl.: Voluntary declaration to Art. 3, para. 1 of C. 102 (temporary exceptions of the conditions of the scope).

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**Convention No. 121 (24 countries)**

Country	Ratification date
Belgium	22.04.1970
Bolivia	31.01.1977
Bosnia and Herzegovina	02.06.1993
Chile	30.09.1999
Congo, Democratic Republic of the	05.09.1967
Croatia	08.10.1991
Cyprus	28.07.1966
Ecuador	05.04.1978
Finland	23.09.1968
Germany	01.03.1972
Guinea	11.08.1967
Ireland	09.06.1969
Japan	07.06.1974
Libyan Arab Jamahiriya	19.06.1975
Luxembourg	24.07.1972
Montenegro	03.06.2006
The Netherlands	02.08.1966
Senegal	25.04.1966
Serbia	24.11.2000
Slovenia	29.05.1992
Sweden	17.06.1969
The former Yugoslav Republic of Macedonia	17.11.1991
Uruguay	28.06.1973
Venezuela, Bolivarian Republic of	10.08.1982

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**Convention No. 128 (24 countries)**

Country	Ratification date
Austria	04.11.1969
Barbados	15.09.1972
Bolivia	31.01.1977
Cyprus	07.01.1969
Czech Republic	01.01.1993
Ecuador	05.04.1978
Finland	13.01.1976
Germany	15.01.1971
Libyan Arab Jamahiriya	19.06.1975
The Netherlands	27.10.1969
Norway	01.11.1968
Slovakia	01.01.1993
Sweden	26.07.1968
Switzerland	13.09.1977
Uruguay	28.06.1973
Venezuela, Bolivarian Republic of	01.12.1983

**Convention No. 130 (15 countries)**

Country	Ratification date
Bolivia	31.01.1977
Costa Rica	16.03.1972
Czech Republic	01.01.1993
Denmark	06.06.1978
Ecuador	05.04.1978
Finland	03.09.1974
Germany	08.08.1974
Libyan Arab Jamahiriya	19.06.1975
Luxembourg	03.07.1980
The Netherlands	17.01.2006
Norway	15.02.1972
Slovakia	01.01.1993
Sweden	14.05.1970
Uruguay	28.06.1973
Venezuela, Bolivarian Republic of	10.08.1982

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**Convention No. 168 (7 countries)**

Country	Ratification date
Albania	04.08.2006
Brazil	24.03.1993
Finland	19.12.1990
Norway	19.06.1990
Romania	15.12.1992
Sweden	18.12.1990
Switzerland	17.10.1990

**Convention No. 183 (13 countries)**

Country	Ratification date
Albania	24.07.2004
Austria	30.04.2004
Belarus	10.02.2004
Belize	09.11.2005
Bulgaria	06.12.2001
Cuba	01.06.2004
Cyprus	12.01.2005
Hungary	04.11.2003
Italia	07.02.2001
Lithuania	23.09.2003
Moldova, Republic of	28.08.2006
Romania	23.10.2002
Slovakia	12.12.2000

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## Annex 4

### **Revised general guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 17/06/91 (Document E/C.12/1991/1)**

#### ***Article 9 of the Covenant***

1. If your State is a party to the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) or to other relevant subsequent ILO Conventions (Nos. 121, 128, 130 and 168) and has already submitted reports to the supervisory committee(s) concerned which are relevant to the provisions of article 9, you may wish to refer to the respective parts of those reports rather than repeat the information here. However, all matters which arise under the present Covenant and are not covered fully in those reports should be dealt with in the present report.

2. Please indicate which of the following branches of social security exist in your country:

- Medical care
- Cash sickness benefits
- Maternity benefits
- Old-age benefits
- Invalidity benefits
- Survivors' benefits
- Employment injury benefits
- Unemployment benefits
- Family benefits.

3. Please describe for each branch existing in your country the main features of the schemes in force, indicating the comprehensiveness of the coverage provided, both in the aggregate and with respect to different groups within the society, the nature and level of benefits, and the method of financing the schemes.

4. Please indicate what percentage of your GNP as well as of your national and/or regional budget(s) is spent on social security. How does this compare with the situation 10 years ago? What reasons are there for any changes?

5. Please indicate whether in your country the formal (public) social security schemes described are supplemented by any informal (private) arrangements. If such is the case, please describe these arrangements and the inter-relationships between them and the formal (public) schemes.

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6. Please indicate whether in your country there are any groups which do not enjoy the right to social security at all or which do so to a significantly lesser degree than the majority of the population. In particular, what is the situation of women in that respect? Please give particulars of such non-enjoyment of social security.

- (a) Please indicate what measures are regarded as necessary by your Government in order to realize the right to social security for the groups mentioned above.
- (b) Please explain the policy measures your Government has taken, to the maximum of its available resources, to implement the right to social security for these groups. Give a calendar and time-related bench-marks for measuring your achievements in this regard.
- (c) Please describe the effect of these measures on the situation of the vulnerable and disadvantaged groups in point, and report the successes, problems and shortcomings of such measures.

7. In case of subsequent reports, give a short review of changes, if any, in national legislation, court decisions, as well as administrative rules, procedures and practices during the reporting period affecting the right to social security.

8. Please indicate the role of international assistance in the full realization of the right enshrined in article 9.

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## Annex 5

### Synopsis of constituents' remarks concerning ILO social security standards

In the mid-1990s, the Governing Body of the ILO set up the Working Party on Policy Regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards with a view to modernizing and strengthening the Organization's standard-setting activities. In addition, between 1995 and 2002 the Governing Body carried out a review of all ILO standards. With regard to social security standards, it concluded that the Social Security (Minimum Standards) Convention, 1952 (No. 102), along with the instruments adopted subsequently and offering a higher level of protection in the area of social security<sup>68</sup> were up to date and therefore relevant.

The Working Party formulated a number of recommendations that were approved by the Governing Body. In this context, the Governing Body requested the Office to undertake consultations among member States to obtain information regarding the obstacles and difficulties encountered, if any, that might prevent or delay ratification of three social security Conventions,<sup>69</sup> and also to request information on the possible need for revision of the three other social security Conventions.<sup>70</sup> Information was required on three social security Recommendations as well.<sup>71</sup> Pursuant to the Governing Body's decision, the Office sent out a questionnaire on these questions to member States, inviting Governments to involve social partners in the elaboration of the remarks.

Out of the 175 member States to which the questionnaire was sent, 82 provided comments. The replies were examined by the Office and submitted to the Governing Body in November 2001.<sup>72</sup>

From these replies, three main categories of obstacles to ratification can be identified. First, certain countries stated that the ILO social security standards embodied an outdated model of society and used gender-biased language. The lack of resources necessary for implementing and monitoring the application of standards was also identified by some countries as an obstacle, together with the insufficiency of administrative capacities needed

<sup>68</sup> Equality of Treatment (Social Security) Convention, 1962 (No.118), Employment Injury Benefits Convention, 1964 (No. 121), Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Medical Care and Sickness Benefits Convention, 1952 (No. 130), Maintenance of Social Security Rights Conventions, 1982 (No. 157), Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and Maternity Protection Convention, 2000 (No. 183).

<sup>69</sup> Social Security (Minimum Standards) Convention, 1952 (No. 102), Equality of Treatment (Social Security) Convention, 1962 (No.118), Employment Injury Benefits Convention, 1964 (No. 121).

<sup>70</sup> Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), Medical Care and Sickness Benefits Convention, 1969 (No. 130), Maintenance of Social Security Rights Convention, 1982 (No. 157).

<sup>71</sup> Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131), Medical Care and Sickness Benefits Recommendation, 1969 (No. 134), Maintenance of Social Security Rights Recommendation, 1983 (No. 167).

<sup>72</sup> *Follow-up to consultations regarding social security instruments*, Document GB.283/LILIS/WP/PRS/3, ILO, Geneva, March 2002.

to cope with the obligations resulting from the Conventions. In the view of others, the Conventions were not compatible with the predominant philosophy of the country. Some other obstacles were also mentioned.

The following tables provide an overview of the comments formulated by States in their respective replies, classified by Convention and the category of obstacles to which they relate.

## Convention No. 102

### Obstacle 1. Convention based on an outdated model of society; non-gender neutral and discriminatory

Country	Remarks
Australia	<p>Many terms and definitions have little relevance to Australia's socio-economic position. Examples:</p> <ul style="list-style-type: none"> <li>➤ "A wife who is maintained by her husband": two-income families are now common, and there has been an increase in the number of de facto relationships.</li> <li>➤ "Unemployment benefit" was renamed "new start allowance" to reflect a clear policy direction.</li> <li>➤ The term "disability support pension" better reflects the intention of the benefit than the term "invalidity benefit".</li> </ul>
Barbados	<p>Wages/benefits are based on the rates of the "male" employee, although in a large proportion of households in the Caribbean the breadwinner is female. It is recommended that this basis be changed to reflect current reality.</p>
Canada	<p>The Convention is outdated; it is not congruent with the realities of the Canadian labour market, the country's demographics and with the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act, the Modernization Act, the Employment Insurance Act, the Old Age Security Act and Canadian's Pension Plan Act.</p> <ul style="list-style-type: none"> <li>➤ Divergences with Canada's Employment Insurance Act: <ul style="list-style-type: none"> <li>• The definition "wife means a wife who is maintained by her husband" is problematic and politically and factually not correct.</li> <li>• The definition of "widow" and the reference in Article 6 to the "skilled manual male employee" are not acceptable.</li> <li>• The word "breadwinner" used in Art. 11 (medical care) is not gender neutral.</li> </ul> </li> <li>➤ Divergences with Canada's Old Age Security Act and Canadian's Pension Plan: <ul style="list-style-type: none"> <li>• Survivors' benefits are limited to the dependants of breadwinners, which could be considered discriminatory.</li> <li>• Art. 61 (Survivors' benefit) restricts the payment to widows and children of a breadwinner, which could be considered discriminatory.</li> </ul> </li> </ul>
Finland	<p>The terminology used in C. 102 reflects an old-fashioned concept of equality.</p> <p>Employers' organization (KT): C.102 violates the EC Equality Directive and Finland's equality legislation due to the concepts used.</p>
United States	<p>Gender-specific wording used in C. 102 presents a significant obstacle in light of both federal and state laws prohibiting discrimination on the basis of sex. Examples:</p> <ul style="list-style-type: none"> <li>➤ "male wage earner",</li> <li>➤ a spouse who is a "wife", and</li> <li>➤ the survivor of a deceased worker as a "widow".</li> </ul>

## Obstacle 2. Economic and administrative difficulties

Country	Remarks
Bangladesh	The country is not yet economically developed to the stage required for ratification of C. 102.
Brazil	Ratification requires several amendments to the national legislation.
Cambodia	Cambodia has been in a civil war for more than two decades.
China	China's social security insurance is targeted at staff members and workers in urban areas. The conditions for the universal application of social security in China's countryside are not yet present.  <i>Health insurance:</i> As for payment of costs, there are exceptions in scope of diseases covered, and payment is limited to curative medical care.  <i>Maternity insurance:</i> has not been extended to the wife of the male employee covered.
Indonesia	The country cannot implement, due to a large number of workers, an unemployment scheme with limited job fields and budget constraints. The Government is now planning a social security programme by scale of priority.
Latvia	The social security Conventions have not been ratified because of the country's insufficient administrative capacity and complicated mechanism of annual reporting. In the process of the reform of the social security system and drafting of new legislation, ILO and Council of Europe standards are taken into account.
Lebanon	Statistics on employment and on the active population or inhabitants are still too imprecise.  The domestic act on social security is actually limited to the contingencies "end of service", family benefit and medical/maternity care. Therefore, application does not cover all three parts stipulated in Art. 2.  Taking into account the spirit of C. 102, the National Insurance Institution is involved in the preparation of an Act on old age, invalidity and death with a view to bringing it into line with regulations in Art. 2.
Malaysia	Social security coverage is presently limited to the formal sector. It concerns protection against injury and invalidity. Ratification is not appropriate at this time.
Pakistan	Benefits not provided under national legislation:  <i>Family benefit:</i> Financial constraints; social security institutions are not financially sound enough to take on this responsibility.  <i>Unemployment benefit:</i> At this stage the country cannot afford to extend this benefit to all due to financial constraints and the developing economy.
Uganda	The economy is still insufficiently developed to provide for all nine contingencies.
United Arab Emirates	Not ratified for structural and administrative reasons concerning the diversity of institutions which would have to supervise the application of C. 102.

## Obstacle 3. Convention not compatible with the predominant philosophy of the country

Country	Remarks
Singapore	Ratification barriers are due to differences in the philosophy regarding social security. The Government's philosophy regarding social security is to get every person to be self-reliant. For this purpose, the Central Provident Fund was set up to meet primary needs like housing, health care and savings for old age with contributions from employees and employers.  Singapore has an extensive safety net. However, the Government does not guarantee the people's future needs.  No unemployment benefits. Instead, programmes for retraining with government subsidy of up to 80 per cent of the worker's salary and 100 per cent of training costs.  Medifund is an endowment fund set up by the Government to help poor and indigent persons pay for their medical care.

#### Obstacle 4. Other reasons behind the non-ratification of Convention No. 102

Country	Remarks
Algeria	Not all contingencies are covered (i.e., unemployment insurance).
Argentina	National legislation not in conformity with Arts. 10, 11, 15, 16, 18, 19, 23, 24 and 29.
Austria	Partial ratification; national legislation not in conformity with parts III, VI, IX, X.
Brazil	Ratification requires many modifications of the national legislation.
Bulgaria	The country does not meet the requirements of part XII and the rates indicated in the other parts of the Convention.
Canada	Divergences with Canada's Old Age Security Act: Payments in C. 102 are based on earnings rather than on contributions. <i>Invalidity benefit (part IX, Art. 57): eligibility is based on a period of residence or on years of contributions made without requiring that contributions have been made recently. In Canada eligibility requirements are based on recent contributions and not overall contributions.</i> Problems with Arts. 63 and 65.
Central African Republic	National legislation does not cover sickness benefit.
Costa Rica	The principles of C. 102 were transposed into national law.
Finland	Employers' organizations: It is no longer expedient to ascertain the possibility of ratifying C. 102 because Conventions 121, 128 and 130 have been adopted already and they partly substitute C. 102. Trade unions: Ratification barriers are no longer of importance.
Hungary	No compliance with parts III, V, VI, IX and X.
India	Existing benefits under national legislation are: medical care, sickness benefit, employment injury and maternity benefit.
Jordan	Schemes for medical care, unemployment benefits, family care and maternity benefits have not been implemented.
Kenya	Not possible to provide other benefits such as unemployment, family and sickness benefit until the fund is converted into a National Pension scheme.
Korea, Republic of	Unemployment benefit: waiting period lasts 14 days, not seven days as prescribed in Art. 24, para. 3.
Latvia	Insufficient administrative capacity and complicated mechanism of annual reporting. In the process of reforming the social security system and drafting new legislation, ILO and Council of Europe standards are taken into account.
Morocco	No coverage for risks related to unemployment and medical care.
New Zealand	Inconsistencies with domestic law/policy/practice. Structure of national benefit rates not compatible with the relativity sought by C. 102 between benefit rates and wages. Specified periods of legal residence within New Zealand as a basis of benefit entitlement. Absence in the national legislation of a sliding scale of benefit to be paid to those people who partially meet eligibility requirements. Children are not entitled to benefits within national law as required by the Convention. Employment injury benefits in C. 102 are very prescriptive as to the rate and duration of benefits and identity of the beneficiary, and provide little scope for flexibility. The wording throughout many of the Conventions is at times open to a variety of interpretations.
Peru	Difficulties with the application of C. 102 (ratified) According to Art. 72 representatives of the persons protected shall participate in the management or be associated therewith. The Government is of the opinion that this participation could be a breach of the constitutional right of free enterprises and the property held by private enterprises (see observations of the CEARC).
Philippines	Ratification is not feasible at the moment given the present condition of the country. Lack of funding for additional benefits provided under certain Conventions. The present contribution rate is allocated for specific types and rates of benefits. Another problem is lack of appreciation, understanding and application by the public in general and by the legislators, employers and employees in particular of the actuarial studies ensuring the financial viability of social security programmes. Inconsistencies in policies and regulations as regards maternity benefits need to be addressed. The amount is higher and the length is shorter than in C. 102. To follow the 12-week compensable leave, a corresponding decrease in the rate of daily allowances should be made. Otherwise, the contribution rate should be increased.

Country	Remarks
Qatar	Country does not have a social security system based on the payment of contributions. Furthermore, its social security legislation covers only its nationals.
Tunisia	<p>Art. 44 requires that family allowances be calculated on the basis of the number of children. In Tunisia the amount is calculated on the basis of the first three children with a basic amount.</p> <p>Art. 57, para. 1 prescribes that the invalidity benefit shall be secured at least where a person has completed a qualifying period of three years of contributions. National legislation requires a qualifying period of 60 months.</p> <p>Art. 18 (waiting period): Under applicable national legislation, the sickness benefit is paid after the fifth day of leave.</p> <p>In accordance with Art. 52 maternity benefits can only be limited to 12 weeks. Under the national legislation the benefit is limited to four weeks.</p> <p>Art. 63, para. 1(b) requires as condition of survivors' benefit that a qualifying period of three years of contributions be fulfilled, whereas national law requires 60 months of contributions.</p>
Uganda	<p>The economy cannot afford unemployment benefits. It is failing to provide employment to those who are looking for it after formal education/training. Most people are self-employed in agriculture and the informal sector. No accurate labour statistics.</p> <p>The country is not in a position to afford family benefits.</p>
United States	<p><i>Medical care:</i> National funded programs do not cover the prescribed percentages of the population.</p> <p><i>Sickness benefits:</i> No federal program for the general population.</p> <p><i>Unemployment benefits:</i> This is a joint federal–state program. Federal law sets forth broad parameters. It is not a national system so duration, benefit amount and other types of provisions are not uniform across the country. In general, each state is free to establish its own tax structure, qualifying requirements, benefit levels and eligibility provisions.</p> <p><i>Old-age benefits:</i> Some differences appear to exist between the Social Security Act, which provides cash benefits to persons who reach retirement age and Art. 29 of C. 102. Gradually the retirement age will be raised from 65 to 67 (for persons born in 1960 or later). The rules in C. 102 concerning periodic payments to beneficiaries together with the principles of income replacement rates differ from the Social Security Act. The benefits in accordance with the Social Security Act are not intended to be the only source of income for a person who retires.</p> <p><i>Employment injury:</i> Most programs are administered at the state level. Because of the federal–state relationship, federal law does not control the specific rights and benefits.</p> <p><i>Family benefits:</i> Federal tax reductions exist, but no programs such as those envisaged by C. 102.</p> <p><i>Maternity benefits:</i> No statutory scheme on federal level. The state laws provide coverage only to working women.</p> <p><i>Invalidity pensions:</i> Such benefits under the Social Security Act are calculated in a different way. In addition, the benefits are not intended to be the only source of income for a person who becomes disabled.</p> <p><i>Survivors' benefits:</i> The methodologies of the periodic payments to the beneficiaries together with the income replacement rates of the Convention are substantially different from the Social Security Act. In addition, the benefits are not intended to be the only source of income.</p>
Uruguay	<p>In view of the general character of C. 102 and the development of the social security schemes in the last decades, ratifying this instrument is not considered useful.</p> <p><i>Medical care:</i> The scheme does not cover spouses and children. Although it is possible that at least 50 per cent of all residents are covered.</p> <p><i>Unemployment benefit:</i> As long as public sector employees are not included in the total number of employees, it cannot be guaranteed that 50 per cent of all employees are covered. Since public sector employees enjoy stable employment, unemployment benefits in this sector are not necessary.</p> <p><i>Maternity benefit:</i> The provision of medical care is not possible at present.</p> <p><i>Invalidity benefit:</i> The definition in Art. 54 is confusing. The National Act distinguishes between total and partial incapacity.</p>

## Convention No. 121

Country	Remarks
Algeria	<p>Art.15: Difficulties to convert the benefit into a lump sum.</p> <p>Art. 18: No funeral benefit under national legislation.</p> <p>Arts. 19 and 20: References to the minimum wage of certain categories of workers.</p>
Australia	<p>More frequent use of lump sum than appears to be allowed by Arts. 14 and 15.</p> <p>Art. 18 provides only for periodic benefits in the case of death of a breadwinner.</p> <p>The differential treatment for widows and widowers is not acceptable.</p> <p>The rate of long-term worker compensation benefit paid in Australia does not comply with Arts. 19 and 20.</p>
Bangladesh	Not yet ratified because of country's socio-economic condition, but certain provisions have been already adopted.
Barbados	<p>Government: ratification is not recommended for the following reasons:</p> <ul style="list-style-type: none"> <li>➤ Some benefits must be paid to categories of persons without pay.</li> <li>➤ Difficult to implement for developing countries with limited resources.</li> <li>➤ Financial implications of the ratification.</li> <li>➤ The ordinary adult male labourer may not be employed in the manufacture of machinery. It is recommended that this aspect should be changed to reflect the current situation.</li> </ul> <p>Barbados Workers Union does not anticipate obstacles or difficulties.</p>
Bulgaria	National law does not meet the minimum rates.
Canada	It is highly unlikely, given the detailed nature of C. 121 and the number of Canadian jurisdictions involved, that the degree of conformity is sufficient to consider ratification.
China	National legislation is in accordance with the principles, but its implementation needs to be further improved.
Hungary	<ul style="list-style-type: none"> <li>➤ Art. 2 (scope of coverage): Students with foreign citizenship are excluded from accident-related treatment.</li> <li>➤ Art. 18: The funeral assistance available in the system is not automatically granted and it does not in each case cover the full expenses of a funeral.</li> <li>➤ Art. 14 The rate of loss of income capacity should be determined in such a way that the person concerned does not find him/herself in a situation of existential emergency.</li> <li>➤ Art. 27: No equal treatment of foreigners and domestic citizens due to the Contribution Act.</li> </ul>
Indonesia	No social security benefits for students and prisoners. It is considered necessary to set up regulations in the construction sector. Special regulation concerning child labour is now being drafted. Legislation needs to be revised concerning entrepreneurs, fishermen, lecturers/private teachers, and others.
Korea, Republic of	The National Industrial Accident Compensation System does not include commuting accident benefits. In this regard, the Employers' Association has responded: "The definition 'commuting accidents' should be confined to involve only vehicles provided by employers".
Lebanon	<p>The regulations concerning rehabilitation after an employment accident or a professional disease refer to curative measures, which are expensive and sophisticated. Therefore, they would weaken the productive capacities.</p> <p>It is important to adopt measures of prevention and to protect against employment injuries.</p> <p>Statistics and actuarial reports are needed in order to prepare legislation. Technical assistance by the ILO is needed.</p>
Mexico	<p>The requirement in Arts. 13, 14, 16, 18, 19, 20, 21 and 26 that the benefit be increased by a family allowance is not in conformity with national legislation.</p> <p>Art. 485 of the Federal Work Act is not in line with the requirements of C. 121 concerning the minimum amount of the benefits.</p>
Morocco	The social security system does not include such contingencies.
New Zealand	The employment injury benefits in Conventions 102 and 121 are very prescriptive regarding the rate and duration of benefits, and as to the scope of coverage. Both Conventions provide little scope for flexibility.

Country	Remarks
Norway	The question of whether the employment injury benefits should cover all seafarers has not been finally solved.
Pakistan	Employment injury benefits are limited to 180 days.
Peru	"Commuting accidents" are not covered in national law. The list of diseases related to employment injuries has not been approved yet. The Government expressed its concern about the method to calculate the periodic payments (imminent discrimination against female workers).
Philippines	Benefits excluded: nursing at home or in hospitals or other medical institutions and maintenance in hospitals, convalescent homes, sanatoria or other medical institutions. These are new benefits that require additional funding. Trainees are not included in the national law.
United States	Schemes exist at the state level. Because of the federal–state relationship, the specific rights and benefits are not controlled by federal law.

### Convention No. 128

Country	Remarks
Algeria	The main obstacle is the reference to the minimum wage of certain categories of workers.
Australia	See comments on C. 102.
Austria	<i>Partly ratified.</i> See comments on C. 102 (especially part IX).
Bangladesh	Not yet achieved the stage of economic and social conditions to ratify this Convention. However, certain welfare measures exist to provide social security benefits to the aged. <i>The Law for the Survivors' Benefits</i> , recently enacted, provides for survivors' benefit in the event of death resulting from an industrial accident.
Benin	<i>Benefits exist for the contingencies of old age, invalidity and death. Nevertheless, ratification is not possible, because of the exclusion of apprentices and trainees.</i>
Bulgaria	Domestic legislation does not meet the minimum rates indicated in the Annex to C. 128.
Canada	Similar arguments as to C. 102: <ul style="list-style-type: none"> <li>➤ Some definitions are outdated. Residence requirement is not an alternative to contributions as requirement for pensions.</li> <li>➤ The requirement for periodical payments to be a percentage of previous earnings is not met, as it was never intended that the sole income should come from social security benefits.</li> <li>➤ Problems with exceptions in the Convention, such as an age reduction for persons in designated professions. This could contravene the Canadian Charter of Rights and Freedoms.</li> <li>➤ Problems with the aspect of extending old-age benefits to sponsors of contributors, as national benefits are based on the individual's contributions or residence and spouses have to qualify in their own right.</li> <li>➤ Problems with Arts. 1, 4, 5, 18, 32.</li> </ul>
China	Current coverage has not yet met the requirements.
Czech Republic	<i>Partly ratified.</i> The legislation on pension insurance is not in line with certain parts of invalidity and survivors' benefits.
Denmark	Specific national rules concerning qualifying periods impede the ratification.  Survivors' benefits: The only benefit is the Labour Market Supplementary Pension (ATP) that does not meet the requirements.
Hungary	The conditions in domestic law are not fully in line with C. 128: <ul style="list-style-type: none"> <li>➤ The national scheme does not ensure reduced provisions in the event of disability under the age of 24; in this case the required service period is four years; between 25 and 29 years, the required service period is six years (instead of five). In other age groups the required service period is even longer;</li> <li>➤ Art. 18: Part-pension will not be available after 31 December 2008;</li> <li>➤ Art. 21: Ensuring survivors' pension if the survivor raises one dependent child of the deceased, in Hungary the requirement is at least two dependent children;</li> <li>➤ No compliance with Art. 24, para. 2 (survivors' pension): ensuring reduced provisions to a dependent person with entitlement based on a minimum of five years of service;</li> </ul>

Country	Remarks
	<ul style="list-style-type: none"> <li>➤ No compliance with Art. 13 concerning rehabilitation of disabled persons.</li> </ul> <p><i>Old-age pension system:</i> The level of protection will not be adequate in the case of those moving over to the private pension scheme. The level of provision will be possible to ensure in future in cases of disability and dependent persons' provisions only if the amount of family allowance rises by any substantial sum. However, the Hungarian system is evolving towards strengthening the elements of insurance and the authorities have no intention of making either the survivors' or the disability system so solidaristic even in the future. No such requirement ever emerged in the course of the EU legal harmonization process.</p>
Indonesia	Workers' social security programme has not yet covered all of the economically active population.
Japan	<ul style="list-style-type: none"> <li>➤ 90 per cent or more of all employees shall be protected. Japan does not meet the requirements. .</li> <li>➤ Part II, Invalidity benefit: The benefit shall be paid throughout the contingency or until old-age benefit becomes payable. In Japan the disability pension becomes payable 18 months after a physician first examined the injury or illness.</li> </ul> <p>Difficulties would arise if the rate of benefit was linked to the percentage in the Annex to part V of the Convention.</p> <p>Problems with R. 131: Minimum amounts for invalidity, old-age and survivors' benefits have not been fixed</p>
Jordan	The provision of benefits in case of temporary invalidity on grounds of sickness or maternity is not possible due to the prevailing economical situation.
Lebanon	There is a benefit payable in the case of end of service. In cooperation with the ILO, there is a project concerning benefits of old-age, invalidity and death. Some difficulties with statistics and actuarial reports.
Mexico	National legislation is not compatible with Arts. 9, 13, 15, 16 22, 24 and 29.
	National legislation needs to be more detailed; the practice of the institutions has to be changed; the benefits would have to be extended. Also the personal scope requires extensions. Only some reservations are allowed when a State ratifies the instrument.
Morocco	Domestic law does not have services related to rehabilitation of beneficiaries of invalidity pension since the system of national fund for social security does not cover medical care.
New Zealand	See comments on C. 102.
Peru	Discrepancies between national law and the higher standards of the Convention.
	Main impediments are the unequal treatment of men and women and the method used to calculate periodical payments (the reference to "wage of male worker" and the imminent discrimination against female workers).
Philippines	For invalidity and old-age standard beneficiaries, the National Act provides respectively 48 and 40 per cent (C. 128: 50 per cent, 45 per cent). For survivors' benefits the amount is 48 per cent (C. 128: 45 per cent). Rehabilitation services are not provided in the national Act. An increase in the contribution rate in the current economic situation is very untimely.
Portugal	National legislation does not provide benefits, which are reduced in conformity with Arts. 11, 18 and 24. But it is possible to get a pension, which is not based on contributions.
	Question with regard to Art. 13 para. 1 (a) of C. 128: National legislation on invalidity and old age provides only that the protection in cases of invalidity can be supplemented by measures of re-education and occupational rehabilitation.
Romania	The ILO is asked to give technical assistance with a view to calculating the periodic payments. That would be an important step towards ratification.
Russian Federation	The level of the national benefit is not sufficient for a vital minimum. For financial reasons it is difficult to extend the level of benefits.
Singapore	C. 128 is benefit defined. However, the Central Provident Fund is a contribution-defined scheme. If a person suffers from permanent incapacity, he/she will be allowed to withdraw his/her savings.
Slovenia	<ul style="list-style-type: none"> <li>➤ Method of calculation of payment referring to Arts. 26, 27 and 28.</li> <li>➤ Method of defining the conditions of qualifying the period for obtaining invalidity pension is different from that in C. 128, as it is not bound to fixed completed pension qualifying period, but to density of insurance.</li> </ul>
United Arab Emirates	Amendments to national legislation are needed.

## Convention No. 130

Country	Remarks
Algeria	National legislation is not in line with Arts. 16, 26 and 27.
Australia	<p>Terms and concepts of C. 130 have limited application to contemporary society and social security law. The concept of a male only beneficiary is alien to current social security law.</p> <p>In Australia the amount of the sickness allowance does not depend on the former amount of the salary. The rate of the Australian sickness allowance is standard.</p> <p>Medicare is a compulsory tax-based system of public health insurance.</p>
Austria	Misgivings were expressed particularly regarding Arts. 7(a), 13(f), 14(d), 16 para. 3, and 22.
Bangladesh	The country is not economically developed to the required stage. However, certain facilities and medical care are provided in case of sickness to persons employed in industrial and commercial undertakings.
Barbados	<p>Government: Ratification is not feasible at present.</p> <p>Workers' Union: No obstacles to ratification.</p>
Benin	Ratification is not possible because the national legislation does not provide for sickness benefits.
Bulgaria	The national legislation does not meet the minimum rates indicated in the Annex to C. 128.
Canada	<p>Arts. 1, 4, 5, 11, 12 and 22 are not compatible with national legislation because they contain gender-bias discrimination.</p> <p>There are also divergences with Arts. 19, 22, 24, 26 and 33.</p>
Central African Republic	Health care infrastructure is still insufficient. Therefore, the requirements of C. 130 cannot yet be met.
China	The coverage has not yet met the requirements.
Cuba	There are barriers to ratification.
Cyprus	The existing health system does not offer protection as required by Art. 10.
Indonesia	The National Act covers health insurance for workers, husbands/wives raising up to three children. The National Act should cover allowances for survivors. It is considered very important to provide social security protection to informal and self-employed workers in the matters of maintenance, medical care and sickness.
Japan	No medical care of a preventive nature in national legislation.
Jordan	Medical care insurance for workers and qualified persons not yet applied in the country.
Lebanon	The scope of the existing regulations must be extended in view of illness and maternity: broader personal scope and more benefits.
Mexico	Art. 23 requires that the periodical payment be increased by family allowances during the contingency. It does not exist in the national legislation. Family allowances are considered as pensions and not as a supplement in cases of temporary illness.
Morocco	No legal provision exists on compulsory sickness insurance.
Peru	Higher standards in the Convention than in the national legislation.
Singapore	The Fund's approach differs from the Convention. The contributions of the employee and the employer range from 8.5 per cent to 36 per cent depending on the employee's age. It is paid for hospitalization expenses. Individuals and self-employed can buy medical insurance to defray healthcare costs.
Switzerland	Problem with the calculation modalities of the daily allowance.
Tunisia	<p>The definitions of the terms "child" and "standard beneficiary" (man with a wife and two children) as laid down in Art. 1 do not exist in Tunisia.</p> <p>The minimum duration of sickness benefit is 52 weeks (Art. 26); the national benefit is limited to 180 days (=24 weeks).</p> <p>A funeral benefit in accordance with Art. 27 exists in the national scheme only in the event of death resulting from employment injury or occupational disease.</p>

## Convention No. 168

Country	Remarks
Argentina	National legislation is not in conformity with Arts. 11, 11, 15, 16, 18, 19, 23, 24, 29.
Austria	In cases of short-time working there are no benefits that could be paid. In cases of temporary suspension of work, no unemployment benefit is paid.
Bangladesh	The country is below poverty level. Its economic condition is not adequate enough to provide employment for all. However, the Government has taken some initiatives to solve the unemployment problem. It has set up an Employment Bank in 1998 to provide credit support to unemployed persons.
Barbados	Government: Ratification not possible at this time. Workers' union: Barbados is the only country in the Caribbean with an unemployment benefit scheme. And the social partners have ongoing discussions in relation to job security and employment creation. These factors would go a long way in facilitating ratification as soon as possible.
Bulgaria	National legislation does not meet the conditions indicated in Art. 10.
Canada	Problems with Art. 18 (maximum waiting period for unemployment benefits); Art. 5, para. 4 (duration of payment has shrunk); Art. 10, para. 2 (benefits for persons with a temporary reduction in normal hours of work); Art. 16 (problem with the goal, that benefits shall guarantee healthy and reasonable living conditions); Art. 19, para. 3 (minimum duration of unemployment benefit of 26 weeks); Art. 26 (social benefits).
Central African Republic	The barrier to ratification lies in the financial burden.
Cuba	There are barriers to ratification.
Cyprus	No payment of unemployment benefit: <ul style="list-style-type: none"> <li>➤ In case of loss of earnings due to partial unemployment (Art. 10, para. 2);</li> <li>➤ To part-time workers who are seeking full-time work (Art. 10, para. 3).</li> </ul>
Czech Republic	At this time problems with Arts. 10, 15 para. 1, 29. The Employment Act is under preparation. Some of these provisions will be taken into account.
Denmark	According to Art. 10 the benefit has to be paid even in cases of work stoppages. In Denmark it is possible to refuse payment of benefits in the event of an industrial dispute. No unemployment benefit will be paid if 65 per cent of the members of an unemployment fund are involved in the conflict.
Jordan	Unemployment insurance is not yet applied in Jordan due to economical circumstances.
Lebanon	Neither C. 44 nor C. 168 can be ratified. There is no unemployment insurance scheme and no unemployment scheme. Nevertheless, some preliminary measures are being taken in respect of unemployment insurance (longer periods of notice and additional compensation in cases of unjustified notice). For the preparation of a scheme statistics and actuarial reports are needed.
Mexico	It is not intended to extend the benefits in cases of loss of earnings due to partial unemployment (see Art. 10). The Convention contains requirements which cannot be fulfilled. Benefits can only be attributed if there was an unjustified dismissal and the employer refuses to reinstate the employee.
Morocco	Concerns Conventions Nos. 44 and 168: No legal provision exists on unemployment coverage.
Netherlands	Current national legislation is not in conformity with the Convention: <ul style="list-style-type: none"> <li>➤ The short-term benefits are not in conformity with Art. 15, para. 1(a);</li> <li>➤ The national rules on the reduction of the working-time are not in conformity with Art. 19, para. 1 in the sense that in the case of full unemployment compensation has to be given even if the suspension of income is caused by a temporary suspension of work without an end of the working relationship;</li> <li>➤ Art. 29, para. 1 requires that under certain conditions representatives of the protected persons and of the employees be associated in the administration in an advisory capacity. The social partners are not associated in this administration. (The trade union federation has different statements).</li> </ul>
Pakistan	As a developing country it may not be able to ratify Conventions Nos. 44 and 168.

Country	Remarks
Poland	<p>National regulations do not fully comply with the provisions of Art. 10, paras. 1 and 2, and Arts. 15, 17, 19, 24, 25 and 26. Some articles formulated in general terms are difficult to evaluate if they are applied in the country.</p> <p>Example in Art. 14: It provides that the amount of benefit should be “calculated in such a way as to ...avoid creating disincentives either to work or to employment creation”.</p> <p>Example in Art. 15, para. 2: It provides that the amount of benefit should be at least equal to a level affording the minimum essential for basic living expenses.</p> <p>Example in Art. 17, para. 1: It provides that the qualifying period should not exceed the length deemed necessary to prevent abuse.</p>
Russian Federation	<ul style="list-style-type: none"> <li>➤ Problems with cases of partial unemployment especially concerning people dismissed on behalf of administrations.</li> <li>➤ They receive limited severance payments.</li> <li>➤ Problems with the financing of “works in the general interest”.</li> </ul>



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## Annex 6

### Summary description of ILO instruments<sup>73</sup>

#### ***International labour Conventions and Protocols***

Synonymous with international treaties, international labour Conventions go through a pre-established tripartite discussion procedure and are also adopted within a tripartite framework. Once a Convention has been adopted by the ILC, the member States are required under the Constitution to bring it before the competent authorities “for the enactment of legislation or other action”. This innovative requirement is intended to generate democratic debate at national level on whether it is appropriate to ratify the international labour Convention concerned. If the member State decides to ratify the Convention, it is only at that point that it acquires binding force for that State and that the State has to take such action as may be necessary to make its provisions effective.

Generally speaking, it is recognized that Conventions have to be universal – in other words, ratifiable by the largest possible number of States – adapted to national conditions, flexible and viable. Some Conventions are more technical, setting out specific standards which the member States undertake to comply with or to achieve through ratification, while others are more of a promotional nature, setting aims that have to be pursued by means of ongoing national action plans. From the point of view of the ILO Constitution, international labour Conventions do not affect more favourable national provisions. Furthermore, if a State withdraws from the ILO, it remains bound by Conventions which it has previously ratified. Since the Organization was founded, the ILC has pursued an intense programme of legislative activity with 187 Conventions adopted to date (September 2006) which involved more than 7,400 ratifications. They cover all labour-related issues. Protocols are also international treaties but which, in the ILO context, do not exist independently since they are always linked to a Convention. Like Conventions, they are subject to ratification (however, the Convention to which they are linked also remains open for ratification). They are used for the purpose of partially revising Conventions, in other words where the subject of the revision is limited. They thus allow adaptation to changing conditions and they enable practical difficulties to be dealt with which have arisen since the Convention was adopted, thus making the Conventions more relevant and up to date. Protocols are particularly appropriate where the aim is to keep intact a Convention which has already been ratified and which may receive further ratifications, while amending or adding to certain provisions on specific points. The ILC has adopted five Protocols to date.

#### ***International labour Recommendations***

International labour Recommendations go through the same tripartite drafting and adoption process as Conventions. They too have to be brought before the competent authorities, but they are not subject to ratification and do not therefore have binding force. The ILO Constitution provides that Recommendations shall be adopted where the subject, or aspect of it, dealt with by the ILC, is not suitable for a Convention. However, practice has moved away from the primary role provided for in the Constitution, and most up-to-date Recommendations supplement and clarify the content of the Conventions they accompany. Only a small number of independent Recommendations have been adopted by the ILC.

<sup>73</sup> *Manual for drafting ILO instruments* (ILO, 2006), pp. 79-80.

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Recommendations serve above all to define the standards that are to guide government action. The ILC has adopted 198 Recommendations to date.

### **Other ILO instruments**

Although Conventions and Recommendations are the instruments most commonly used by the ILC to formulate standards, it has also, in its long practice, used other types of texts.

#### **(a) ILC and Governing Body declarations**

Declarations are generally used by the ILO ILC or Governing Body in order to make a formal statement and reaffirm the importance which the constituents attach to certain principles and values. Although declarations are not subject to ratification, they are intended to have a wide application and contain symbolic and political undertakings by the member States. In some cases declarations could be regarded as an expression of customary law. Four declarations have been adopted by the ILO: the Declaration of Philadelphia in 1944, which has since formed an integral part of the ILO Constitution; the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in 1977; the Declaration on apartheid in 1964; and lastly, in 1998, the Declaration on Fundamental Principles and Rights at Work.

#### **(b) ILC resolutions**

The ILC generally uses resolutions for two different purposes. First, it may use resolutions as a way of formally expressing its will or its opinion on a given subject. These resolutions are intended as a response to practical situations and specific needs. Some are used as guidelines in terms of social policy standards and as reference points by the ILO's supervisory bodies for evaluating national situations. Secondly, the ILC may adopt resolutions accompanied by conclusions following general tripartite discussions within one of its technical committees. Although such discussions may not lead directly to a standard setting action, in many cases they enable problems to be explored in detail and from every angle (this was the case with social security in 2001, the informal economy in 2002, the employment relationship and occupational safety and health in 2003, and migrant workers in 2004).

#### **(c) Other ILO texts**

Technical committees of experts, special or regional conferences and bodies set up to deal with particular issues (social security, labour statistics, health and safety) or sectors (industrial committees, joint maritime commissions, etc.) are also required to adopt texts which may take various forms (resolutions, guidelines, standard regulations). These standards vary both in their content, which may relate to fundamental principles or technical matters, and in the authority conferred on them. However, they are certainly useful in that they are designed to respond to practical situations and have been adopted by bodies representing the interests involved. Lastly, mention must be made of the guidelines and codes of practice prepared by the International Labour Office's technical departments and branches. Although not binding, they are still useful in that they are sometimes provided for in the Conventions themselves, and they develop and flesh out international labour standards. Their amendment procedure is also much more flexible than for the international labour Conventions and Recommendations. These guidelines and codes of practice are subject to the tripartite discussion process and to the Governing Body.