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# SOCIAL SECURITY PROTECTION IN OLD-AGE

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General Survey of the  
Committee of Experts on the  
Application of Conventions and Recommendations



International Labour Office Geneva



Report III  
(Part 4 B)

Third Item on the Agenda:  
Information and Reports on the Application  
of Conventions and Recommendations

General Survey of the Reports relating  
to the Social Security (Minimum Standards)  
Convention (No. 102), 1952,  
the Invalidity,  
Old-Age and Survivors' Benefits  
Convention (No. 128)  
and Recommendation (No. 131), 1967,  
in so far as they apply to old-age benefits

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## INTRODUCTION

### Background to the survey

1. In accordance with article 19 of the ILO Constitution, the Governing Body of the ILO decided at its 231st Session (Geneva, November 1985) to request governments to report on the position of their law and practice with respect to old-age benefit as defined by the Social Security (Minimum Standards) Convention, 1952 (No. 102) and by the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and Recommendation (No. 131). The reports thus supplied by the governments, together with those submitted in accordance with articles 22 and 35 of the ILO Constitution by States which have ratified one of these Conventions and accepted the part relating to old-age benefit,<sup>1</sup> enabled the Committee of Experts on the Application of Conventions and Recommendations to carry out, in accordance with its usual practice, a general survey of the situation as regards the implementation of these instruments in so far as old-age benefit is concerned.

2. Minimum standards of social security have already been the subject of a general survey of the Committee of Experts carried out in 1961. In addition, the Governing Body requested governments to report in 1968 on the ratification prospects and difficulties as regards 17 of the most important international labour Conventions, including Convention No. 102. In 1977, the Committee of Experts carried out a general survey on another important aspect of social security - equality of treatment between nationals and non-nationals - after the Governing Body of the ILO requested governments to supply reports under article 19 of the Constitution concerning the Equality of Treatment (Social Security) Convention, 1962 (No. 118). The frequency with which the Governing Body has chosen social security instruments as the subject of reports under article 19 of the Constitution clearly shows the importance which it attaches to this fundamental aspect of social protection. Moreover, Conventions Nos. 102 and 128 and Recommendation No. 131 were classified by the Governing Body in its in-depth study of international labour standards carried out in 1979 as instruments which should be promoted on a priority basis.<sup>2</sup> This priority was confirmed in 1987.<sup>3</sup>

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<sup>1</sup> Part V of Convention No. 102 and Part III of Convention No. 128.

<sup>2</sup> Final Report of the Working Party on International Labour Standards, Official Bulletin, Vol. LXII, 1979, Series A, special issue.

<sup>3</sup> Report of the Working Party on International Labour Standards, Official Bulletin, Vol. LXX, 1987, Series A, special issue.

3. Unlike the general survey carried out in 1961, which covered the nine branches of social security provided for by Convention No. 102, this survey, which also concerns Convention No. 128 and Recommendation No. 131, only covers old-age benefit. The Governing Body considered that it would be appropriate to limit the scope of the survey to old-age benefit in order to undertake a more thorough study of the subject and better identify the main trends in this field, taking into account an economic context marked by high unemployment and persistent inflation, which has repercussions, sometimes highly detrimental, for long-term benefits such as old-age benefit.

#### Standard-setting activities of the ILO

4. Social security issues have always been foremost among the concerns of the ILO. The Preamble to the Constitution urged the Organisation as long ago as 1919 to improve working conditions by "the prevention of unemployment, the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury, ...". This concern of the ILO, in its first phase beginning with the first sessions of the International Labour Conference, was expressed in the adoption of standards for the protection of certain categories of workers against specific contingencies, such as maternity,<sup>4</sup> industrial accident,<sup>5</sup> and occupational disease,<sup>6</sup> sickness,<sup>7</sup> invalidity,<sup>8</sup> death of the bread-winner<sup>9</sup> and unemployment.<sup>10</sup> More particularly, as regards old-age protection, in 1933 the Conference adopted two Conventions, the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) and the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36).

5. The second phase of the ILO's standard-setting activity focused on a broader, global concept of social security, under the impetus of the Declaration concerning the Aims and Purposes of the International Labour Organisation, adopted in Philadelphia in 1944, which includes as part of the Programme of Action of the ILO "the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care". Two important Recommendations, namely the Income Security Recommendation, 1944 (No. 67) and the Medical Care Recommendation, 1944 (No. 69) paved

<sup>4</sup> Maternity Protection Convention, 1919 (No. 3).

<sup>5</sup> Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); Workmen's Compensation (Accidents) Convention, 1925 (No. 17).

<sup>6</sup> Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18); Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42).

<sup>7</sup> Sickness Insurance (Industry) Convention, 1927 (No. 24); Sickness Insurance (Agriculture) Convention, 1927 (No. 25).

<sup>8</sup> Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37); Invalidity Insurance (Agriculture) Convention, 1933 (No. 38).

<sup>9</sup> Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39); Survivors' Insurance (Agriculture) Convention, 1933 (No. 40).

<sup>10</sup> Unemployment Provision Convention, 1934 (No. 44).

the way for the adoption in 1952 of Convention No. 102. This instrument, which introduced the concept of general minimum standards of social security which member States must reach, marks a turning point in the history of social security.

6. Parallel to Convention No. 102, the possibility was envisaged of adopting an instrument providing for a higher standard of social security. Owing to lack of time and in view of its complexity, the question was not discussed by the Committee on Social Security of the 1952 Conference. However, at that Committee's recommendation, the Conference issued a resolution inviting the Governing Body to take up the question again in due time. In accordance with this resolution, and taking into account the experience acquired in the application of Convention No. 102, the social security Conventions adopted from 1925 to 1934 were gradually revised by adopting a new series of instruments, including the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), supplemented by Recommendation No. 131.<sup>11</sup>

7. The picture given above of the development of international standards on social security would be incomplete if it failed to mention the ILO's constant concern to provide protection for migrant workers, and non-nationals in particular, in the field of social security. Here twin goals have been pursued: on the one hand, to ensure that non-nationals are treated on an equal footing with nationals and, on the other, to guarantee the maintenance of rights, both acquired and in the course of acquisition, in the event of workers transferring their residence from one country to another. The principle of equality of treatment is enshrined in many general instruments on social security, including Convention No. 102. It has also been the subject of specific standards, of which the following should be mentioned in particular: the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). As regards maintenance of migrant workers' acquired rights and rights in the course of acquisition in the event of transferral of residence, this issue is fraught with particularly complex problems which have been the subject of several international instruments, including the Maintenance of Social Security Rights Convention, 1982 (No. 157) and Recommendation (No. 167).

8. Lastly, in accordance with the practice regarding the drafting of standards on maritime labour, a number of Conventions and Recommendations concerning seafarers' old-age benefits have been

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<sup>11</sup> The other social security Conventions listed in notes 5 to 10 to paragraph 4 above were revised by the following instruments: the Employment Injury Benefits Convention, 1964 (No. 121), supplemented by Recommendation No. 121; the Medical Care and Sickness Benefits Convention, 1969 (No. 130), supplemented by Recommendation No. 134; and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), supplemented by Recommendation No. 176. The Maternity Protection Convention, 1919 (No. 3), was revised in 1952 with the adoption of the Maternity Protection Convention (Revised), 1952 (No. 103).

adopted by special maritime sessions of the International Labour Conference.<sup>12</sup>

Contents of the instruments covered  
by the General Survey

Convention No. 102

9. Unlike the Conventions adopted previously, Convention No. 102 deals in a single instrument with the nine main branches of social security: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. Its scope is no longer defined in terms of branch of economic activity (industry or agriculture), but is determined, at the option of the member States, by reference to employed persons, or active population, or residents. Lastly, the Convention fixes the minimum amount of benefit; periodical payments are calculated by reference to wages in the country concerned, while earlier instruments left the determination of the rate of benefit to the national legislation.

10. Convention No. 102 comprises 15 parts, of which Parts II to X correspond to the nine branches of social security mentioned above. The other parts (Part I and Parts XI to XV) contain provisions which apply to all branches. In order to ratify Convention No. 102, a country must merely accept three of these nine branches, including at least one of the following: unemployment, employment injury, old-age, invalidity or survivors' benefit (Article 2). States may subsequently accept the obligations in respect of other parts of the Convention (Article 4).

11. For each branch, the Convention contains provisions pertaining to the definition of the contingency covered, minimum coverage, and the rate, duration and conditions for the grant of benefit. The Convention has been drafted with sufficient flexibility on these points to take different methods and stages of development into account. Moreover, Article 3 provides for a number of temporary exceptions for countries "whose economy and medical facilities are insufficiently developed". In order to avail itself of such exceptions, a country must append a declaration to its ratification.

12. More particularly, as regards old-age benefit, Part V of the Convention lays down the age for entitlement to pension, which is, in principle, fixed at 65 years (Article 26, paragraphs 1 and 2). The persons protected must, at the government's option, include one of the following: not less than 50 per cent of all employees; or prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or all residents whose means during the contingency do not exceed a certain limit. For countries which have made a declaration in virtue of Article 3 at the time of ratification, coverage may be reduced to a smaller number of persons

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<sup>12</sup> The instruments concerning seafarers and dealing with old-age benefit include the Seafarers' Pensions Convention, 1946 (No. 71) and the Seafarers' Welfare Convention (Revised), 1987 (No. 165).



calculated by reference to the number of persons employed only in industrial workplaces of a certain size.

13. Old-age benefit, which must consist of periodical payments, may be calculated using one of three methods prescribed by the Convention. The rate of benefit, in principle, is equal to 40 per cent of the beneficiary's previous earnings (this level must be attained even for a skilled manual employee) or of the wage of an ordinary labourer, or it may be determined according to a scale taking into account other means of the beneficiary's family. Moreover, old-age benefit must be reviewed to take into account changes in the general level of earnings (Articles 28, 29, 65, 66 and 67 and Schedule appended to Part XI).

14. The provisions common to all branches refer in particular to equality of treatment of non-national residents (Article 68), cases in which benefits may be suspended (Article 26, paragraph 3, and Article 69), right of appeal (Article 70) and certain principles concerning financing (Article 71, paragraphs 1 and 2). The State must also assume general responsibility for the due provision of benefits and proper administration of institutions and services (Article 71, paragraph 3 and Article 72, paragraph 2). Lastly, representatives of the persons protected must participate in the management of social security or be associated therewith in a consultative capacity, if the administration is not entrusted to an institution regulated by the public authorities or to a government department (Article 72, paragraph 1).

15. The Convention does not apply to seamen or sea fishermen (Article 77).

### Instruments of 1967

16. Convention No. 128, which comprises eight parts, covers only three long-term contingencies: invalidity, old age and loss of bread-winner (survivors' benefit). Like Convention No. 102, it contains provisions relating to each of these three branches (Parts II to IV) and common provisions (Part I, and Parts V to VIII). A Member must accept one of the three branches covered in order to ratify the Convention (Article 2).

17. Most of the common provisions, as well as those defining the contingency and the form, calculation and duration of benefit have been drafted in a very similar way to those of Convention No. 102. Convention No. 128 also provides for maintenance of rights in the course of acquisition, for example where the beneficiary changes schemes (Article 30). Convention No. 128, however, provides a higher degree of protection, both as regards coverage and in terms of the rate of benefit. In the case of old-age benefit, covered in Part III of the Convention, the persons protected must comprise all employees, or prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population, or all residents whose means during the contingency do not exceed a prescribed limit (Article 16). The rate of benefit is fixed at 45 per cent of the reference wage (Schedule to Part V of the Convention).

18. In view of the higher objectives set by the Convention, it contains a number of flexibility clauses. In particular, it allows

the exclusion of certain categories of employees (Article 37) and temporary exclusion of agricultural employees (Article 38). Seafarers and public servants may also be excluded under certain conditions (Article 39). Other exceptions, some quite broad in scope, are allowed for States which accept the obligations of the Convention as a whole and where protection covers a given percentage of the economically active population higher than that required by the Convention (Articles 41 and 42).

19. Recommendation No. 131 increases the degree of protection provided for by Convention No. 128 by supplementing it on a number of points, including for old-age benefit, scope (Paragraph 2), pensionable age (Paragraphs 6 and 7), qualifying conditions (Paragraphs 8, 16 and 17), conditions for suspension of benefit (Paragraphs 11 and 26), deferred retirement (Paragraph 18) and rate of benefit (Paragraphs 22 to 25).

20. The texts of the relevant provisions of the three instruments are found in Appendix I of this Survey.

#### Other activities of the ILO in the field of social security

21. From the earliest years of its existence, the ILO has been fully aware of the need to promote and encourage the exchange of information and experience in the field of social security. In this context, officials at headquarters began to travel to various countries, on short missions at first, in response to governments' requests for the ILO's advice and technical assistance in setting up or developing their social security systems. Such technical co-operation became increasingly widespread following the Second World War, when the technical assistance programme of the United Nations and specialised agencies was launched. It is estimated that more than 400 missions of ILO experts or consultants in the field of social security have been undertaken since 1950 in over 100 countries. ILO assistance first focused on Latin America, later spreading to Africa and the Caribbean. Recently, experts have also been sent on mission to Asia and the Gulf States. In a great many cases, the ILO provided assistance throughout the process of setting up the social security scheme. In the last decade, technical co-operation has developed further in order to meet the constantly changing needs of States facing new challenges.

22. The ILO provides assistance in a number of different ways. Firstly, it assists countries wishing to set up a social security system by collaborating in studying the underlying economic, social and administrative conditions and in drawing up guide-lines taking into account immediate needs, the country's administrative resources and future prospects. It also carries out actuarial studies, which are of fundamental importance to the viability of the future scheme. The ILO also assists in drafting social security legislation, whether by framing new laws or regulations or by revising or amending existing legislation. The technical assistance provided by the Office adheres closely to the objectives laid down in the ILO instruments on social security and Convention No. 102 in particular. Lastly, the ILO studies problems involved in the organisation and administration of

social security institutions with a view to improving their methods and operation. Such studies may cover the administration as a whole or deal with certain aspects of it. In addition to sending experts to the field, the ILO provides scholarships enabling young officials in developing countries to undergo training in the national administrations or social security institutions of other countries which have acquired substantial experience in this field. The ILO also organises courses and seminars at the national or regional level enabling senior staff, administrative staff and specialists in the field of social security to improve their knowledge. Regional advisers on social security are appointed for each region, chiefly in order to reply to governments' urgent requests and to follow up the recommendations made in the course of technical assistance projects; these advisers undertake to promote technical co-operation on a permanent basis, taking into account the instruments adopted by the International Labour Conference.

23. The most recent technical assistance projects include those undertaken in Algeria, Burundi, Cuba, Guatemala, Kuwait, the Libyan Arab Jamahiriya, Malaysia and Mauritania, involving financial and actuarial evaluation of national social security systems, and pension schemes in particular. A tripartite consultation was held at ILO headquarters in order to examine specific methods for the introduction of a pension scheme in Lebanon. In Algeria, Bolivia, Guinea, Indonesia, Rwanda, Senegal, Suriname and several Caribbean countries, emphasis was laid on an analysis of the efficiency of existing programmes and a study of the possibility of adopting new schemes or extending coverage of social security. Projects also focus on training senior social security staff, especially in Africa where there is a shortage of qualified personnel. Lastly, projects are now under way in Angola and Mozambique with a view to setting up and reorganising their social security schemes.

24. The ILO's activities in the field of social security also include research and publication of studies aimed at achieving a better understanding of the various problems encountered. In addition to the preparatory reports drawn up by the Office with a view to adopting new social security standards and those prepared for regional conferences<sup>13</sup> and other technical meetings, the ILO also undertakes studies and thorough analyses of current issues.<sup>14</sup> These studies

<sup>13</sup> See, inter alia, Report II prepared for the Fifth African Regional Conference, Abidjan (September-October 1977): Improvement and harmonisation of social security systems in Africa.

<sup>14</sup> See, inter alia, A. Zelenka: Les systèmes de pensions dans les pays industrialisés (Geneva, ILO, 1974); Pensions and Inflation (Geneva, ILO, 1977); Financing Social Security: The Options (Geneva, ILO, 1984); Into the Twenty-First Century: The Development of Social Security (Geneva, ILO, 1984) (this last study, which focuses entirely on the industrialised world, should be followed by a general study on the future of social security in Third World countries); Demographic Development and Social Security, Report II, Fourth European Regional Conference, Geneva, 1987; A.M. Brocas, A.M. Cailloux and V. Oget: Les femmes et la sécurité sociale (Geneva, ILO, 1988).

are carried out by the research staff of the Social Security Department of the ILO or outside specialists. Parallel to these studies, which provide important guide-lines for social security, the ILO produces manuals intended chiefly for social security directors and administrators, although they may be of interest to a wider readership, in particular in the actuarial and accounting fields.

25. Thus, the standard-setting activity of the ILO is effectively supplemented by technical co-operation activities taking into account both the Conventions and Recommendations adopted by the International Labour Conference, on the one hand, and the comments of the ILO supervisory bodies, on the other. Recent years have seen an increase in this tendency to link standard-setting and technical co-operation activities as closely as possible.

#### Activities of other organisations

26. At the universal level, the right to social security is enshrined in Articles 22 and 25 of the Universal Declaration of Human Rights. In addition, the International Covenant on Economic, Social and Cultural Rights provides in general terms that the States Parties to the Covenant "recognise the right of everyone to social security, including social insurance", but without specifying the nature or extent of the protection to be provided (Article 9).

27. At the regional level, the Council of Europe has adopted a number of instruments containing the principles reflecting that Organisation's systematic approach to social security. Firstly, the European Social Charter, a comprehensive instrument, contains a number of provisions on this subject. The Charter, adopted in 1961, sets social objectives to be followed by ratifying States. Thus, Article 12 concerning social security lays down the principle of the right to social security and requires the contracting parties to maintain a level of protection at least equal to that prescribed for ratification of Convention No. 102 and to endeavour to raise progressively the system of social security to a higher level. It also provides for the conclusion of bilateral or multilateral agreements in order to ensure co-ordination of national legislation of various countries as applied to nationals of the contracting parties. The Charter further stipulates the right to social and medical assistance (article 13). The Council of Europe has also adopted specific texts in the field of social security. These include the European Code of Social Security, which was adopted in 1964 and entered into force four years later. Convention No. 102 was taken as a model, and most of its provisions are reproduced in the Code.<sup>15</sup> The Code is supplemented by a protocol which sets higher objectives than those laid down in the Code

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<sup>15</sup> The European Code of Social Security, however, sets higher standards than Convention No. 102 as regards the number of parts to be complied with in the event of ratification (art. 2).

itself.<sup>16</sup> A revision of the Code is now under way. Lastly, the Committee of Ministers of the Council of Europe has adopted a number of resolutions and recommendations in the field of social security, including Recommendation No. R(87) 5 (dated 12 March 1987) on making old-age and invalidity benefits generally available.

28. The European Communities have also adopted standards concerning specific aspects of social security. Thus, several regulations have been issued on the problem of social security of migrant workers as an element of the free movement of workers provided for by Article 51 of the Treaty of Rome.<sup>17</sup> Two directives have also been drafted on equal treatment for men and women in social security.<sup>18</sup>

29. A social insurance minimum standards convention was adopted by the Arab Labour Organisation in 1971. This convention, the application of which shall be gradually extended to the whole active population, covers all contingencies provided for by Convention No. 102.

30. Lastly, it should be borne in mind that regional organisations such as the African and Mauritian Common Organisation (OCAM), the Economic Community of the Great Lake Countries and the Council of Europe have adopted numerous co-ordination agreements in order to ensure the protection of migrant workers.<sup>19</sup> These instruments concern the legislation applicable in the field of social

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<sup>16</sup> Part V of the European Code of Social Security, which concerns old-age benefit, has been accepted by all of the States which have ratified this instrument, that is, Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and the United Kingdom. Of these, Belgium, Federal Republic of Germany, Luxembourg, Netherlands, Norway, Portugal and Sweden have also accepted the obligations under the protocol for Part V in particular.

<sup>17</sup> In particular, Regulations No. 1408 of 1971 and No. 574 of 1972.

<sup>18</sup> Directive 79/7/EEC of 19 December 1978, on the progressive implementation of the principle of equal treatment for men and women in matters of social security; Directive 86/378/EEC of 24 July 1986, on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

<sup>19</sup> For example: the European Convention on Social Security adopted in 1972 by the Council of Europe, which entered into force in 1977; Agreement concerning the Social Security of Rhine Boatmen of 1950 (revised several times; the last revision is dated 1979 and entered into force in 1987); Andean social security instrument of 1977 and the implementing regulations, dated 1979; general social security Convention of the African and Mauritian Common Organisation (OCAM), which was adopted and entered into force in 1971, and administrative arrangement adopted in 1972; general social security Convention of the Great Lakes Countries, which was adopted in 1978 and entered into force in 1980.

security, the principle of equal treatment and the maintenance of acquired rights and those in the course of acquisition.

31. Both the Social Charter and the European Code of Social Security, as well as most of the co-ordination agreements mentioned above, were drafted and adopted with the collaboration, often very close, or the technical assistance of the ILO. In addition, the Committee of Experts is involved in the procedure for supervision of compliance with the European Code of Social Security and its Protocol, so that a degree of uniformity is achieved between supervision of the application of these instruments, on the one hand, and Convention No. 102, on the other.<sup>20</sup>

#### Ratification of Conventions

##### Nos. 102 and 128

32. Convention No. 102, which entered into force on 27 April 1955, has been ratified by 32 countries to date; 21 of these ratifications occurred since the general survey of 1961. Four States did not accept Part V of the Convention, concerning old-age benefit.<sup>21</sup>

33. Convention No. 128 entered into force on 1 November 1969 and by March 1989 had been ratified by 14 States, of which only one did not accept Part III concerning old-age benefit.

34. Detailed information on the States bound by these instruments is given in Appendix II of this Survey. It should be borne in mind that, under Article 45 of Convention No. 128, and in conformity with Article 75 of Convention No. 102, Part V of Convention No. 102 ceases to be binding on a member which has ratified Convention No. 128 and accepted obligations in respect of Part III of this Convention, in so far as no declaration under Article 38 of Convention No. 128 is in force.

#### Available information

35. One hundred and five States and 11 non-metropolitan territories have communicated reports under article 19 of the Constitution on Conventions Nos. 102 and 128 and Recommendation No. 131 and under article 22 on these Conventions when they have been ratified. Appendix III of this Survey contains detailed information on the countries which have sent such reports. The Committee has also taken into account observations made by employers' and workers'

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<sup>20</sup> Under article 74, paragraphs 4 and 5, the reports of the Contracting Parties to the Code and its Protocol must be sent to the appropriate body of the ILO, whose conclusions shall be examined by the appropriate bodies of the Council of Europe.

<sup>21</sup> One of these, Sweden, has ratified Convention No. 128, of which it has accepted all of the parts.

organisations to whom government reports have been communicated in accordance with article 23, paragraph 2, of the ILO Constitution.<sup>22</sup>

36. The nature and extent of the information available vary considerably from one country to another. Some reports are very comprehensive, while others give an inadequate or an incomplete picture of the situation. In this respect, the Committee should point out that the evaluation of the implementation of certain fundamental provisions of Conventions Nos. 102 and 128, and in particular those concerning coverage and the rate and review of benefit, has been made particularly difficult by the absence of statistical information. Except for the countries which have ratified one of these Conventions, very few governments indeed have supplied such information, although it was expressly requested in the report forms adopted by the Governing Body under article 19 of the Constitution. This lack of information can probably be attributed to the fact that such information is not always available, particularly in developing countries where statistical services are not yet fully operational. In any case, the Committee has, according to its usual practice, endeavoured to supplement the information supplied by governments in order to achieve the most possible complete evaluation of the implementation of the principles laid down in the instruments under consideration.

### Outline of the survey

37. The introduction is followed by Chapter I, dealing with the fundamental objectives of the instruments as regards old-age protection and with methods of protection. Chapter II deals with scope. Chapter III contains an analysis of the qualifying conditions for old-age benefit, while Chapter IV concerns the form, calculation and rate of benefit. Chapter V deals with the review of benefit, an issue of particular relevance today. Chapter VI examines various aspects, such as the financing, organisation and operation of social security schemes, the beneficiary's right of appeal, the principle of equal treatment and the suspension of benefit. Chapter VII of this Survey contains the Committee's conclusions.

38. As in the past, the Committee refers to the situation in individual countries by means of footnotes. In view of the large number of countries surveyed, these notes, which are intended to throw light on the scope and implementation of the various instruments, contain only the most representative examples and do not claim to be comprehensive.

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<sup>22</sup> The following organisations have sent their comments on the reports made under art. 19 of the Constitution: Austria: Austrian Congress of Chambers of Workers; Finland: Finnish Employers' Confederation (STK), Employment Confederation of Service Industries (LTK), Central Organisation of Finnish Trade Unions (SAK) and Confederation of Salaried Employees (TVK); India: Bhartiya Mazdoor Sangh; Sri Lanka: Employers' Federation of Ceylon; Turkey: Turkish Confederation of Employers' Associations.





## CHAPTER I

### BASIC OBJECTIVES AND METHODS OF PROTECTION

#### I. Basic objectives

39. Under both Article 25 of Convention No. 102 and Article 14 of Convention No. 128, it is considered a basic principle that each Member for which the Part relating to old-age benefit is in force shall secure to the persons protected the provision of old-age benefit.

40. It is already clear, if one considers the Preamble of the Constitution of the ILO and the Universal Declaration of Human Rights, for example, that the international community as a whole has long recognised the need to protect older persons. The vast majority of countries have therefore taken steps to set up a system of old-age protection. This trend has become even more pronounced since the Second World War and there are few countries today which do not have social protection in this field.<sup>1</sup> The number of countries without protection tends to decline and several governments have mentioned that they are studying the possibilities of setting up a social security system, often with ILO assistance.<sup>2</sup>

#### II. Methods of protection

41. Unlike the instruments adopted before 1945, which advocated social insurance as being the only method of protection for the

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<sup>1</sup> According to the reports communicated by the Governments and the information available at the Office, this appears to be the case for the following countries - where old-age protection only extends to public servants: Afghanistan, Bangladesh (according to the information communicated by the Government there is also a provident fund for plantation employees), Burma (the Government refers, however, to the old-age benefit programme for the Co-operative Society employee), Botswana, Ethiopia (the scheme also covers employees in nationalised enterprises), Malawi, Mozambique (the Government indicates that members of the armed forces are also covered, see also below, note 20 to para. 45), Sierra Leone, Somalia, Thailand, Zimbabwe.

<sup>2</sup> For example: Mozambique, Zimbabwe.

Furthermore, a draft of social security legislation applicable to workers in the private sector is being prepared in the United Arab Emirates.

implementation of social security,<sup>3</sup> both Convention No. 102 and Convention No. 128 have been drafted to be extremely flexible on this matter. As already stressed during preparatory work leading up to the adoption of Convention No. 102, a same general level of social security can be attained by different means.<sup>4</sup> The Conference therefore deliberately refused to adopt a rigid terminology which would have been ill-suited to the particularly wide range of national solutions, still less to the rapid and constant developments in systems of protection. Convention No. 102 merely stipulates, under Article 71, paragraph 1, that the cost of national systems should be borne by way of insurance contributions or taxation or both. It also contains, as does Convention No. 128, several provisions of a general nature concerning the organisation and running of social security schemes.<sup>5</sup> Finally, Article 6 of both instruments provides for the possibility, under certain circumstances, of taking account of insurance which is not compulsory by law for the persons to be protected.<sup>6</sup>

42. Conventions Nos. 102 and 128 therefore allow account to be taken of the two basic concepts that have developed in the field of old-age protection and social security in general: compulsory social insurance based on employers' and workers' contributions which may or may not be subsidised by the State; and protection, which, although also compulsory, is funded by general taxation and provided to the population as a whole. It may be seen, from examining national situations, that the majority of schemes are based on the principle of social insurance. Under such schemes, entitlement to benefits is contingent upon the period of contribution or employment credited to the insured person, irrespective of any criterion of needs or means; and the rates are usually related to the beneficiary's previous earnings. There are many countries in which the social insurance scheme covers all contingencies; however, even in countries that have not yet reached this stage because of their economic and social development, the existing branches include old-age benefits in most cases. In other countries, on the other hand, the State directly provides flat-rate benefits which are financed entirely or mainly by public funds. Old-age pensions under these schemes are usually paid to all members of the population who have reached a certain age, although account is often taken of various conditions related to the

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<sup>3</sup> For example: Article 1 of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) stipulates that "each Member ... undertakes to set up or maintain a scheme of compulsory old-age insurance which shall be based on provisions at least equivalent to those contained in this Convention". Article 1 of the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36) is identical.

<sup>4</sup> For instance, see: Objectives and minimum standards of social security, Report IV(1), International Labour Conference (ILC), 34th Session, 1951, p. 11.

<sup>5</sup> The financing and organisation of social security schemes will be examined in more detail in Chapter VI.

<sup>6</sup> See below, paras. 46-49.

beneficiary's residence, income or other means. Although there was originally a clear distinction between social insurance benefits and benefits provided as a public service, some of their intrinsic characteristics tend today to be blurred. Various methods are also often combined under national schemes. For instance, the legislation of some countries provides for a basic pension, usually at a flat rate for all residents, and for a complementary or supplementary pension for all or part of the economically active population.<sup>7</sup>

43. In many countries, alongside the general social security schemes, there are special schemes covering certain categories of workers, such as the self-employed,<sup>8</sup> farmers and/or agricultural workers,<sup>9</sup> miners<sup>10</sup> and seafarers.<sup>11</sup> The great majority of governments that submitted reports also pointed out that they have a special pension scheme for public servants, as public authorities often wish to provide preferential conditions for their staff.<sup>12</sup> In some countries, public servants are still the only occupational category to receive pensions.<sup>13</sup>

44. The various methods of protection described above are all likely to meet the standards contained in Conventions Nos. 102 and 128. However, in several countries, the legislation provides for workers' old-age protection by way of provident funds which also cover the contingencies of disability and loss of the bread-winner.<sup>14</sup> As a rule, these funds are financed by workers' and employers' contributions and are administered by the State; they pay out a lump sum to beneficiaries when they reach a prescribed age and fulfil various conditions. This lump sum is usually equal to the sum of contributions, plus interest, which is credited to the worker's account. Unlike in social insurance, there is therefore no pooling of risk among the participants. Although they are funded by contributions and administered by the State, these funds do not comply with the objectives stated by Convention No. 102 and Convention

<sup>7</sup> See below, para. 65, in particular.

<sup>8</sup> For example: Argentina, Belgium, Finland (as to supplemental benefit), Turkey.

<sup>9</sup> For example: Brazil, Finland (as to supplemental benefit), Federal Republic of Germany, Poland, Spain.

<sup>10</sup> For example: Austria, France, German Democratic Republic, Federal Republic of Germany, Poland.

<sup>11</sup> For example: Finland (as to supplemental benefit), France, Norway, Spain.

<sup>12</sup> In view of the specific characteristics of various national schemes, Convention No. 102 contains special provisions for seafarers and Convention No. 128 contains special provisions for both public servants and seafarers, which will be examined in greater detail in Chapter II.

<sup>13</sup> See above, note 1 to para. 1, and below, note 14 to para. 44.

<sup>14</sup> For example: Ghana, India (the Government also refers to state legislation generally based on the principle of public assistance), Indonesia, Kenya, Malaysia, Nepal, Nigeria, Papua New Guinea, Singapore, Sri Lanka.

No. 128, in so far as they do not, in principle,<sup>15</sup> guarantee benefits in the form of periodical payments, as provided for by these instruments.<sup>16</sup> These schemes may constitute a first step towards a more comprehensive protection of workers - as borne out by the conversion, in several countries, of provident funds into pension schemes.<sup>17</sup> Indeed, several countries are at present envisaging converting their provident funds into social security schemes.<sup>18</sup> Protection granted under various national schemes is often supplemented by specific social protection measures to help those without means who do not meet the statutory qualifying conditions for old-age benefits, or who are paid benefits that are inadequate to cover their basic needs.

45. Alongside statutory old-age protection schemes, there are, in many countries, private pension schemes created either within the enterprise or at occupational or inter-occupational level. Whether these are unilaterally set up by employers for their staff or - as is often the case in Europe - they result from collective bargaining, these schemes pay workers benefits which are added to those under the statutory social security system; in some instances, they even partially replace statutory benefits.<sup>19</sup> According to information communicated by governments, private pension schemes constitute the only form of workers' protection in the private sector in some countries.<sup>20</sup>

46. In order to take account of these private schemes and allow for flexibility, Convention No. 102 and Convention No. 128 both make special provisions under their Article 6. They state that protection effected by means of insurance, which is not compulsory by legislation, may be taken into consideration in the case of old-age

<sup>15</sup> In some countries, however, the worker may opt to convert his lump sum into a pension.

<sup>16</sup> See below, para. 128.

<sup>17</sup> For example: Bolivia, Dominica, Ecuador, Iraq, Seychelles.

<sup>18</sup> For example: Ghana, Kenya, Indonesia, Sri Lanka.

<sup>19</sup> In the United Kingdom, the Social Security Pensions Act of 7 April 1975 set up, in addition to the national flat-rate benefit scheme, a supplementary earnings-related pension scheme (SERPS), which allows for "contracting-out". In return for this possibility of leaving the state scheme, occupational schemes must commit themselves to providing, upon retirement, a guaranteed minimum pension (GMP). However, since 1 July 1988, employees may, instead of remaining within the supplementary pension scheme set up by the State or within the occupational pension scheme, make their own pension arrangements. If they opt for personal pension schemes instead of supplementary pension schemes, beneficiaries are no longer entitled to a guaranteed minimum pension.

<sup>20</sup> For example Mozambique: the Government points out that there is a voluntary scheme extending to 30 enterprises which have their own special social security schemes and cover approximately 13,000 employees. The pensions granted under these schemes vary from one enterprise to another.

benefits,<sup>21</sup> when they fulfil the following conditions. First, the protection provided for under these provisions can only be taken into account in the case of an insurance scheme. Schemes where a policy is taken out with a life insurance or pension insurance company for a specific group of persons may therefore, in principle, be taken into account, as may pension funds in the strict sense of the term, whose regulations establish the conditions relating to coverage, benefits and contributions, etc.; in this context, benefits that are merely paid out by the employer, without insurance or reinsurance, do not comply with the above-mentioned Article 6. Second, these insurance schemes must be "supervised by the public authorities or administered, in accordance with prescribed standards,<sup>22</sup> by joint operation of employers and workers", to ensure certain guarantees as to their administration. Third, these schemes must cover a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee to ensure that they cover to a very great extent those with average or low occupational earnings. Finally, these schemes must comply, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention; i.e., in the case of old-age benefit, to the provisions contained in Part V of Convention No. 102 and Part III of Convention No. 128, as well as to the general provisions in these instruments. When these conditions are met, it is possible, under Article 6 of Conventions Nos. 102 and 128, to add together persons protected under non-compulsory insurance schemes and those under compulsory statutory schemes, in order to apply the provisions contained in these instruments as to coverage. Furthermore, when occupational schemes cover the same group of persons as the statutory schemes, the supplementary benefits paid by the voluntary insurance schemes may also be taken into account to reach the level prescribed by the instruments.

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<sup>21</sup> According to Article 6 of Convention No. 102, protection effected by means of insurance which is not compulsory by national laws for the person to be protected may be taken into account for the following branches: medical care, sickness benefit, unemployment benefit, old-age benefit, maternity benefit (in so far as it relates to medical care), invalidity benefit and survivors' benefit. As regards Article 6 of Convention No. 128, account may be taken in this Article of all the long-term benefits provided for by this instrument.

<sup>22</sup> According to Article 1, subparagraph (a) of Convention No. 102 and Article 1, subparagraph (b) of Convention No. 128, "the term 'prescribed' means determined by or in virtue of national laws or regulations". Furthermore, Article 1, subparagraph (a) of Convention No. 128 stipulates that "the term 'legislation' includes any social security rules as well as laws and regulations". Paragraph 1(a) and (b) of Recommendation No. 131 contains similar definitions.

47. Although many countries<sup>23</sup> have mentioned the existence of private old-age protection schemes, only very few<sup>24</sup> have referred to them as being a method of protection likely to give effect to the instruments under consideration; therefore, governments have not provided information necessary to make it possible to assess whether these schemes comply with the conditions under Article 6 of Convention No. 102 or Convention No. 128. Some countries even mentioned that this was not the case.<sup>25</sup> Others specified that they had not taken account of private protection schemes in their replies.<sup>26</sup>

48. The lack of detailed information from governments on the existence of private insurance schemes may be explained by the fact that the extent of protection they offer is extremely variable - even when they are co-ordinated with the statutory scheme - as they often depend upon the personnel policy within the enterprise. The significance of this type of protection, especially in the industrialised countries where private schemes cover a large part of

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<sup>23</sup> For example: Australia, Bangladesh, Burundi, Canada, Grenada, Honduras, Madagascar, Malaysia, Mozambique, New Zealand, Nigeria, Panama, Spain, Suriname, Sweden, Trinidad and Tobago, Zambia, Zimbabwe.

<sup>24</sup> As the Government of Bolivia, which has ratified Convention No. 128, referred to a supplementary and voluntary social security scheme with a view to applying the Convention, particularly Part III concerning old-age benefit, the Committee of Experts asked the Government to provide information on the nature and scope of this scheme. Furthermore, the Government of Canada mentioned employer-pension plans which cover about half of the labour force. Such plans complete the legal schemes (universal pension and income-related pension) and must be in conformity with the provisions of federal law or relevant provincial law in the area of social security. With regard to the Government of the Philippines, it mentioned in its report that private occupational insurance schemes are usually a matter for collective agreement or clauses in employment contracts and company policy. It adds that the protection granted in this way, which is usually higher than that provided for by legislation, fulfils the conditions prescribed by Article 6 of Convention No. 102 and Convention No. 128, without however providing any specific information on this matter. The Government of the United Kingdom provided a certain amount of information on occupational pension schemes. Fifty per cent of all pensioners receive pensions under these schemes. Amongst those who have recently retired, the figure is as high as 70 per cent. See also above, note 19 to para. 45. Finally, the Government of Sweden indicates that practically all employees on the labour market are covered by collective agreements on retirement pension supplementing the Basic Pensions Scheme and the Supplementary Pensions Scheme (ATP). It adds that this supplement varies generally between 10 and 12 per cent of the previous earnings.

<sup>25</sup> For example: Chad, Grenada, Zambia, Zimbabwe.

<sup>26</sup> For example: Central African Republic, Colombia, Cyprus, Finland, Federal Republic of Germany, Japan, Mauritius, Morocco, New Zealand, Spain, Trinidad and Tobago.

the working population, should not however be overlooked because of this lack of information.<sup>27</sup> In several countries, complementary schemes which were initially agreed upon under collective agreement have been made legally binding for all workers or some categories of workers,<sup>28</sup> although it is true that, in other countries, however, the percentage of workers benefiting from these schemes is still low.

49. Article 6 of Convention No. 102 and Convention No. 128 may also apply to voluntary statutory schemes. Indeed, there are many social security laws and regulations enabling certain categories of workers which they do not or no longer cover, to join or to continue to belong to the general scheme or special schemes, when specific conditions are fulfilled.<sup>29</sup>

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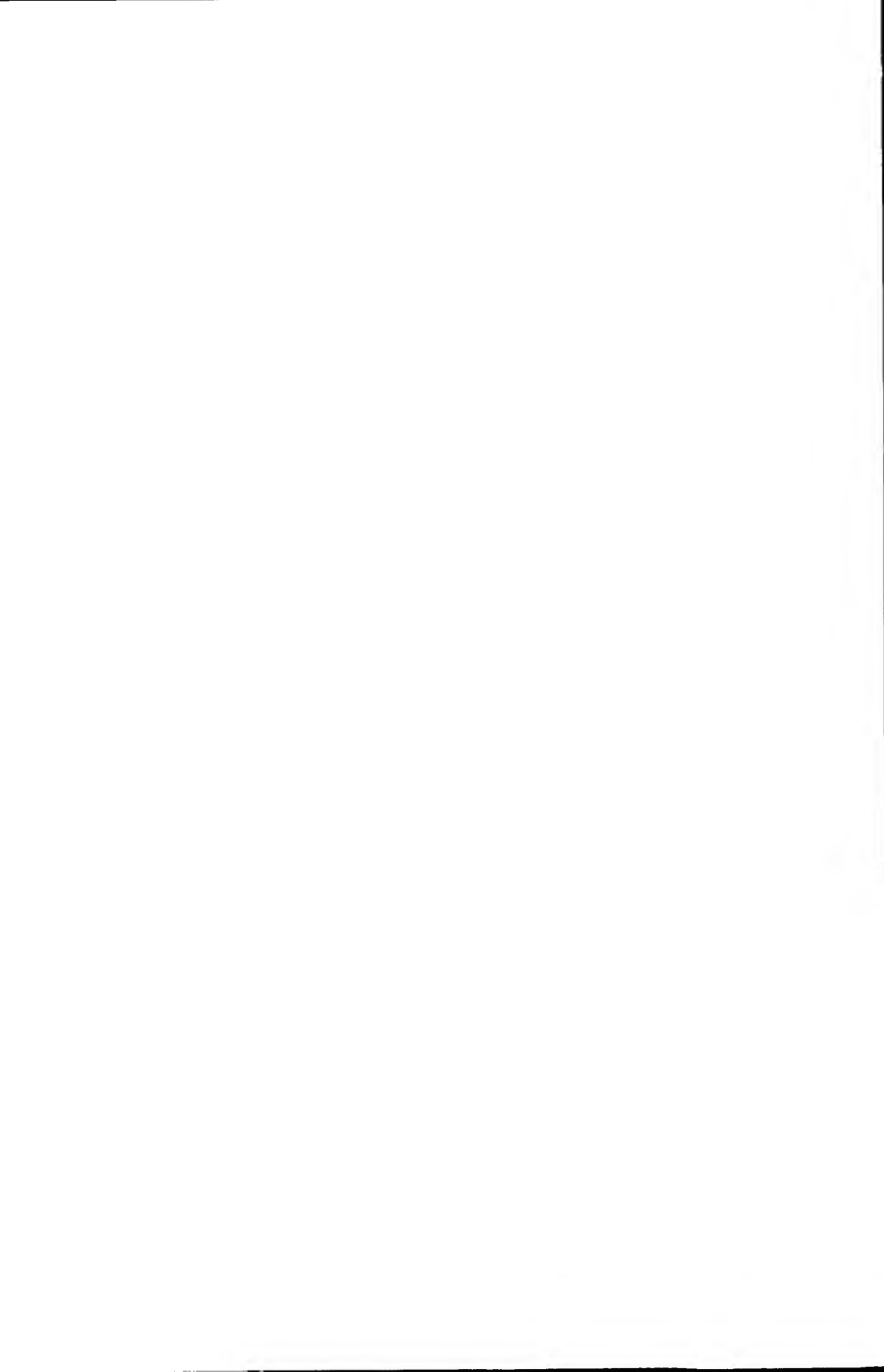
50. The basic objectives and possible methods of protection contained in these instruments therefore represent a unified set of ideals which first originated with the emergence of modern social security itself - and which are still valid today. There is no denying that the objectives of Conventions Nos. 102 and 128 are adhered to more closely in the case of compulsory social insurance schemes; however, the role of voluntary schemes, which are extremely widespread in some countries, has not been overlooked - far from it - provided, of course, that they afford equivalent protection to that offered under statutory schemes. It may therefore be seen that these instruments, when defining old-age protection, not only succeed in clearly setting out objectives but allow for a certain amount of flexibility and are realistic in their approach to the various methods of protection available.

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<sup>27</sup> For example: Bolivia (the Government pointed out that all occupational sectors under the compulsory social security schemes are incorporated into the complementary scheme); Federal Republic of Germany; Netherlands.

<sup>28</sup> For example: France (Act of 29 December 1972 to generalise supplementary pensions for employees and former employees); Finland (Act of 8 July 1961, in particular); Sweden; Switzerland (Federal Act of 25 June 1982 respecting old-age, survivors' and disability insurance).

<sup>29</sup> For example: Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 3, subs. 1); Cyprus (Social Insurance Law of 1980, ss. 3(c) and 15, subs. (1)); Federal Republic of Germany (Federal Insurance Code, s. 1233); Guyana (National Insurance and Social Security Act of 1969, s. 15, subs. (1)); Kuwait (Social Insurance Act of 1976, s. 53); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 3).





## CHAPTER II

### SCOPE

#### I. Persons covered

##### 1. International standards

51. In order to maintain a degree of flexibility, both Convention No. 102 and Convention No. 128 avoid defining protected persons in terms of strictly legal concepts. Rather than define their scope in terms of branches of economic activity and the legal position of persons working in the sectors concerned, as was the practice in Conventions adopted before the war,<sup>1</sup> these instruments largely refer to statistical criteria and offer governments a choice of alternatives. Thus, both Article 27 of Convention No. 102 and Article 16 of Convention No. 128 lay down three criteria according to which their scope may be defined by reference to employees, or the economically active population, or residents. The choice of criteria is left to the States.

52. If the criterion of employees is applied, under Article 27(a) of Convention No. 102, the persons protected must comprise prescribed classes of employees constituting not less than 50 per cent of all employees, while under Article 16, paragraph 1(a), of Convention No. 128 all employees, including apprentices, must be covered.<sup>2</sup> If the criterion of the active population is applied, the persons protected must comprise prescribed classes of the economically active population constituting not less than 20 per cent of all residents, under Article 27(b) of Convention No. 102, and not less

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<sup>1</sup> Under Article 2, paragraph 1, of Convention No. 35 mentioned above, compulsory old-age insurance applies to manual and non-manual workers, including apprentices, employed in industrial or commercial undertakings or in the liberal professions, and to outworkers and domestic servants. Article 2, paragraph 1, of Convention No. 36 contains an analogous provision for agricultural workers. Periodical reports on the application of Conventions Nos. 35 to 40 to the 40th Session of the International Labour Conference (1957) indicated that certain countries having old-age, invalidity and survivors' benefit schemes refrained from ratifying the Conventions because these schemes exclude certain categories of workers to whom the Conventions apply.

<sup>2</sup> However, see above, para. 58.

than 75 per cent of the whole economically active population,<sup>3</sup> under Article 16, paragraph 1(b), of Convention No. 128. Paragraph 2(b) of Recommendation No. 131, on the other hand, advocates the extension of protection to all economically active persons.<sup>4</sup> Lastly, the application of the third criterion, referring to residents, both under Article 27(c) of Convention No. 102 and Article 16, paragraph 1(c), of Convention No. 128, requires protection of all residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the relevant provisions of these Conventions.

53. Article 1(b) of Convention No. 102 and Article 1(d) of Convention No. 128 define the term "resident" as a person ordinarily resident in the territory of the Member. The term "ordinarily" is used in order to exclude persons who are only occasionally or temporarily in the territory of the Member. It should also be noted that the definition of the term "resident" draws no distinction between nationals and non-nationals, so that the application of clause (c) of Article 27 of Convention No. 102 or clause (c) of paragraph 1 of Article 16 of Convention No. 128 necessarily implies protection of non-national residents, or at least those whose means do not exceed the limits prescribed.<sup>5</sup> As regards the question of whether the term "resident" covers non-nationals who are not lawfully resident, which was raised by one government,<sup>6</sup> it should be recalled that Article 6 of the Migration for Employment Convention (Revised), 1949 (No. 97), which lays down the principle of equal treatment in respect of social security, inter alia, applies to immigrants who are lawfully within the country's territory.<sup>7</sup> This approach was upheld by the Conference in 1975, with the adoption of the Migrant Workers

<sup>3</sup> Note that the criterion relating to the economically active population laid down in Convention No. 128 is expressed in terms of a percentage of the economically active population, while Convention No. 102 refers to a percentage of all residents; in the first case, however, the proportion is 75 per cent, while in the second it is only 20 per cent.

<sup>4</sup> Paragraph 2(a) of Recommendation No. 131 concerns the gradual extension of benefit, including old-age benefit, to persons whose employment is of a casual nature.

<sup>5</sup> The fact that Convention No. 128, unlike Convention No. 102, contains no provision concerning equal treatment for non-national residents is immaterial. In this regard, see ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions, Report IV(2), ILC, 51st Session, 1967, p. 13.

<sup>6</sup> Australia.

<sup>7</sup> Article 6, paragraph 1(b), of Convention No. 97 stipulates that "each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality ..., to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters: ... (b) social security ...".

(Supplementary Provisions) Convention (No. 143).<sup>8</sup> The Committee therefore considers that the term "resident" is intended by Conventions Nos. 102 and 128 to be read as including only those non-nationals who are lawfully resident in the country of immigration.<sup>9</sup>

54. The concept of the economically active population, on the other hand, is defined neither in Convention No. 102 nor in Convention No. 128. However, according to international recommendations concerning labour statistics, this term comprises both the employed and the unemployed.<sup>10</sup>

#### Flexibility clauses

55. By referring to statistical criteria for defining their scope and by offering States a choice of options, the Conference aimed for sufficient flexibility when drafting its instruments. This objective was also furthered by including a number of provisions allowing exceptions, most of which are temporary.

#### Temporary exceptions

56. One of the first clauses allowing temporary exceptions concerns developing countries. When Convention No. 102 was adopted, it was realised that some of its provisions, particularly those concerning its scope, might be too stringent for the developing countries to comply with them in the near future.<sup>11</sup> This is why

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<sup>8</sup> Part II of Convention No. 143, which concerns equality of opportunity and treatment, provides in Article 10 that "Each Member for which the Convention is in force undertakes to declare and to pursue a national policy designed to promote and guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect ... of social security, ... for persons who as migrant workers or as members of their families are lawfully within its territory."

<sup>9</sup> In its General Survey of 1977 relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 128), the Committee pointed out that "a requirement of lawful residence in the country or of lawful authorisation to be in employment does not appear to be contrary to this principle; where such conditions are imposed the difference in treatment does not appear to be motivated by the alien status of the persons concerned but rather by their legal position under regulations governing entry into and residence in the country, or access to employment." (para. 57, p. 20).

<sup>10</sup> See, inter alia, ILO: Resolution I concerning statistics of the economically active population, employment, unemployment and underemployment, 13th International Conference of Labour Statisticians, Geneva, 1982, paras. 5 to 10. See also the report forms for Conventions Nos. 102 and 128 approved by the Governing Body of the ILO in accordance with art. 22 of the Constitution.

<sup>11</sup> See Record of Proceedings, ILC, 34th Session, Geneva, 1951, Report of the Committee on Social Security, p. 587, para. 42.

Article 3, paragraph 1, of the Convention allows States whose economy is "insufficiently developed" to avail themselves, by a declaration appended to their ratification, of the temporary exceptions provided for in certain Articles of the Convention, including Article 27(d) as far as scope is concerned, in relation to Part V relating to old-age benefit. Under this provision, the persons protected must comprise, "where a declaration made in virtue of Article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more". Convention No. 128 has maintained and extended the possibility for States "whose economy is insufficiently developed" to avail themselves of temporary exceptions (Article 4). Thus, Article 16, paragraph 2, offers the following alternative to States which have made a declaration in virtue of Article 4: protected persons must comprise either (a) prescribed classes of employees, constituting not less than 25 per cent of all employees; or (b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings.<sup>12</sup> As the exceptions allowed to developing countries are temporary under the above-mentioned provisions of Conventions Nos. 102 and 128, paragraph 3 of Article 4 of Convention No. 128 states expressly that each member which has availed itself of such a clause must increase the number of employees protected as circumstances permit. Moreover, under Article 3, paragraph 2, of Convention No. 102 and Article 4, paragraph 2, of Convention No. 128, each member which has availed itself of such temporary exceptions when ratifying the Conventions must state in its reports on the application of the instrument concerned either that the reason for its decision subsists or that it renounces the right to avail itself of the exception.

57. The Office had originally suggested that Convention No. 128 could be ratified separately for agricultural and non-agricultural activities, but the principle of global ratification subsequently prevailed in discussions at the Conference.<sup>13</sup> However, in order to take into account the technical, administrative and financial problems which could arise in the extension of social security to agriculture, a compromise solution was reached in Article 38, paragraph 1, of the Convention, which provides that any State "whose legislation protects employees may, by a declaration accompanying its ratification, temporarily exclude from the application of this Convention the employees in the sector comprising agricultural occupations who are not yet protected by its legislation at the time of the ratification". Thus, States whose legislation protects employees may

<sup>12</sup> Article 1(c) of Convention No. 128 stipulates that "the term 'industrial undertaking' includes all undertakings in the following branches of economic activity: mining and quarrying; manufacturing; construction; electricity, gas, water and sanitary services; and transport, storage and communication".

<sup>13</sup> See in particular Record of Proceedings, ILC, 51st Session, Geneva, 1967, First Report of the Committee on Social Security, p. 689, para. 13.

avail themselves of this provision. However, as the exception only applies to categories of agricultural employees who were not yet protected at the time of the ratification, it cannot be applied to categories already protected by legislation, but whose protection is inadequate.<sup>14</sup> This exception being a temporary one, States are required under paragraph 3 of Article 38 to increase the number of employees protected in the agricultural sector to the extent and with the speed that the circumstances permit. In addition, they are bound under paragraph 2 of the same Article to indicate in their reports on the application of the Convention any measures taken or envisaged to give effect to the provisions of this instrument in respect of such employees and to furnish appropriate explanations if there is no change to report.

#### Other exceptions and exclusions

58. Under Article 37 of Convention No. 128, certain categories of workers may be excluded from its application if employees are protected by legislation. The following persons may be excluded under the terms of this provision: (a) persons whose employment is of a casual nature; (b) members of the employer's family living in his house in respect of their work for him; (c) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those in the above-mentioned categories. While the first two exclusions refer to specific categories of workers who are often excluded from social security schemes applicable to employees, the third, on the other hand, allows exclusion of any category of workers, provided that they do not exceed the percentage indicated.

59. As already noted, many countries have special old-age schemes for public servants and seafarers. It is in order to take account of the particular features of such schemes that Article 39 of Convention No. 128 provides for the possibility of excluding these categories of workers from its application where they are protected "by special schemes which provide in the aggregate benefits at least equivalent" to those required by this instrument. Thus a State can only avail itself of paragraph 1 of Article 39 if certain conditions are met regarding the extent of protection offered by special schemes. Moreover, the decision to exclude seafarers, including sea fishermen, and/or public servants must be taken at the time of ratification, in the form of a declaration accompanying ratification.<sup>15</sup> As for

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<sup>14</sup> See in particular Record of Proceedings, ILC, 51st Session, Geneva, 1967, First Report of the Committee on Social Security, p. 699, para. 89.

<sup>15</sup> Paragraph 2 of Article 39 of Convention No. 128 specifies that, where a declaration under paragraph 1 of the same Article is in force, the State "may exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in ... paragraph 2, subparagraph (b), of Article 16". According to paragraph 3 of Article 38, States may subsequently reverse their decision by notifying the Director-General of the ILO.

Convention No. 102, by virtue of Article 77 it applies neither to seamen nor to sea fishermen.<sup>16</sup> However, it contains no specific provision for exception as regards public servants, agricultural workers or other categories of workers, such as members of the employer's family or casual employees. On the other hand, Convention No. 102 sets far lower standards for its scope than those of Convention No. 128, and in most cases it should be possible to achieve the percentages prescribed in subparagraphs (a) and (b) of Article 27 of Convention No. 102 without having to take these categories of workers into account.

## 2. National situations

60. In the vast majority of developing countries, coverage under old-age protection schemes is based on the existence of an employment relationship.<sup>17</sup> The legislation applies to workers or employees in an employment relationship or working under an employment contract or to persons undertaking to place their occupational activity, in exchange for remuneration, under the authority of another person or a legal entity. This last formula is often used by the French-speaking African countries, whose social security legislation refers to the Labour Code for a definition of the term "employees".

61. In some of these countries,<sup>18</sup> however, old-age protection is often limited to persons working in enterprises employing a prescribed number of workers, or in those where the total wages paid exceed a

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<sup>16</sup> Paragraph 2 of Article 77 of Convention No. 102 provides that States may "exclude seamen and sea fishermen from the number of employees, of the economically active population or of residents, when calculating the percentage of employees or residents protected in compliance with any of Parts II to X covered by its ratification".

<sup>17</sup> For example: Belize (Social Security Ordinance 1979, s. 3); Benin (Ordinance No. 73-3 to provide for the establishment and organisation of the Benin Social Security Fund, 1973, s. 2, and Labour Code, s. 3); Bolivia (Social Security Code of 1956, s. 6); Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 3, and Labour Code (ss. 3 and 4)); Cameroon (Law of 1969 instituting old-age, invalidity and survivors' pension insurance, s. 2, and Labour Code, s. 1); Equatorial Guinea (Social Security Act 1984, s. 7, and transitional provision No. 1); Honduras (Social Insurance Act, s. 3); Iraq (s. 3 of Act No. 39 of 1971 respecting workers' pensions and social security, read in conjunction with s. 2 of the Workers' Pensions and Social Security Law, No. 112 of 1979); Mali (Social Insurance Code, ss. 2 and 151); Nicaragua (Social Security Act 1982, s. 5, and government report); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 2); Saint Lucia (National Insurance Act 1978, s. 25); Senegal (Decree No. 75-455 of 1975, s. 5).

<sup>18</sup> For example: Iraq (Ordinance No. 599 of 1978); Jordan (government report); Pakistan (Employees' Old-Age Benefits Act, 1976, s. 1.4.i.).

certain amount. Moreover, the legislation often excludes certain occupational categories from its scope or refers to implementing provisions concerning which it is not always clear from the available information whether or not they have actually been adopted. In some countries, this is true of agricultural workers,<sup>19</sup> domestic workers,<sup>20</sup> homeworkers<sup>21</sup> and family workers,<sup>22</sup> as well as casual,<sup>23</sup>

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<sup>19</sup> For example: Bolivia (Social Security Code of 1956, s. 253); Colombia (under s. 1 of Agreement No. 224 of 1966, agricultural workers employed in non-mechanised enterprises are governed by implementing regulations); Panama (under s. 4(f) of Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, only agricultural workers employed for over six months are members of the social insurance scheme).

<sup>20</sup> For example: Bolivia (Social Security Code of 1956, s. 253); Iraq (s. 3 of the Workers' Pensions and Social Security Law, No. 39 of 1971, read in conjunction with s. 3(f) of the Workers' Pensions and Social Security Law, No. 112 of 1969); Jordan (government report); Nicaragua (according to information supplied by the Government, domestic workers temporarily employed in the rural sector are excluded from protection); Yemen (Social Insurance Act of 1987, s. 47).

<sup>21</sup> For example: Belize (Social Security Ordinance 1979, s. 3, and first Schedule, Part II, 10); Iraq (s. 3 of the Workers' Pensions and Social Security Law, No. 39 of 1971, read in conjunction with s. 3(h) of the Workers' Pensions and Social Security Law, No. 112 of 1969); Venezuela (Social Insurance Act, s. 3(a)).

<sup>22</sup> For example: Belize (Social Security Ordinance 1979, s. 3, and first Schedule, Part II, 4); Iraq (s. 3 of the Workers' Pensions and Social Security Law, No. 39 of 1971, read in conjunction with s. 3(b) of the Workers' Pensions and Social Security Law, No. 112 of 1969); Nicaragua (Social Security Act of 1982, s. 6(c); affiliation is optional for family workers who do not receive remuneration); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 4(a)).

<sup>23</sup> For example: Belize (Social Security Ordinance 1979, s. 3, and first Schedule, Part II, 1 to 3); Bolivia (Social Security Code of 1956, s. 10(a)); Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 3, subs. 4); Colombia (Agreement No. 224 of 1966, s. 3, subs. 1); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 4(c)); Togo (Ordinance No. 39 of 1973 to institute a Social Security Code, s. 3, subs. 4); Venezuela (Social Insurance Act, s. 3(c)); Yemen (Social Insurance Act, s. 47).



temporary,<sup>24</sup> seasonal workers<sup>25</sup> or when the earnings are below a prescribed minimum.<sup>26</sup> However, there seems to have been a tendency in the past to extend compulsory protection gradually to these categories.<sup>27</sup> In some Latin American countries, coverage has expanded in geographical terms, with the social security scheme being gradually extended to the entire country.<sup>28</sup> Coverage may also be extended by stages to certain establishments; thus, one country reduced the minimum number of employees required for an enterprise to be covered by social insurance from 100 to 20 workers.<sup>29</sup> It should be noted that even if the legislation does not provide expressly for the exclusion of certain categories of workers, difficulties stemming from the definition of the term "employees" may arise in practice. This type of problem also occurs in certain countries of French-speaking Africa, particularly in the case of persons hired on a subcontracting basis.

62. The extension of old-age protection to the self-employed allows the economically active population as a whole to be covered. Industrialised countries achieved this some years ago at least to a great extent. In an increasing number of developing countries, legislation protects the self-employed in addition to employees.<sup>30</sup> The extent to which self-employed persons have been integrated in

<sup>24</sup> For example: Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 3, subs. 4); Colombia (Agreement No. 224 of 1966, s. 3, subss. 2 and 3); Iraq (s. 3 of the Workers' Pensions and Social Security Law, No. 39 of 1971, read in conjunction with s. 3(c) of the Workers' Pensions and Social Security Law, No. 112 of 1969); Rwanda (the Government indicates that protection covers all employees except day-labourers); Togo (Ordinance No. 39 of 1973 to institute a Social Security Code, s. 3, subs. 4); Venezuela (Social Insurance Act, s. 3(b)).

<sup>25</sup> For example: Iraq (s. 3 of the Workers' Pensions and Social Security Law, No. 39 of 1971, read in conjunction with s. 3(c) of the Workers' Pensions and Social Security Law, No. 112 of 1969); Panama (Legislative Decree No. 14 of 1954 to amend Act No. 134 of 1943 respecting the institution of the Social Insurance Fund, s. 4(d)).

<sup>26</sup> For example: Mauritius (National Pensions Act of 1976, s. 20 and Appendix I concerning contributory pensions).

<sup>27</sup> In Colombia, for example, Act No. 11 of 1988 provides for the extension of social security to domestic workers, even if they are paid less than the minimum wage.

<sup>28</sup> For example: Bolivia, Colombia and Nicaragua.

<sup>29</sup> Saudi Arabia (Decision No. 13 of 1975 of the Minister of Labour and Social Affairs).

<sup>30</sup> For example: Algeria (Act No. 83-11 of 1983 respecting social insurance, ss. 3 and 4; Act No. 83-12 of 1983 respecting retirement, s. 4; Decree No. 85-33 of 1985 to prescribe the list of workers treated as salaried employees for purposes of social security; Decree No. 85-35 of 1985 respecting the social security of persons engaged in an occupational activity who are not employees);

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national social security schemes varies from one country to another.<sup>31</sup> In this respect, one government has stated that it is currently considering the question of coverage of farmers and fishermen, who make up most of the economically active population.<sup>32</sup> In some countries, the legislation excludes self-employed persons earning a low income or offers them the option not to affiliate.<sup>33</sup>

63. A variety of methods have been adopted to provide protection for the self-employed. In some countries they are covered by the general scheme applicable to employees,<sup>34</sup> often with certain special arrangements. In others, the self-employed have their own special scheme.<sup>35</sup> In still other countries, they are included in various special schemes according to their occupational category.<sup>36</sup> More

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Argentina (Act No. 18.038 of 1968 concerning a new pension scheme for self-employed workers); Barbados (National Insurance and Social Security Act 1966, s. 13 and the National Insurance and Social Security (Self-Employed Persons) Regulations, 1970, s. 5); Brazil (Decree No. 83080 of 1979 to approve the regulations governing social welfare benefits, ss. 1 to 3 and 275); Gabon (Act No. 10/82 giving effect to the Social Guarantee Code, s. 4); Guyana (National Insurance and Social Security (Self-Employed Persons) Regulations 1971, s. 3); Libyan Arab Jamahiriya (Social Security Law, No. 13 of 1980, s. 31); Philippines (Social Security Law, ss. 9 and 9-A); Tunisia (Decrees Nos. 82-1359 and 82-1360 of 1982); United Kingdom (Bermuda) (Contributory Pensions Act, 1970, s. 2).

<sup>31</sup> In the Federal Republic of Germany, for example, some categories of self-employed persons are not obliged by law to affiliate, but may either obtain compulsory insurance coverage at their request or apply for voluntary affiliation. In the Philippines, under s. 9-A of the Social Security Law, the competent authority may issue regulations for the extension of social security to certain categories of self-employed persons (see also the following note).

<sup>32</sup> Philippines: according to information provided by the Government, a Bill concerning the extension of social security to these two categories of workers was to have been submitted to Congress in the very near future.

<sup>33</sup> For example: Philippines (under s. 9-A of the Social Security Law, coverage is compulsory for self-employed workers earning 1,800 pesos per year or more); United Kingdom (under s. 1, subs. (2) and s. 7, subs. (5) of Ch. 14 of the Social Security Act 1975, self-employed persons whose earnings fall below a certain amount may be exempt from the liability to pay contributions); United States (42 CFR, Part 404.1096(c): self-employed persons are not covered in respect of years in which their annual earnings fell below 400 dollars).

<sup>34</sup> For example: Algeria, Barbados, Cyprus, Guyana, Libyan Arab Jamahiriya, Luxembourg, Philippines, United Kingdom, United States.

<sup>35</sup> For example: Belgium, Turkey.

<sup>36</sup> For example: France (pension insurance for the self-employed is organised according to four categories: artisans, industry and trade, liberal professions, farmers); Italy.

rarely, some categories of self-employed persons are covered by a special scheme, while others are included in the general scheme.<sup>37</sup>

64. In many countries with centrally planned economies, where there are fewer self-employed persons because of the socio-economic structure, there is a main scheme for employees.<sup>38</sup> In some of these countries, the scheme also applies to other categories.<sup>39</sup> Protection can thus be afforded under the scheme to members of production co-operatives, the liberal professions, artists, journalists and architects, students and agricultural workers, as the case may be. Other countries have adopted special schemes for workers employed in certain sectors, such as the railways and mining, or for certain occupational categories.<sup>40</sup> In many countries, the collectivisation of agriculture has resulted in special pension funds being set up for members of collective farms or agricultural co-operatives.<sup>41</sup>

65. Lastly, a number of countries have an old-age protection system designed to cover the entire population.<sup>42</sup> In most cases, protection covers both national and foreign residents.<sup>43</sup> In one country, however, the scheme mentioned by the Government as giving effect to the provisions of the instruments under consideration appears to apply only to nationals.<sup>44</sup> In some countries, benefits are paid to residents irrespective of their means.<sup>45</sup> In others, on the other hand, benefits, or a part of them, may be reduced if the income or property of the beneficiary exceeds prescribed limits.<sup>46</sup>

<sup>37</sup> For example: Austria, Federal Republic of Germany.

<sup>38</sup> In the USSR, according to information provided by the Government, 70 per cent of pensions are paid under national pension legislation.

<sup>39</sup> For example: Bulgaria, German Democratic Republic, Hungary, USSR.

<sup>40</sup> In Poland, for example, there are special schemes for railway and mineworkers, craftsmen and other self-employed persons, artists, farmers working their own land, persons working other than under an employment relationship, etc. In Romania, there are different laws governing the pensions of members of agricultural production co-operatives, persons farming their own land and lawyers and military personnel.

<sup>41</sup> For example: Byelorussian SSR, Poland, Romania, USSR.

<sup>42</sup> For example: Australia, Canada, Denmark, Finland, Iceland, Japan, Mauritius, Netherlands, New Zealand, Norway, Switzerland.

<sup>43</sup> However, protection of foreign residents may be subject to special residence requirements; see below, Ch. VI.

<sup>44</sup> Qatar.

<sup>45</sup> For example: Norway, Sweden, Switzerland.

<sup>46</sup> For example: Australia (Social Security Act 1947, ss. 4, 8 and 33, inter alia, and government report: pension is subject to both an income test and an assets test (although certain assets are not taken into account); the test which would result in the greatest reduction is applied. In both cases, the beneficiary is entitled to a minimum amount exempt from reduction. If this minimum is not reached, the beneficiary may receive credit up to a certain amount); Canada  
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Under these schemes, the amount of benefit does not generally depend on the occupational earnings of the person concerned,<sup>47</sup> but many countries have adopted legislation instituting a complementary pension scheme or a pension supplement, the amount of which depends on the income earned during the pensioner's working life.<sup>48</sup> Such complementary schemes usually cover the economically active population. In one country the amount of supplementary benefit which only covers employees depends on the period of insurance, and not on previous earnings.<sup>49</sup>

### 3. Evaluation

66. First of all, it is encouraging to note that coverage under old-age schemes has tended to increase since the last general survey carried out in 1961. In the great majority of industrialised countries, provision has been made either for coverage of all residents, or for a gradual extension of protection to all economically active persons, as advocated in Paragraph 2 of Recommendation No. 131. An extension of coverage under old-age protection schemes to categories of workers who are still excluded, on the one hand, and to self-employed persons, on the other, has also been achieved by some developing countries, although the rate of improvement seems to have slowed in recent years. Moreover, some governments have stated that their objective was to cover the entire economically active population,<sup>50</sup> and a number of developing countries have also made provision in their legislation for the principle of subsequent extension of social

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(Old Age Security Act, s. 10: only the supplement to the national pension is subject to a means test); Iceland (National Insurance Act of 1971, art. 19: only the pension supplement may be reduced if the beneficiary's means other than the basic pension exceed a certain amount); New Zealand (Government report and Income Tax Act, s. 336 A-L: all pensioners receive the full rate of benefit, but a special tax is levied on their other income above a certain amount, so that a beneficiary's pension is reduced if he has other sources of considerable income. For a small number of persons with a high income, this special tax may be equal to the amount of the pension. However, according to the report of the Department of Social Welfare, most beneficiaries were not affected by the special tax in the year ending 31 March 1987).

<sup>47</sup> However, this is not the case in Switzerland, where the amount of previous earnings is taken into account in calculating benefit.

<sup>48</sup> For example: Canada, Finland, Japan, Mauritius, Norway, Sweden.

<sup>49</sup> Denmark.

<sup>50</sup> For example: Burundi (the Government has stated that studies are envisaged with a view to instituting a social security scheme which would apply to the rural sphere, which makes up the bulk of the informal sector); Grenada; Nicaragua.

security to the self-employed.<sup>51</sup> This progress should not, however, obscure the fact that in many countries some occupational categories, in particular the self-employed, are not yet protected. Moreover, in the developing countries the extension of social security to agricultural workers runs up against administrative difficulties, such as those involved in setting up a system for registering beneficiaries and financing problems which are compounded by the fact that self-employed workers in the agricultural sector far exceed those in employment. Lastly, in several developing countries, public servants are the only workers covered by a pension scheme.

67. Conventions Nos. 102 and 128 refer to statistical criteria for determining their scope. This is why, in accordance with Article 76, paragraph 1(b), of Convention No. 102,<sup>52</sup> the report form for this instrument, which was approved by the Governing Body in accordance with article 22 of the Constitution, requests governments to supply certain statistics relating to persons protected. A request for statistical information has also been included in the report form for Convention No. 128 and in the form adopted for these instruments by the Governing Body under article 19 of the Constitution. However, international comparison is not the only purpose of compiling statistical information. An efficient system for gathering statistics is an invaluable and indispensable tool providing the national authorities with access to important information on the way in which their social security scheme operates in practice, enabling them to draw on their experience in the future. As regards coverage in particular, keeping statistics in this field should help social security bodies to verify whether all of the persons covered by social security legislation are in fact protected in practice. In this context, the Committee, while fully aware of the difficulties encountered by some governments, can only note that the reports sent by most States which have ratified neither Convention No. 102 nor No. 128 do not contain all of the statistics requested which are necessary in order to assess the extent to which effect is given to the provisions of these instruments as regards their scope; either the reports contain no statistics, or those supplied are incomplete.

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<sup>51</sup> For example: Grenada (National Insurance Law, 1983, s. 25, subs. 1(c)); Equatorial Guinea (Social Security Act, s. 7(c), read in conjunction with transitional provision No. 1); Saint Lucia (National Insurance Act, s. 26(1)(c)); Trinidad and Tobago (the Government states that the legislation provides for protection to be afforded to self-employed persons, but that this provision has not yet been put into effect).

<sup>52</sup> Article 76, paragraph 1(b), reads as follows: "Each Member which ratifies this Convention shall include in the annual report upon the application of this Convention ... (b) evidence, conforming in its presentation as closely as is practicable with any suggestions for greater uniformity of presentation made by the Governing Body of the International Labour Office, of compliance with the statistical conditions specified in - (i) Articles ... 27(a), (b) or (d) ... as regards the number of persons protected."

68. The provisions concerning scope do not appear to have given rise to difficulties for those States which have ratified Conventions Nos. 102 and 128, except, in certain cases,<sup>53</sup> for which the Committee has demanded additional information, in particular the statistics requested in the report from. It is important, therefore, that the statistics concerning the scope of the national social security scheme are communicated on a regular basis. In some of these countries, protection schemes cover all residents, in principle, in accordance with Article 27(c) of Convention No. 102 and Article 16, paragraph 1(c), of Convention No. 128.<sup>54</sup> For the other countries a distinction should be drawn between those bound by Convention No. 102 and those for which Convention No. 128 is in force.

69. Some of the States for which Part III of Convention No. 128 is in force have supplied statistics indicating that the protection scheme covers all or nearly all employees (although other categories of economically active persons are also covered), in accordance with Article 16, paragraph 1(a), of Convention No. 128, read in conjunction with Article 37, which allows certain categories of employees to be excluded.<sup>55</sup> In other countries, around 75 per cent of the entire economically active population are protected.<sup>56</sup> Lastly, three countries availed themselves at the time of ratification, of the temporary exceptions provided for by paragraph 2 of Article 16, and in particular subparagraph (a), according to which the persons protected must comprise at least 25 per cent of all employees, as well as Article 38, which allows a temporary exclusion of employees in the agricultural sector.<sup>57</sup> Only one country availed itself of the

<sup>53</sup> For example: as regards Convention No. 102: Israel, Mauritania, Mexico; as regards Convention No. 128: Barbados, Libyan Arab Jamahiriya, Uruguay.

<sup>54</sup> States for which Part V of Convention No. 102 is in force: for example: Denmark, Iceland, Japan (see also infra note 60, para. 70).

States for which Part III of Convention No. 128 is in force: Finland, Netherlands, Norway, Sweden, Switzerland.

The Governments of Finland and Norway have availed themselves of Article 16(a) of Convention No. 128, and the Government of Sweden has availed itself of Article 16(b), since they have taken into account, for the calculation of benefits, income-related complementary pension or pension supplements which are paid to workers.

The Governments of the Netherlands and Switzerland have availed themselves of Article 16(b) of Convention No. 128, without providing details concerning reasons for this choice.

<sup>55</sup> Austria, Federal Republic of Germany.

<sup>56</sup> Barbados (according to statistics supplied by the Government in its report made under Article 22 for the period 1974 to 1976, protected persons accounted for 73.5 per cent of the economically active population. In its report sent under art. 19 of the Constitution, the Government states that old-age protection covers all economically active persons, without, however, supplying statistics).

<sup>57</sup> Bolivia, Ecuador, Venezuela.

possibility under Article 39, paragraph 1(b), of excluding public servants from the application of the Convention where these categories are protected by special schemes providing benefits at least equivalent to those required by this instrument.<sup>58</sup>

70. As for the countries which have ratified Convention No. 102, many of them have adopted a social security system which, according to available statistics, covers all or the vast majority of employees, with protection usually including other categories of the economically active population.<sup>59</sup> In other countries, the number of employees covered is more limited, while exceeding the standards provided for by subparagraph (a) of Article 27 of the Convention.<sup>60</sup> Lastly, one country availed itself at the time of ratifying the Convention of the temporary exception provided for in subparagraph (d) of Article 27 of the Convention.<sup>61</sup>

71. Among the countries for which neither Part V of Convention No. 102 nor Part III of Convention No. 128 are in force, several have adopted old-age protection schemes which, in line with the provisions of Article 27(c) of Convention No. 102 and Article 16, paragraph 1(c), of Convention No. 128, apply to all residents or to those whose means do not exceed the prescribed limits,<sup>62</sup> although in one country,<sup>63</sup> only nationals are protected. Moreover, the few statistics available show that, in one country, all employees are covered by the old-age insurance system in accordance with Article 16, paragraph 1(a), of Convention No. 128.<sup>64</sup> It would be the same in another country according to the statistics communicated by the Government.<sup>65</sup> In several countries, protected persons comprise the entire economically

<sup>58</sup> Austria.

<sup>59</sup> For example: Belgium, France, Greece, Italy (according to the statistics communicated by the Government in its report under Article 19 of the Constitution the persons assured before the National Institute of Social Insurance represent approximately 80 per cent of the active population), Luxembourg, Niger, United Kingdom, Yugoslavia.

In Niger, protection covers employees.

Most of these countries referred to subparagraph (a) of Article 27 of Convention No. 102, although the United Kingdom availed itself of subparagraph (b).

<sup>60</sup> For example: Costa Rica, Japan (as regards pension insurance for wage earners), Mexico.

<sup>61</sup> Peru.

<sup>62</sup> For example: Australia, Canada, New Zealand. The same applies, in principle, to Suriname, although the Government indicates in its report that difficulties have arisen in the protection of workers in small-scale enterprises and the rural and informal sectors, as well as homeworkers.

<sup>63</sup> Qatar.

<sup>64</sup> Trinidad and Tobago.

<sup>65</sup> Egypt.

active population, in principle,<sup>66</sup> or, in any case, they exceed the percentage prescribed by Article 16, paragraph 1(b), of Convention No. 128.<sup>67</sup> In one country national statistics indicates that the percentage of the economically active population protected has virtually reached the level prescribed by Article 27(b) of Convention No. 102.<sup>68</sup> As for the remaining countries, many have stated that their legislation applies in principle to the entire economically active population or to all employees without, however, supplying sufficient statistics to enable an assessment to be made of the extent to which the legal provisions governing old-age protection coverage are put into practice. In most of these cases, it should be possible to consider the national situation as at least meeting the requirements as to coverage laid down in Convention No. 102, since the standard it prescribes in this respect is relatively low, although some difficulties may arise in particular in countries where old-age protection schemes only cover certain categories of establishment or have not yet been extended throughout the country. At all events, the Committee must emphasise that it is for the States which ratify Convention No. 102 or Convention No. 128 and accept the parts relating to old-age benefits to supply the necessary statistical information indicating that they comply with the requirements laid down in Article 27 of Convention No. 102 or Article 16 of Convention No. 128.<sup>69</sup> In

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<sup>66</sup> Poland (the Government states that virtually 100 per cent of the economically active population are protected). From the available information it appears that the same is true of the following countries: Bulgaria, Byelorussian SSR, Czechoslovakia, German Democratic Republic, Hungary, Ukrainian SSR, USSR.

<sup>67</sup> For example: Algeria; Brazil (according to the information supplied by the Government, protected persons account for about 76 per cent of all persons employed, bearing in mind that not all rural workers may claim old-age benefit. Under s. 297 of Decree 83080 of 1979 to approve the regulations governing social welfare benefits, rural workers who are heads or bread-winners of a family unit, as well as those who are not members of a family unit and have no dependents, are entitled to old-age benefit); Chile (78 per cent); Cyprus (82 per cent); Portugal (80 per cent); United States (90 per cent).

<sup>68</sup> Panama (19.1 per cent of total population according to "El compendio especial estadístico, 1975-84", p. 42, published by the Panama Social Insurance Fund in 1986. Moreover, the Government indicates that all workers in the service of the State or of an individual or company carrying on activities in the country are protected without exception).

<sup>69</sup> See the above-mentioned Article 76, paragraph 1(b), of Convention No. 102. See also Article 5 of Convention No. 102, which stipulates that "where, for the purpose of compliance with any of the Parts II to X ..., a member is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or residents, the member shall satisfy itself, before undertaking to comply with any such part, that the relevant percentage is attained".

this respect, it considers useful to recall that States may request technical assistance in this area from the ILO. Moreover, the Committee would also recall that Conventions Nos. 102 and 128 contain various clauses allowing exceptions as regards coverage, aimed at facilitating acceptance and application of the parts relating to old-age benefit.

72. More specifically as regards Article 39 of Convention No. 128, which allows seafarers and public servants to be excluded where these categories enjoy at least equivalent protection, it appears from the information available that the special schemes applicable to public servants generally provide more favourable old-age benefits than those granted under general schemes.<sup>70</sup> The same is true to a great extent of seafarers.<sup>71</sup>

## II. Period of application

73. In line with the general principle according to which international laws and treaties do not apply retroactively, both Convention No. 102 and Convention No. 128 apply only to contingencies which occur after the coming into force of the relevant part of the Convention for the Member concerned (Article 73(a) of Convention No. 102 and Article 43(a) of Convention No. 128). A corollary of this principle is that the Conventions do not apply to benefits in contingencies occurring after the coming into force of the relevant part of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date (Article 73(b) of Convention No. 102 and Article 43(b) of Convention No. 128). However, Article 29, paragraph 5, of Convention No. 102 and Paragraph 8 of Recommendation No. 131 provide for certain transitional measures for persons who, in view of their advanced age at the time of implementation of the social insurance scheme, are unable to benefit from the protection provided for by legislation.

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<sup>70</sup> See ILO: Social security, including social protection of public employees in respect of invalidity, retirement and survivors' benefits, Report III of the Joint Committee on the Public Service, Fourth Session, Geneva, 1988 (JCPS/4/1988).

<sup>71</sup> See ILO: Social security protection for seafarers, including those serving in ships flying flags other than those of their own country, Report II, Preparatory Technical Maritime Conference, Geneva, May 1986.



### CHAPTER III

#### QUALIFYING CONDITIONS FOR OLD-AGE BENEFIT

74. The award of old-age benefit is usually contingent upon two main conditions: pensionable age<sup>1</sup> and the qualifying period for entitlement to benefit. As will be seen in Chapters IV and VI, the award or rate of benefit may also be conditional upon a means test or retirement from gainful activity.

##### I. Pensionable age

75. There are a number of considerations involved in fixing the age at which a worker becomes entitled to old-age benefit. One is that once a worker has reached a certain age, his contribution to working life has earned him the right to a rest; this concept of compensation for services rendered and the right to rest underlies the pensions originally granted to public servants and military personnel. Another approach, adopted in setting up the first pension insurance scheme,<sup>2</sup> is based on a presumption of invalidity: at a certain age, a worker's physical and mental capacity are thought to be reduced, so that it would be unfair to compel him to continue his occupational activity. Other factors influencing the fixing of pensionable age by legislation are demographic, economic and social criteria, such as the average level of ageing of protected persons, the structure by age of the population, and the cost of financing pensions. The approach to age is increasingly influenced by the idea that a worker who has reached a certain age may freely choose the time at which he retires from working life within a given period and in a gradual manner; this is reflected in provisions introducing a degree of flexibility in pensionable age and those allowing partial retirement.

##### 1. International standards

###### Maximum pensionable age

76. Under Article 26 of Convention No. 102 and Article 15 of Convention No. 128, the contingency covered is survival beyond an age

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<sup>1</sup> Pensions are sometimes awarded for long service without an age requirement.

<sup>2</sup> The German Act of 1889 respecting the institution of compulsory invalidity insurance provided for the award of pensions without proof of invalidity from the age of 70 years.

prescribed by or in virtue of national legislation, which shall not be more than 65 years. The wording of these provisions allows States to fix a lower age.

77. Both Conventions, however, contain a flexibility clause allowing a higher age than 65 years to be fixed, in certain conditions, for special reasons. Thus, Article 26, paragraph 2, of Convention No. 102 stipulates that a higher age may be fixed by the competent authority "with due regard to the working ability of elderly persons in the country concerned". It is interesting to note that the text drafted by the Office following the first discussion at the Conference allowed a pensionable age of more than 65 years on condition "that the number of residents having attained that age is not less than 10 per cent of the number of residents under that age but over 15 years".<sup>3</sup> This draft was intended to allow for the situation in countries where life expectancy is high and a large proportion of elderly people may therefore be considered fit for work. The version which was finally adopted by the Conference, however, opted for a greater degree of flexibility by eliminating this statistical criterion, retaining only the underlying idea of the working ability of "elderly persons".<sup>4</sup>

78. The idea that an increase in the pensionable age should be based on criteria supported by statistics was taken up again in the drafting of Convention No. 128. Article 15, paragraph 2, of that Convention provides that a higher age than 65 years may be fixed by the competent authorities "with due regard to demographic, economic and social criteria, which shall be demonstrated statistically". The aim of requiring such criteria to be demonstrated statistically was to ensure that exceptions were founded on objective criteria and thus make the supervisory bodies' work easier.<sup>5</sup> The criteria to be demonstrated statistically could include, for example, the life expectancy of the population and the proportion of elderly persons at work.

<sup>3</sup> ILO: Minimum standards of social security, Report V(a)(2), International Labour Conference, ILC, 35th Session, Geneva, 1952, p. 252.

<sup>4</sup> It was only during discussion in plenary at the 1952 Conference that the present wording of paragraph 2 of Article 26 of Convention No. 102 was adopted following an amendment submitted by the Government delegation of Norway (ILO: Record of Proceedings, ILC, 35th Session, Geneva, 1952, pp. 310, 318 and 333).

The European Code of Social Security retained the wording proposed by the Office. Article 26(2) of the Code provides that "the prescribed age shall be not more than 65 years or than such higher age that the number of residents having attained that age is not less than 10 per cent of the number of residents under that age but over 15 years of age".

<sup>5</sup> ILO: Record of Proceedings, ILC, 51st Session, Geneva, 1967, first report of the Committee on Social Security and discussion in plenary, pp. 438 and 693. During the preparatory work, the Workers' members emphasised the need to retain this criterion "in order to enable the Committee of Experts on the Application of Conventions and Recommendations to exercise supervision" and hoped that the latter would apply the standards regarding pensionable age strictly.

### Lowering of pensionable age

79. Article 15, paragraph 3, of Convention No. 128 provides that if the prescribed age is 65 years or higher, it 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 be arduous or unhealthy. The lowering of pensionable age should be understood as meaning a reduction with respect to the age of 65 years fixed by the Convention and not with respect to a lower age which may be prescribed by national legislation.<sup>6</sup> This provision, the social significance of which was emphasised during the preparatory work on the Convention,<sup>7</sup> is intended to ensure additional protection, through a more favourable system, to persons employed on arduous or unhealthy work. When the Convention was being drafted, it was pointed out that the legislation containing this type of provision based preferential treatment on the assumption that, on average, the working capacity of persons employed in such conditions diminishes sooner than that of persons in other occupations; the contribution made by such persons to the national economy in physically arduous conditions is also taken into consideration.<sup>8</sup>

80. The wording of Article 15, paragraph 3, allows a considerable degree of flexibility in the application of the principle that, where the pensionable age is 65 years or higher, it shall be lowered for persons who have been employed in arduous or unhealthy work. Firstly, the provision leaves it to national legislation to determine the occupations which may be considered as arduous or unhealthy for the purpose of old-age benefit, in the light of all the relevant circumstances. It is therefore for the competent authorities to assess and evaluate jobs and occupations in order to determine which jobs should be considered as arduous or unhealthy within the meaning of the Convention, specifying the criteria applied, where appropriate. Secondly, the provision also leaves it to the competent authorities to prescribe the conditions under which persons engaged in arduous or unhealthy work would be entitled to benefit at a lower age than the normal pensionable age.<sup>9</sup> While States are allowed a fairly wide discretion in applying Article 15, paragraph 3, of Convention No. 128, they should nevertheless proceed in good faith, taking into account the objectives underlying this provision.

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<sup>6</sup> During the second discussion of the draft Convention, the Conference Committee on Social Security confirmed this interpretation, which it had already formulated during the first discussion (ILO: Record of Proceedings, ILC, 51st Session, Geneva, 1967, first report of the Committee on Social Security, p. 693).

<sup>7</sup> *ibid.*

<sup>8</sup> ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions, Report V(1), ILC, 50th Session, Geneva, 1966, pp. 28-29.

<sup>9</sup> See the Memorandum addressed by the ILO to the Government of Denmark, in O.B. LIII, 1970, pp. 384-385.

81. As the Committee has recalled in specific comments addressed to some governments which have ratified the Convention, the power allowed to national legislation of prescribing the conditions for awarding old-age pensions before the age of 65 years to persons who have been employed on arduous or unhealthy work should be exercised in accordance with its objective, which is to establish a more favourable scheme for this category of workers by allowing them, *inter alia*, to draw an anticipated old-age pension, of which the rate and qualifying period must conform to Articles 17 and 18 of the Convention. It should be pointed out here that Paragraph 6(a) of Recommendation No. 131 provides that "with a view to protecting persons who are over a prescribed age but have not attained pensionable age Members should provide benefits, under prescribed conditions, for ... persons whose unfitness for work is established or presumed". The possibility of anticipating pensionable age in the case of unfitness for work is broader in scope than the reference to arduous or unhealthy work, since it allows the award of an anticipated pension without having to establish whether or not unfitness is due to having performed such work.<sup>10</sup> When Recommendation No. 131 was being drafted, emphasis was laid on the importance of these provisions for adapting the award of old-age benefit to individual cases of premature ageing.<sup>11</sup>

82. Prolonged involuntary unemployment of elderly persons for a period prescribed by legislation is another circumstance which, according to Paragraph 6(b) of Recommendation No. 131, should justify the award of anticipated old-age benefit for persons who are over a prescribed age.<sup>12</sup>

83. Lastly, according to the Recommendation, social grounds may also justify either the grant of benefit to categories of persons who have not reached pensionable age (Paragraph 6(c)) or the lowering of pensionable age (Paragraph 7).

<sup>10</sup> See ILO: Older workers: Work and retirement, Report VI(1), ILC, 65th Session, Geneva, 1979, p. 66. It is interesting to note that the Older Workers' Recommendation, 1980 (No. 162) refers to these two reasons for granting early retirement benefit in Paragraph 25(1). This Paragraph provides that older workers who have been engaged in occupations that are deemed arduous or unhealthy, for the purpose of old-age benefit, by national laws or regulations or national practice or are recognised as being unfit for work to a degree prescribed, should be eligible, during a prescribed period prior to the date on which they reach the age normally qualifying workers for an old-age benefit, for an early retirement benefit the grant of which may be made dependent upon a prescribed qualifying period.

<sup>11</sup> ILO: Record of Proceedings, ILC, 51st Session, Geneva, 1967, second report of the Committee on Social Security, p. 710.

<sup>12</sup> The objection raised during the preparatory work to the effect that it was inappropriate to deal with involuntary unemployment in an instrument concerning old-age benefit was not upheld (*ibid.*).

### Deferment of old-age pension

84. Under Paragraph 18 of Recommendation No. 131, deferment of the claim to old-age benefit or, what amounts largely to the same in practice, postponement of retirement when receipt of benefits is incompatible with the exercise of a gainful activity, should entail an increase in the amount of the old-age benefit, but only in cases where the grant of this benefit is subject to fulfilment of the qualifying conditions of contribution or employment and where this qualifying period has been completed at the normal pensionable age.

### 2. National situations

85. The national legislation specifies the conditions for entitlement to old-age benefit, and, in particular, the normal pensionable age. This age may vary according to several criteria, such as the nature of the work performed or the occupation, or the sex of the insured person.

#### General rules

86. In the great majority of countries, the pensionable age<sup>13</sup> is 65 years or less. While many countries have fixed the age at 65 years,<sup>14</sup> a significant number have opted for 60 years<sup>15</sup> or even 55

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<sup>13</sup> The hypothesis taken into consideration is that of the applicable age under the basic social security schemes (residents, active population or employees). The particular situation of women will be examined in paras. 92 and 121 to 123 below; in the following notes, however, for clarity's sake, the pensionable age for women will be indicated in brackets if it is lower than that for men.

<sup>14</sup> Age 65 (the figures in brackets apply to women). For example: Australia (60), Austria (60), Barbados, Belgium (60), Brazil (in the urban sector, 60 years for women), Canada, Chile (60), Cyprus, Finland (national pensions and employment-related pensions), German Democratic Republic (60), Greece (60), Japan (as concerns national pensions), Libyan Arab Jamahiriya (60), Luxembourg, Mexico, Netherlands, Poland (60), Portugal (62), Spain, Sweden, Switzerland (62), United Kingdom (60), United Kingdom (Anguilla, Bermuda).

<sup>15</sup> Age 60 (the figures in brackets apply to women). For example: Algeria (55), Argentina (55), Belize, Bulgaria (55), Byelorussian SSR (55), Cameroon, China (55; 50 for female manual workers), Colombia (55), Cuba (55), Egypt, Equatorial Guinea, France, Grenada, Guinea-Bissau, Guyana, Iraq (55), Italy (55), Japan (as regards employees' pension insurance) (56), Jordan (55), Madagascar (55), Morocco, Mauritania (55), Nicaragua, Niger, New Zealand, Panama (55), Peru (55), Philippines, Qatar, San Marino, Saudi Arabia, Saint Lucia, Suriname, Trinidad and Tobago, Tunisia, Ukrainian SSR, USSR (55), Uruguay (55), Venezuela (55), Yemen (55), Yugoslavia (55).

Age 61 (60) in Malta.

years.<sup>16</sup> Under a number of systems, on the other hand, the age is over 65.<sup>17</sup>

87. For certain categories of workers who are often covered by special schemes, such as agricultural workers, members of production co-operatives or self-employed persons, the pensionable age is sometimes different; although it may be higher, it is still most often within the limits provided for in the Conventions.<sup>18</sup> Sometimes different age requirements are established for other categories of workers, and they are often more favourable; such is the case, for example, of public servants in many countries,<sup>19</sup> as well as seafarers and miners. The latter two categories are often considered as working in arduous jobs and may therefore be protected in the same way as other categories of persons engaged in arduous or unhealthy work. Lastly, under some schemes, the award of old-age benefit is conditional upon the number of years of employment, irrespective of age. Such "long-service" pensions are often provided in addition to pensions awarded upon reaching a certain age.<sup>20</sup>

Lowering of the pensionable age  
according to specific criteria

88. The legislation in many countries provides for a lower pensionable age according to criteria including the nature of certain jobs, the physical condition of the beneficiary and/or his employment status; in addition, a lower age is often fixed for women.

89. Employment on arduous or unhealthy jobs is the oldest and still the most widespread reason for lowering the pensionable age, on the assumption that such jobs entail premature ageing. Many countries

<sup>16</sup> Age 55 (the figures in brackets apply to women). For example: Benin, Bolivia (50), Burundi, Central African Republic (50), Chad, Congo, Côte d'Ivoire, Rwanda, Senegal, Singapore, Togo, Turkey (50).

The age is 57 years (55) in Costa Rica.

<sup>17</sup> For example, the pensionable age is 67 years in the following countries: Denmark, Iceland, Norway.

<sup>18</sup> For example: Argentina (self-employed persons: 65 instead of 60 years for men (60 instead of 55 years for women)); Brazil (65 years for women in the agricultural sector; 60 years in the urban sector); Romania (agricultural sector (65 instead of 60 years for men, 60 instead of 55 years for women)).

<sup>19</sup> See, inter alia, ILO: Social security, including social protection of public employees in respect of invalidity, retirement and survivors' benefits, Report III, Joint Committee on the Public Service, Fourth Session, Geneva, 1988.

<sup>20</sup> Brazil (Decree No. 83080 of 1979 to approve regulations for social insurance benefits, s. 51: eligibility for pension after 30 years of service); Togo (the government report states that the age of 55 years must have been reached or 30 years of actual service must have been completed); Turkey (Social Insurance Act and government report: eligibility for pension after 25 years of insurance (20 years for women) and 5,000 days of contribution); Yugoslavia (government report: 40 years of insurance for men and 35 for women).

have enacted provisions for a reduction of pensionable age on this ground, including countries where the normal pensionable age is under 65 years.<sup>21</sup> In a number of countries, some of these jobs are covered by a special scheme with a lower pensionable age than under the general scheme, such as the miners', seafarers' and railway workers' schemes; but the age may also be lowered under the general scheme, which often prescribes lists of arduous or unhealthy jobs. There are a wide variety of provisions concerning the age from which anticipated pension may be granted (most often five years before the normal pensionable age), the list of occupations covered and the length of service required. The reduction of pensionable age often depends not only on the type of occupation but also on the number of years spent in this occupation; the length of the qualifying period frequently decreases in proportion to the degree of unhealthiness or arduousness of the job. Thus, for example, the qualifying period may be shorter for miners working underground than for those employed above ground.

90. The easing of the age requirement is often linked to the concept of unfitness for work; anticipated pensions on these grounds are generally awarded up to five years, but sometimes even ten years,<sup>22</sup> before normal pensionable age. This type of pension should

<sup>21</sup> The age is lowered for arduous and unhealthy work in the following countries, for example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions. Under s. 7 of the Act, the list of jobs involving particularly harmful conditions for which workers would become eligible for pension before the normal pensionable age, the applicable ages and the minimum required time spent on such jobs should be established by decree. Decree No. 85-31 of 1985 set up a commission to submit the list of such jobs and the age requirement and minimum period); Argentina (Decree No. 4257 of 1968 to institute a special scheme for unhealthy work); Austria (government report and information communicated by the Austrian Congress of Chambers of Workers); Belgium (Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit, ss. 4 and 6); Bulgaria (Pensions Act of 1957, s. 2, and government report); Byelorussian SSR (government report); China (regulations of 1978 governing retirement benefit of workers and employees, s. 1(b)); Colombia (Agreement No. 224 of 1966, s. 14); Cuba (Social Security Act, ss. 67 and 68); Cyprus (government report); Egypt (Social Insurance Act of 1975, s. 18); France (the age is lowered, inter alia, in certain special schemes); German Democratic Republic (Pensions Ordinance, s. 34); Morocco (government report); Norway (government report); Poland (government report); Spain (General Social Security Act, s. 154, and government report); Ukrainian SSR (government report); USSR (National Pensions Act of 1956, s. 9, and government report).

<sup>22</sup> Burundi (Legislative Decree No. 1-17 of 1981 respecting the reform of the general social security scheme, s. 20); Central African Republic (Decree No. 83.340 of 1983, s. 17); France (Social Security Code, ss. L351-7, L351-8, R351-21, R351-22); Gabon (Social Security Code, s. 75(3)); Madagascar (Social Insurance Code, s. 268);

(footnote continued on next page)

not be confused with invalidity pensions, for which there is no age requirement.

91. The increasing imbalance on the employment market over the last 15 years has led many countries to lower the pensionable age for the unemployed, not only to protect the elderly unemployed, for whom it is difficult to find alternative employment, but also as a means of combating unemployment alongside other measures such as pre-retirement<sup>23</sup> or progressive retirement.<sup>24</sup> The information available to the Committee indicates that an anticipated pension is generally awarded up to five years before normal pensionable age after a period of prolonged unemployment, usually on condition that a certain qualifying period has been completed.<sup>25</sup> Parallel to the measures lowering the pensionable age in order to protect the elderly unemployed, other measures have been adopted to combat unemployment; unlike the former, these are targeted at elderly workers who have continued to work, encouraging them to retire earlier by offering them an old-age pension, in principle without a reduction in benefit,

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(footnote continued from previous page)

Nicaragua (Social Insurance Act, s. 48, and implementing regulations, s. 57); Togo (Social Security Code, s. 26); Trinidad and Tobago (the Government states that an old-age pension is paid to a blind person aged 40 years whose vision is so impaired that he is unable to earn his livelihood); Tunisia (Decree No. 74-499 of 1974 concerning old-age, invalidity and survivors' pension schemes in the non-agricultural sector, s. 15(bis)); Ukrainian SSR (the Government states that the pensionable age is lowered for persons suffering from dwarfism, the blind and war invalids, inter alia).

<sup>23</sup> The system of pre-retirement benefit, which is often a matter for collective bargaining, provides for payment of replacement income to a worker who has reached a certain age and who ceases his occupational activity either fully or partially. This system, which in some cases is limited to unemployed workers, is usually intended as a temporary measure introduced for a fixed period; pre-retirement benefit is paid temporarily until the worker reaches pensionable age, when the old-age insurance system takes over. Unlike pre-retirement systems, early retirement is an integral part of the old-age insurance system. In practice, however, there is not always a clear distinction between pre-retirement benefit, usually viewed as an extension of unemployment insurance, and early retirement, which is part of old-age insurance.

<sup>24</sup> See below, para. 98.

<sup>25</sup> Austria (General Social Insurance Act, s. 253(a)); Bolivia (Regulations of 1959 made under the Social Security Code, s. 93); Federal Republic of Germany (Salaried Employees' Insurance Act, s. 25, subs. (2), and Federal Insurance Code, s. 1248); Portugal (government report).



before normal pensionable age, sometimes on condition that the employer undertakes to replace the retiring worker by a jobseeker.<sup>26</sup>

92. Although the instruments make no express provision for a lower pensionable age for women,<sup>27</sup> a great many countries, chiefly in Latin America and Europe, recognise the right of women to receive old-age benefit at a lower age than men,<sup>28</sup> the difference generally being five years. However, some changes may be observed here. Thus, in one country, for example, pensionable age for single women has been brought up to the general age.<sup>29</sup> In other countries, the age for

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<sup>26</sup> Belgium (Royal Order No. 95 of 1982 allows employees to claim their pension, without reduction, from the age of 60 years, on condition that their employer undertakes to replace them with a jobseeker. This "pre-retirement" pension is a true pension and is calculated as such; rules are applied which allow the beneficiary to draw an income which is equivalent to the pension which would theoretically be drawn at the normal retirement age. According to the information supplied by the Government in its last report under article 22 of the Constitution concerning Convention No. 102, this option terminates on 31 December 1988); Italy (in occupational sectors (except the building industry) affected by the economic crisis or in enterprises which change their production, employees may claim their pension up to five years before the normal age, without a reduction in benefits. The pension is increased by taking into account the period between cessation of activity and normal retirement age) (ISSA: Lowering the age of cessation of activity and the financial equilibrium of social security schemes providing replacement income, Report IV, 22nd General Assembly, 1986, p. 10.); Spain (workers may retire at the age of 64 (instead of 65) without actuarial reduction of pension entitlement, provided that the employer undertakes to replace the retiring employee by an unemployed person).

<sup>27</sup> During the first discussion of the draft Convention No. 128 in the Conference Committee, the Workers' members had submitted an amendment introducing in the Convention a pensionable age for women five years lower than that for men; this amendment was withdrawn and replaced by a subamendment which did not fix a particular age for women but provided that the pensionable age should be lowered for women under conditions prescribed by legislation; this subamendment was rejected. However, a provision for the lowering of pensionable age for women was included in the text of the draft Recommendation (Record of Proceedings, ILC, 50th Session, Geneva, 1966, pp. 637 and 657). During the second discussion, an amendment put forward by the Workers' members to the same effect was again rejected. The provision in the draft Recommendation was also deleted (Record of Proceedings, ILC, 51st Session, Geneva, 1967, pp. 693-694 and 711).

<sup>28</sup> For example: Algeria, Australia, Austria, Belgium, Bolivia, Brazil (urban sector), Bulgaria, China, Colombia, Costa Rica, Cuba, German Democratic Republic, Greece, Iraq, Italy, Madagascar, Mauritania, Panama, Peru, Poland, Portugal, Romania, Switzerland, Turkey, Ukrainian SSR, USSR, United Kingdom, Uruguay.

<sup>29</sup> Denmark.

women is being gradually brought up from 55 to 60 years.<sup>30</sup> Lastly, a number of countries<sup>31</sup> are considering equalisation of pensionable age as part of the application of the general principle of equal treatment between men and women in social security.

93. Pensionable age is sometimes adjusted in view of other criteria based on social considerations or recognition of special services rendered to society. Thus, the age is sometimes lowered for women who have given birth to and raised one or more children<sup>32</sup> or for certain veterans or prisoners.<sup>33</sup> In some countries, the age is lowered for teachers<sup>34</sup> and in another country, for bullfighters and artists.<sup>35</sup>

Other adjustments of pensionable age;  
flexible retirement, progressive retirement

94. In an increasing number of countries, pensionable age is no longer fixed in a rigid manner. In addition to adjustments for the reasons outlined above, other alternatives have been introduced in legislation providing for full pension, or reduced or increased rates of pension. The different alternatives available allow a more individualised approach to retirement age by permitting the

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<sup>30</sup> Japan (a reform of the Japanese pension system was introduced in 1985. As regards the earnings-related pension scheme, the retirement age which at the time, was 55 years for women, is being gradually raised to 60 years for women, while it remains 60 years for men. The principle of a future general increase in the retirement age to 65 has been maintained in the reform, although its application has been postponed indefinitely (ILO: World Labour Report (Geneva, 1987), Vol. 3, p. 41).

<sup>31</sup> For example: Belgium (the planned reform to "fix a general retirement age of 65 years with calculation of pension based on 45ths and the simultaneous introduction of a system of flexible retirement between the ages of 60 and 65 years, based on years of employment", failed to elicit a unanimous opinion of the social partners in the National Labour Council (opinion No. 872 of 29 September 1987)); Switzerland.

<sup>32</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions, s. 8); Bulgaria (Pensions Act of 1957, s. 4); Greece (the age is lowered by five years for women with a dependent child aged under 21 years who have contributed for at least 5,500 working days); Romania (Act of 1977 respecting state social insurance pensions and social assistance, s. 18); USSR (National Pensions Act of 1956, s. 10).

<sup>33</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pension, ss. 20 et seq.); Belgium (government report); German Democratic Republic (government report); Poland (government report).

<sup>34</sup> Nicaragua (general regulations made under the Social Insurance Act, s. 55).

<sup>35</sup> Spain (government report).

beneficiary to exercise a certain choice among a given range of possibilities.<sup>36</sup>

95. Under some schemes, long periods of contribution or employment entitle a worker to old-age pension, often without a reduction in benefit, at a lower age than the normal pensionable age<sup>37</sup> or without an age requirement.<sup>38</sup> Such measures mainly favour manual workers, who usually start out in working life at an earlier age than other workers; these measures proceed from the same motivation as that of a lower pensionable age for arduous or unhealthy jobs.

96. Often the possibility also exists for insured persons to claim a pension in advance once they have reached a prescribed age, often five years before the normal pensionable age, on condition that a certain minimum qualifying period is completed;<sup>39</sup> in this case, the amount of the pension is usually reduced in proportion to the number of years it is drawn in advance of the normal age, which offsets the advantage to a certain extent and may, according to the particular situation, encourage or on the contrary discourage resorting to such action.

97. Some systems, on the other hand, expressly allow insured persons to defer claiming old-age pension beyond the age prescribed by legislation and provide for the amount of the pension to be increased by a coefficient which is generally proportional to the number of years of deferment. These increases, which are the counterpart of the reductions in the event of early retirement, compensate to a certain extent the reduction in the number of years the pension is

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<sup>36</sup> See also Paragraphs 26 to 29 of the Older Workers' Recommendation, 1980 (No. 162).

<sup>37</sup> For example: Austria (government report); Belgium (government report); Greece (Act No. 825 of 1978: pension at age 62 years (for men) or 57 years (for women), conditional upon completion of 10,000 days of work in respect of which contributions have been paid, of which at least 1,000 days occurred during the last ten years, and at age 58 years (for men and women), conditional upon completion of 10,500 days of work in respect of which contributions have been paid); Poland (government report: women may retire at the age of 55, i.e. five years before the normal age for women, if they have completed a 30-year period of employment).

<sup>38</sup> See above, note 20, para. 87.

<sup>39</sup> For example: Belgium (Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit, s. 5); Cameroon (Law No. 69 LF-18 of 1969 instituting old-age, invalidity and survivors' pension insurance, as amended by Act No. 84-07 of 1984, s. 9); Canada (government report as regards earnings-related pensions); Côte d'Ivoire (Social Welfare Code, s. 165); Jordan (government report); Senegal (government report); Tunisia (Decree No. 74.499 of 1974 concerning old-age, invalidity and survivor's pension schemes in the non-agricultural sector, s. 15 bis(c)); United States (government report).

paid.<sup>40</sup> Under some systems, the deferment period is theoretically unlimited, while in others it is only possible up to a prescribed age. Even in countries whose legislation does not provide for a coefficient for the increase of pension if retirement is deferred, old-age pensions are usually granted at the normal age only on request; consequently, if the amount of pension varies in accordance with the length of service, continuing his occupational activity beyond that age normally qualifies the pensioner for a higher pension, as long as the maximum number of years of employment (or insurance, contribution or residence) to be taken into account has not been attained.

98. A small number of countries have recently introduced provisions in their legislation aimed at easing the transition from full-time activity to retirement, by providing for progressive retirement. A partial pension may be paid to persons who reduce their activity and whose age falls between a lower and an upper limit. These schemes offer workers the option of gradually reducing their workload in the last years of their working life so as to achieve a smooth transition to retirement and avoid a sudden drop in their income. This system was introduced by a Nordic country<sup>41</sup> some ten years ago, and the example was recently followed by other countries in the region.<sup>42</sup> Similar provisions have been adopted by still other countries.<sup>43</sup>

## II. Minimum qualifying period and maintenance of rights in the course of acquisition

### 1. International standards

#### Minimum qualifying period for entitlement to old-age benefit

99. Both Article 29 of Convention No. 102 and Article 18 of Convention No. 128 use the term "qualifying period" to refer to two different matters. On the one hand, Article 29, paragraph 1, of Convention No. 102 and Article 18, paragraph 1, of Convention No. 128

<sup>40</sup> For example: Bulgaria (National Pensions Act of 1957, ss. 10 and 50, and government report); Canada (government report as regards earnings-related pensions paid under the Canada Pension Plan); Denmark (government report as regards supplementary benefit under the ATP scheme); Switzerland (Federal Act of 1946 respecting old-age and survivors' pensions, s. 39); United Kingdom (government report); United States.

<sup>41</sup> Sweden (Act of 1979 respecting insurance for a partial pension; the first Act on this subject was adopted in 1975).

<sup>42</sup> Denmark (Act of 1987 on partial pensions); Finland.

<sup>43</sup> For example: France (solidarity contracts with gradual retirement, followed by Act No. 88/16 of 5 January 1988); Spain (government report: in this case the employer is bound to hire a part-time worker to replace the worker in partial retirement); Yugoslavia (the partial pension system also exists in some republics and provinces).

use the term "qualifying period" to refer to a maximum number of years of contribution (30), employment (30) or residence (20) which may be considered in order for the old-age benefit to attain the rate prescribed by the instruments; this subject will be examined in Chapter IV dealing with the form and rate of old-age benefit. On the other hand, paragraph 2 of Article 29 of Convention No. 102 and of Article 18 of Convention No. 128 refer to the minimum qualifying period which may be required for entitlement to old-age benefit. Thus, subparagraph (a) of paragraph 2 of these provisions provides that, where the award of benefit is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least to a person who has completed, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment.<sup>44</sup> It should be made clear at this point that this provision is not intended to make the award of pension compulsory in all cases, but only to guarantee that, where the award of pension is conditional upon a minimum period of contribution or employment, protected persons who have completed a 15-year qualifying period shall be paid a pension at a lower rate than that calculated in accordance with paragraph 1 of Article 29 of Convention No. 102 and of Article 18 of Convention No. 128.<sup>45</sup>

100. As the Committee pointed out in its general survey carried out in 1961, the reference to "prescribed rules" leaves it to a certain extent to national legislation to determine the conditions in which the qualifying period should be completed, subject to the reservation that it should not exceed the length prescribed by the instruments under consideration.<sup>46</sup> Moreover, although the Conventions refer to the qualifying period in terms of years, national legislation may refer to another unit of time, such as a quarter, month, week or day; what is essential is that these different units are used in such a way as to correspond to the minimum number of years required by the Conventions, taking into account methods of conversion stemming from national legislation.<sup>47</sup>

101. It is worth noting that both Article 29, paragraph 2(b), of Convention No. 102 and Article 18, paragraph 2(b), of Convention No. 128 lay down more flexible rules "where, in principle, all

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<sup>44</sup> Paragraph 17 of Recommendation No. 131 provides that in this case a reduced benefit should be secured after completion of a qualifying period of ten years of contribution or employment.

<sup>45</sup> See ILO: Record of Proceedings, report of the Committee on Social Security, ILC, 50th Session, Geneva, 1966, p. 641.

<sup>46</sup> General Survey of the Committee of Experts carried out in 1961 on minimum standards of social security, para. 90.

<sup>47</sup> See the opinion addressed on 20 July 1987 by the International Labour Office to the Social Insurance Institute, Athens, concerning certain provisions of Convention No. 128.

economically active persons are protected".<sup>48</sup> Obviously, this requirement is met if the system of protection covers the entire population.<sup>49</sup>

102. It should also be pointed out that the reduced benefit must necessarily be a periodical payment as provided in Article 28 of Convention No. 102 and Article 17 of Convention No. 128.<sup>50</sup>

103. Lastly, under Paragraphs 20 and 21 of Recommendation No. 131, periods of incapacity due to sickness, accident or maternity and periods of involuntary unemployment, in respect of which benefit was paid, as well as periods of compulsory military service, should be assimilated, under prescribed conditions, to periods of contribution or employment in calculating the qualifying period.

#### Maintenance of rights in the course of acquisition

104. Whether by choice or because they are compelled to do so, workers in most countries increasingly find themselves moving from one job to another during their working life. Where these jobs fall under different social security schemes (for example, the general scheme and the public servants' scheme), the persons concerned face the risk of losing their right to pension - particularly if the entitlement to pension is conditional upon a fairly long qualifying period which has not been completed in any one scheme - unless appropriate measures are adopted to ensure co-ordination between schemes and thus guarantee the maintenance of pension rights. A related problem may arise even if a worker does not transfer from one scheme to another, for example, if he loses his job for a lengthy period, or even until the pensionable age prescribed by national legislation, or ceases for any other reason to engage in a covered activity and consequently to pay contributions under the social security scheme. This could be the case, for instance, if under the legislation in force rights resulting from completion of past periods lapse after a prescribed time following coverage by a scheme, or if a certain density of contribution or insurance prior to entitlement to pension is required. This is why Article 30 of Convention No. 128 stipulates that "national legislation shall provide for the maintenance of rights in the course of

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<sup>48</sup> Paragraph 2(b) of Article 29 of Convention No. 102 reads as follows "Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least ... where, in principle, all economically active persons are protected, to a person protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, half the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid." Article 18, paragraph 2(b) of Convention No. 128 contains a provision drafted in similar terms.

<sup>49</sup> See the Memorandum addressed by the ILO to the Government of the Netherlands regarding certain provisions of Convention No. 102 (Official Bulletin, Vol. XLIV, 1961, No. 8, pp. 569 and ff., para. 17).

<sup>50</sup> See below, Ch. IV, para. 128.

acquisition in respect of contributory invalidity, old-age and survivors' benefits under prescribed conditions". The term "contributory benefits" is defined in Article 1(j) of Convention No. 128 as benefits the grant of which depends on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity.

105. It should be emphasised at this point that the measures referred to in Article 30 mentioned above are those which must be adopted at the domestic level, and not those which might be necessary at the international level in order to ensure that rights in the course of acquisition are maintained where residence is transferred to another country.<sup>51</sup>

106. The reference to "prescribed conditions" was included in Article 30 with a view to allowing the determination by the legislation of the methods deemed appropriate for the implementation of the principle of maintenance of rights; such methods might be, for example, a prescribed period of insurance or employment, a prescribed period for the preservation of rights or the choice given to the persons concerned to continue their insurance subject to prescribed conditions, including doing so by means of continuing voluntary insurance.<sup>52</sup>

## 2. National situations

107. Under most schemes, the grant of old-age benefit is conditional upon a minimum qualifying period, which may be a period of contribution, employment or residence, as the case may be. Qualifying periods are often expressed in terms of weeks, months, quarters or years, although some legislation refers to the qualifying period in terms of days.<sup>53</sup>

108. In schemes applicable to all residents and paying benefit at a flat rate, entitlement to pension most often depends on habitual residence in the country over a prescribed period, which generally varies between one and ten years.<sup>54</sup>

<sup>51</sup> Maintenance of rights in the course of acquisition in the event of transferral of residence from one country to another is dealt with, inter alia, in Articles 7 and 8 of the Equal Treatment (Social Security) Convention, 1962 (No. 118) and Part III of the Maintenance of Social Security Rights Convention, 1982 (No. 157).

<sup>52</sup> ILO: Record of Proceedings, Report of the Committee on Social Security, ILC, 50th Session, Geneva, 1966, p. 644.

<sup>53</sup> For example: Greece, Morocco, Turkey.

<sup>54</sup> Australia (Social Security Act, 1947, s. 25: ten years of continuous residence or several periods totalling at least ten years, including at least five years of continuous residence); Canada (Old-Age Security Act, s. 3: in principle, ten years' residence); Denmark (Social Pensions Act, 1984, s. 4: three years' residence); Finland (according to information communicated by the Government, a qualifying period of one to five years is applicable to immigrants, both Finnish and foreign, for national pensions); New Zealand (Social Security Act, 1964, s. 14: ten years' residence, including seven years in the ten preceding years (this requirement is reduced by one year for each ten years' residence)).



109. Under other schemes, the qualifying period generally takes the form of periods of contribution, insurance or employment. While in a number of countries no minimum qualifying period is required for entitlement to benefit,<sup>55</sup> most legislation adopted under the insurance system provides that entitlement to an old-age pension, even at a reduced rate, is conditional upon a minimum qualifying period. This period may be short,<sup>56</sup> although most legislation provides for a longer period which does not, however, exceed 15 years.<sup>57</sup> Under some systems, however, the period may be longer, even up to 20 years,

<sup>55</sup> For example: Belgium (government report: Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit requires no minimum qualifying period of residence, contribution or employment); Canada (as regards earnings-related pensions awarded under the Canada Pension Plan, the Government states that the amount of benefit depends on the amount and duration of contributions).

<sup>56</sup> Finland (government report: earnings-related pension: one month of service); France (government report: one-quarter of insurance); Senegal (government report: one year of contribution); Switzerland (Federal Act of 1946 respecting old-age and survivors' pensions, s. 29: one year of contribution for nationals. As concerns non-nationals see below, note 28, para. 219).

<sup>57</sup> For example: Argentina (Act No. 18037 of 1968 to institute a new pension scheme for employees, s. 30: ten years of service, including at least five within eight years immediately preceding cessation of employment); Belize (Social Security (Benefit) Regulations, s. 25: 500 weekly contributions paid or credited, of which 150 actually paid); Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 20: 15 years since registration; 60 months of insurance during the last ten years preceding retirement); Egypt (Social Insurance Act of 1975, s. 18: 120 months); Equatorial Guinea (Social Security Act of 1984, s. 40: 120 months of contribution, including 60 months during the last ten years before retirement); German Democratic Republic (Pensions Act, s. 3: 15 years of insurable activity); Grenada (National Insurance (Benefit) Regulations, s. 29: 500 weeks of contributions paid or credited, with at least 150 weeks actually paid); Kuwait (Social Insurance Act of 1976, s. 17.4: 15 years of insurance); Luxembourg (Act of 1987 respecting old-age, invalidity and survivors' pension insurance, s. 183: 120 months of insurance); Morocco (Act No. 1-72-184 of 1972 respecting the social security scheme, s. 53: 3,240 days of insurance); Nicaragua (general regulations issued under the Social Insurance Act, s. 55(a): 750 weeks of contributions); Philippines (Social Security Law, s. 12B: 120 months of contribution); Saudi Arabia (Social Insurance Law, s. 38, subs. (1): 120 months of insurance, including 36 months in the last five years preceding application for pension, or a total of 180 months of contribution); USSR (National Pensions Act, s. 12: five years of service, including three immediately preceding application for pension); Venezuela (Social Insurance Act, s. 27: 750 weeks of contribution).



for example.<sup>58</sup> Many schemes in French-speaking African countries require the beneficiary to prove that he has been registered with a scheme for at least 20 years, with a certain number of months falling within a prescribed period preceding the date on which he becomes eligible for pension.<sup>59</sup>

110. Under most systems there is a single qualifying period, linked to a single pensionable age. Some, however, provide for several pensionable ages; in this case, generally, the higher the age, the shorter the qualifying period.<sup>60</sup> It is worth noting here that in most pension insurance schemes the qualifying period may be completed even after pensionable age has been reached.

111. Some systems require the insured person to reach a certain average number of contributions per year, in addition to a total minimum number of contributions.<sup>61</sup> In others, the qualifying period must fall within a prescribed period immediately preceding the pensionable age.<sup>62</sup>

112. The minimum qualifying period is sometimes reduced in systems where the pensionable age is lowered for some categories of beneficiary, such as women or persons employed on arduous or unhealthy work.<sup>63</sup>

113. In a considerable number of countries, periods other than periods of employment are also contributory or are assimilated to periods of employment, contribution or insurance and, as such, are taken into account in calculating the minimum qualifying period and/or

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<sup>58</sup> For example: Iraq (Workers' Pension and Social Security Law of 1971, s. 65: 20 years of insured employment); Poland (government report: 20 years of employment for men and 15 years for women).

Furthermore, it is noted that in Hungary, according to the information communicated by the Government, the minimum qualifying period of service for a pension which is now ten years will increase to 20 years in 1990.

<sup>59</sup> For example: Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 31: 20 years since registration and 60 months of insurance during the last ten years preceding the date of application for pension). Similar provisions exist in the following countries, for example: Cameroon, Central African Republic, Congo, Gabon, Niger, Rwanda, Togo.

<sup>60</sup> For example: Costa Rica (Regulation of 1977 respecting invalidity, old-age and survivors' insurance, s. 14); Yugoslavia (government report).

<sup>61</sup> For example: Ireland (Social Welfare (Consolidation) Act 1981, ss. 79 and 84 and implementing regulations); Malta (Social Insurance Act of 1987, s. 66); United Kingdom (Social Security Act 1975, ss. 27 and 28, and Schedule 3, Part 1, and government report); United Kingdom (Bermuda (government report)).

<sup>62</sup> See above, note 59 to para. 109 and example concerning Burundi in note 57 to para. 109.

<sup>63</sup> For example: Bulgaria (National Pensions Act of 1957, ss. 3 and 8).

the rate of benefit. Often, however, the legislation stipulates that in order for the minimum qualifying period to be completed, a certain number of contributions must have been actually paid or periods of employment completed. The periods thus taken into account often cover those in which the insured person received social security benefits or other compensation, such as sickness benefit,<sup>64</sup> employment injury benefit,<sup>65</sup> maternity<sup>66</sup> or unemployment<sup>67</sup> benefit. In addition, in some countries periods of incapacity in the event of sickness<sup>68</sup> or unemployment,<sup>69</sup> for example, irrespective of whether benefit was paid for them, are also taken into account, sometimes with certain limitations and under certain conditions. Some systems also take into account periods of compulsory military service, military mobilisation or war,<sup>70</sup> periods of study or training or occupational rehabilitation;<sup>71</sup> an increasing number of countries also include periods spent raising children and/or assisting a disabled person or one requiring care.<sup>72</sup> Sometimes periods in which the insured person held an official post or political office are taken into account.<sup>73</sup> Some legislation provides that periods of unpaid leave<sup>74</sup> or strike action<sup>75</sup> are taken into account, as well as certain periods of

<sup>64</sup> For example: Algeria, Argentina, Barbados, Belgium, France, Grenada, Guyana, Luxembourg, Morocco, Rwanda, Saint Lucia, Togo, Trinidad and Tobago, Yugoslavia. The Government of the Philippines stated in its report that the assimilation of certain periods due to temporary incapacity has not yet been implemented, but that its adoption is envisaged.

<sup>65</sup> For example: Algeria, Argentina, Belize, Benin, Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, German Democratic Republic, Guyana, Rwanda, Saint Lucia, Saudi Arabia, Togo, Trinidad and Tobago.

<sup>66</sup> For example: Algeria, Argentina, Austria, Barbados, Belize, Benin, Cuba, France, German Democratic Republic, Grenada, Guyana, Morocco, Norway, Rwanda, Togo, Trinidad and Tobago.

<sup>67</sup> For example: Barbados, Belgium, Finland, Luxembourg, Spain, Sweden.

<sup>68</sup> For example: Algeria, Burundi, Cameroon, Cuba, Iraq, Libyan Arab Jamahiriya, Ukrainian SSR, USSR.

<sup>69</sup> For example: France.

<sup>70</sup> For example: Algeria, Argentina, Austria, Belgium, Burundi, Central African Republic, Côte d'Ivoire, Cuba, Czechoslovakia, France, German Democratic Republic, Federal Republic of Germany, Hungary, Iraq, Luxembourg, Romania, Rwanda, Spain, Togo, USSR.

<sup>71</sup> For example: Cuba, German Democratic Republic, Romania, Sweden, Yugoslavia.

<sup>72</sup> For example: Czechoslovakia, France, German Democratic Republic, Federal Republic of Germany, Luxembourg, Romania, Sweden, USSR, United Kingdom, Yugoslavia.

<sup>73</sup> For example: Cameroon, Cuba.

<sup>74</sup> For example Yugoslavia.

<sup>75</sup> For example: Belgium (periods of strike action recognised by trade union organisations and periods of interruption of work resulting from a lock-out).

custody before trial.<sup>76</sup> One system also takes into account periods spent on co-operation projects in developing countries.<sup>77</sup>

114. The available information also indicates that in the case of an insured person transferring to another scheme, some legislation provides for measures to ensure maintenance of rights in the course of acquisition through a variety of methods.<sup>78</sup>

115. The issue of maintenance of rights in the course of acquisition may also arise, although more rarely, where an insured person is only covered by one social security scheme. Indeed, if he stops working before reaching pensionable age, the insured person's rights to old-age benefit will normally be maintained, as long as he has completed the minimum qualifying period required by legislation. Some schemes even contain an express provision to this effect.<sup>79</sup> Sometimes, however, legislation in this case lays down certain restrictions on the maintenance of rights in the course of acquisition.<sup>80</sup> Moreover, in some countries, a worker is given a choice between reimbursement of his contributions and maintenance of rights.<sup>81</sup> It should also be pointed out that the problem of maintenance of rights in the course of acquisition is likely to arise in systems which require all or part of the qualifying period to fall within a prescribed period preceding the date of entitlement to pension. In such cases, the option offered by some systems to continue voluntarily as a member of a scheme may be the first step towards a solution.<sup>82</sup>

<sup>76</sup> For example: Cuba, Iraq, Rwanda.

<sup>77</sup> Luxembourg.

<sup>78</sup> For example: Argentina (Act No. 18037 of 1968 to institute a new pension scheme for employees, s. 45); Egypt (Social Insurance Act of 1975, s. 39); Finland (government report); France (Social Security Code, s. L173-1 and Social Security Decree, ss. D173.1 et seq.); Madagascar (Act of 1968 to institute a retirement scheme and establish a National Social Welfare Fund, s. 12); Mali (Social Welfare Code, as amended by Act No. 86 of 1969, s. 170); Morocco (Dahir to promulgate Act No. 1-72-184 of 1972 respecting the social security scheme, s. 4); Romania (Pensions Act of 1977, s. 5), Yemen (Social Insurance Act of 1987, s. 61).

<sup>79</sup> For example: Byelorussian SSR; Ukrainian SSR; USSR (National Pensions Act of 1956, s. 16; this provision, however, appears to refer to cases where the worker has completed 25 years of service for men and 20 years for women).

<sup>80</sup> For example: Mexico (Social Insurance Act of 1973, ss. 182 and 183: maintenance of rights appears to be secured only during a fixed period after coverage is interrupted; if insurance is resumed, previous periods of contribution are taken into account under certain conditions and within certain limits).

<sup>81</sup> For example: Côte d'Ivoire (Order No. 33/TAS/DPS of 1960, s. 20).

<sup>82</sup> For example: Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 4); Chad (Decree No. 99 P-CSM of 1978 providing for the organisation of pension insurance, s. 3); Togo (Social Security Code, s. 4).

### III. Evaluation

#### Pensionable age

116. From the available information it is apparent that the normal pensionable age is generally fixed in accordance with the requirements of the Conventions, which specify that this age should not, in principle, exceed 65 years. Pensionable age is generally concentrated between 60 and 65 years, although in some countries it is 55 years, or even lower. A very small number of countries who have ratified either Convention No. 102 or Convention No. 128, have placed the pensionable age above 65 years. The information communicated by the governments of these countries indicates that this age takes into account demographic, economic or social criteria, such as the working ability of persons aged above 65, thus meeting the requirements of Article 26, paragraph 2, of Convention No. 102 and Article 15, paragraph 2, of Convention No. 128.<sup>83</sup>

117. Some countries have lowered the general pensionable age, sometimes on condition that certain subsidiary requirements are met.<sup>84</sup> While in some cases this decision was taken for essentially social reasons, in others it was also based on economic concerns, with a view to encouraging older workers to retire from working life, thus vacating jobs. One country, on the contrary, has decided to raise the pensionable age gradually from 65 to 67 years, for demographic reasons affecting the financial equilibrium of the schemes.<sup>85</sup>

118. Under Article 15, paragraph 3, of Convention No. 128, if the pensionable age is 65 years or higher, the age should be lowered for persons who have been engaged in arduous or unhealthy work. In this respect, the Committee was interested to note that a great many countries, including some where the normal pensionable age is lower than 65 years, have adopted provisions to this effect. However, the Committee points out that some of the countries where the pensionable age is 65 years or higher, do not, according to the available information, appear to have adopted specific provisions lowering the age for persons engaged in arduous or unhealthy work<sup>86</sup> or have

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<sup>83</sup> Thus, in its first reports made under article 22 of the Constitution on the application of Convention No. 128, the Government of Norway referred to grounds related to demographical considerations (high life expectancy), employment (high rate of activity of older persons) and protection under unemployment and invalidity insurance, duly supported by statistics.

<sup>84</sup> This is the case, for example, in Canada, France, Ireland, Norway and Sweden.

<sup>85</sup> United States (pensionable age will be raised to 66 years by the year 2009 and to 67 years by 2027).

<sup>86</sup> For example: Canada, United States.

stated that no such provisions exist.<sup>87</sup> Moreover, measures adopted sometimes apply only to very limited categories of workers. Lastly, from the information communicated by some governments it is not always possible to assess whether the early pensions thus awarded to workers employed on work considered to be arduous or unhealthy meet the requirements of Convention No. 128 as to rate and qualifying period. The Committee has addressed specific comments on these matters to certain governments which have ratified Convention No. 128;<sup>88</sup> in particular, it emphasised the need for a thorough examination of jobs which should be considered as arduous or unhealthy within the meaning of this provision of the Convention.

119. A considerable number of countries have adopted other provisions for a flexible pensionable age under certain prescribed criteria, in accordance with Recommendation No. 131; these include provisions concerning persons considered to be unfit for work and unemployed persons, as well as those based on social considerations.

120. It is interesting to note that a growing number of countries have introduced possibilities of flexible retirement in their legislation (early retirement, long-service retirement, deferred retirement, gradual retirement). These formulas allow a more individual approach to the age at which a person leaves working life, while attempting to reconcile two different aims: to relieve the employment market and to reduce financial deficits. As regards early retirement for personal convenience, reductions in the amount of pension should not be such as to affect a person's exercise of this option; deferred retirement, on the other hand, will be the more attractive to workers, the higher the increase in benefits offered.

121. The analysis of national situations also shows that in many countries, the legislation provides for a lower pensionable age for women. The question of whether the pensionable age should be different or equal for men and women, regarding which the Conference did not take a stand in adopting the instruments of 1967, is still relevant and continues to elicit discussions. An equal pensionable age is advocated in the name of equality of treatment, including equality in employment and occupation. Some consider that a lower pensionable age for women results in a shorter career, adding to the

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<sup>87</sup> For example: Australia; Ireland; Mexico (according to information communicated by the Government, social security legislation, however, provides for the principle of subsequent adoption of special provisions governing the pensions of workers employed on dangerous or unhealthy work).

<sup>88</sup> Direct requests have been addressed to the following countries, inter alia: Austria, Barbados, Federal Republic of Germany, Switzerland.

The Government of Switzerland availed itself in this respect of the provisions of Article 42 of Convention No. 128 which allows a member State which has accepted the obligations of the Convention in respect of Parts II, III and IV to derogate from certain provisions of these Parts of the Convention, on condition that it meet certain requirements as regards coverage and the rate of benefits.

handicap of a wage which is often lower. Others feel, again in the name of equality, that men are discriminated against if women receive identical benefit under more favourable conditions. Still other arguments are based on economic and financial grounds relating to the equilibrium of schemes. In this respect, it is emphasised that there is a paradox involved in fixing a lower age for women when their life expectancy is statistically higher than that of men and they therefore draw their pensions for a longer time. Advocates of a lower pensionable age for women, on the other hand, contend that the social conditions prevailing in most countries mean that working women still perform most of the housework and family activities such as raising children, which amounts to a double working day. Thus a lower pensionable age for women without reduction of benefit would be only a partial recognition of the unpaid work performed by women in the interests of the family and society.

122. This question, which is currently being discussed in a number of countries, has not yet been fully solved at the national level, if only because of the practical difficulties involved in implementing a principle of this kind. Should the pensionable age for women be brought up to that for men, or should the age for men be brought down to that for women, or should an intermediate age be adopted for both women and men? This is a problem fraught with social, legal, economic and financial implications, and therefore very difficult to solve. Perhaps seeking a more global solution aiming for a flexible system for fixing the pensionable age and a gradual transition from working life to retirement would help to reconcile the different points of view, while taking into account workers' wish to have more leeway in deciding when to retire.<sup>89</sup>

123. The Committee wishes to emphasise that the question of equalisation of the pensionable age falls within the broader scope of equality of treatment between men and women in social security, one of

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<sup>89</sup> A recent proposal for a directive submitted by the Commission of the European Communities to the Council completing the implementation of the principle of equal treatment for men and women in statutory and occupational social security schemes recommends that an identical age be gradually applied, with temporary guarantees where the fixing of an identical pensionable age leads to a reduction or increase in that age; where there is no fixed age, the principle of equality shall be deemed to have been complied with where the choice of age is left to the beneficiaries, under identical prescribed conditions, or if benefits are solely conditional upon an identical number of contribution years. This proposal for a directive supplements Directives 79/7 of 19 December 1978 and 86/378 of 24 July 1986 by extending the principle of equality of treatment, inter alia, to the fixing of retirement age for the grant of old-age and retirement benefits. The Committee on Women's Rights of the European Parliament, whose opinion on this proposal was requested, emphasised the importance of and priority to be accorded to a flexible retirement age.

the subjects which the Director-General of the ILO intends to submit this year to the Governing Body with a view to including it in the agenda of a forthcoming session of the Conference.<sup>90</sup>

Qualifying conditions and maintenance  
of rights in the course of acquisition

124. The legislation in most countries makes entitlement to benefit conditional upon completion of a minimum period of residence, contribution or employment. If the qualifying period is one of contribution or employment, the legislation, with the exception of some countries,<sup>91</sup> secures payment of reduced benefit to a person who has completed a qualifying period of 15 years, in accordance with Conventions Nos. 102 and 128, and, also fairly frequently, after a qualifying period of ten years, in accordance with Recommendation No. 131, some countries even requiring a shorter qualifying period. In addition, in a significant number of countries, various periods other than periods of employment or contribution are credited for purposes of entitlement to pension and/or calculation of benefit, as advocated in the Recommendation.

125. The legislation in several countries requires that part of the qualifying period fall within a period immediately preceding the pensionable age. This requirement for a certain "density of insurance" can hardly be considered as being contrary to the requirements of Article 29, paragraph 2(a), of Convention No. 102 and Article 18, paragraph 2(a), of Convention No. 128, since the wording of these provisions, referring as it does to "prescribed rules" for the determination of the minimum qualifying period, offers a certain amount of leeway to governments. It may, however, give rise to a paradoxical situation in which a person who, overall, has completed a higher number of contributions over his working life, is none the less deprived of benefit on the grounds that he is unable to prove that the required number of contributions have been paid during the prescribed period preceding pensionable age.<sup>92</sup> This is why, at least as far as Convention No. 128 is concerned, such statutory provisions may also be examined in the light of Article 30 of this instrument, which provides for the principle of maintenance of rights in the course of acquisition for contributory benefits. In this respect, the Committee would emphasise the importance which it attaches to this provision of the Convention regarding the application of which governments have unfortunately supplied little information.

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<sup>90</sup> See also below, under Equality of treatment, Ch. VI, para. 222.

<sup>91</sup> See above, notes 58 and 59 to para. 109.

<sup>92</sup> In some French-speaking African countries, an insured person who fails to complete 60 months of insurance in the last ten years preceding the date of eligibility for pension, is entitled under legislation only to an old-age allowance, irrespective of the total qualifying period completed.

126. In this context, the Committee notes that, in one country, the requirement that a person be a member of a scheme and covered by that scheme or be in an equivalent situation at the time of the contingency has been abolished.<sup>93</sup> In practice, this requirement meant that entitlement to benefit lapsed if a person reached a pensionable age during an interruption in working life or after ceasing to work. In another country, the condition of holding a job at the time of the contingency has also been abolished.<sup>94</sup>

127. The question of maintenance of rights in the course of acquisition will also arise if the insured person is covered by more than one social security scheme during his working life as a result of a change in occupation. This calls for internal co-ordination among different provisions of social security legislation which each require completion of a qualifying period. There are different ways of achieving such co-ordination, including adding up periods of insurance and paying proportional benefits under each of the schemes, or transferring rights from one scheme to another. The absence of such measures, in addition to placing the insured person at the risk of losing all or part of his pension rights, also impedes occupational mobility. This problem arises, for example, when a worker leaves the private sector to become a public servant or vice versa, as public servants are very often covered by a special pension scheme.<sup>95</sup>

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<sup>93</sup> Spain (Act of 31 July 1985. However, under s. 2 of this Act, the minimum period of contribution required for entitlement to old-age pension is 15 years, including at least two years within the eight years immediately preceding the age of entitlement to pension).

<sup>94</sup> Czechoslovakia (Social Security Act of 1988).

<sup>95</sup> See ILO: Social security, including social protection of public employees in respect of invalidity, retirement and survivors' benefits, Report III, Joint Committee on the Public Service, Fourth Session, Geneva, 1988.



## CHAPTER IV

### FORM AND RATE OF BENEFIT

#### I. Form of benefit

128. The main objective of any system of old-age protection is to guarantee protected persons who have reached a certain age reasonable means of subsistence for the rest of their lives. Seen from this angle, the most useful form of old-age benefit from the point of view of social security is a periodical payment. In general, a lump-sum payment is unlikely to meet the real needs of beneficiaries upon retiring and cannot fully provide for their old age. This is why the vast majority of old-age protection schemes provide benefit in the form of periodical payments, in accordance with Article 28 of Convention No. 102 and Article 17 of Convention No. 128. An exception to this, however, as we have seen above, is the benefit provided under certain provident funds in which a lump sum is paid; although such funds are certainly useful in developing countries, payment of a lump sum does not meet the above-mentioned requirements laid down by Conventions Nos. 102 and 128.

#### II. Rate and calculation of benefit

##### 1. International standards

129. Unlike the social security Conventions adopted before the war, Convention No. 102 prescribes the minimum rate for the various benefits it provides for. This is certainly one of the most innovative aspects of this instrument. Convention No. 128 largely reproduces the provisions of Convention No. 102 as regards the calculation of benefit, although it prescribes a higher rate of benefit.

##### Rate of benefit

130. Under the schedule appended to Part XI of Convention No. 102, concerning periodical payments, old-age benefit for a standard beneficiary - a man with a wife of pensionable age<sup>1</sup> - should amount

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<sup>1</sup> See the schedules appended to Part XI of Convention No. 102 and Part V of Convention No. 128, as well as Article 1(c) of Convention No. 102 and Article 1(f) of Convention No. 128, which define the term "wife" as a wife who is dependent on her husband.

to 40 per cent of a reference wage.<sup>2</sup> The percentage is increased to 45 per cent in the schedule appended to Part V of Convention No. 128. These percentages may, however, be reduced by up to ten points if the benefit is secured at least to protected persons who have completed a qualifying period of less than 30 years of contribution or employment or 20 years of residence normally taken into account by the Conventions (paragraphs 1, 3 and 4 of Article 29 of Convention No. 102 and paragraphs 1, 3 and 4 of Article 18 of Convention No. 128). Paragraph 22 of Recommendation No. 131 advocates a rate of 55 per cent;<sup>3</sup> moreover, Paragraph 23 recommends that national legislation fix minimum amounts of old-age benefit so as to ensure a minimum standard of living.

131. Recommendation No. 131 also provides that the amount of old-age benefit should be increased in certain circumstances. Paragraph 18 of the Recommendation, as we have seen in Chapter III, advocates an increase in benefit in the event of deferred retirement. In addition, under Paragraph 25, increments in benefits or supplementary or special benefits should be provided, under prescribed conditions, for pensioners requiring the constant help of another person.

#### Methods of calculation

132. Conventions Nos. 102 and 128 provide for three formulas to ensure that the rate of benefit reaches the level they prescribe. These three formulas take into account the methods for calculation of benefit adopted by different States: (a) the amount of benefit is based on the previous earnings of the beneficiary (Article 65 of Convention No. 102 and Article 26 of Convention No. 128); or (b) a uniform rate of benefit or one which includes a prescribed minimum amount, compared in the Convention to the wage of an ordinary adult male labourer (Article 66 of Convention No. 102 and Article 27 of Convention No. 128); or (c) a uniform rate of benefit is fixed as in the preceding case, but the amount may be reduced to the extent by which the other means of the beneficiary's family during the contingency exceed a prescribed amount (Article 67 of Convention No. 102 and Article 28 of Convention No. 128).

133. As the Committee stressed in its general survey carried out in 1961, these various formulas were considered to provide reasonable equivalence in the obligations arising under the instruments.<sup>4</sup> The

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<sup>2</sup> See below, para. 132 for a definition of the reference wage in the context of the methods for calculating benefit provided for by Conventions Nos. 102 and 128.

<sup>3</sup> Paragraph 22 of Recommendation No. 131 stipulates that the percentages indicated in the schedule appended to Part V of Convention No. 128 should be increased by ten points.

<sup>4</sup> In its general survey of 1961 on minimum standards of social security, the Committee of Experts recalled that the three methods for the calculation of benefit provided for by Convention No. 102 "were considered to provide reasonable equivalence in the obligations (footnote continued on next page)

decision as to which of these formulas to use will depend, in principle, on the method of determining the extent of national coverage. Article 28 of Convention No. 102 and Article 17 of Convention No 128 provide that old-age benefit shall be calculated according to formulas (a) or (b) above where classes of employees or classes of the economically active population are protected, and according to formula (c) above, where all residents or residents whose means during the contingency do not exceed prescribed limits are protected. In a country where the social security system as a whole allows all of the requirements as to scope laid down by these instruments to be met, it should be possible, in principle, to apply any one of the above three formulas in the calculation of benefit; the choice will depend on the method of calculation of benefit under the scheme concerned.<sup>5</sup>

134. It should be noted that in a country where, in addition to the old-age benefits awarded within a general scheme, benefits are provided under supplementary schemes, whether compulsory or voluntary, the sum of these various benefits may be used for purposes of calculation of benefit in so far as they meet the other requirements laid down by the instrument, particularly as regards coverage and conditions of entitlement.<sup>6</sup> Thus, a State where a scheme combines a non-means tested flat-rate benefit and a graduated supplementary

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arising under the Convention. On the one hand, it is to be noted that the various parts of the Convention establish a link between the method of calculating benefits and the scope of the coverage provided: benefits may be reduced or withheld during the contingency on account of the means of the persons concerned, in accordance with the conditions laid down in Article 67, only when all residents are covered; in all other cases, entitlement to benefit must be independent of any such assessment of means, but may be confined to certain classes of persons (employees or members of the economically active population) under conditions laid down in the Convention. At the same time, in any comparison of a system of benefits proportionate to previous earnings (Article 65) with a system of benefits at fixed rates (Article 66), it should be remembered that the latter must ensure payment of a benefit which may not fall below a certain level however low the beneficiary's previous earnings or those of his bread-winner, whereas, when the benefit is fixed as a percentage of the previous earnings, it may be less than the benefit which would have accrued under Article 66, where previous earnings were very low" (para. 13, p. 162).

<sup>5</sup> See the Memorandum addressed to the Government of the Netherlands by the Office concerning certain provisions of Convention No. 102 (O.B., Vol. XLIV, 1961, No. 8, pp. 569 and ff., paras. 7 and 8).

<sup>6</sup> See the Memorandum addressed to the Government of the Netherlands by the Office concerning certain provisions of Convention No. 102 (ibid., paras. 9 to 12). As regards inclusion of voluntary insurance, see also para. 46 above.

benefit which is related to earnings, can use either its basic benefit scheme for all residents by applying Article 67 of Convention No. 102 (Article 28 of Convention No. 128) or its combined benefit scheme for employees or classes of the economically active population by applying either Article 65 or Article 66 of Convention No. 102 (either Article 26 or Article 27 of Convention No. 128).<sup>7</sup>

135. Where Article 65 of Convention No. 102 or Article 26 of Convention No. 128 is applied, the rate of old-age benefit plus any family allowances<sup>8</sup> must amount to the percentage required by the instruments (40 per cent and 45 per cent respectively) of the beneficiary's previous earnings, including any family allowances. Under paragraph 2 of these Articles, previous earnings are calculated according to rules which are "prescribed" by or in virtue of national legislation, which allows for a wide margin of flexibility. In systems where the persons protected are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.

136. Most national systems place a ceiling on the amount of benefit or on the earnings taken into account for the calculation of benefit. In order to ensure that this upper limit is not too low, reducing the extent of protection in practice, both Conventions stipulate that the maximum limit prescribed by national legislation should be fixed in such a way that the percentages required by the instruments are attained where the previous earnings of the beneficiary or his bread-winner are equal to or lower than the wage of a skilled manual male employee (paragraph 3 of Article 65 of Convention No. 102 and of Article 26 of Convention No. 128). The Conventions contain provisions defining a skilled male manual employee<sup>9</sup> as well as his wage,<sup>10</sup> which must be calculated on the same time basis as his previous earnings, the benefit and any family allowances. In order to obtain comparable statistical data, the Committee of Experts expressed the wish that governments use the wage before deduction of taxes and social insurance contributions as the reference wage when communicating the statistical information required for the calculation of benefit.<sup>11</sup>

<sup>7</sup> See ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions, Report IV(2), International Labour Conference, 51st Session, Geneva, 1967, p. 35.

<sup>8</sup> However, family allowances should only be taken into account if they are payable in respect of a dependent wife, in view of the definition of the standard beneficiary given in the case of old-age benefit.

<sup>9</sup> The skilled manual male employee is defined as a worker belonging either to certain occupational categories, or to certain statistical categories (paras. 6, 7 and 8 of Article 65 of Convention No. 102 and of Article 26 of Convention No. 128).

<sup>10</sup> Paras. 4 and 9 of Article 65 of Convention No. 102 and of Article 26 of Convention No. 128.

<sup>11</sup> General observation on Convention No. 102, made in 1973.

137. According to Article 66 of Convention No. 102 and Article 27 of Convention No. 128, the rate of benefit, increased by the amount of any family allowances, must attain, for the standard beneficiary, the percentage of the wage of an ordinary adult male labourer required by the instruments.<sup>12</sup> As we have said, this formula applies in particular to systems under which benefits are awarded at a uniform rate irrespective of the beneficiary's previous earnings. This method may also be used where benefits, although based on the beneficiary's previous earnings, include a minimum rate guaranteed to all beneficiaries, which is often the case as will be seen below in the examination of national situations. The minimum guaranteed rate may thus be considered as benefit which is fixed at a uniform rate.

138. The formula provided for by Article 67 of Convention No. 102 and Article 22 of Convention No. 128 is designed to allow for systems which cover all residents, by definition, and under which benefits may be reduced or suspended depending on the beneficiary's other means. The rate of the benefits normally awarded under such systems should be fixed according to a prescribed scale and may only be reduced if the other means of the beneficiary's family exceed prescribed amounts. The Conventions do not specify these amounts, leaving them to be determined by legislation and the competent authorities, bearing in mind that such amounts must be "substantial" in order for a reduction to be allowed. The total of the benefit and any other means for which a deduction is allowed by the Conventions should be sufficient to maintain the family of the beneficiary in health and decency. Moreover, in order to provide a basis for comparison with the international standard, this total amount should not be less than the amount of benefit calculated in accordance with the requirements of Article 66 of Convention No. 102 (Article 27 of Convention No. 128). In addition, subparagraph (d) of Article 67 of Convention No. 102 and of Article 28 of Convention No. 128 allows governments which so wish the option of an overall evaluation of the benefits paid under their schemes. This subparagraph provides that the rate of benefit shall be considered to have been attained if the total amount of benefits paid under the scheme concerned exceeds by at least 30 per cent the total amount of benefits which would be obtained if the benefits, calculated in accordance with Article 66 of Convention No. 102 or Article 27 of Convention No. 128, had been awarded under a scheme covering 20 per cent of all residents, in the case of Convention No. 102, and 75 per cent of the economically active population in the case of Convention No. 128. Obviously, such a calculation presupposes an estimate of the number of beneficiaries to whom benefits would be paid under such a hypothetical system (an estimate of the "beneficiaries/insured persons" ratio).<sup>13</sup> This flexibility clause allows governments

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<sup>12</sup> For definitions of the ordinary adult male labourer and his wage, see paras. 4 to 7 of Article 66 of Convention No. 102 and of Article 27 of Convention No. 128.

<sup>13</sup> See the Memorandum addressed by the Office to the Government of the Netherlands concerning certain provisions of Convention No. 102 (*ibid.*, para. 8(c)) and the report forms for Conventions Nos. 102 and 128 approved by the Governing Body under art. 22 of the Constitution.

considerable leeway in fixing the amount of benefit awarded individually, provided that the overall evaluation of benefit meets the requirements of these instruments under subparagraph (d) of Article 67 of Convention No. 102 and Article 28 of Convention No. 128.<sup>14</sup>

139. It should be recalled that the provisions of the instruments under consideration are not intended to oblige States to adhere to a certain method of calculating the rate of benefit provided for by national legislation; States are allowed to adopt their own rules and methods for calculating the rate of benefit paid under their national schemes, provided that the result of their calculations meets the requirements as to amount of benefit laid down by the instruments. The three formulas outlined above and the parameters they apply, such as "wage of the skilled manual male employee" and the "wage of the ordinary adult male labourer" are intended only to provide a basis for comparison between national situations and the requirements of the Conventions. Therefore, contrary to what some governments appear to believe,<sup>15</sup> any State for which these Conventions are in force may avail itself of any one of these formulas for purposes of international comparison, without, however, being obliged to introduce them in its national legislation or practice.

Length of the period to be taken  
into account in the calculation  
of the benefit

140. Under the terms of Article 29, paragraph 1(a), of Convention No. 102 and Article 18, paragraph 1(a), of Convention No. 128, the percentages required by these instruments should be secured to a person protected who has completed in accordance with "prescribed rules"<sup>16</sup> a qualifying period of contribution, employment or residence. The qualifying period should not exceed 30 years of contribution or employment<sup>17</sup> or 20 years of residence.

141. Article 29, paragraph 1(b), of Convention No. 102 and Article 19, paragraph 1(b), of Convention No. 128, however, provide for more flexible rules "where, in principle, all economically active persons are protected".<sup>18</sup> In this case, benefits should be secured

<sup>14</sup> The Government of Denmark has availed itself in the past of the provisions of Article 67(d) of Convention No. 102 as regards invalidity benefit. It has also referred, in the context of the European Code of Social Security, to Art. 67(d) of the Code which contains a similar provision, as regards invalidity and old-age benefits.

<sup>15</sup> For example: Saudi Arabia, New Zealand.

<sup>16</sup> For the scope of the term "prescribed rules", see above, para. 100.

<sup>17</sup> On the use of another time unit, see above, para. 100.

<sup>18</sup> Obviously, this condition is met if the system of protection covers the entire population. See the Memorandum addressed by the Office to the Government of the Netherlands concerning certain provisions of Convention No. 102 (ibid., para. 17).

after a prescribed qualifying period of contribution has been completed and a prescribed yearly average number of contributions has been paid while the person concerned was of working age.<sup>19</sup>

142. As we have seen in paragraph 130 above, Conventions Nos. 102 and 128 allow the rate of old-age benefit to be reduced where benefit is secured to protected persons who have completed a shorter qualifying period than that provided for in paragraph 1(a) of Article 29 of Convention No. 102 and of Article 18 of Convention No. 128 (30 years of contribution or employment or 20 years of residence). Under paragraph 3 of these Articles, the requirements as to rate of benefit laid down in Conventions Nos. 102 and 128 will be deemed to be satisfied where a benefit amounting to 30 per cent of the reference wage (under Convention No. 102) and 35 per cent (under Convention No. 128) for the standard beneficiary is secured at least to a person protected who has completed a qualifying period not exceeding either ten years of contribution or employment or five years of residence.<sup>20</sup>

### 2. National situations

143. In an attempt to achieve a more orderly presentation of national situations, earnings-related and flat-rate benefits will be examined separately, followed by the closely related topic of minimum and maximum pensions, as well as pension increments.

#### Earnings-related benefit

144. In many countries, the rate of pension is a percentage of the beneficiary's previous earnings. Very often, this rate is determined without taking the amount of the previous wage into account. In other words, the relation between the amount of pension and the previous remuneration remains constant (subject to a ceiling if one is fixed by national legislation) irrespective of the amount of remuneration, but it usually varies according to the period of insurance or employment. This is the most widespread method of

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<sup>19</sup> See the Memorandum addressed by the Office to the Government of the Netherlands concerning certain provisions of Convention No. 102 (*ibid.*, para. 17).

<sup>20</sup> In addition, Article 29, para. 4 of Convention No. 102, where the qualifying period consists of a period of contribution or employment, allows a proportional reduction of the normal percentage if the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years but is less than 30 years. A similar provision is contained in para. 4 of Article 18 of Convention No. 128, which provides also that a proportional reduction of the normal percentage may be effected where the qualifying period consists of a period of residence exceeding five years but less than 20 years.

calculation.<sup>21</sup> Thus, the legislation of some of these countries provides for an annual rate of accumulation of the pension for each year of insurance, the amount of pension being equal to the amount of the reference wage multiplied by such accumulation rate and the number of years of insurance.<sup>22</sup> In other countries, pension consists of a base component equal to a certain percentage of the reference wage, to which a supplement (also a percentage of the wage) is added for each additional period.<sup>23</sup> In still other countries, pension is

<sup>21</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions s. 12); Barbados (National Insurance and Social Security (Benefit) Regulations, s. 32); Belize (Social Security (Benefit) Regulations of 1980, s. 26); Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 33); China (retirement regulations, s. 2); Cuba (Social Security Act of 1979, s. 70); Equatorial Guinea (Act of 1984 respecting social security, s. 41); France (Social Security Code, s. L351-1 and s. R351-27 and 29); Grenada (National Insurance (Benefit) Regulations, s. 30); Honduras (regulations under the Social Insurance Act, s. 96, read in conjunction with s. 92); Hungary (Social Security Act, s. 43); Morocco (Dahir to promulgate Act No. 1-72-184 of 1972 respecting the social security scheme, ss. 55 and 56); Pakistan (Employees' Old-Age Benefits Act, 1976, s. 22 and schedule); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 53A); Saint Lucia (National Insurance Regulations, s. 63); Saudi Arabia (Social Insurance Law, s. 38, subs. 3); Togo (Social Security Code, s. 28(3)); Turkey (Social Insurance Act, s. 61); Yugoslavia (Act of 1982 respecting the basic entitlements enjoyed under pension and disability insurance, s. 26); United Kingdom (Anguilla) (Social Security (Benefit) Regulations, s. 32).

<sup>22</sup> For example: Algeria (see previous note): the increment is 2.5 per cent per year; Austria (government report: the accumulation rate is 1.9 per cent per year for the first 30 years of insurance, and 1.5 per cent for the following 15 years); Guinea-Bissau (Legislative Decree No. 5/86 of 1986, ss. 58 and 68, the accumulation rate is 2 per cent per year); Italy (Presidential Decree No. 488 of 1968, s. 5: the accumulation rate is 2 per cent per year); Jordan (government report: the annual accumulation rate is 2 per cent); Libyan Arab Jamahiriya (Social Security Law of 1980, s. 14: the accumulation rate is 2.5 per cent per year for the first 20 years of employment, followed by 2 per cent); Portugal (Decree No. 45266 of 1963 to issue general regulations for the trade union provident funds, s. 89: the accumulation rate is 2.2 per cent per year); Saudi Arabia (see previous note): the accumulation rate is 2 per cent per year.

<sup>23</sup> For example: Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 33: 30 per cent of the average monthly remuneration, increased by 2 per cent for each 12-month insurance period or one treated as such in excess of 180 months); Bolivia (Legislative Decree (footnote continued on next page)



calculated on the basis of a percentage of the reference wage divided by the number of years required for entitlement to a full pension, multiplied by the number of years of insurance.<sup>24</sup>

145. A second formula for calculating pensions on the basis of earnings discriminates in favour of lower-paid workers. Thus, in some schemes, pension is calculated on a degressive scale based on the level of previous earnings so that the higher the earnings taken into

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No. 13214 of 1975 respecting the reform of the Bolivian social security system, s. 36: 30 per cent of monthly average wage, increased by 2 per cent for each 12-month contribution period in excess of 180 months); Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 22: 30 per cent of monthly average remuneration, increased by 1.33 per cent for each 12-month period of insurance or one treated as such in excess of 180 months); Cameroon (Law No. 69-LF-18 of 1969 instituting old-age, invalidity and survivors' pension insurance scheme, s. 11: 30 per cent of average monthly remuneration, increased by 1 per cent for each 12-month period in excess of 180 months); Cuba (Social Security Act of 1979, s. 70: 50 per cent of monthly annual wage, increased by 1 per cent or 1.5 per cent, according to the nature of the work, for each year of employment in excess of 25 years); Grenada (National Insurance (Benefit) Regulations of 1983, s. 30: 30 per cent of average annual remuneration, increased by 1 per cent for each 50 weeks of contribution of the first 500 weeks); Honduras (regulations under the Social Insurance Act, s. 96, read in conjunction with s. 92: 40 per cent of the monthly base remuneration, increased by 1 per cent for each 12-month period of contribution in excess of 60 months); Morocco (Dahir to promulgate Act No. 1-72-184 of 1972 respecting the social security scheme, ss. 55 and 56: 50 per cent of average remuneration, increased by 1 per cent for each 216-day period of insurance in excess of 3,240 days); Rwanda (Legislative Decree of 1974 respecting the organisation of the social security system, s. 32: 30 per cent of average remuneration, increased by 1 per cent for each 12-month period of insurance or one treated as such in excess of 180 months); Saint Lucia (National Insurance Regulations of 1984, s. 63: 40 per cent of monthly pensionable remuneration, increased by 1 per cent for each year of contribution in excess of ten years).

<sup>24</sup> For example: Belgium (Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit, s. 10: 60 per cent (75 per cent for a couple) of the reference wage, multiplied by the number of years of employment and divided by the number of years between the insured person's 20th birthday and the normal age of entitlement to pension); France (Social Security Code, ss. L351-1 and L351-8, as well as s. R351-27: the full rate of pension is equal to 50 per cent of the reference wage, multiplied by the number of quarters of insurance or periods treated as such and divided by 150. Persons entitled to the full rate include insured persons who are aged 65 at the time of claiming pension and those aged under 65 if they have completed 150 quarters of insurance or periods treated as such).

account, the lower the ratio of pension to wage.<sup>25</sup> In other countries, pensions consist of a base component unrelated to earnings, plus a supplement which is proportional to the beneficiary's previous earnings and the period of insurance.<sup>26</sup> Other schemes apply more complicated calculation methods also aimed at insuring that the higher the previous wage, the lower the rate of pension.<sup>27</sup>

146. In addition to these two formulas, some countries, including a few French-speaking African countries, have adopted what is known as the pension points method. According to this method, an insured person acquires a certain number of points each year, based on the contributions paid. The retirement pension is equal to the number of contribution points acquired at the time of award of pension, multiplied by the value of the benefit point; the value of the

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<sup>25</sup> For example: Bulgaria (National Pensions Act of 1957, s. 10: rate of 80 to 55 per cent degressive according to wage bracket, increased by a 2 per cent supplement per year of employment in excess of the minimum qualifying period for entitlement to pension); Nicaragua (general regulations under the Social Insurance Act of 1982, s. 85: 40 per cent (45 per cent if the wage is less than double the minimum wage) of the base remuneration, increased by 1.36 per cent (1.591 per cent if the wage is less than double the minimum wage) for each period of 50 weekly contributions in excess of 150); Poland (government report: rate of 100 per cent of the average wage up to a certain amount, and 55 per cent on the remainder, with a supplement for each year of employment in excess of 20 years); USSR (National Pensions Act of 1956, s. 13: degressive rate from 100 to 50 per cent, according to wage bracket, with, *inter alia*, a 10 to 20 per cent supplement for long periods of employment); United States (20 CFR part 404.212 and schedule II: 90 per cent, 32 per cent and 15 per cent degressive rates, according to wage bracket).

<sup>26</sup> For example: German Democratic Republic (Pensions Ordinance of 1979, s. 5: the monthly old-age pension is calculated on the basis of a fixed rate, with a supplement of 1 per cent of average earnings for each year of activity subject to compulsory insurance and for each additional year credited); Luxembourg (Act of 1987 respecting old-age, invalidity and survivors' pension insurance, s. 214: annual rate of pension is calculated on the basis of an amount fixed in accordance with the period of insurance, with a supplement of 1.6 per cent of total insured earnings over the entire working life); Madagascar (Social Insurance Code, s. 286: old-age pension calculated on the basis of a fixed rate equal to 30 per cent of the guaranteed minimum wage (SMIG), with a supplement of 20 per cent of the reference wage plus a yearly supplement of 1 per cent of the reference wage for each year of contribution in excess of ten years); Switzerland (Federal Act on Old-Age and Survivors' Insurance of 1946, s. 34: the monthly rate of the full simple old-age pension consists of a fixed component equal to four-fifths of the minimum rate of pension and a variable component equal to one-sixtieth of average yearly pensionable remuneration).

<sup>27</sup> For example: Philippines (Social Security Law, s. 12).

contribution point or the benefit point is fixed annually by the competent authority on the basis of the technical and financial requirements of the schemes.<sup>28</sup> A points system based on the same principle but applying slightly different methods is also used by other countries in their supplementary schemes, whether they are occupational<sup>29</sup> or statutory.<sup>30</sup>

147. Moreover, in several countries<sup>31</sup> protected persons are classified according to earnings in different wage classes each with its own minimum and maximum rates.<sup>32</sup> A base remuneration is attributed to each class, and the rate of pension is often determined with reference to the base remuneration. Thus, in principle, the rate of pension is identical for all workers in the same wage class if they have completed the same period of contribution or employment.

148. Under the schemes linking benefit to previous earnings, the rate of pension depends on the length of the period of insurance or employment. As we have seen in paragraph 113 above, national legislation often treats other periods as periods of employment or insurance; these may include periods during which the insured person received compensation under social security, performed military service, studied, etc.

149. The amount of the wage or earnings taken into account in calculating pension is one of the essential elements determining the rate of benefit. The amount of the reference wage depends, on the one hand, on the wage components taken into consideration and, on the other, on the period taken into account. The definition of earnings varies from one country to another. In some cases, it is very broad, covering all of the wage components, including overtime, bonuses and annual gratuities, while in others, only the fixed component of remuneration is taken into account. As regards the period taken into consideration, in some schemes it covers all or nearly all of the period of insurance or the insured person's working life,<sup>33</sup> although low-income years may be excluded from calculation in some cases.<sup>34</sup> Often, however, the period taken into consideration is shorter,

<sup>28</sup> For example: Côte d'Ivoire (Social Insurance Code, s. 164); Senegal (Internal Regulations No. 1 respecting the general retirement pensions scheme).

<sup>29</sup> For example: France.

<sup>30</sup> Sweden (National Insurance Act of 1962, Title IV, Ch. 11).

<sup>31</sup> For example: Mexico (Social Insurance Act of 1973, s. 167); Trinidad and Tobago (National Insurance Act, s. 54 and second and third schedules, table B).

<sup>32</sup> However, no maximum is placed on the last class.

<sup>33</sup> For example: Belgium (Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit, s. 29); Switzerland (Federal Act on Old-Age and Survivors' Insurance of 1946, s. 30); Trinidad and Tobago (government report).

<sup>34</sup> United States (42 USC part 415: average earnings are calculated over all of the calendar years between the insured persons 21st birthday and their attainment of 62 years of age with the exception, inter alia, of the five years yielding the lowest earnings).

consisting in some schemes of the last years of employment or insurance (usually one to ten years).<sup>35</sup> Instead of the last years of insurance or employment, the average wage may be calculated on the basis of the "most favourable" years;<sup>36</sup> sometimes these must be consecutive<sup>37</sup> or must fall within a prescribed period.<sup>38</sup> In some

<sup>35</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions, s. 13: average monthly wage for the job over the last year preceding retirement or, if it is more favourable, the average monthly wage calculated on the basis of the three best years); Burundi (Legislative Decree No. 1-17 of 1981 respecting the reform of the general social security scheme, s. 22: the base remuneration is defined as the average pensionable earnings for the last 36 or 60 months preceding eligibility for pension, whichever is most favourable to the insured person; if less than 36 months have passed since registration, monthly remuneration is calculated by dividing the total pensionable remuneration since registration by the number of calendar months between the date of registration and that of entitlement to pension); Cameroon (Law No. 69-LF-18 of 1969 instituting old-age, invalidity and survivors' pension insurance, s. 11 contains a similar provision to that referred to for Burundi); Colombia (Agreement No. 029 of 1985 of the Colombian Institute of Social Security, s. 1: average remuneration is calculated over the last 100 weeks of contribution); Madagascar (Social Insurance Code of 1969, s. 275: the average age is calculated over the ten calendar years preceding the age of entitlement to pension); Morocco (Dahir to promulgate Act No. 1-72 of 1972 respecting the social security scheme, s. 55: the average remuneration is defined as one thirty-sixth or one sixtieth of pensionable remuneration over the last three or five years preceding the last calendar month of insurance preceding the age of eligibility for pension or the age of entitlement to pension, whichever is most favourable to the insured person); Mexico (Social Insurance Act of 1973, s. 167: calculation is based on the last 250 weeks of contribution, unless the number of last preceding weeks falls below 250); Saudi Arabia (Social Insurance Law, s. 38: average wage over the last 24 months of insurance); Spain (Act providing for urgent measures to rationalise the structure and protective activity of social security of 1985, s. 3: the base of calculation of old-age pensions is on the last 96 months).

<sup>36</sup> For example: Algeria (see above, previous note); France (Social Security Code, s. R351-29: average wage corresponding to the contributions paid over the ten best years).

<sup>37</sup> For example: Yugoslavia (Act of 1982 respecting the basic entitlements enjoyed under pension and disability insurance, s. 24: the average personal income used as a basis for calculating retirement pension is calculated over the ten consecutive best years).

<sup>38</sup> For example: Argentina (Act No. 18037 of 1968 establishing a new pension scheme for employees, s. 45: the pension is established on the basis of the average monthly remuneration over the three best calendar years in the last ten years); Belize (regulations concerning

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countries the legislation provides for an alternative method of calculating the period to be taken into account, either stipulating that the most favourable method applies, or leaving the choice to the beneficiary.<sup>39</sup>

150. Where the reference period is long or remote, there is a risk, due to inflation, that the earliest registered nominal earnings no longer correspond to the range of earnings obtaining at the time pension is claimed; this is why many countries have adopted measures to adjust the earnings taken into consideration in calculating pensions.

151. Lastly, most schemes set a ceiling above which earnings are no longer taken into account in the calculation of benefit. This ceiling is very often an absolute figure, but in some cases it is based on criteria such as the minimum wage.<sup>40</sup> In some schemes the legislation also provides that the amount of earnings taken into account cannot fall below a prescribed minimum.<sup>41</sup>

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social security benefits of 1980, s. 26: the average remuneration is calculated over the three best years of contribution in the last 15 years); Bulgaria (National Pensions Act of 1957, s. 11: the amount of pension is calculated on the basis of the average gross monthly remuneration over three consecutive years chosen by the pensioner from his last ten years of employment); Cuba (Social Security Act of 1979, s. 75: the yearly average remuneration is calculated over the five best calendar years among the last ten years); Panama (Legislative Decree No. 14 amending Act No. 134 of 1943 respecting the organisation of the Social Insurance Fund, s. 54: the basic wage is the average taken for the three, four or five best years of contribution - depending on the number of contributions - in the last 15 years); Portugal (Decree No. 45-266 of 1963 to issue general regulations for the trade union and welfare funds, s. 80: the base remuneration is the average monthly remuneration over the five best years in the last ten years); Romania (Act respecting state social insurance pensions and social assistance, s. 10: the base remuneration is the average of the monthly statutory wage over five consecutive years chosen among the last ten years of employment).

<sup>39</sup> For example: Algeria (see above, para. 149, note 35); Philippines (Social Security Law, s. 8(f) and (m): the average monthly salary credit, which is one of the elements taken into account in calculating pension, is reckoned either over the last 60 months or over the entire working life); USSR (National Pensions Act of 1956, s. 53: the average reference wage is calculated over the last 12 months or, at the beneficiary's request, over any period of five consecutive years falling within the ten years preceding application for pension).

<sup>40</sup> For example: Mexico (Social Insurance Act of 1973, s. 33).

<sup>41</sup> For example: Mexico (Social Insurance Act of 1973, s. 33); Pakistan (Employees' Old-Age Benefits Act, 1976, s. 2(p); Turkey (Social Insurance Act No. 506 of 1964, s. 78).



Uniform rates of benefit

152. As we have already seen, uniform rates of pension are awarded under the schemes applicable to all residents.<sup>42</sup> In most cases, a person is entitled to pension if he has completed the minimum qualifying period, consisting of a period of residence.<sup>43</sup> Some schemes also require completion of a longer period (usually 40 years) for entitlement to full pension.<sup>44</sup> Some of these countries also provide for an additional pension, or a pension supplement, which is linked to earnings, in addition to the uniform rate of benefit paid to all residents.<sup>45</sup> It is worth noting that these two systems are often closely inter-related, even constituting, in some countries, a single national insurance scheme awarding a single pension consisting of a uniform base rate and an earnings-related supplement.<sup>46</sup>

153. Under some schemes, universal pensions may be reduced on the basis of the beneficiary's means.<sup>47</sup> In some cases, the means requirement only applies to the pension supplements which are often awarded in addition to minimum benefits.<sup>48</sup> In one country, benefits awarded to all residents are subject to a means requirement only up to a prescribed age (70 years), after which benefits are paid without reduction, irrespective of the beneficiary's means.<sup>49</sup>

154. Flat-rate pensions are also awarded, although more rarely, under insurance schemes.<sup>50</sup> They are often supplemented by additional benefits linked to previous earnings.<sup>51</sup>

Minimum pensions

155. Often pensions are fixed in such a way as to ensure that they do not fall below a certain minimum. As we have seen, some schemes fix a minimum amount for the earnings taken into consideration in calculating pension: thus, the pension is automatically calculated on the basis of this minimum figure if the reference wage falls below it.<sup>52</sup> In addition, many schemes provide that the amount of pension cannot fall below a prescribed rate. In most of them, the minimum

<sup>42</sup> For example: Canada, Finland, Japan, Mauritius, Norway, Sweden.

<sup>43</sup> See above, para. 108.

<sup>44</sup> For example: Canada (Old-Age Security Act, s. 3(1.2)); Iceland (National Insurance Act of 1971, s. 11); Norway (National Insurance Act of 1966, Ch. 7, s. 7, 1.3).

<sup>45</sup> See above, para. 65.

<sup>46</sup> For example: Norway.

<sup>47</sup> See above, para. 65, note 46.

<sup>48</sup> See above, para. 65, note 46.

<sup>49</sup> Denmark (Social Pensions Act of 1984, s. 19).

<sup>50</sup> For example: Ireland (Social Welfare Act (Consolidation), of 1981); Netherlands (General Old-Age Act); United Kingdom (Social Security Act of 1975).

<sup>51</sup> For example: United Kingdom.

<sup>52</sup> See above, para. 151.

pension is fixed in monetary terms.<sup>53</sup> In others, the minimum is fixed according to parameters such as the minimum wage,<sup>54</sup> pensionable earnings<sup>55</sup> or other criteria.<sup>56</sup> Many governments have stated in their reports that this minimum amount is fixed in such a way as to ensure a minimum standard of living, as advocated in Paragraph 23 of Recommendation No. 131.<sup>57</sup>

#### Maximum pensions

156. As already pointed out, in most schemes in which the amount of pension is based directly on the beneficiary's previous earnings, the amount of pension is limited by placing a ceiling on the earnings on which the calculation of benefit is based.<sup>58</sup> Irrespective of this ceiling, the legislation often provides for a maximum rate for the pension itself;<sup>59</sup> this maximum amount is often expressed in monetary terms. Moreover, the legislation adopted in a number of

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<sup>53</sup> For example: Barbados (National Insurance and Social Security (Benefit) Regulations, s. 32(2)); Belize (Social Security (Benefit) Regulations, s. 26, subsection 4); Bulgaria (National Pensions Act of 1957, s. 10); Cuba (Social Security Act of 1979, ss. 78 and 79); Egypt (government report); German Democratic Republic (Pensions Ordinance of 1979, s. 6); Jordan (government report); Mexico (Social Insurance Act of 1973, s. 168); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 56-K); Portugal (Order No. 903/87 of 1987, s. 4); Trinidad and Tobago (government report); USSR (National Pensions Act of 1956, s. 13, and government report).

<sup>54</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions, s. 16); Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 33(4)); Burundi (Legislative Decree No. 1/17 of 1981 respecting the reform of the general social security scheme, s. 22(4)); Libyan Arab Jamahiriya (Social Security Law of 1980, s. 14(b)); Poland (government report).

<sup>55</sup> For example: Honduras (regulations under the Social Insurance Act, s. 96).

<sup>56</sup> For example: Cyprus. The Government states that the old-age benefit shall in no case be less than 50 per cent of the full basic benefit.

<sup>57</sup> For example: Algeria, Barbados, Belgium, Belize, Bulgaria, Cuba, Guyana, Mexico, Pakistan, Panama, Poland, Romania, Togo, Turkey, Yugoslavia.

<sup>58</sup> See above, para. 151.

<sup>59</sup> For example: Egypt (Social Insurance Act of 1975, s. 20); Iraq (Workers' Pension and Social Security Law No. 39 of 1971 and government report); Malta (Social Security Act of 1987, s. 65); Switzerland (Federal Old-Age and Survivors' Insurance Act of 1946, s. 34, subsection 3, and government report).

countries provides that pension shall not exceed a certain percentage or all of the pensionable earnings.<sup>60</sup>

### Pension increments

157. The legislation in many countries provides for pension increments under certain conditions; these are mainly awarded in respect of dependants. Many schemes award pension supplements in respect of a spouse<sup>61</sup> or dependent children.<sup>62</sup> The dependant's increment may be paid at a flat rate or as an additional percentage of the pension, depending on the case. Moreover, in the schemes covering residents, each spouse of pensionable age is usually entitled to a pension if he or she meets the conditions laid down in the legislation; however, the rate sometimes depends on the marital status of the beneficiary, so that the rate for a married couple is less than double the rate for single persons.<sup>63</sup> Moreover, if the beneficiary's spouse does not meet certain conditions for entitlement to pension, such as pensionable age, the beneficiary often receives a

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<sup>60</sup> This is not, however, a maximum within the meaning of Article 65, para. 3, of Convention No. 102, and of Article 26, para. 3, of Convention No. 128.

<sup>61</sup> For example: Algeria (Act No. 83-12 of 1983 respecting retirement pensions, s. 15); Belgium (Royal Order No. 50 of 1967 respecting employees' retirement pension and survivors' benefit, s. 10); Colombia (Agreement No. 029 of 1985 of the Colombian Institute of Social Security, s. 3); Cyprus (Social Insurance Law of 1980, fourth schedule, part III, and government report: increase in regard to dependants); France (Social Security Code, s. L351-13); German Democratic Republic (Pensions Ordinance of 1979, s. 17); Israel (government report); Nicaragua (general rules made under the Social Insurance Act, 1982, s. 85); Panama (Legislative Decree No. 14 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 53(b)); Peru (Legislative Decree No. 19990 of 1973, s. 43); Saudi Arabia (Social Insurance Law, s. 38, subsection 3: increase in regard to dependants).

<sup>62</sup> For example: Australia (Social Security Act 1947, s. 33(3) and (4)); Côte d'Ivoire (Social Insurance Code, s. 166); Cyprus (Social Insurance Law of 1980, fourth schedule, part III, and government report); France (Social Welfare Code, s. L351-12: provision is made for an increase if the beneficiary has had or raised a certain number of children); Israel (government report); Nicaragua (general rules under the Social Insurance Act of 1982, s. 85); Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943, establishing the Social Insurance Fund, s. 53(b)); Peru (Legislative Decree No. 19990 of 1973, s. 43); Qatar (Decision No. 12 of 1981, s. 16); Saudi Arabia (Social Insurance Law, s. 38(3): increase in regard to dependants); Senegal (Internal Regulations No. 1 respecting the general retirement pensions scheme and government report).

<sup>63</sup> This is the case, for example, in the following countries: Australia, Denmark, Norway, Sweden.



supplement in this respect.<sup>64</sup> It should also be borne in mind that, in many countries, family allowances continue to be paid to pensioners.

158. In accordance with Paragraph 25 of Recommendation No. 131, supplementary benefit is often awarded to persons requiring the help of another person. These increments are most often awarded under invalidity protection schemes and occupational injury compensation schemes, although some systems also award them to recipients of old-age benefit.<sup>65</sup>

159. Some countries have adopted special provisions concerning the calculation of benefit for persons engaged in particularly arduous, unhealthy or difficult occupations. Thus, some schemes classify jobs for purposes of old-age pension in different groups according to factors including the arduous, hazardous or unhealthy nature of the work, with the accumulation rate varying according to the job category in which the worker is classified.<sup>66</sup> Other countries fix a higher rate for workers employed underground or in unhealthy work or in workplaces with a particularly high temperature,<sup>67</sup> as well as in the health-care and postal services, the railways, and mines.<sup>68</sup> In other countries, workers employed on jobs considered to be as unhealthy are covered by a complementary insurance scheme.<sup>69</sup> Lastly, it should be noted that still other countries have special schemes covering particular categories of workers, such as mineworkers and seafarers.

### 3. Evaluation

160. With the exception of particular cases in which the Committee has requested additional information on the method of calculating benefit, including statistics on the rate of benefit and the reference wage, the great majority of countries for which Part V of Convention No. 102 is in force have achieved the rate of benefit prescribed by this instrument, i.e. 40 per cent of the reference wage for a standard beneficiary with a wife of pensionable age. The same is true of the countries which have accepted Part III of Convention No. 128, which fixes the rate of old-age benefit at 45 per cent of the reference wage. From the statistics communicated by governments, it

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<sup>64</sup> For example: Denmark, Netherlands, Norway.

<sup>65</sup> For example: Austria (government report); France (Social Security Code, s. L355-1); German Democratic Republic (Pensions Ordinance of 1979, s. 55); Mexico (Social Insurance Act of 1973, s. 166); Poland (government report).

<sup>66</sup> For example: Cuba (Social Security Act of 1979, ss. 67 and 70); Romania (Act of 1977 respecting state social insurance pensions and social assistance, ss. 1 and 11: work is classified in three groups depending on working conditions and the difficulty and importance of the work).

<sup>67</sup> For example: USSR (National Pension Act of 1956, s. 13).

<sup>68</sup> For example: German Democratic Republic (government report).

<sup>69</sup> Ecuador (Codification of the Statutory Social Insurance Law, s. 52).

appears that in these countries the rate of old-age benefit calculated in accordance with the provisions of these instruments varies between 40 and 95 per cent of the reference wage. In most cases, the percentage is at least as high as that prescribed by Convention No. 128.

161. In most of the cases mentioned above the prescribed rate of old-age benefit is attained after completion of a qualifying period which is shorter than that provided for in Article 29, paragraph 1(a), of Convention No. 102 and Article 18, paragraph 1(a), of Convention No. 128 (either 30 years of contribution or employment or 20 years of residence). However, one government which accepted Part III of Convention No. 128<sup>70</sup> has availed itself of Article 18, paragraph 1(b) of this instrument.<sup>71</sup>

162. In the countries for which neither the part of Convention No. 102 which relates to old-age benefit nor that of Convention No. 128 is in force, the rate of benefit as provided for by the legislation generally varies between 40 and 95 per cent of the reference earnings, most often equalling between 55 and 60 per cent of such earnings. The vast majority of the schemes studied award benefits which are proportional, at least in part, to the beneficiary's previous earnings. It should be pointed out, however, that many of these schemes base the calculation of pension only on wages which do not exceed a certain ceiling<sup>72</sup> and/or provide that the pension itself must not exceed a certain upper limit. While the instruments do allow, as we have seen, a ceiling to be placed both on pensionable remuneration and on the rate of benefit, they require that, in this case, the rate of benefit which they prescribe be attained at least for a standard beneficiary whose wage is equal to or less than that of a skilled manual male employee. In order to assess whether this requirement is met, it is necessary to have the statistical information requested in the report forms adopted by the Governing Body under article 19 of the Constitution on the wage of the skilled manual male employee and the rate of old-age benefit such a worker would receive after completing the qualifying period provided for by the Conventions. However, the reports sent by governments do not usually contain statistical information which could enable the Committee to assess how far the ceiling fixed by the legislation in many countries would cause old-age benefit to fall below that required of the Conventions. It is true that, according to the available information, some schemes do not appear to place an upper limit either on the rate of benefit or on the amount of pensionable earnings.<sup>73</sup> Moreover, some other schemes provide for a reduced rate of pension if the wage exceeds a certain amount, but even this reduced rate still meets the requirements as to rate of benefit laid down by Conventions

<sup>70</sup> Switzerland.

<sup>71</sup> See above, para. 141.

<sup>72</sup> This is also the case of schemes which calculate the reference wage on the basis of classes of remuneration, since the last class must include all workers whose wages exceed a certain amount.

<sup>73</sup> This appears to be the case in the following countries: China, Mali, Portugal, Rwanda, Togo.

Nos. 102 and 128.<sup>74</sup> Another government stated that workers whose base remuneration exceeds the ceiling fixed by legislation may join a supplementary pension scheme.<sup>75</sup> Still another government stated that it had adopted measures to adjust the ceiling on pensionable earnings, so that the level required by Convention No. 128 would also be attained in the case of a skilled manual male employee.<sup>76</sup>

163. It should also be pointed out that in many developing countries the rate of replacement of previous earnings provided for by legislation after a given number of years of insurance has not yet been attained, either because their scheme has been set up only recently or because its coverage has been gradually extended. Thus even the workers protected since the scheme came into force have still not been able to complete 30 years of insurance. Convention No. 102 (paragraph 5 of Article 29) and Recommendation No. 131 (Paragraph 8) therefore provide for the adoption of transitional provisions in order to secure reduced benefit for workers who are advanced in age when a scheme comes into force; such measures have in fact been adopted in many countries.<sup>77</sup>

164. The information communicated under article 19 of the Constitution by countries where flat-rate benefits are paid has not always been sufficient to enable the Committee to assess how far effect is given to the provisions on old-age benefit of the instruments under consideration; this is due mainly to the lack of statistics on the wage of the ordinary adult male labourer, to which such benefit must be compared under Article 66 of Convention No. 122 and Article 27 of Convention No. 128.<sup>78</sup> Having said this, the available information shows that in one country the rate of old-age benefit exceeds, for the time being, the percentage required by Convention No. 102.<sup>79</sup> In another country old-age benefit paid to

<sup>74</sup> For example: Bulgaria (National Pensions Act of 1957, s. 10); Poland (government report).

<sup>75</sup> German Democratic Republic (according to the information communicated by the Government, the upper limit on remuneration is 600 marks; in addition, the supplementary scheme covers 80 per cent of workers who are entitled to affiliate to it.

<sup>76</sup> Czechoslovakia (the new Social Security Act entered into force on 1 October 1988).

<sup>77</sup> For example: Barbados (National Insurance and Social Security (Benefit) Regulations, s. 33); Belize (Social Security (Benefit) Regulations, 1980, s. 27(1)); Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 53); Cameroon (Law No. 69-LF-18 of 1969 instituting old-age, invalidity and survivors' pension insurance, s. 23); Grenada (National Insurance (Benefit) Regulations, ss. 33 and 51); Madagascar (Social Insurance Code, s. 271); Rwanda (Legislative Decree of 1974 respecting the organisation of social security, s. 53); Togo (Social Security Code, s. 86); Trinidad and Tobago (National Insurance (Contribution) Regulations, s. 12).

<sup>78</sup> See above, para. 137.

<sup>79</sup> Ireland (information communicated in connection with the European Code of Social Security).

workers in the rural sector is equal to 50 per cent of the highest minimum wage, which it has not been possible, however, to compare to the wage of the ordinary adult male labourer.<sup>80</sup> It should also be recalled that in the case of systems where the rate of benefit is calculated on the basis of previous earnings, Article 66 of Convention No. 102 or Article 27 of Convention No. 128 may be applied where a minimum benefit is guaranteed. The statistics sent by some governments show that the percentage of the ordinary adult male labourer's wage represented by the minimum old-age benefit is more or less equal to the rate prescribed by Convention No. 128<sup>81</sup> or even exceeds it.<sup>82</sup> However, not enough governments have supplied information on this subject for a broader generalisation to be made.

165. In the systems applicable to all residents whose means during the contingency exceed a prescribed amount, the conditions laid down in Article 67, subparagraphs (a) and (b) of Convention No. 102 and Article 28, subparagraphs (a) and (b) of Convention No. 128 appear to be generally met in so far as benefits can only be reduced if the other means of the beneficiary's family "exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with the prescribed rules". This does not appear to be the case in one country, however, where old-age benefit is automatically reduced by the total amount of the beneficiary's other means.<sup>83</sup> As regards the rate of benefit, the statistical information supplied by one government indicates that the base component of benefit plus the means-tested supplement is at least equal to the rate required by Convention No. 102.<sup>84</sup> One other government stated that the amount of old-age pension paid to a retired couple corresponds to approximately 49 per cent of the average weekly wage of an adult male unskilled labourer.<sup>85</sup> Lastly, one government stated that the net rate of old-age benefit for a married couple is equal to 80 per cent of the average ordinary time weekly wage after tax, established by quarterly employment surveys; it adds that this rate is not linked either to the previous wage or to the wage for a particular occupation.<sup>86</sup>

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<sup>80</sup> Brazil (under Decree No. 83080 of 1979 to approve regulations for social insurance benefits, ss. 294 and 297, old-age pension for rural sector workers is equal to 50 per cent of the highest minimum wage in the country).

<sup>81</sup> Côte d'Ivoire.

<sup>82</sup> Portugal.

<sup>83</sup> Qatar (Social Security Act of 1963, ss. 17 and 18, and government report).

<sup>84</sup> Canada.

<sup>85</sup> Australia.

<sup>86</sup> New Zealand (to the extent that one can assume that the average ordinary time weekly wage exceeds that of the ordinary male labourer, it appears that, as the Government indicates, the rate of old-age benefit should meet the requirements of the instruments under consideration. In any case, Convention No. 128 fixes the rate of old-age benefit at 45 per cent of the reference wage).

166. The Committee cannot overemphasise the fact that the reference period chosen for the calculation of the base remuneration is a key factor in systems under which benefits are based on the beneficiary's previous earnings. The longer or the more remote the reference period, the greater the risk that the earliest registered remuneration would no longer correspond to the general income level at the time the pension is granted, which would inevitably have a considerable impact on the real value of the pension. This is why many schemes provide for an adjustment of pensionable earnings<sup>87</sup> although this is not expressly stipulated by the Conventions. The need to adjust the pensionable remuneration arises primarily in schemes where the reference period spans the beneficiary's entire career. However, one wonders whether this practice should not be introduced more widely in countries with a high inflation rate, even if a shorter period is taken in calculating the reference wage.

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167. From the study of the national situations it is clear that there are three main methods for fixing the amount of old-age benefit. The first links the amount of pension to the beneficiary's previous earnings, and thus to the protected person's previous standard of living. Under the second method, a uniform rate of benefit is applied to all beneficiaries, irrespective of their earnings, which should at least ensure that the necessary minimum is reached. Under the third method, the conditions for the grant of benefit and the amount thereof are subject to a means requirement. However, the current trend appears to be to combine these methods: on the one hand, earnings-linked pension schemes often pay minimum benefits, and on the other, under schemes in which flat-rate benefits are granted, the base rate is often supplemented by additional earnings-linked benefit. However, as flat-rate and minimum benefits are often insufficient to provide a livelihood for pensioners, they are supplemented in several countries by benefits subject to a means requirement.

168. It should also be pointed out that the standards concerning the amount and calculation of benefit laid down in Convention No. 102 are flexible enough to be met in very many countries, at least as regards the general social security schemes, on which governments have supplied the most detailed information. The same can be said of Convention No. 128, though to a lesser extent, as it prescribes a slightly higher rate of old-age benefit.<sup>88</sup> However, in the case of

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<sup>87</sup> This is the case, for example, in the following countries: Austria, Belgium, Brazil, France, Luxembourg, Madagascar, Switzerland, United Kingdom, United States.

<sup>88</sup> As regards Paragraph 22 of Recommendation No. 131, the recommended rate, which is 55 per cent of the reference wage, is attained more rarely due, among other reasons, to the fact that under Paragraph 16 of the Recommendation old-age benefit should be secured to protected persons who have completed a qualifying period consisting of 20 years of contribution or employment or 15 years of residence.

systems in which benefits are linked to the beneficiary's previous earnings, it is often necessary to have additional information in order to assess the effect of the upper limit placed on earnings or benefits by national legislation. When the ceiling is too low, it may prevent the percentage prescribed in the Conventions from being reached in the case of a standard beneficiary whose wage is equal to or lower than that of a skilled male manual worker, which may be the case for a great many beneficiaries. The risk is even greater in countries with a high inflation rate, unless such ceilings are reviewed regularly. This is why, in the Committee's view, it is essential that the competent authorities periodically review the ceilings fixed in order to ensure that they continue to meet the workers' real needs, and that such reviews be carried out independently of the systems for adjusting benefit rates to changes in the cost of living, which will be discussed in Chapter V.

## CHAPTER V

### REVIEW OF OLD-AGE BENEFITS

169. Maintenance of purchasing power of pensions is one of the fundamental problems faced by social security systems. Pensioners are particularly vulnerable to inflationary processes, in so far as their pension is their main, if not their only source of income. This is why it is essential to protect them against loss of real value of their pension due to variations in the economic situation.

170. Many developing countries, and those of Latin America in particular, are currently suffering from severe inflation. In most industrialised countries, the particularly high rate of inflation in the last decade has in many cases been brought down in recent years. Even in this case, however, the question of reviewing pensions is still vital, if one considers that a constant inflation rate of 3 per cent per year, for instance, which is generally considered moderate, will result in a price increase of 100 per cent in about 23 years, cutting the purchasing power of pensions by half. Where the inflation rate is a little over 5 per cent per year, the real value of pensions is halved in only about 14 years.

#### I. International standards

171. As early as 1952, the International Labour Conference concerned itself with the adjustment of long-term benefits, and old-age pension in particular, in order to take account of changes in the cost of living. This is why paragraph 10 of Article 65 of Convention No. 102, as well as paragraph 8 of Article 66,<sup>1</sup> stipulate that "the rates of current periodical payments in respect of old age ... shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living". The principle of review of old-age benefits was reaffirmed in similar terms by Convention No. 128, which underscores the importance which it attaches to this issue by devoting a specific provision to it in Article 29. Paragraph 1 of this Article specifies that "the rates of cash benefits currently payable ... shall be

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<sup>1</sup> For those countries which apply Article 67 of Convention No. 102 for the calculation of benefits, it should be recalled that subparagraph (c) of this provision refers to Article 66.

reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living".<sup>2</sup>

172. It should be pointed out here that the above-mentioned provisions of Convention No. 102 and those of Convention No. 128 only state the obligation to adjust benefits, without, however, stipulating the methods for discharging this obligation. Neither do they prescribe the periodicity of reviews, which should be undertaken following substantial changes in the general level of earnings and/or the cost of living. Thus, the application of these provisions by no means involves setting up a system for the automatic adjustment of benefits by reference to a specified index. However, while States are free to choose the method of adjustment which they consider to be most appropriate to their national context, they are none the less required to adhere in good faith to the objective of these provisions, which is to maintain the real value of old-age benefits, in particular with respect to changes in wages and/or the cost of living, as is clear from the preparatory work on Conventions Nos. 102 and 128.<sup>3</sup>

## II. National situations

173. A study of national legislation and practice shows that there are three main methods of adjusting pensions to variations in the economic situation: (a) systematic adjustment, where the principle and methods of adjustment are laid down in legislation; (b) adjustment according to general principles stated by the law, without specifying any method or degree of adjustment; and (c) adjustment on an ad hoc basis.

### Systematic adjustment

174. This method has become far more widespread since the Second World War. Although very few countries used this method at the time, today it is applied in the vast majority of industrialised countries,

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<sup>2</sup> Paragraph 2 of Article 29 of Convention No. 128 reads as follows: "Each member shall include the findings of such reviews in its report upon the application of this Convention submitted under article 22 of the Constitution ... and shall specify any action taken."

As regards Recommendation No. 131, Paragraph 24 provides that "The amount of ... old-age ... benefits should be periodically adjusted taking account of changes in the general level of earnings or the cost of living."

<sup>3</sup> See ILO: Minimum standards of social security, Report V(2)(a), ILC, 35th Session, Geneva, 1952, p. 228, and ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions, Report IV(2), ILC, 51st Session, Geneva, 1967, pp. 49 and 50.



as well as a number of developing countries.<sup>4</sup> Legislation providing for a systematic adjustment of benefit lays down not only the principle of adjustment, but also the necessary methods.<sup>5</sup> Adjustment is based on changes in the cost of living,<sup>6</sup> the general level of earnings,<sup>7</sup> or other criteria, such as changes in the minimum wage<sup>8</sup> or a combination of factors.<sup>9</sup> Generally, the amount of the adjustment is not fixed in advance but is determined by variations in the economic indicator adopted as a basis (general level of earnings, cost of living, etc.). In some countries, however, the percentage of the increase is fixed in advance by legislation, but these cases are rare and are mainly confined to the centrally planned economy countries.<sup>10</sup> In addition to the indexation of pensions, certain systems provide for increases in order to take account of improvement in wages and of the standard of living.<sup>11</sup>

175. In some systems, pensions are periodically adjusted on fixed dates. In some countries, adjustment occurs once a year;<sup>12</sup> in

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<sup>4</sup> For example: Argentina, Australia, Austria, Bolivia, Brazil, Bulgaria, Byelorussian SSR, Canada, Cyprus, Denmark, France, Federal Republic of Germany, Hungary, Israel, Italy, Japan, Madagascar, Netherlands, New Zealand, Poland, Spain, Switzerland, Turkey, Ukrainian SSR, USSR, Uruguay, United Kingdom, United States, Yugoslavia.

<sup>5</sup> In certain countries, however, such as the Federal Republic of Germany, although the method of adjustment is clearly defined by law, special legislation must be adopted every year in order to implement it.

<sup>6</sup> For example: Australia; Belgium; Canada; Finland (for national pensions); Italy; Japan; Luxembourg; Spain; United States.

<sup>7</sup> For example: Argentina; Bolivia; Bulgaria; Cyprus (as regards the basic benefit); France; Poland; Uruguay.

<sup>8</sup> For example: Brazil, Madagascar, Netherlands, Tunisia.

<sup>9</sup> For example: Switzerland (adjustment according to changes in wages and prices).

<sup>10</sup> For example: Bulgaria (according to the information communicated by the Government, pensions are increased every five years by at least 10 per cent); Hungary (pensions are increased annually by 2 per cent, with a minimum of 120 florins per year; as from 1986, however, pensions for persons aged over 70 years are increased according to the cost of living); USSR (systematic adjustment of pensions was introduced in 1985, when pensions awarded at least ten years before were increased by an amount equal to 1 per cent of basic earnings for each of the years which had elapsed since entitlement to pension; pensions are subsequently adjusted every two years by an amount equal to 2 per cent of the basic earnings).

<sup>11</sup> For example: Japan, Luxembourg.

<sup>12</sup> For example: Austria; Canada (as regards earnings-related pensions); Cyprus (as regards the basic amount); Federal Republic of Germany; Malta; Poland.

others every six months<sup>13</sup> or even at quarterly intervals.<sup>14</sup> According to the system in force, adjustment on fixed dates may be conditional upon a certain degree of variation in the indicator chosen as a basis.<sup>15</sup> In countries with a high inflation rate, pension adjustments may lag considerably behind variations in the economic situation.<sup>16</sup> One country seeks to overcome this problem by recently adopting a legislation which, in addition to annual adjustment of pensions according to changes in the general wage level, also provides for a system of interim adjustment, in which pensions are increased within two months following any general increase in the remuneration of public servants.<sup>17</sup>

176. In other countries, pensions are adjusted at irregular intervals as soon as the indicator has risen by a certain amount since the last adjustment<sup>18</sup> or there has been a change in the reference basis.<sup>19</sup>

177. It should, however, be pointed out that in some systems, pension adjustment is a direct corollary of the procedure fixing the amount of pension.<sup>20</sup> For example, in one country where there is a universal pension scheme and a supplementary earnings-linked pension scheme, both pensions are calculated according to a basic amount which is periodically reviewed, so that any change in the basic amount automatically results in an adjustment of pension.<sup>21</sup> Although in

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<sup>13</sup> For example: Australia; Denmark (national pensions); Finland; France; Italy; New Zealand.

<sup>14</sup> For example: Canada (as regards universal pensions).

<sup>15</sup> For example: Switzerland (adjustment is normally made every two years. The Federal Council, however, may adjust ordinary pensions before this period has elapsed if the consumer price index rises by over 8 per cent. The interval may also be lengthened if the index rose by less than 5 per cent over two years).

<sup>16</sup> In its report under article 19 of the Constitution, the Government of Bolivia indicated that as the result of constant currency devaluation the situation of pensioners created a serious social problem; it adds that a number of measures are provided for in the draft code on social security which is currently being prepared. See also below, note 45, para. 185.

<sup>17</sup> Uruguay (Act No. 15900 of 1987, ss. 1 and 2).

<sup>18</sup> For example: Argentina (the Government states that if the general level of remuneration, inter alia, varies by a minimum of 10 per cent, the Secretariat for Social Security must adjust pensions by an equivalent percentage within 60 days).

<sup>19</sup> Madagascar (Social Insurance Code, s. 277, subs. 3: an amount proportional to each increase in the minimum guaranteed inter-occupational wage is added to the amount of old-age pension as from the calendar quarter following the wage increase).

<sup>20</sup> For example: Federal Republic of Germany; New Zealand; Norway; Sweden, as well as some French-speaking African countries, such as Côte d'Ivoire and Senegal, which have adopted what is called the pension points method. See above, para. 146.

<sup>21</sup> Sweden.

most countries the adjustment coefficient is applied in the same way irrespective of the amount of pension, in other systems, on the other hand, pensions are only partially adjusted if they exceed a certain amount.<sup>2 2</sup>

### Adjustment in accordance with general principles

178. In many countries, the law confines itself to stating the principle of adjusting pensions according to variations in economic conditions, without specifying the rules and procedures.<sup>2 3</sup> It is left to the competent authority, within its terms of reference and taking into account the financial situation of the scheme, to decide whether pensions should be adjusted, and if so, when and by how much. In some systems, however, the legislation prescribes the minimum frequency with which benefits should, in principle, be adjusted<sup>2 4</sup> the interval usually being between one and five years. The Committee was interested to note that in one country where the legislation provided for an annual adjustment of pensions according to changes in the minimum wage, the body administering social security has adopted measures to adjust pensions whenever there is a change in the minimum general wage.<sup>2 5</sup>

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<sup>2 2</sup> For example: Italy (the full adjustment coefficient is applied to the amount of pension if it does not exceed twice the minimum pension; for pensions which fall between twice and three times the minimum pension, 90 per cent of the coefficient is applied, and for higher rates of pension, 75 per cent); San Marino.

<sup>2 3</sup> For example: Benin, Cameroon, Chad, Colombia, Honduras, Mexico, Morocco, Nicaragua, Nigeria, Panama, Peru, Philippines, Portugal, Rwanda, Togo, Trinidad and Tobago, Venezuela.

<sup>2 4</sup> Panama (Legislative Decree No. 14 of 1954 amending Act No. 134 of 1943 establishing the Social Insurance Fund, s. 56-K: review at least every five years); Philippines (Social Security Law, s. 4-C, and government report: the competent authority has the power to require a valuation report on the social security system every five years or more frequently and to require that necessary actuarial studies and calculations are undertaken concerning increases in benefits); Portugal (Social Security Act of 1984, s. 12, and government report: annual review); Trinidad and Tobago (National Insurance Act, ss. 56 and 70, and government report: rates of benefit may be reviewed by the competent authority after an actuarial review which is carried out at least every five years).

<sup>2 5</sup> Mexico.

179. According to the system in force, benefits may be adjusted where there is a change in the cost of living,<sup>26</sup> the wage level<sup>27</sup> the minimum wage<sup>28</sup> or a combination of factors;<sup>29</sup> in most of these cases, adjustment will only take place if the variation is "significant" or "considerable".

180. In order to have a clear picture of the way these systems work, additional information is needed on their implementation in practice and in particular on pension adjustments decided by the competent authority in accordance with its terms of reference under

<sup>26</sup> For example: Peru (General Act of 1987 respecting the Peruvian Social Security Institute, s. 31).

<sup>27</sup> For example: Cameroon (Decree No. 74-733 of 1974 to issue implementing regulations under Law No. 69-LF-18 of 1969 instituting old-age, invalidity and survivors' pension insurance, s. 37: the adjustment coefficients applicable to pensions already awarded are fixed by order whenever there is a general increase in the wages of workers covered by the Labour Code); Morocco (Dahir to promulgate Act No. 1-72-184 of 1972 respecting the social security scheme, s. 68, and government report).

<sup>28</sup> For example: Colombia (Agreement No. 224 of 1966 to approve the general regulations for invalidity, old-age and survivors' insurance, s. 27); Mexico (Social Insurance Act of 1973, s. 172).

<sup>29</sup> For example: Honduras (implementing regulations made under the Social Insurance Act, s. 52: pensions shall be adjusted to maintain their purchasing power if it has dropped significantly following an increase in the wage level or cost of living); Nicaragua (Social Insurance Act of 1982, s. 107, and implementing regulations, s. 96: the amount of current pensions shall be reviewed following significant variations in the general level of earnings or the cost of living; see also below, note 47 to para. 187); Portugal (Social Security Act of 1984, s. 12: pensions are reviewed taking into account the financial means available and significant fluctuations in the level of wages and the cost of living); Rwanda (Legislative Decree of 1974 organising social security, s. 41: periodical benefits currently in payment may be reviewed following variations in the general level of wages resulting from the cost of living); Venezuela (Social Insurance Act of 1966, s. 78: pensions currently in payment are reviewed, inter alia, if the general level of wages increases significantly due to a variation in the cost of living).

This is also the case in a number of French-speaking African countries, whose legislation provides that the amount of benefit may, taking account of financial means, be changed following variations in the general level of wages resulting from a variation in the cost of living, and based on an increase in the minimum guaranteed inter-occupational wage: Benin (Ordinance No. 73-3 of 1973 to provide for the establishment and organisation of the Benin Social Security Fund, s. 42); Chad (Decree No. 99-P-CSM of 1978 providing for the organisation of the pension insurance scheme, s. 21); Togo (Social Security Code, s. 70, subs. (1): the Government states, however, that old-age benefits are reviewed if the general wage level has been increased by government decision).

the legislation. Few governments, however, have communicated such information, although one government did state that the annual revalorisations of old-age pensions in recent years have been higher than the increase in the minimum wage.<sup>30</sup> The available information shows that in another country old-age pension was increased several times between 1 July 1975 and 1 January 1987.<sup>31</sup> According to the information communicated by another country, the rate of old-age pension was adjusted in 1980 following an actuarial review which is carried out at least once every five years.<sup>32</sup>

### Adjustment on an ad hoc basis

181. In several countries, pensions are adjusted although the legislation does not provide expressly for review procedures. A number of governments have supplied detailed information on pension adjustments in recent years.<sup>33</sup> On the other hand, some governments stated in their reports under article 19 of the Constitution that benefits are periodically reviewed, without, however, specifying the frequency and the amount of these adjustments.<sup>34</sup>

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<sup>30</sup> Portugal (the Government of Portugal also supplied statistics in the context of the supervisory procedure under the European Code of Social Security).

<sup>31</sup> Philippines (in particular, Presidential Decree No. 735 effective 1 July 1975; Presidential Decree No. 1202, effective 1 January 1978; Presidential Decree No. 1636 effective 1 January 1980; Executive Order No. 102 effective 1 January 1987).

<sup>32</sup> Trinidad and Tobago (a new actuarial study is being prepared).

<sup>33</sup> For example: Barbados (the Government has supplied information showing that pensions had been adjusted, under certain conditions, by 25 per cent in 1979 and 10 per cent in 1981, and that the minimum pension had more than quadrupled between 1975 and 1986); Czechoslovakia (the Government stated that pensions had been increased three times since 1975; at the same time the lower limits of the pensions constituting the sole income of pensioners were also reviewed, and in 1987 a new increase in these limits was decided upon); German Democratic Republic (the Government, while considering that regular adjustment of pensions to the cost of living was not justified, since the latter remained stable, recalled that the progress in national economic performance was aimed at improving citizens' standard of living; pensions have therefore been increased five times since 1971, resulting in a significant increase in the real value of pensions. It adds that minimum old-age pensions increased between 100 and 147 per cent).

<sup>34</sup> For example: Burundi (the Government states that legislation is enacted promptly whenever necessary, for example if there is a significant variation in the cost of living resulting in a considerable loss in the purchasing power of pensions. It adds that actuarial studies are undertaken fairly regularly in order to monitor the financial equilibrium of the branch); Grenada (the Government

(footnote continued on next page)

### III. Evaluation

182. One cannot analyse the various systems for adjusting old-age benefits without knowing a certain number of economic indicators showing the changes which occur over a specified period in the amount of pension with respect to variations in the cost of living and wage indices. This is why both the report forms on Conventions No. 102 and 128 adopted by the Governing Body under article 22 of the Constitution and that adopted under article 19 of the Constitution contain a request for statistical information to enable an appreciation of the operation of the review system in practice. While most of the governments which have ratified one of these Conventions regularly supply the statistics requested, this is not the case of the vast majority of the governments which are not bound by these instruments.

183. In the past, the vast majority of States which have ratified Conventions Nos. 102 and 128 did not appear to have encountered any difficulties in applying the provisions concerning review of benefits. In most cases, old-age benefits have been adjusted to changes in the cost of living or the wage level in order to prevent them from being eroded by inflation. An ILO study carried out on several industrialised countries, nine of which have ratified Conventions Nos. 102 or 128, showed that pensions at least maintained their purchasing power over the period 1963 to 1975.<sup>35</sup> Since then, however, in the wake of the economic crisis, an increasing number of countries have adopted measures to slow down the adjustment of benefits. Thus some countries suspended indexation for a certain period<sup>36</sup> or postponed the dates for the adjustment of benefits.<sup>37</sup>

(footnote continued from previous page)

states that benefits are reviewed every year); Romania (the Government states that old-age benefits are periodically increased by legislation, while the remuneration of the active population is raised according to the level of economic development); Saint Lucia; United Kingdom (Bermuda), (Falklands - pensions are revised annually).

<sup>35</sup> ILO: Pensions and inflation, op. cit.

<sup>36</sup> For example: Netherlands (the Government states in its reports that in order to check the expenses of the public sector, it has on several occasions set aside the review system for the statutory minimum wage, which is used as a basis for the calculation of old-age benefits).

<sup>37</sup> For example: Belgium (Royal Order No. 281 of 31 March 1984 to introduce certain temporary amendments to the system for linking certain social security benefits and public sector expenditure to the consumer price index in the Kingdom and to grant an adjustment allowance to certain recipients of social benefits, as amended by Royal Order No. 420 of 18 July 1986).

The Austrian Congress of Chambers of Workers referred in its comments on the Austrian Government's report on the application of Recommendation No. 131 to a measure to postpone the annual pension adjustment of 1988 by six months for reasons of economy. The Government stated in this respect that this measure did not fall within the reporting period.

Other governments changed their indexing systems, for example by providing that henceforth pensions would be adjusted in inverse relation to the amount of pension.<sup>38</sup> In other countries, certain elements used in fixing the index have temporarily been excluded from the calculation basis.<sup>39</sup> Another type of change was the adoption of a new method of review.<sup>40</sup>

184. According to the available information, these measures aimed at achieving financial savings and combating inflation appear to be becoming more widespread.<sup>41</sup> This is why the Committee, while fully aware of the concerns shown by governments, addressed a general observation on this matter to the countries which have ratified one or both of Conventions Nos. 102 and 128, bearing in mind the impact such measures may have on the purchasing power of pensions. In certain specific cases, the Committee also considered that it needed additional information, in particular the statistics which are to be established in the manner set out in the report forms.<sup>42</sup> In two of these cases, the review of periodical benefits was the subject of comments by trade union organisations.<sup>43</sup>

<sup>38</sup> For example: Greece. This is also the case at present in Italy.

<sup>39</sup> For example: Sweden.

<sup>40</sup> For example: France. From now on the adjustment of benefits is linked to the forecast for the index for the current year, and not to past variations in the index of the preceding year, as used to be the case.

<sup>41</sup> See OECD: Social Policy Studies No. 5 (1988): Reforming public pensions. Jean-Pierre Dumont: L'impact de la crise économique sur les systèmes de protection sociale, étude réalisée pour le Bureau international du Travail (Economica, Paris, 1987).

<sup>42</sup> The Committee has addressed requests for additional information on the review of the rates of current periodical payments to the following countries:

Convention No. 102: Costa Rica, Italy, Mauritania, Mexico, Peru;

Convention No. 128: Bolivia, Ecuador, Libyan Arab Jamahiriya, Netherlands, Uruguay, Venezuela (in its report under article 19 of the Constitution, the Government indicated that old-age pension, in particular, has been increased by 30 per cent by virtue of Decree No. 2.399 of 1988).

<sup>43</sup> The Committee's comments addressed to the Government of Costa Rica followed from the conclusions of the committee set up by the Governing Body of the ILO to examine the representation made by several trade union organisations of Costa Rica under article 24 of the ILO Constitution alleging the failure by Costa Rica to observe certain Conventions, including Convention No. 102.

The comments addressed by the Committee to the Government of Uruguay concerning Convention No. 128 took account of the observations of the "National Vanguard Movement of Retired Persons and Pensioners" (Movimiento Vanguardia Nacional de Jubilados y Pensionistas) concerning the manner in which the rates of cash benefits currently payable are reviewed. See also above, note 17 to para. 175.

185. As regards the countries for which neither the part relating to old-age benefit of Convention No. 102 nor that of Convention No. 128 are in force, some have adopted methods for the systematic adjustment of old-age benefits. However, owing to the lack of statistical information on changes in the rate of benefit with respect to variations in the economic indicators, the Committee has been unable to assess in every case how far pension recipients are adequately protected against inflation in practice. From the information available to the Committee it seems that some of these countries have also recently adopted measures to slow down pension increases.<sup>44</sup> The question should also be raised as to how these systems operate in practice in countries with a high inflation.<sup>45</sup>

186. In the systems where the adjustment percentage (for example 2 per cent per year) is fixed in advance, problems may arise if the adjustment fixed is less than the increase in the cost of living, unless the figure is then corrected.<sup>46</sup>

187. As for the many schemes which leave it to the competent authority to adjust benefits as the need arises (irrespective of whether the principle of adjustment is laid down in legislation), few governments supplied information enabling an assessment to be made of changes in pensions with respect to the cost of living. In these systems there is a serious risk that the gap between variations in economic conditions and the adjustment of pensions may widen with time and become considerable. This is also true of countries which fix lengthy intervals between pension reviews. This is why the Committee considers that it is particularly desirable for governments to make periodical reviews at the closest possible intervals, and adopt the necessary measures to adjust old-age pensions accordingly. In this context, one government whose legislation provides for the general principle of adjustment of pensions according to the general level of earnings and the cost of living, stated that in view of the extraordinarily high inflation in recent years old-age pensions already in payment have been adjusted proportionally (and no longer on a degressive scale) to the increase in wages so as to ensure that no pension falls below two-thirds the current minimum wage; pensions were increased six times between April and December 1987.<sup>47</sup>

188. Other governments, and in particular those of French-speaking African countries, appear to favour what could be termed a mixed system. Although they have not adopted the principle of automatic indexing of old-age benefits based on a given indicator,

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<sup>44</sup> See above, note 41 to para. 184.

<sup>45</sup> The Government of Brazil stated in this respect that the maintenance of purchasing power of pensions was the main problem, chiefly because of the effect of the economic crisis and high inflation on social insurance reserves.

<sup>46</sup> See above, note 10 to para. 174.

<sup>47</sup> Nicaragua (according to the statistical information supplied by the Government, it appears that old-age pensions have increased by over 800 per cent during the period under consideration; however, information is lacking on the rate of inflation during this period).



they have applied a formula enabling the minimum pension to be systematically adjusted according to changes in the guaranteed minimum inter-occupational wage. This formula is all the more useful, because in some of the schemes under consideration at least, minimum pensions account for 60 to 90 per cent of all pensions, the figure varying from one country to another. In countries where particular difficulties arise, this type of solution may be a first step towards providing a better guarantee of the purchasing power of current pensions. The same is true of systems which seek to review minimum pensions according to other criteria.

189. Lastly, the Committee should point out that the information supplied by a number of governments has not always enabled an appreciation of the measures taken or envisaged to ensure that current pensions are adjusted to the cost of living.<sup>48</sup>

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190. The examination of the legislation of various countries shows that since the last general survey an increasing number of countries have introduced more or less automatic methods of indexation. The Committee would like to emphasise that this constitutes progress, although in recent years governments have increasingly tended to adopt measures to slow down the adjustment of pensions, without, however, calling the principle itself into question. It should also be pointed out that an equally large number of countries only undertake ad hoc adjustments, dictated by circumstances, or those in accordance with a general principle laid down by legislation. Although such adjustment methods certainly do not guarantee the same degree of security for recipients as systematic indexing of benefits, they are none the less capable of providing effective protection and thus meeting the objectives of Conventions Nos. 102 and 128, provided that the frequency and amount of the adjustments keep in step with changes in the economic situation, which, unfortunately, is far from being the case in many countries.

191. In the years following the economic crisis which began shortly after the oil crisis of 1974, the Committee endeavoured to study as closely as possible the adverse effects of inflation and even "stagflation" (inflation accompanied by economic stagnation) on old-age pensions in order to satisfy itself that the relevant provisions of Conventions Nos. 102 and 128 were being fully

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<sup>48</sup> For example: Saudi Arabia (the Government stated, however, that it intends in future to take account of the requirements of the Conventions as regards the review of current periodical benefits); Congo; Equatorial Guinea; Guyana; Iraq; Mauritius; Yemen.

applied.<sup>49</sup> The fact is, however, that any lag in keeping up with the rising cost of living, especially in high-inflation economies, will almost certainly drastically affect pensioners' budgets. On this point, the Committee considers that, whatever the method chosen to implement Articles 65 and 66 of Convention No. 102 and Article 29 of Convention No. 128, probably the best guarantee of pensioners' legitimate right to protection of their purchasing power is the full participation of representative organisations of protected persons in the choice and implementation of methods for adjusting pensions. The community as a whole should be made aware of, and hence responsible for, the need to ensure, in the name of social justice, that the pensioners of today are given back a fair share of what they contributed as members of the workforce on whose shoulders the well-being of modern society rests.

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<sup>49</sup> Thus, for example, a general observation made in 1980 concerning Convention No. 102 was drafted in the following terms: "The Committee considers that, in view of the effect of inflation of the general level of earnings and the cost of living, the review of the rate of cash benefits granted in respect of old age, employment injury (with the exception of benefit for temporary incapacity), invalidity and death of the bread-winner should be given special attention, particularly in the present economic situation. The Committee therefore requests governments that have ratified the Convention not to fail to provide in their next report, all the statistical data called for by the report form in connection with the application of paragraph 10 of Article 65 or paragraph 8 of Article 66 of the Convention."

## CHAPTER VI

### OTHER QUESTIONS

#### Financing

##### International standards

192. This study of the financing of national schemes in national legislation and practice shall be confined to the context of Convention No. 102. In accordance with the opinion of the Committee of Social Security Experts convened in 1962 to revise Conventions Nos. 35 to 40 of 1933 concerning old-age, invalidity and survivors' insurance that it would be desirable to avoid "establishing standards of a technical nature relating to methods of organising and administering pensions" in the new instrument,<sup>1</sup> the Conference did not introduce any new provisions on the financing of benefits in Convention No. 128.

193. Convention No. 102 confined itself to laying down a number of principles for financial and administrative guarantees and procedural safeguards. According to the Convention, financing must be carried out by way of insurance contributions, taxation, or a combination of both (Article 71). The Convention also establishes some provisions for the distribution of costs and stipulates in a general way that financing must be carried out in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and the classes of persons protected. For the specific case of contributory schemes, this Article stipulates that the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection.<sup>2</sup> Whatever the method of financing, Article 71 provides in paragraph 3 that the Member shall accept general responsibility for the due provision of benefits and shall take all measures required for this purpose.<sup>3</sup>

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<sup>1</sup> ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 Concerning Old-Age, Invalidity and Survivors' Pensions, Report V(1), ILC, 50th Session, Geneva, 1966, p. 1.

<sup>2</sup> For the purpose of ascertaining whether this condition is fulfilled, Article 71 allows for all the benefits provided to be taken together, except family benefits and, if provided by a special branch, employment injury benefits.

<sup>3</sup> According to Convention No. 102, Article 71, paragraph 3, the necessary actuarial studies and calculations concerning financial equilibrium must be made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.

Thus, the competent authority must ensure that benefits are provided in any case.

Financing of benefits in national  
legislation and practice

194. Of the two methods of financing pension schemes, i.e. the one based on employers' and workers' contributions, with or without state subsidies (known as contributory schemes), and the one based on taxes (known as non-contributory schemes), the method based on contributions is more widespread.<sup>4</sup>

195. As for the distribution of costs, the methods used vary considerably. Tripartite financing is often used,<sup>5</sup> with contributions from both insured persons and employers, as well as state subsidies. Such subsidies may take various forms: the State may pay a fixed portion of each pension, a subsidy proportional to the contributions made by employers and employees, a fixed annual subsidy, or simply cover any possible shortfall. On the other hand, some countries rely exclusively on contributions made by the insured persons and employers.<sup>6</sup> Others finance benefits out of employers' contributions and state funds,<sup>7</sup> while in a minority of cases

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<sup>4</sup> Replying to a question of clarification on the distinction between "contributory" and "non-contributory" systems, the Office noted that "a widely accepted criterion" for the distinction between "contributory" and "non-contributory" systems "is whether entitlement to benefit under the scheme depends on direct financial participation by the persons protected or their employers or on a period or the status of occupational activity ... a scheme under which entitlement to benefits depends only on residence is non-contributory, despite the fact that it is largely financed by a tax based on payrolls" (Memorandum by the International Labour Office to the Subcommittee of the Northern Committee for Social Policy concerning certain provisions of Convention No. 102, in particular, O.B. XLV, No. 3, July 1962, p. 238).

See also Article 1(j) of Convention No. 128 which contains definitions of the terms "contributory benefits" and "non-contributory benefits".

<sup>5</sup> For example: Argentina, Austria, Belgium, Brazil, Cyprus, Ecuador, German Democratic Republic, Federal Republic of Germany, Hungary, Ireland, Israel, Italy, Libyan Arab Jamahiriya, Luxembourg, Mexico, Nicaragua, Saudi Arabia, Spain, Switzerland, United Kingdom.

<sup>6</sup> For example: Algeria, Barbados, Benin, Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Gabon, Grenada, Iraq, Madagascar, Mali, Mauritania, Morocco, Niger, Peru, Portugal (non-contributory pensions are paid for by the State), Rwanda, Saint Lucia, Senegal, Togo, Turkey.

<sup>7</sup> For example: Byelorussian SSR, Bulgaria, Cuba, Czechoslovakia, Ukrainian SSR, USSR.

benefits are financed entirely either by the workers.<sup>8</sup> This method of cost distribution is contrary to Convention No. 102, Article 71, paragraphs 1 and 2, which provide that benefits provided in compliance with this Convention and the cost of the administration of such benefits "shall be borne collectively", and "the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the financial resources allocated to the protection".

196. With the exception of the few schemes which depend entirely on workers for financing, the reports show that employees usually do not pay more than half of the cost, and usually pay less. Because of the variety of financing methods used, however, it is not always possible to assess exactly how the actual costs involved in each scheme affect the persons covered by it. Moreover, the financing of a pension scheme within a social security system cannot be regarded as immutable. An institution may undergo major changes over the years on account of external constraints such as economic crisis, unemployment, an ageing population and inflation.

197. In this context, it is interesting to note that in October 1987, on the occasion of the national debate on social security (Etats généraux de la sécurité sociale) held in France, a committee of experts known as the "Comité des Sages" drafted a report describing well the situation that France will have to face in the future. It is a situation which probably applies to other industrialised countries, as well as to some developing countries which have long-established pension schemes. The report emphasised that old-age insurance in France had, in the past, enjoyed favourable conditions, such as sustained economic expansion, growth in employment, and the fact that the scheme was in its initial stages. These conditions will not return. Old-age insurance now faces more difficult prospects, because of demographic factors (an ageing population), economic and sociological factors (growing unemployment, early retirement) and legal factors (resulting from the more generous approach to the qualifying conditions and calculation of pensions adopted in better times).<sup>9</sup>

198. As some governments have pointed out, demographic factors such as the increase in the number of beneficiaries resulting from the increase in early retirement and from longer life expectancy have and will have repercussions on the level of contributions and state subsidies. Moreover, these contributions and subsidies are often insufficient to maintain benefits at a satisfactory level. Preserving the purchasing power of pensions while maintaining the stability of the old-age benefits system thus appears to be one of the major challenges facing social security schemes in the future.

199. Some developing countries have stated that the actuarial deficit stemming from the increase in applications for old-age

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<sup>8</sup> For example: Chile (the new pension system, introduced in 1980 by Legislative Decree No. 3500, eliminated employers' contributions and only provides for supplementary state contributions when the pension is at or under the minimum pension (ss. 13 and 73 of the Decree)).

<sup>9</sup> Report of the "Comité des Sages" in the context of the national debate on social security, Paris, 20 Oct. 1987.

benefits may jeopardise the ability of these institutions to disburse benefits in the near future.

200. Other factors, such as an economic crisis, inflation, insufficient social and economic development, and administrative and financial factors (such as difficulties in collecting employers' contributions), have been cited by developing countries as obstacles to the implementation of Conventions Nos. 102 and 128. These countries further noted that such factors hinder the introduction and extension of the pension scheme to other classes of persons and, understandably, the adjustment of benefits to the real cost of living.

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201. The information available shows that there is a wide variety of financing systems for pension schemes. This is perfectly consistent with the spirit of Convention No. 102 which does not prescribe a uniform system for financing, but confines itself to setting out principles regarding financial, administrative and procedural guarantees.

202. In any case, and whatever the financing system used, the method adopted must serve two purposes. On the one hand, it must provide resources to cover benefits and administrative costs. On the other, it must ensure an equitable distribution of the financial burden. To do so, periodic actuarial studies should be made to monitor the long-term financial stability of the schemes. Such studies should, in any case, be made prior to any change in benefits, in insurance contribution rates or in taxes used to cover benefits.

203. The Committee can only express its concern faced with the actuarial deficits mentioned by many countries. These deficits have been brought on by various factors, and they may jeopardise the institutions' ability to disburse pensions. It cannot be emphasised enough that old-age protection as part of social security is based on long-term forecasts. Variations in the economic climate, though admittedly hard to predict and sometimes harder still to control, should not affect either the reliability of resources or the feeling of protection against economic vicissitudes that old-age schemes should offer to insured persons. The State's role seems more vital in this field of social policy than in any other, because it consists essentially in long-term, or even very long-term, forecasting and ensuring that costs are equitably distributed among the generations. However, the interested parties, whether contributors or beneficiaries, must themselves be able to play a role, if necessary through the representative organisations concerned.

#### Organisation and operation of social security schemes

##### International standards

204. Like the other common provisions, those relating to the administration of social security schemes in Convention No. 128 (Article 35, paragraph 2, and Article 36) were drafted along the lines

of the provisions in Convention No. 102 (Article 72). In this way, rather than seeking to impose a uniform type of organisation,<sup>10</sup> the Conference tried to provide simultaneously for the interests which should be represented in the administration of the schemes and for the share of the responsibility which would ultimately rest with the State.

205. Both Conventions set certain criteria of broad scope: where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management<sup>11</sup> under prescribed conditions; national laws or regulations may likewise provide for the participation of representatives of employers and of the public authorities. Furthermore, whatever the type of the administration, the Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of the protection.

### Organisation and operation of schemes in national legislation and practice

206. The administrative organisation of national social security schemes varies widely. Various solutions have been adopted by the member States, based on tradition, social structure or other characteristics specific to each country. There is therefore no single model or paradigm for the administration of social security. However, no matter how complex and multifarious the schemes, the general responsibility for the proper administration of social security still rests with the State. It often falls within the purview of the Ministry of Labour, although sometimes it may be the responsibility of the Ministry of Social Security, the Ministry of Health, or even the Ministries of Finance or the Interior.

207. Social security is directly administered by the State in many countries.<sup>12</sup> The system is managed by the public authorities. When the administration of schemes is delegated to autonomous or semi-autonomous institutions, management is often entrusted to an administrative board, which usually includes representatives of

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<sup>10</sup> For example, the old-age insurance Conventions, 1933 (Nos. 35 and 36) stipulated that the administration had to be carried out by non-profit institutions.

<sup>11</sup> The words "or be associated therewith in a consultative capacity" found in Article 72, paragraph 1, of Convention No. 102, were removed from Convention No. 128 during the first discussion in the Conference Committee on Social Security (ILO: Record of Proceedings, ILC, 50th Session, Geneva, 1966, p. 649).

<sup>12</sup> For example: Australia, Canada, Cyprus, Ireland, New Zealand, United Kingdom, United States. Furthermore, in China the state enterprises administer their schemes, and in Yugoslavia, workers, and as concerns pensions, pensioners administer self-managing communities through their representatives in the institutions' councils.

employees and employers alongside civil servants from the main competent ministerial departments. The protected persons are generally represented, sometimes *de facto*, either in consultative committees or in the administrative bodies. In many countries,<sup>13</sup> the administration of general social security schemes is entrusted to a single body, such as a social security institute, national social insurance office or national social security fund. In other countries,<sup>14</sup> the administration of the various branches is divided among various bodies, while in other cases<sup>15</sup> a particular body is entrusted with the management of pensions and/or old-age benefits. Lastly, in one country,<sup>16</sup> the management of pensions is assigned to establishments which act as private profit-making companies, without participation of insured persons as such in the management of the insurance institutions.

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208. In the light of the available information, it is clear, therefore, that there is no single model or paradigm for the administration of social security schemes. This is in keeping with the spirit of the Conventions, which impose no uniform method of organisation.

209. Although the administrative structure may vary from one country to another, it would be desirable to provide for the various interests, which should be represented in the administration. This is especially true when the administration of schemes is delegated to

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<sup>13</sup> For example: Algeria, Barbados, Benin, Bolivia, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Ecuador, Guatemala, Honduras, Iraq, Israel, Madagascar, Mali, Mexico, Panama, Peru, Poland, Saint Lucia, Togo, Turkey, Uruguay, Venezuela.

<sup>14</sup> For example: Argentina, Austria, Finland, Federal Republic of Germany, Luxembourg, Netherlands, Norway, Switzerland.

<sup>15</sup> For example: Czechoslovakia, France, Pakistan, Senegal.

<sup>16</sup> In 1980, a new Chilean law (Legislative Decree No. 3500) turned the management of pensions over to establishments designated as pension fund management companies (AFP's) which are private incorporated companies. The new law was the subject of a representation submitted by the the National Trade Union Co-ordinating Council (CNS), alleging non-observance by Chile of, inter alia, the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), and the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38). The Governing Body committee set up to examine the representation concluded that "national law and practice do not guarantee the participation of representatives of insured persons in the administration of insurance institutions, as stipulated by Conventions Nos. 35 (Article 10, paragraph 4), 37 (Article 11, paragraph 4), and 38 (Article 11, paragraph 4)" (see the report of the Committee, GB.234/23/28, para. 179).



autonomous or semi-autonomous institutions, in which case representatives of the persons concerned should be able to participate in the administration of such institutions.

210. One last point worth mentioning is that whatever type of management is used, the institutions are always monitored in one way or another and to varying degrees by the State, in accordance with Conventions No. 102 and 128. However, the State's supervisory or monitoring powers should in no way permit it to avail itself of monies earmarked for old-age pensions. Such a system would not only run the risk of leading to a kind of indirect expropriation of contributions and interest, but might give rise to an even more serious situation by causing insured persons to lose confidence in the institutions responsible for protecting them in old age.

### Right of appeal

#### International standards

211. The right to appeal in the case of refusal of benefit or complaints as to its quality or quantity is a principle enshrined in both Convention No. 102 (Article 70, paragraph 1) and Convention No. 128 (Article 34, paragraph 1) although neither of the Conventions stipulates what form the appeal should take. During the preparatory work for the adoption of both Conventions, however, it was pointed out that "the concept of appeal implies - if this right is not to be fictitious - that decisions must be taken by an authority independent of the administrative body which made the original decision. The mere right to ask for re-examination of the case by the same body is not enough to constitute an appeal procedure".<sup>17</sup> However, Article 70, paragraph 3, of Convention No. 102 stipulates that no right of appeal shall be required where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented. This provision was not repeated in Convention No. 128, but Article 34 of this Convention does introduce a new provision in paragraph 2 calling for procedures to be prescribed permitting the claimant to be represented or assisted, where appropriate, by a qualified person of his choice or by a delegate of an organisation representative of persons protected.

#### The right of appeal in national legislation and practice

212. From the available information, it appears that the right of appeal against administrative decisions concerning benefits is a recognised principle in the laws and regulations of most countries. The procedure for exercising this right obviously varies from one country to another, depending on its administrative and legal structures. In many cases, the legislation provides a right of appeal

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<sup>17</sup> ILO: Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions, Report V(1), ILC, 50th Session, 1966, p. 68.

before an authority independent of the administrative authority which made the original decision. Thus, in several countries,<sup>18</sup> the interested party is given the opportunity to apply to a higher administrative authority than the one which made the original decision, and/or to special social security<sup>19</sup> or labour courts,<sup>20</sup> the ordinary courts<sup>21</sup> or arbitration courts.<sup>22</sup> In some countries, the highest authority in the event of a dispute is either the competent minister<sup>23</sup> or the competent state bodies.<sup>24</sup> It also appears that the claimant's right to be represented or assisted is either expressly recognised in many legislations, whether through social security law or the general provisions regarding procedure, or implicitly recognised in so far as there are no provisions denying this right.

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213. The right of appeal against administrative decisions taken on the occasion of application for benefits is a principle enshrined in nearly all of the national laws or regulations studied. While neither Convention No. 102 nor Convention No. 128 stipulates what form the appeals procedure should take, it would seem desirable for a number of recognised principles to be enshrined in national legislation, such as that procedures are expeditious and free of charge, and the appeal authority is independent. The claimant should have the right to be represented or assisted by a qualified person of

<sup>18</sup> For example: Argentina, Bolivia, Brazil, Central African Republic, Colombia, Costa Rica, Cuba, Honduras, Hungary, Iraq, Mexico, Morocco, Nicaragua, Panama, Philippines, Portugal, Trinidad and Tobago, Turkey, United Kingdom, Uruguay.

In addition, it can be observed that in some countries, the legislation provides for a compulsory preliminary special appeal procedure (recours gracieux). The case is first submitted to a commission of the fund in question, and then may be referred to a court: Benin, Burundi, Cameroon, Chad, Côte d'Ivoire, France, Gabon, Mali, Niger, Rwanda, Togo.

<sup>19</sup> For example: Finland, New Zealand (appeals concerning decisions made by the administration may be brought before the special Social Security Appeal Authority); Sweden, United Kingdom.

<sup>20</sup> For example: Belgium (appeals concerning decisions of the National Pension Office may be brought before a labour tribunal and may be heard in the second instance by the Labour Court).

<sup>21</sup> For example: Argentina.

<sup>22</sup> For example: Mexico.

<sup>23</sup> For example: United Arab Emirates (the Minister of Social Affairs and Labour sets up a commission by order, and this commission's decision may be appealed to the Minister, whose decision is final).

<sup>24</sup> For example: Byelorussian SSR, Ukrainian SSR, USSR (decisions of a pensions committee may be appealed to the regional or city Executive Committee of the Soviet of Peoples' Deputies).

his choice. It should be remembered that a large proportion of insured persons depend mainly, if not entirely, on their pensions for their livelihood. For them, a protracted and costly procedure could indeed amount to a denial of justice, with sometimes drastic repercussions on their everyday lives.

### Equality of treatment

#### International standards

214. From its inception, one of the ILO's basic tasks has been the protection of foreign workers. Thus, the principle of equality of treatment for nationals and non-nationals in social security is a fundamental objective of social policy enshrined in a number of instruments.

215. Special provisions for foreign workers may be found in a number of general social security Conventions, including Convention No. 102. They may also be found in Conventions such as the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), and the Equality of Treatment (Social Security) Convention, 1962 (No. 118), which were adopted specifically to deal with the situation of non-nationals. In addition, Convention No. 118 was the subject of a general survey carried out by the Committee in 1977.<sup>25</sup> This explains why equality of treatment is not included in Convention No. 128 as supplemented by Recommendation No. 131, these questions having been dealt with by Convention No. 118. Lastly, there are two basic texts which deal specifically with the situation of migrant workers and which aim at securing equality of treatment for these workers: the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

216. Bearing the above in mind, the question of equality of treatment for nationals and non-nationals will be studied in the context of Article 68 of Convention No. 102.<sup>26</sup> This provision,

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<sup>25</sup> ILO: Equality of treatment (social security), General Survey by the Committee of Experts on the Application of Conventions and Recommendations, ILC, 63rd Session, 1977.

<sup>26</sup> Article 68 of Convention No. 102 reads as follows: "(1) Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes. (2) Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant Part of the Convention shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity."

which covers all branches of social security, stipulates that non-national residents must have the same rights as national residents. However, in paragraph 1, it allows the prescription of special rules for benefits which are paid wholly or mainly out of public funds and for transitional schemes. As the Committee pointed out in paragraph 23 of its 1961 General Survey on Convention No. 102, this provision "was included to prevent possible abuses and safeguard the financial balance of non-contributory schemes, particularly as regards old-age ... benefits. It seemed necessary to permit, for example, the imposition of a qualifying period of residence on non-national residents (or nationals born abroad), although it might not be required from other residents, or of a longer qualifying period than for the latter".

217. As for contributory social security schemes which protect employees, Article 68, paragraph 2, allows for equality of treatment to be limited, for the application of any Part of the Convention, to nationals of another Member which has accepted the obligations of the relevant Part. Such equality of treatment may be subject to the existence of a special agreement providing for reciprocity. According to this paragraph, the enforcement of equality of treatment thus presupposes the satisfaction of two conditions. The first condition is achieved, ipso jure, when the non-national resident is a national of another member State which has accepted the obligations arising from the relevant Part of Convention No. 102. The second condition is potential in nature: equality of treatment may be made subject to the existence of a bilateral or multilateral agreement of reciprocity.<sup>27</sup>

#### Equality of treatment in national legislation and practice

218. Applying the principle of equality of treatment in the field of social security raises complex technical problems which were considered by the 1977 survey by the Committee of Experts on Convention No. 118; the survey's conclusions are still valid. In this regard it is worth mentioning that only rarely has the application of this principle elicited comments from governments.

219. Most countries which have ratified either of the Conventions provide for equality of treatment either expressly, or implicitly in so far as national legislation contains no provision to the contrary;

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<sup>27</sup> See the report of the committee set up to examine the representation made by the General Federation of Labour of Belgium under article 24 of the Constitution alleging the failure by Belgium to implement, inter alia, the Social Security (Minimum Standards) Convention, 1952 (No. 102), doc. GB.225/20/15, para. 20. Following this representation and the comments of the Committee of Experts, the Government repealed s. 9, subs. 1(a), of Royal Order No. 118 of 23 December 1982, which, contrary to Article 68, paragraph 2, of the Convention, excluded certain categories of foreign managerial staff and researchers from social security coverage.

this holds true as well for most of the countries that have not ratified either of the Conventions. Only a few of the countries that have ratified either one of the Conventions<sup>28</sup> or neither<sup>29</sup> apply

<sup>28</sup> For example: Switzerland: federal law guarantees equality of treatment in affiliation (s. 1, subs. 1, of the Old-Age and Survivors' Insurance Act, 1946). Regarding the granting of benefits, however, regular pensions are only granted to foreigners if ten years of contributions have been paid, subject to, in particular, contrary international Conventions (s. 18). Furthermore, in principle, foreigners do not have a right to special pensions (s. 42); Turkey: the provisions in s. 3, subs. 1(g) and 2(a) of the Social Insurance Act No. 506, 1964, which exclude some foreign nationals from insurance and merely recognise a voluntary membership option limited to disability, old-age and survivors' insurance for these nationals, have been the subject of comments by the Committee of Experts which noted that studies are being prepared for modification of the legislation.

<sup>29</sup> For example: Egypt (by virtue of s. 2 of the Social Insurance Act of 1975 foreigners are protected with regard to old age only if they benefit from a contract of at least one year and if a reciprocity agreement exists without prejudice to the provisions of international Conventions); Gabon (Act No. 10/82 respecting the Social Guarantee Code, s. 6, as regards self-employed workers); Kuwait: the Social Insurance Act, 1976, applies exclusively to Kuwaiti citizens; Nigeria: in principle, equality of treatment is guaranteed by s. 2, subs. 1, and s. 9 of the National Provident Fund Act, No. 20, of 1961. However, foreigners working in Nigeria for periods not exceeding six years at a time are exempt from participation in the fund if the employer can prove that the worker is liable to contribute to, or is prospectively entitled to benefits from, a social security scheme in a country other than Nigeria or any benefit scheme set up by his employer or under his employment on terms that would provide the worker with benefits substantially not less favourable than the like benefits to which he would have been entitled under the Act (paras. 6 and 7 of the Second Schedule); Qatar: according to information provided by the Government in its report, only citizens of Qatar are covered by the Social Security Act of 1963 and consequently benefit from old-age pensions; Saudi Arabia: foreign workers are excluded from the Social Security Act (s. 5, subs. 1(h)); United Arab Emirates (according to the information communicated by the Government, foreign workers do not enjoy old-age benefits); Zambia: the Zambia National Provident Fund Act guarantees equality of treatment with the exception of s. 14 and of the Third Schedule of this Act, Ch. 8, which exclude from membership foreigners working in Zambia for periods not exceeding six years at a time if the employer can prove that the worker is liable to contribute to, or is prospectively entitled to benefits from, a social security scheme in a country other than Zambia or any benefit scheme set up by his employer or under his employment on terms that would provide the worker with benefits substantially not less favourable than the like benefits to which he would have been entitled under the Act.

restrictions based on nationality. Some of these restrictions, however, should not be considered contrary to Article 68 of Convention No. 102, on account of the special rules States are permitted to prescribe. Usually, these take the form of a residence requirement imposed under non-contributory schemes,<sup>30</sup> or a reciprocity requirement under contributory schemes.<sup>31</sup>

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220. In addition to the Conventions specifically dealing with the situation of migrant workers, many social security Conventions explicitly lay down the principle of equality of treatment between nationals and non-nationals. Thus, Convention No. 102 includes specific provisions stipulating that non-national residents must be entitled to the same rights as nationals, provided the application of this principle may be made subject to the adoption of special rules for non-contributory benefits and for transitional schemes, or subject to reciprocity conditions for contributory schemes.

221. An examination of national laws and regulations and the information provided by the governments shows that the principle of equality of treatment for nationals and non-nationals seems to have been widely adopted. However, it is equally clear that Convention No. 102's scope as to equality of treatment between nationals and non-nationals is substantially weakened by the possibility of making equality of treatment contingent on the existence of a reciprocity agreement in the case of contributory social security systems which protect employees (Article 68, paragraph 2). No such possibility is allowed by Convention No. 118 which also stipulates that old-age benefits be paid abroad both for non-nationals and for the nationals of the States having ratified this Convention (Article 5). The Committee therefore considers it appropriate, or even imperative, to repeat the appeal it made in paragraph 156 of its 1977 General Survey on this Convention: "It is to be hoped, in the interests of millions of non-national and migrant workers, that member States will continue to make every effort to extend application of the principle of equality of treatment as regards social security in accordance with the provisions of Convention No. 118."

222. The Committee wishes to emphasise that neither Conventions Nos. 102 and 128 nor Recommendation No. 131 prescribe equality of treatment between men and women in matters of social security. The Committee had brought this issue to the attention of the Working Party set up by the ILO's Governing Body to examine, inter alia, possible subjects for new standards. The Committee subsequently noted with interest that the above-mentioned Working Party had included this

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<sup>30</sup> For example: Denmark (Social Pensions Act, No. 217, of 16 May 1984, s. 1).

<sup>31</sup> For example: Equatorial Guinea: non-national workers only benefit from equality of treatment if they are citizens of a State which recognises reciprocity (ss. 5 and 6 of Decree No. 104/1984).

question among the subjects which might require new instruments.<sup>32</sup> Therefore, the Committee would like to draw the attention of the International Labour Conference to this serious flaw in social security matters, with a view to the possible adoption of universal standards on this subject.<sup>33</sup>

### Suspension of benefits

#### International standards

223. Both Convention No. 102 (in Article 26, paragraph 3, and Article 69) and Convention No. 128 (in Articles 31, 32 and 33) provide for a number of cases in which the benefits to which a protected person should be entitled may be suspended or reduced. The list of these cases is essentially the same in both Conventions. As regards old-age benefits, however, only the following cases of suspension or reduction seem relevant.

224. Firstly, suspension and/or reduction of benefits is authorised when the beneficiary is absent from the territory of the member State. In this respect, Convention No. 128 allows suspension in such a case, except under prescribed conditions, for contributory benefit. According to Recommendation No. 131 (Paragraph 26), however, the benefits to which a person protected would otherwise be entitled should not be suspended in the event of absence of the beneficiary.

225. Secondly, suspension is authorised when the beneficiary is maintained at public expense or by social security. Whereas Article 69(b) of Convention No. 102 provides that only in cases where the benefit exceeds the cost of this maintenance, the difference should be granted to the dependants of the beneficiary, by contrast, Convention No. 128, in Article 32, paragraph 2, broadens the scope of this rule, by stipulating that "in the cases and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned".

226. Benefits may also be suspended if the beneficiary receives other benefits or compensation. Article 69(c) of Convention No. 102 authorises the suspension of benefits in certain conditions and within certain limits, especially when the person concerned is in receipt of another cash benefit, other than a family benefit. Furthermore, Article 33 of Convention No. 128 also provides for the reduction and suspension of benefits, subject to prescribed conditions and limits, if the beneficiary is concurrently entitled to more than one benefit. Benefits may also be suspended when the beneficiary is engaged in gainful activity. They may also be reduced if the beneficiary's earnings (or other means in the case of non-contributory benefits)

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<sup>32</sup> See the Report of the Working Party on International Labour Standards, O.B., special issue, Vol. LXX, 1987, Series A, Appendix II, p. 29.

<sup>33</sup> See also Equal remuneration, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 72nd Session, 1986, para. 17.



exceed a prescribed amount (Convention No. 102, Article 26; Convention No. 128, Article 31).

Suspension in national legislation  
and practice

Suspension when the beneficiary is  
absent from the territory of the  
Member (Article 69(a) of  
Convention No. 102; Article 32(a)  
of Convention No. 128)

227. In a number of countries the laws and regulations impose no territorial restrictions on the payment of old-age benefits if the beneficiary resides abroad.<sup>34</sup> In other countries,<sup>35</sup> however, the laws and regulations authorise the suspension of payment of benefits if the beneficiary is absent from the national territory. This applies to nationals as well as non-nationals. Some countries<sup>36</sup> make the payment of old-age pensions to non-nationals conditional upon the existence of a reciprocity agreement with the beneficiary's country of residence or of an international Convention.

<sup>34</sup> For example: Argentina, Costa Rica, Cyprus, Egypt, Madagascar, Morocco, Netherlands, Panama, Senegal.

<sup>35</sup> For example: Ireland (Social Welfare (Consolidation) Act, 1981, s. 129); Pakistan (Employees' Old-Age Benefits Act, s. 27); Poland (Act respecting pension security for workers and their families, 1982, s. 81 and government report); Portugal (as regards social pensions, Legislative Decree No. 464 of 1980, s. 7); Romania (Act respecting state social insurance pensions and social assistance, 1977, s. 60(b)).

<sup>36</sup> For example: Algeria (Act No. 83-12 respecting retirement pensions, s. 53); Benin (Ordinance No. 73-3 to provide for the establishment and organisation of the Benin Social Security Fund, 1973, s. 45(2)); Bulgaria (Order No. 3 of 15 Jan. 1958, of the Council of Ministers, s. 21); Cameroon (Law No. 84-07, 1984, amendment to Law No. 69-LF-18 instituting old-age, invalidity and survivors' pension insurance, s. 20(2)); Central African Republic (Decree No. 83.340 of 1983, s. 35(1)); Chad (Decree No. 99 P-CSM of 1978, instituting a pension insurance scheme, s. 25); France (Social Security Code, s. L.311-7); Mali (Social Insurance Code, s. 169); Mexico (Social Insurance Act, 1973, s. 126); Rwanda (1974 Decree instituting a social security scheme, s. 44); Togo (Social Security Code, s. 73(2)).



Suspension when the beneficiary is maintained at public expense or by social security (Article 69(b) of Convention No. 102; Article 32(b) of Convention No. 128)

228. The legislation of many countries provides for the suspension of benefits if the beneficiary is hospitalised,<sup>37</sup> serving a sentence of imprisonment<sup>38</sup> or placed in a public establishment for the elderly.<sup>39</sup> With a few exceptions,<sup>40</sup> the legislation provides for at least the difference between the cost of maintenance and the total of the benefit to be provided to the beneficiary's dependants.

<sup>37</sup> For example: Denmark (in certain instances: Social Pensions Act, 1984, s. 46); New Zealand (in the event of hospitalisation of a certain duration or confinement to a social institution, the pension is reduced according to the beneficiary's financial situation; Social Security Act, 1964, ss. 75 and 75A).

<sup>38</sup> For example: Australia (Social Security Act, 1947, s. 167); Barbados (National Insurance and Social Security (Classification) Regulations, 1967, s. 50, subs. (1)); Belgium (the pension may be maintained if the period of incarceration is less than 12 months; Royal Order establishing general regulations concerning retirement and survivors' pensions, s. 70); Finland (National Pensions Act, 1956, s. 42, when imprisonment goes beyond a certain duration); Guyana (National Insurance and Social Security Regulations, 1969, as amended, s. 43); Rwanda (Legislative Decree of 1974 instituting a social security scheme, s. 44); Saudi Arabia (Social Insurance Law, s. 50, when imprisonment goes beyond a certain duration); Uruguay (Constitutional Decree respecting general principles of social security, 1982, ss. 14 and 15); Yugoslavia (Act of 1982 respecting the basic entitlements enjoyed under pension and disability insurance, s. 85).

<sup>39</sup> For example: France (up to a certain percentage, the pensions of persons placed in public institutions under public assistance for the elderly are allocated towards the coverage of their maintenance; Social Security Code, s. L.371-9; Family and Social Assistance Code, s. 142); Romania (Act of 1977 respecting state social insurance pensions and social assistance, ss. 76 and 77(2), admission costs to welfare and social assistance institutions are covered using either pensions or other means).

<sup>40</sup> For example: Cuba (Social Security Act of 1979, ss. 93 and 105(d): in the event of incarceration exceeding 30 days, the law does not appear to provide for the granting of part of the benefits normally received by the beneficiary to his dependants); Mauritania (the law makes no provision for the granting to the entitled parties of at least part of the suspended benefits when the beneficiary is serving a sentence of imprisonment); Niger (the law does not expressly provide for the granting of the difference between the

(footnote continued on next page)

Suspension or reduction of benefits  
when the beneficiary receives  
other benefits or compensation  
 (Article 69(c) of Convention No. 102;  
 Article 33 of Convention No. 128)

229. Most of the national laws and regulations studied which allow a beneficiary to receive more than one benefit at a time either impose a ceiling<sup>41</sup> on the total benefits, or provide for suspension or reduction of one of the benefits,<sup>42</sup> when they exceed certain limits. Furthermore, most legislation prohibiting or restricting receipt of more than one type of benefit allows insured persons to choose the highest one.<sup>43</sup> In a few cases, it appears that there is no restriction on receipt of more than one benefit at a time.<sup>44</sup>

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benefits due and the cost of maintenance when the beneficiary is serving a sentence of imprisonment. However, the Government indicated in its reports on the application of Convention No. 102 under article 22 of the Constitution that dependants receive the full amount of pension, but that a study had been initiated aimed at changing the law to give effect to the Committee of Experts' comments); United States (42 USC, Part 402: according to this provision, suspension of benefits may be ordered by a court if the recipient is convicted for subversive activities. The information available did not indicate whether in such a case all or part of the benefits were granted to dependants).

<sup>41</sup> For example: Bulgaria (Pensions Act, 1957, s. 47); Colombia (Agreement No. 224 of 1966 to approve the general regulations for invalidity, old-age and survivors' insurance, s. 18); Luxembourg (Act of 1987 respecting old-age, invalidity and survivors' pension insurance, s. 227); Mexico (Social Insurance Act, 1973, s. 124); Nicaragua (Social Security Act, 1982, s. 110).

<sup>42</sup> For example: Chad (Decree No. 99 P-CSM of 1978, instituting a pension insurance scheme, s. 22); Madagascar (Social Insurance Code, s. 279); Morocco (Dahir to promulgate Act No. 1-72-184 respecting the social security scheme, s. 65); Togo (Social Security Code, s. 72).

<sup>43</sup> Grenada (National Insurance (Benefit) Regulations, 1983, s. 45); Iraq (Worker's Pension and Social Security Law No. 39, 1971, s. 70(a)); Libyan Arab Jamahiriya (Regulations of 1981 respecting social security pensions, s. 153); Pakistan (Employees' Old-Age Benefits Act, 1976, s. 28); Saint Lucia (National Insurance Regulations, 1984, s. 94).

<sup>44</sup> For example: Cameroon (Act No. 84-07, 1984, amending Law No. 69-LF-18, instituting old-age, invalidity and survivors' pension insurance, s. 19).

Suspension of benefits when the beneficiary is engaged in gainful activity (Article 26, paragraph 3, of Convention No. 102; Article 31, paragraph 1, of Convention No. 128)

230. Many of the laws and regulations studied make the granting of benefits contingent upon actual cessation of gainful employment,<sup>45</sup> or prohibit concurrently engaging in an occupational activity or an insurable activity.<sup>46</sup> In some cases where the exercise of an occupational activity is authorised by law,<sup>47</sup> the benefits are subject to a ceiling, which is determined by the earnings and/or the sum of the pension and the earnings. Pensions may be suspended or reduced accordingly.

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231. It is important to emphasise that the provisions of Convention No. 102 and Convention No. 128 permitting cases of suspension of benefit are in fact flexibility clauses designed to take account of the range of economic, social and legal situations in various countries. Obviously, these provisions are optional in that the States are not obliged to avail themselves of them. As they constitute exceptions to the general rules laid down in these Conventions, however, it would be desirable that their application be

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<sup>45</sup> For example: Côte d'Ivoire (Social Insurance Code, s. 164); Iraq (Worker's Pension and Social Security Law of 1971, s. 65); Madagascar (Social Insurance Code, ss. 266 and 280); Mali (Social Insurance Code, s. 164); Rwanda (Decree of 1974 instituting a social security scheme, s. 30); Saint Lucia (National Insurance Regulations, 1984, s. 62).

<sup>46</sup> For example: Belize (Social Security (Benefit) Regulations, No. 82, 1980, s. 25); Bulgaria (Pensions Act, 1957, s. 50); Finland (Workers' Pensions Act, 1961, s. 4); Libyan Arab Jamahiriya (Regulations of 1981 respecting social security pensions, ss. 154 and 165; the prohibition on receiving pensions and occupational income simultaneously does not apply to casual or temporary employment); Nicaragua (Social Security Act, 1982, s. 54; the law does, however, provide for the possibility of working to supplement the basic salary); Saudi Arabia (Social Insurance Law, s. 38); Spain (General Social Security Act, 1974, ss. 153 and 156(2); exceptions may, however, be provided for by regulations).

<sup>47</sup> For example: Austria (General Social Insurance Act, s. 94); Philippines (Social Security Law, s. 12 B(c): there is no more reduction once the beneficiary reaches 65 years old); USSR (National Pensions Act, 1956, s. 15); United States (government report: there is no reduction for beneficiaries who are 70 years and older).

more restrictive so as to avoid any abuse which might result from drafting suspension clauses in national legislation in excessively broad terms.

232. From the examination of the available information and of the national laws and regulations, it is clear that the types and definitions of possible cases of suspension provided for in the Conventions cover most of the situations provided for in national law and practice. However, in accordance with Convention No. 128 (Article 32, paragraph 2), it would be desirable that in certain cases of suspension part of the benefits otherwise due be paid to the dependants of the person concerned, particularly to their children.

## CHAPTER VII

### CONCLUSIONS

#### I. Difficulties in application and prospects of ratification

233. A number of governments have referred to difficulties which they consider likely, temporarily at least, to prevent acceptance of Part V of Convention No. 102 and/or Part III of Convention No. 128, while others have expressed their intention to ratify these Conventions or adopt measures for their application.

#### Difficulties

234. Some governments state in general terms that there are difficulties involved in the ratification or application of Conventions Nos. 102 and 128.<sup>1</sup> Many other governments report economic, financial or administrative difficulties.<sup>2</sup> The economic crisis and inflation,<sup>3</sup> as well as the country's level of development<sup>4</sup> and the lack of human resources<sup>5</sup> 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>6</sup> Lastly, as may be seen in the following paragraphs, several governments referred to problems relating to specific aspects of the Conventions.

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<sup>1</sup> For example: Yemen, Zimbabwe.

<sup>2</sup> For example: Chad (because of state of war); Côte d'Ivoire (the Government points out that, although there is no major obstacle, the present economic situation is unfavourable); Guinea-Bissau; India; Indonesia; Mozambique; Nigeria; Philippines (according to the Government, although the present scheme substantially meets the requirements of the instruments, financing is a major problem because of the critical state of the economy inherited from the previous regime); Rwanda; Venezuela (the Government has nevertheless ratified Conventions Nos. 102 and 128); United Kingdom (British Virgin Islands).

<sup>3</sup> For example: Bolivia (the Government has nevertheless ratified Conventions Nos. 102 and 128); Peru; Suriname; Zambia.

<sup>4</sup> For example: Bangladesh; Central African Republic; Madagascar; Nepal; Trinidad and Tobago.

<sup>5</sup> For example: Zambia.

<sup>6</sup> For example: Nigeria, Suriname.

235. The Government of New Zealand considers that it is unable to apply Conventions Nos. 102 and 128 because of technical difficulties resulting principally from the non-contributory nature of the national social security system. As was stated in Chapter I of this Survey, Conventions Nos. 102 and 128 were drafted with a high degree of flexibility as regards the methods of protection which may be adopted by governments with a view to application of their provisions. Thus, they make allowance both for systems based on the principle of social insurance and for schemes applicable to all residents and financed through general taxation. The Committee would therefore like to draw this country's attention to the fact that the non-contributory nature of old-age benefit paid by the New Zealand social security system does not in itself constitute an obstacle to the application of Conventions Nos. 102 and 128.

236. The Committee notes that the Government of Thailand stated that there was no system of old-age protection in force in the country apart from the public servants' pension scheme. In this context, the Committee considers that countries which only protect such a limited sector of the population should be given special attention by the Office in the form of technical co-operation in this area.

237. The question of coverage was raised by a number of governments. The Government of Honduras stated that homeworkers, domestic temporary and casual workers, as well as agricultural workers and herdsman are not covered by social security, so that the coverage of legislation does not meet the requirements of the instruments under consideration. According to the Government of Pakistan, the coverage of legislation is very restricted, owing to limited resources, so that it falls far short of the requirements of Article 27 of Convention No. 102 and Article 16 of Convention No. 128. However, it adds that the scope has been improved considerably since 1976 and that it should be possible in future to further extend it in stages, in conformity with paragraph 2 of Recommendation No. 131. The Government of Morocco states that only persons covered by social insurance, who contribute financially to the social security scheme, are protected. The Government of Suriname considers that one of the problems involved in applying the instruments concerns the protection of workers employed in small enterprises and those in the rural and informal sectors, as well as that of homeworkers. The Government of Tunisia states that the percentages laid down by the Conventions for protected persons are not attained in practice, although the coverage provided for by law is very extensive.<sup>7</sup> Lastly, the Government of Japan considers that the coverage of protected persons may raise certain questions as regards Convention No. 128.

238. It should be pointed out in this context that Conventions Nos. 102 and 128 define their scope largely by referring to statistical criteria, leaving governments a choice of several

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<sup>7</sup> According to the statistical information provided by the Government, it seems, however, that the total number of employees protected compared with the total number of employees attains the percentage provided for under Article 27(a) of Convention No. 102.

options. Moreover, as the Committee emphasised in paragraphs 55 to 59 of Chapter II of this Survey, both Conventions contain a number of provisions allowing for exceptions, one of which is intended specifically for developing countries (Article 3, read in conjunction with Article 27(d), of Convention No. 102, and Article 4, read in conjunction with Article 16, paragraph 2, of Convention No. 128). In view of the particular importance of this question, the Committee hopes that the governments of the countries concerned will continue to make every effort to gradually extend old-age benefit to new categories of workers, on the one hand, and that they will re-examine the possibility of accepting the obligations under Part V of Convention No. 102 or Part III of Convention No. 128, on the other.

239. The Government of Australia raised the question whether the term "resident" in Article 27(c) of Convention No. 102 and Article 16, paragraph 1(c), of Convention No. 128 also includes illegal immigrants. In this respect, the Committee would like to emphasise that, in accordance with the views it expressed in paragraph 53 of Chapter II of this Survey, this term should be understood as including only non-nationals who are lawfully resident within the country of immigration. These provisions do not, of course, prohibit countries from going beyond this obligation by also affording protection to non-nationals whose position cannot be regularised, particularly in the case of contributory schemes.

240. The Government of Denmark, referring to Convention No. 128, raised difficulties in regard to pensionable age, which is 67 years in that country, both for national social pensions and supplementary pensions (ATP scheme). In this respect, the Committee recalls that Article 15, paragraph 2, of Convention No. 128 allows an age higher than 65 years to be fixed "with due regard to demographic, economic and social criteria, which shall be demonstrated statistically".<sup>8</sup> Therefore this does not constitute a real obstacle or difficulty in the application of this instrument.

241. In Australia,<sup>9</sup> Ireland and Mexico,<sup>10</sup> the absence of provisions for lowering the pensionable age in respect of workers engaged in arduous or unhealthy occupations is mentioned by the Governments as impeding the application of Convention No. 128, of which Article 15, paragraph 3, provides that "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 be arduous or unhealthy".

<sup>8</sup> The Government of Denmark has accepted Part V of Convention No. 102 which contains, in its Article 26, paragraph 2, a similar provision.

<sup>9</sup> In Australia, pensionable age is 65 years for men and 60 years for women.

<sup>10</sup> The Government of Mexico has pointed out various other issues concerning pensionable age, among others, which do not, however, seem to be considered as an obstacle to the implementation of Part III of Convention No. 128.

242. In Kenya, the payment of old-age benefit in the form of a lump sum impedes the application of Conventions Nos. 102 and 128. The Government states that the necessary amendments cannot be introduced until workers show willingness or desire to have their provident fund transformed into a pension scheme. While the Committee appreciates the attachment of workers in certain developing countries to the system of reimbursement of individual contributions which is characteristic of provident funds, it none the less emphasises the importance which it attributes to payment of old-age pensions based on the distribution of risks, as the only form of benefit which can provide guaranteed security for beneficiaries in their old age, irrespective of the duration of their retirement. However, the Committee notes in this respect that the Kenyan Public Servants' Pension Scheme provides for the payment of old-age pensions.

243. The Government of Senegal considers that the main difficulty lies in the calculation of the rate of benefits. It should be recalled here that neither Convention No. 102 nor Convention No. 128 impose a particular method for the calculation of benefits; States are given the freedom to adopt their own rules and methods of calculation for fixing the amounts of benefit paid under their national system, provided that such amounts meet the requirements laid down by the instruments.<sup>11</sup> In this context, the Committee notes that the objective of the managing board of the Senegalese Social Security Fund should be to provide a retirement pension equal to 1.33 per cent of remuneration per year of service. The Committee would also like to draw attention to the fact that, contrary to what the Governments of Morocco and Rwanda appear to believe, the provisions of Conventions Nos. 102 and 128 concerning old-age benefits do not require dependents to be taken into account in order to increase old-age pension, neither do they stipulate that family allowances must be paid in addition to old-age benefit.

244. More particularly as regards the rate of old-age benefit, the Government of Mauritius stated that it was not possible, in view of the state of the economy of the country, to increase the rate of contributions to the National Pensions Fund in order to ensure a level of 40 per cent of previous earnings as contributory retirement pension after 30 years of contribution. However, the Government considers that the level prescribed by Convention No. 102 may be attained if the amount paid as non-contributory pension is also taken into consideration. In so far as the non-contributory pension scheme is applicable to all residents without a means requirement, the Committee considers, bearing in mind the views expressed in paragraph 134 of Chapter IV, that the benefits provided under such a scheme may be added to the contributory benefits paid to employees in order to assess whether the level stipulated by the Conventions is attained. The Government of the United Kingdom considers that, although in practice the benefits reach the standards set by Convention No. 128, they do not necessarily do so through retirement pension alone. Lastly, the Government of Israel believes that the main problem as far

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<sup>11</sup> See above, Chapter IV, para. 139.



as Convention No. 128 is concerned lies in the level of benefit, given the difficult economic situation in which the country now finds itself.

245. The length of the period to be taken into account for the calculation of benefit also appears to give rise to some difficulties. In this respect, the Government of Australia states that entitlement to old-age benefit is subject to a residence requirement of either ten years' continuous residence or combined periods of broken residence totalling ten years, provided that one of these periods is at least five years. It should be stressed that Article 29, paragraph 1(a), of Convention No. 102 and of Article 18, paragraph 1(a), of Convention No. 128, by referring to "prescribed rules" leave it to a certain extent to national legislation to determine the conditions in which the qualifying period should be completed.

246. The Government of Ireland points out that periods of insurance preceding 1953 are not taken into account. In this respect, the Committee wishes to recall that both Article 73 of Convention No. 102 and Article 43 of Convention No. 128 specify in subparagraph (b) that these instruments "shall not apply to benefits in contingencies occurring after the coming into force of the relevant Part of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date". The Committee therefore considers that the situation described by Ireland does not in itself constitute an obstacle to acceptance of the parts of Conventions Nos. 102 and 128 relating to old-age benefit.

247. The Government of Ireland also states that reduced old-age benefit is not guaranteed in every case to beneficiaries who have completed 15 years of insurance, contrary to the provisions of Article 29, paragraph 2, of Convention No. 102.<sup>12</sup>

248. The review of old-age benefit to take account of increases in the cost of living was mentioned by several governments as impeding full application of the Conventions. In Saudi Arabia, no measure has been adopted to ensure that old-age pensions are revaluated. The Government of Burundi stressed the negative impact of the economic crisis on maintenance of purchasing power of pensions. The crisis, as well as a high rate of inflation, was also mentioned by the Government of Brazil as having a detrimental effect on the resources of social insurance, making it difficult to maintain the real value of pensions. Lastly, the Government of a non-metropolitan territory of the United Kingdom - Anguilla - referred to the fairly long interval which may elapse between revaluations of benefit as a possible difficulty.

249. The Government of Colombia cites as a difficulty the fact that the social security scheme does not provide for an early pension in certain circumstances. It should, however, be emphasised at this point that neither Convention No. 102 nor Convention No. 128 require the grant of early pensions.

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<sup>12</sup> It should be noted that Ireland has ratified the European Code of Social Security and accepted Part V of it, which contains similar provisions.

250. Suspension or reduction of old-age benefit in the event of the insured person engaging in an occupational activity was mentioned by the Governments of Ireland<sup>13</sup> and Poland. This is expressly allowed, however, both by Article 26, paragraph 3, of Convention No. 102 and by Article 31 of Convention No. 128.

251. The exclusion of foreign workers from coverage by the Social Insurance Act was mentioned by the Government of Kuwait as likely to impede ratification of the Conventions.

252. The Government of Poland stated that in view of the economic situation it was difficult to ensure payment of benefits where the insured person travels or resides abroad. In this respect, the Committee recalls that Article 69(a) of Convention No. 102 provides that "benefit may be suspended as long as the person concerned is absent from the territory of the Member", while Article 32, paragraph 1(a), of Convention No. 128 allows benefit to be suspended in such a case "except, under prescribed conditions, in the case of a contributory benefit".

253. Lastly, the Government of Ireland wonders whether Article 34, paragraph 2, of Convention No. 128 gives an absolute entitlement to the beneficiary to be represented by a person of his choice if he appeals in the case of refusal of benefit or complains as to its quality or quantity, in accordance with paragraph 1 of the same Article. Under Irish legislation the Appeals Officer has the discretion in the first instance to decide whether an appeal may be decided summarily or an oral hearing may be given. In the event of an oral hearing, the prescribed procedures provide that the appellant may appear at the hearing in person and may be represented by any member of his family or, with the consent of the Appeals Officer, by any other person. It should be noted in this respect that by referring to procedures "prescribed"<sup>14</sup> by or in virtue of national legislation "which permit the claimant to be represented or assisted, where appropriate, by a qualified person of his choice ...", paragraph 2 of Article 34 allows governments a certain amount of leeway in the implementation of this provision.

#### Prospects for ratification

254. A number of governments have stated that they are favourably disposed towards ratification of Convention No. 102 and/or Convention No. 128.

255. According to information communicated by the Government of Portugal, ratification of Convention No. 102 has been approved. The Government of Belgium has stated that it is in a position to ratify Convention No. 128.

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<sup>13</sup> In Ireland, old-age pensions are paid from 65 years of age onwards, provided that the beneficiary stops work. This requirement is no longer stipulated when the beneficiary reaches the age of 66 years.

<sup>14</sup> Under Article 1, paragraph (b), of Convention No. 128, the term "prescribed" means determined by or in virtue of national legislation.

256. The Government of Malta reported that it was seriously considering the possibility of ratifying Conventions Nos. 102 and 128. The Government of Egypt stated that both of these Conventions were currently being examined prior to beginning ratification procedures. According to the Government of Jordan, ratification of Conventions Nos. 102 and 128 will be proposed after the Provisional Law of 1978 on social security has been adopted on a permanent basis in accordance with the Constitution.

257. The Government of Côte d'Ivoire states that ratification of Convention No. 102 can only take place after the current reforms to harmonise social security legislation have been implemented.

258. The Committee notes with interest this information concerning prospects of ratification. It recalls, as it pointed out in 1961 in the General Survey carried out on Convention No. 102, that social security can no longer be considered as a luxury, since it answers the call which must be heard for any social policy to be comprehensive (paragraph 190), and it hopes that Convention No. 102 and/or Convention No. 128 may be ratified in the near future by a number of member States of the ILO.

### Other measures for implementation

259. Several governments<sup>15</sup> also mentioned that they intended to improve or extend the protection afforded by their old-age benefit system, or that they had undertaken studies for this purpose. Others referred to the drafting of new social security legislation.<sup>16</sup> In this respect, the Committee notes with interest the information communicated by the Government of Sri Lanka to the effect that, in accordance with a recommendation of the ILO-sponsored National Tripartite Seminar, legislation is under preparation to convert the national provident fund into a pension scheme.

260. The Government of Tunisia stated that social security coverage, and in particular the old-age scheme, was constantly being extended to new sectors and occupational categories, but went on to point out that part of the population covered by law was not protected in practice. Measures are therefore being adopted to raise public awareness in order to give effect to legal provisions in this area.

## II. General conclusions

### Basic objectives and methods of protection

261. The need to provide protection to elderly persons by guaranteeing them a basic income has long been recognised as a fundamental objective of social protection. The great majority of countries have now adopted measures to set up an old-age benefit

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<sup>15</sup> For example: Brazil, Byelorussian SSR, Colombia, Grenada, Honduras, Nepal, Saudi Arabia.

<sup>16</sup> For example: Bolivia, Burundi, Indonesia, Islamic Republic of Iran, Mozambique, Philippines, Ukrainian SSR, USSR.

scheme, and it is especially encouraging to note that the number of countries in which this type of social benefit does not exist is decreasing. In this context, the Committee would like to emphasise the very positive role of the ILO in the field of technical assistance. In a great many cases, the setting up and improvement of social security scheme was facilitated by the advice and technical assistance provided by the Office to the governments which requested it. This is why the Committee urges those governments which have not yet set up a pension scheme generally applicable to workers to consider, together with the bodies financing international technical co-operation and in particular the United Nations Development Programme, the possibility of seeking the technical assistance of the Office. For it is hardly conceivable that on the eve of the twenty-first century, private-sector workers in a country, whatever its stage of development, be deprived of such essential protection as the provision of an income in their old age after working all their life.

262. Admittedly, one should welcome the fact that in the case of Convention No. 102, there have been 32 ratifications, 28 of which include acceptance of Part V relating to old-age benefit. The fact remains none the less that over two-thirds of the member States of the ILO are not bound either by Convention No. 102 or by Convention No. 128. The reason for this lies in the difficulties inherent in implementing these two Conventions, as well as in their particularly technical nature and considerable complexity. The Committee therefore hopes that this Survey will facilitate comprehension of these instruments and clarify a number of points, thus giving an increasing number of countries the opportunity to reconsider their position as regards ratification of Conventions Nos. 102 and 128.

263. In drawing up this Survey, the Committee was fully aware of the problems and difficulties facing countries with different economic and social backgrounds, whose state of development varies considerably. However, the Committee considers that the flexibility formulae provided for by these instruments should make it easier for countries with a wide variety of economic and social conditions to implement the objectives pursued by Conventions Nos. 102 and 128. These allow a wide variety of methods to be applied in providing the protection which they stipulate, thus enabling account to be taken of the extremely broad range of national situations, which follow two main lines of approach: that of social insurance, on the one hand, and that of benefits provided as a state service and financed through taxation on the other. The Conventions also make allowance for the protection provided by non-compulsory social security schemes, provided that these meet certain conditions. Governments are also offered the choice among a number of options for assessing whether the scope and level of protection are attained. Lastly, the Committee would like to draw the attention of governments more particularly to the fact that the Conventions allow exceptions to be made, *inter alia*, as regards scope, with especial flexibility in the case of Convention No. 128.

### Coverage

264. Since the last general survey, the Committee has been aware of a tendency to extend the coverage of national old-age protection schemes, although it has slowed down in recent years. In the great majority of industrialised countries, the social security system now covers employees at least, while many countries have extended protection, to varying degrees, to self-employed persons. Moreover, social security coverage has by definition been generalised in countries which have instituted universal schemes covering the entire resident population. In addition, in countries with a centrally planned economy, social security protection has been extended to self-employed persons, in particular those of the agricultural sector. The developing countries have also expanded their priorities, initially often limited to narrow categories of workers such as the employees of industrial enterprises, to cover new categories of workers excluded up to now. However, these positive developments should not obscure the fact that some occupational categories, the self-employed in particular, are not yet protected in many countries, and that some continue to cover only a limited number of workers. In several developing countries, only public servants are covered by a pension scheme. Moreover, the extension of social security to agricultural workers also gives rise to many difficulties due to peculiar features of this category of workers. Lastly, the question of real coverage of protected persons also appears to raise problems in some countries where the persons who, according to the legislation, should be covered by the national social security system are not always protected in practice. This is an especially important problem which calls for vigilance on the part of the national authorities, in particular as concerns the administration of the schemes. The Committee for its part has consistently endeavoured to supervise closely the implementation in practice of the provisions of Conventions Nos. 102 and 128 concerning coverage.

265. Improvements in the coverage of old-age protection schemes should enable an increasing number of countries to meet the requirements of the instruments under consideration, and in particular those of Convention No. 102, which are relatively low. It should, however, be recalled that both Convention No. 102 and Convention No. 128 refer to statistical criteria in determining their scope. As regards the governments which are not bound by either of these Conventions, very few have included in their reports the statistical information necessary to assess how effect is given to the provisions of the instruments on this point.

### Pensionable age

266. Pensionable age does not appear to raise any major problems in the implementation of Conventions Nos. 102 and 128, except for the lowering of the age for workers engaged in arduous or unhealthy occupations required by Convention No. 128. In more general terms, however, this question calls for a number of comments.

267. The pensionable age as fixed by national legislation generally meets the requirements of Conventions Nos. 102 and 128, which prescribe that this age should not, in principle, be higher than 65 years. Since the last general survey on Convention No. 102, some countries have adopted measures to lower the pensionable age, usually in response to workers' desire to retire earlier, but also in order to create new vacancies by encouraging retirement. The question arises, however, as to what is the real impact on employment of lowering the pensionable age, since there is no guarantee that the vacancies created by early retirement will be filled by unemployed persons, and not simply abolished following rationalisation measures. It is also possible that retired persons may be tempted to re-enter the labour market under conditions inferior to those normally offered to other workers. In this context, the question arises as to whether it is appropriate to use old-age insurance as an instrument of employment policy.<sup>17</sup>

268. Some governments feel that demographic factors justify raising the pensionable age as a means of cutting social security costs: as life expectancy has been increasing alongside an improvement in living standards, workers should be able to remain longer in active life. However, there are many arguments against this point of view, of which one is linked to employment. An overall raising of the pensionable age would not fail to have negative repercussions on the employment opportunities of younger workers. Furthermore, the increase in life expectancy is not necessarily a universal phenomenon; moreover, within a single country, the increase may not affect the various categories of workers to the same extent. In some developing countries, a worker's life expectancy at the time he starts his career is such that, even in spite of progress made, he still has few chances of living long enough to reach pensionable age. Even in industrialised countries, it may be seen that many workers have to stop working on health grounds before this age.

269. It should also be pointed out that pensionable age is not synonymous with retirement age; i.e. the age at which a worker decides to stop work or has to leave his job. When the pensionable age is fixed in a rigid manner, problems are therefore likely to arise not only for older workers who have had to, on health grounds, stop working earlier than planned, but also for those who, having lost their jobs, have remained unemployed for a long time because of their limited chances - given their age - of finding a new job. Account should also be taken of the wishes of workers who, for personal reasons, might like to take early retirement or, on the contrary, postpone their retirement. This is why it would appear to be particularly desirable to allow each person according to health or personal preference, a certain choice as to when they wish to start

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<sup>17</sup> See in this respect: Into the twenty-first century: The development of social security, op. cit., paras. 111 and 114, in particular.

The Committee took particular account of this study when drawing up these conclusions.

drawing their old-age pension, in accordance with the provisions of the Older Workers Recommendation, 1980 (No. 162), and in particular Part IV. In this respect, the Committee notes with interest that a growing number of countries have introduced flexible retirement arrangements, such as voluntary early retirement, deferred retirement or progressive retirement, into their legislation. These measures are often coupled with other provisions to make the pensionable age more flexible according to various specific criteria designed to take into account the actual situation of those concerned - arduous or unhealthy occupations, loss of working capacity, long-term unemployment - and should give individuals greater freedom to decide upon the age at which they stop working.

270. In many countries, women are entitled to draw their old-age pensions at an earlier age than men, so that they will receive benefits for a longer period. It should, however be borne in mind that where the amount of the pension is linked to the length of contributory service, women may receive lower pensions than men, because of a shorter career, unless adjustments are made, depending on the system, to the accumulation rate or the number of years considered as constituting a full period of insurance. The debate over whether the pensionable age should be different or equal for men and women is still very much alive today. Against the argument on principle advanced by some, based on respect for equality of treatment between men and women, others contend that the "double working-day of women", at home and at work, should be compensated. In practice, the main question which arises is whether the pensionable age for women should be gradually raised to that of men, or the pensionable age for men lowered to that of women, or an intermediate age be adopted for both women and men.

271. The issue of an equal pensionable age for men and women is at present being examined at the national, regional and international levels within the wider context of equality of treatment between men and women in social security; until now, no ILO standard has been drawn up on this subject. It is for this reason that the Committee welcomes the decision taken by the Director-General of the ILO to propose to the Governing Body that equality of treatment between men and women in social security be one of the subjects concerning which new standards may be drawn up. It would also like to take this opportunity to draw the attention of the Conference to the fact that there are no specific standards on this subject at present.

### Co-ordination of systems

272. Irrespective of the level of protection provided by the national systems, difficulties have often been noted in the past when a beneficiary has been covered by more than one pension scheme during the course of his career. In countries where special schemes exist alongside a general scheme - even if only for public servants, as is often the case - those concerned risk losing their rights or only receiving a reduced pension if they are unable to meet the qualifying conditions established by the various schemes. Co-ordination measures must therefore be taken to guarantee maintenance of beneficiaries' rights in the course of acquisition. As the significance of this



problem is often underestimated, the Committee wishes to draw it to the attention of governments. The lack of co-ordination measures, which affects private pension schemes even more, not only runs counter to the individual interests of those concerned but can also, more generally speaking, impede occupational mobility.

#### Level and adjustment of benefits

273. As regards the amount of old-age benefits, this survey has revealed that, in some cases, the level of benefits has been maintained or even increased since the last general survey on Convention No. 102, in spite of the economic crisis and or inflation. However, it should be pointed out that in many countries, especially developing countries, the insurance scheme has not yet matured because it was only set up or extended fairly recently; consequently, the protected workers cannot yet have completed the period of insurance the instruments take as a basis for establishing the amount of benefits. What is more, most schemes awarding benefits linked to the beneficiary's previous earnings only take into account, when calculating the pension, wages not exceeding a certain ceiling and/or provide that the pension itself should not be more than a maximum determined amount. Although a ceiling of this nature is not in itself contrary to the provisions of Conventions Nos. 102 and 128, it must be fixed in such a way that it attains the percentages prescribed by these instruments in the case of a standard beneficiary whose earnings are equal to or lower than the wage of a skilled manual male employee. In most cases, additional statistical information would be required to assess the impact of maximum limits placed on earnings or benefits under national legislation. The lack of statistics has also prevented the Committee from determining whether the level prescribed by the instruments was attained in the case of several national systems providing flat-rate benefits.

274. More generally speaking, the introduction of minimum benefits by countries in which social security schemes award benefits linked to beneficiaries' previous earnings should normally improve the situation of some pensioners. They are thus guaranteed a minimum level of security that has to be fixed and maintained at a rate which can meet their basic needs. This is automatically achieved in countries which have a system providing flat-rate benefits. However, there is also a significant trend in these countries towards the provision of a supplementary pension related generally to previous earnings which is often added to basic benefits. There is therefore increasing recourse to a combination of the various methods that may be used to determine the amount of old-age benefits.

275. Cost-of-living increases in countries with a high rate of inflation have serious repercussions on the situation of pensioners if measures are not taken to adjust their pensions. Even in countries where inflation has been brought down to lower levels, price increases result very quickly in a significant drop in the purchasing power of pensions requiring adjustment measures. In this respect, the Committee notes with regret that in a growing number of countries that have adopted systematic methods of review, measures have been taken during the past few years, following the economic crisis, to slow down



pension adjustment. In countries which leave it up to the competent authority to make the necessary adjustments as the need arises or which fix long intervals between reviews, there is a particularly high risk that the gap between cost-of-living increases and the adjustment of pensions will have intolerable consequences for pensioners. The situation is particularly worrying in countries beset by severe inflation. In these circumstances, the Committee wishes to stress the vital importance which it attaches to maintaining the purchasing power of pensions. This is one of the major challenges that social security institutions must take up if they wish to continue fulfilling the objectives for which they were created. Over and above the responsibility of social security institutions, the community as a whole should be made aware of the need to ensure, in the name of social justice, that pensioners receive a fair share of what they gave as members of the working population.

### Protection of foreign workers

276. The protection of foreign workers has always been one of the major concerns of the ILO. As regards social security, several Conventions of a general scope, such as Convention No. 102, as well as Conventions dealing more specifically with the issue, such as the Equality of Treatment (Social Security) Convention, 1962 (No. 118), deal with the principle of equality of treatment between nationals and non-nationals. As may be seen from the available information, the legislation of the great majority of countries recognises equality of treatment between nationals and non-nationals with respect to old-age benefits, in accordance with the provisions laid down in Convention No. 102. It should nevertheless be pointed out that this Convention provides for certain arrangements in the implementation of the principle of equality of treatment, which include making such equality subject, under contributory social security schemes, to the existence of a reciprocity agreement, which is not provided for by Convention No. 118. Furthermore, unlike Convention No. 118, Convention No. 102 does not require the payment of benefits abroad nor does it deal with the maintenance of rights in course of acquisition when the worker transfers his residence from one country to the other. On these two points, therefore, Convention No. 102 is much more limited in scope than Convention No. 118. These differences may be explained by the fact that as the main objective of Convention No. 102 was to lay down a minimum social security standard, equality of treatment had to be dealt with in a sufficiently flexible way in view of the complex technical problems raised by this question. The fact remains that the effects of ageing experienced by all human beings on reaching a certain age are undoubtedly even harder to bear for foreign pensioners. It is for this reason that the Committee urges governments to continue making every effort to establish equality of treatment in social security to the greatest extent possible between nationals and non-nationals, by taking as guide-lines the principles laid down in Convention No. 118. In so doing, they will only be acknowledging the legitimate right of foreign workers who have reached retirement age to benefit from the achievements of the social security

system, which, as working members of society, they have helped to establish and build up in the same way as nationals.

#### Financing and future action

277. The financing of national pension schemes is one of the major concerns of governments at the present time, although Convention No. 102 merely puts forward certain general principles on the subject. There is nothing paradoxical about this, because whatever the methods adopted, they must guarantee the supply of resources needed to pay out benefits whilst ensuring that the burden of financing is fairly distributed. National social security schemes are clearly having to cope with adverse economic and demographic conditions liable to undermine the institutions' ability to disburse pensions. First, the economic crisis and the rise in unemployment have affected the amount of revenue of social security schemes. In many countries, a large proportion of the active population has, within the space of a few years, stopped paying social security contributions and pays much lower tax. Inflation has also had considerable repercussions on the amount of resources needed to maintain the purchasing power of pensions. Furthermore, in many countries, the ageing of the population - due to the drop both in birth and in death rates - is affecting the financial equilibrium of pension schemes, since the number of beneficiaries tends to increase in comparison with the working population, and the former draw their pension for a much longer period. In addition to these economic factors, the development and maturity of schemes must be taken into account.

278. Given the extent of these problems, doubts have been raised as to the role of the State in social protection, which is now challenged by some. In this respect, the Committee wishes to point out that the problems facing social security today, and national pension schemes in particular, are by no means due to the nature of the institution itself but are mainly caused by external economic factors, which also affect the other sectors. Furthermore, it considers that the disengagement by the State advocated by some would only shift the problems without solving them. In fact, the State's role seems even more vital in this field of social policy than anywhere else because it is necessary to forecast in the long term the balance between resources and expenditure in order to guarantee, despite difficult economic conditions, the institutions' ability to meet their pension commitments.

279. The extent of the economic problems facing national pension schemes must not make one lose sight of the extreme economic vulnerability of older persons, for whom their pension is often their only means of subsistence. To guarantee today's pensioners a fair share of what they gave during their working life is a fundamental concern of social justice. In many countries, this is a social achievement already considered as inalienable by the population as a whole. Admittedly, the principles laid down in Conventions Nos. 102 and 128 concerning old-age benefits have not yet been implemented in every country. The Committee therefore feels bound to stress the need for governments to do everything in their power to overcome their

difficulties - with the support of the representative organisations concerned, and employers' and workers' organisations in particular. In this context, it would like to emphasise the importance for governments of continuing co-operation with the ILO, for it is convinced that through technical co-operation, the States will be better able to identify priorities in the light of their economic capacity and to find ways to provide increasingly efficient social protection for older workers.



## APPENDIX I

### TEXT OF THE RELEVANT ARTICLES OF CONVENTIONS NOS. 102 AND 128 AND RECOMMENDATION NO. 131 AS REGARDS OLD-AGE BENEFIT

#### Social Security (Minimum Standards) Convention, 1967 (No. 102)

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## PART I. GENERAL PROVISIONS

### Article 1

1. In this Convention -

- (a) the term "prescribed" means determined by or in virtue of national laws or regulations;
- (b) the term "residence" means ordinary residence in the territory of the Member and the term "resident" means a person ordinarily resident in the territory of the Member;
- (c) the term "wife" means a wife who is maintained by her husband;
- (d) the term "widow" means a woman who was maintained by her husband at the time of his death;
- (e) the term "child" means a child under school-leaving age or under 15 years of age, as may be prescribed;
- (f) the term "qualifying period" means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed.

2. In Articles 10, 34 and 49 the term "benefit" means either direct benefit in the form of care or indirect benefit consisting of a reimbursement of the expenses borne by the person concerned.

### Article 2

Each Member for which this Convention is in force -

- (a) shall comply with -
  - (i) Part I;
  - (ii) at least three of Parts II, III, IV, V, VI, VII, VIII, IX and X, including at least one of Parts IV, V, VI, IX and X;
  - (iii) the relevant provisions of Parts XI, XII and XIII; and
  - (iv) Part XIV; and
- (b) shall specify in its ratification in respect of which of Parts II to X it accepts the obligations of the Convention.

### Article 3

1. A Member whose economy and medical facilities are insufficiently developed may, if and for so long as the competent authority considers necessary, avail itself, by a declaration appended to its ratification, of the temporary exceptions provided for in the following Articles: 9(d); 12(2); 15(d); 18(2); 21(c); 27(d); 33(b); 34(3); 41(d); 48(c); 55(d); and 61(d).

2. Each Member which has made a declaration under paragraph 1 of this Article shall include in the annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement, in respect of each exception of which it avails itself -

- (a) that its reason for doing so subsists; or
- (b) that it renounces its right to avail itself of the exception in question as from a stated date.

#### Article 4

1. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more of Parts II to X not already specified in its ratification.

2. The undertakings referred to in paragraph 1 of this Article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

#### Article 5

Where, for the purpose of compliance with any of the Parts II to X of this Convention which are to be covered by its ratification, a Member is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or residents, the Member shall satisfy itself, before undertaking to comply with any such Part, that the relevant percentage is attained.

#### Article 6

For the purpose of compliance with Parts II, III, IV, V, VIII (in so far as it relates to medical care), IX or X of this Convention, a Member may take account of protection effected by means of insurance which, although not made compulsory by national laws or regulations for the persons to be protected -

- (a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;
- (b) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee; and
- (c) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.

.....

PART V. OLD-AGE BENEFIT

Article 25

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

Article 26

1. The contingency covered shall be survival beyond a prescribed age.

2. 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.

3. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

Article 27

The persons protected shall comprise -

- (a) prescribed classes of employees, constituting not less than 50 per cent of all employees; or
- (b) prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or
- (c) all residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 67; or
- (d) where a declaration made in virtue of Article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more.

Article 28

The benefit shall be a periodical payment calculated as follows:

- (a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66,
- (b) where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67.

Article 29

1. The benefit specified in Article 28 shall, in a contingency covered, be secured at least -

- (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution or employment, or 20 years of residence; or
- (b) where, in principle, all economically active persons are protected, to a person protected who has completed, a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least -

- (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment; or
- (b) where, in principle, all economically active persons are protected, to a person protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, half the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, ten years of contribution or employment, or five years of residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years of contribution or employment but is less than 30 years of contribution or employment; if such qualifying period exceeds 15 years, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

5. Where the benefit referred to in paragraphs 1, 3 or 4 of this Article is conditional upon a minimum period of contribution or employment, a reduced benefit shall be payable under prescribed conditions to a person protected who, by reason only of his advanced age when the provisions concerned in the application of this Part come into force, has not satisfied the conditions prescribed in accordance with paragraph 2 of this Article, unless a benefit in conformity with the provisions of paragraphs 1, 3 or 4 of this Article is secured to such person at an age higher than the normal age.



Article 30

The benefits specified in Articles 28 and 29 shall be granted throughout the contingency.

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PART XI. STANDARDS TO BE COMPLIED WITH  
BY PERIODICAL PAYMENTS

Article 65

1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his bread-winner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The previous earnings of the beneficiary or his bread-winner shall be calculated according to prescribed rules, and, where the persons protected or their bread-winners are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.

3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this Article are complied with where the previous earnings of the beneficiary or his bread-winner are equal to or lower than the wage of a skilled manual male employee.

4. The previous earnings of the beneficiary or his bread-winner, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis.

5. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

6. For the purpose of this Article, a skilled manual male employee shall be -

- (a) a fitter or turner in the manufacture of machinery other than electrical machinery; or
- (b) a person deemed typical of skilled labour selected in accordance with the provisions of the following paragraph; or
- (c) a person whose earnings are such as to be equal to or greater than the earnings of 75 per cent of all the persons protected, such earnings to be determined on the basis of annual or shorter periods as may be prescribed; or
- (d) a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected.

7. The person deemed typical of skilled labour for the purposes of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the bread-winners of the persons protected, as the case may be, in the division comprising the largest number of such persons or bread-winners; for this purpose, the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, and reproduced in the Annex to this Convention, or such classification as at any time amended, shall be used.

8. Where the rate of benefit varies by region, the skilled manual male employee may be determined for each region in accordance with paragraphs 6 and 7 of this Article.

9. The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national laws or regulations, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this Article is not applied, the median rate shall be taken.

10. The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of bread-winner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

#### Article 66

1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the wage of an ordinary adult male labourer and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The wage of the ordinary adult male labourer, the benefit and any family allowances shall be calculated on the same time basis.

3. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

4. For the purpose of this Article, the ordinary adult male labourer shall be -

- (a) a person deemed typical of unskilled labour in the manufacture of machinery other than electrical machinery; or
- (b) a person deemed typical of unskilled labour selected in accordance with the provisions of the following paragraph.

5. The person deemed typical of unskilled labour for the purpose of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the

contingency in question, or of the bread-winners of the persons protected, as the case may be, in the division comprising the largest number of such persons or bread-winners; for this purpose, the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, and reproduced in the Annex to this Convention, or such classification as at any time amended, shall be used.

6. Where the rate of benefit varies by region, the ordinary adult male labourer may be determined for each region in accordance with paragraphs 4 and 5 of this Article.

7. The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national laws or regulations, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 6 of this Article is not applied, the median rate shall be taken.

8. The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of bread-winner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living.

## Article 67

In the case of a periodical payment to which this Article applies -

- (a) the rate of the benefit shall be determined according to a prescribed scale or a scale fixed by the competent public authority in conformity with prescribed rules;
- (b) such rate may be reduced only to the extent by which the other means of the family of the beneficiary exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with prescribed rules;
- (c) the total of the benefit and any other means, after deduction of the substantial amounts referred to in subparagraph (b), shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of Article 66;
- (d) the provisions of subparagraph (c) shall be deemed to be satisfied if the total amount of benefits paid under the Part concerned exceeds by at least 30 per cent the total amount of benefits which would be obtained by applying the provisions of Article 66 and the provisions of:
  - (i) Article 15(b) for Part III;
  - (ii) Article 27(b) for Part V;
  - (iii) Article 55(b) for Part IX;
  - (iv) Article 61(b) for Part X.

SCHEDULE TO PART XI. PERIODICAL PAYMENTS  
TO STANDARD BENEFICIARIES

Part	Contingency	Standard beneficiary	Percentage
III	Sickness	Man with wife and two children	45
IV	Unemployment	Man with wife and two children	45
V	Old age	Man with wife of pensionable age	40
VI	Employment injury: Incapacity for work	Man with wife and two children	50
	Invalidity	Man with wife and two children	50
	Survivors	Widow with two children	40
VIII	Maternity	Woman	45
IX	Invalidity	Man with wife and two children	40
X	Survivors	Widow with two children	40

PART XII. EQUALITY OF TREATMENT OF NON-NATIONAL RESIDENTS

Article 68

1. Non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes.

2. Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member which has accepted the obligations of the relevant Part of the Convention shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.

PART XIII. COMMON PROVISIONS

Article 69

A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to X of this Convention may be suspended to such extent as may be prescribed -

- (a) as long as the person concerned is absent from the territory of the Member;
- (b) as long as the person concerned is maintained at public expense, or at the expense of a social security institution or service, subject to any portion of the benefit in excess of the value of such maintenance being granted to the dependants of the beneficiary;
- (c) as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, and during any period in respect of which he is indemnified for the contingency by a third party, subject to the part of the benefit which is suspended not exceeding the other benefit or the indemnity by a third party;
- (d) where the person concerned has made a fraudulent claim;
- (e) where the contingency has been caused by a criminal offence committed by the person concerned;
- (f) where the contingency has been caused by the wilful misconduct of the person concerned;
- (g) in appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries;
- (h) in the case of unemployment benefit, where the person concerned has failed to make use of the employment services placed at his disposal;
- (i) in the case of unemployment benefit, where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, or has left it voluntarily without just cause; and
- (j) in the case of survivors' benefit, as long as the widow is living with a man as his wife.

Article 70

1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.

2. Where in the application of this Convention a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.

3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required.

#### Article 71

1. The cost of the benefits provided in compliance with this Convention and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected.

2. The total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. For the purpose of ascertaining whether this condition is fulfilled, all the benefits provided by the Member in compliance with this Convention, except family benefit and, if provided by a special branch, employment injury benefit, may be taken together.

3. The Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention, and shall take all measures required for this purpose; it shall ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question.

#### Article 72

1. Where the administration is not entrusted to an institution regulated by the public authorities or to a Government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the participation of representatives of employers and of the public authorities.

2. The Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of the Convention.

PART XIV. MISCELLANEOUS PROVISIONS

Article 73

This Convention shall not apply to -

- (a) contingencies which occurred before the coming into force of the relevant Part of the Convention for the Member concerned;
- (b) benefits in contingencies occurring after the coming into force of the relevant Part of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date.

Article 74

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

Article 75

If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member having ratified the said Convention as from the date at which the said Convention comes into force for that Member.

Article 76

1. Each Member which ratifies this Convention shall include in the annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation -

- (a) full information concerning the laws and regulations by which effect is given to the provisions of the Convention; and
- (b) evidence, conforming in its presentation as closely as is practicable with any suggestions for greater uniformity of presentation made by the Governing Body of the International Labour Office, of compliance with the statistical conditions specified in -
  - (i) Articles 9(a), (b), (c) or (d); 15(a), (b) or (d); 21(a) or (c); 27(a), (b) or (d); 33 (a) or (b); 41(a), (b) or (d); 48(a), (b) or (c); 55(a), (b) or (d); 61(a), (b) or (d), as regards the number of persons protected;
  - (ii) Articles 44, 65, 66 or 67, as regards the rates of benefit;
  - (iii) subparagraph (a) of paragraph 2 of Article 18, as regards duration of sickness benefit;
  - (iv) paragraph 2 of Article 24, as regards duration of unemployment benefit; and

- (v) paragraph 2 of Article 71, as regards the proportion of the financial resources constituted by the insurance contributions of employees protected.

2. Each Member which ratifies this Convention shall report to the Director-General of the International Labour Office at appropriate intervals, as requested by the Governing Body, on the position of its law and practice in regard to any of Parts II to X of the Convention not specified in its ratification or in a notification made subsequently in virtue of Article 4.

Article 77

1. This Convention does not apply to seamen or seafishermen; provision for the protection of seamen and seafishermen has been made by the International Labour Conference in the Social Security (Seafarers) Convention, 1946, and the Seafarers' Pensions Convention, 1946.

2. A Member may exclude seamen and seafishermen from the number of employees, of the economically active population or of residents, when calculating the percentage of employees or residents protected in compliance with any of Parts II to X covered by its ratification.

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ANNEX

INTERNATIONAL STANDARD INDUSTRIAL CLASSIFICATION  
OF ALL ECONOMIC ACTIVITIES  
(not reproduced)



Invalidity, Old-Age and Survivors' Benefits  
Convention, 1967 (No. 128)

PART I. GENERAL PROVISIONS

Article 1

In this Convention -

- (a) the term "legislation" includes any social security rules as well as laws and regulations;
- (b) the term "prescribed" means determined by or in virtue of national legislation;
- (c) the term "industrial undertaking" includes all undertakings in the following branches of economic activity: mining and quarrying; manufacturing; construction; electricity, gas, water and sanitary services; and transport, storage and communication;
- (d) the term "residence" means ordinary residence in the territory of the Member, and the term "resident" means a person ordinarily resident in the territory of the Member;
- (e) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;
- (f) the term "wife" means a wife who is dependent on her husband;
- (g) the term "widow" means a woman who was dependent on her husband at the time of his death;
- (h) the term "child" covers -
  - (i) a child under school-leaving age or under 15 years of age, whichever is the higher; and
  - (ii) a child under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions: Provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph;
- (i) the term "qualifying period" means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed;
- (j) the terms "contributory benefits" and "non-contributory benefits" mean respectively benefits the grant of which depends or does not depend on direct financial participation by the persons protected or their employer or on a qualifying period of occupational activity.

Article 2

1. Each Member for which this Convention is in force shall comply with -

- (a) Part I;
- (b) at least one of Parts II, III and IV;
- (c) the relevant provisions of Parts V and VI; and
- (d) Part VII.

2. Each Member shall specify in its ratification in respect of which of Parts II to IV it accepts the obligations of the Convention.

Article 3

1. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of one or more of Parts II to IV not already specified in its ratification.

2. The undertakings referred to in paragraph 1 of this Article shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

Article 4

1. A Member whose economy is insufficiently developed may avail itself, by a declaration accompanying its ratification, of the temporary exceptions provided for in the following Articles: Article 9, paragraph 2; Article 13, paragraph 2; Article 16, paragraph 2; and Article 22, paragraph 2. Any such declaration shall state the reason for such exceptions.

2. Each Member which has made a declaration under paragraph 1 of this Article shall include in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement in respect of each exception of which it avails itself -

- (a) that its reason for doing so subsists; or
- (b) that it renounces its right to avail itself of the exception in question as from a stated date.

3. Each Member which has made a declaration under paragraph 1 of this Article shall increase the number of employees protected as circumstances permit.

Article 5

Where, for the purpose of compliance with any of the Parts II to IV of this Convention which are to be covered by its ratification, a Member is required to protect prescribed classes of persons constituting not less than a specified percentage of employees or of the whole economically active population, the Member shall satisfy itself, before undertaking to comply with any such Part, that the relevant percentage is attained.

Article 6

For the purpose of compliance with Parts II, III or IV of this Convention, a Member may take account of protection effected by means of insurance which, although not made compulsory by its legislation for the persons to be protected -

- (a) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;
  - (b) covers a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee; and
  - (c) complies, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention.
- .....

PART III. OLD-AGE BENEFIT

Article 14

Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

Article 15

1. The contingency covered shall be survival beyond a prescribed age.

2. 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.

3. 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 be arduous or unhealthy.

Article 16

1. The persons protected shall comprise -

- (a) all employees, including apprentices; or
- (b) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or
- (c) all residents or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.

2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise -
- (a) prescribed classes of employees, constituting not less than 25 per cent of all employees; or
  - (b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings.

#### Article 17

The old-age benefit shall be a periodical payment calculated as follows:

- (a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27;
- (b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28.

#### Article 18

1. The benefit specified in Article 17 shall, in a contingency covered, be secured at least -

- (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution or employment, or 20 years of residence; or
- (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the old-age benefit is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least -

- (a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of 15 years of contribution or employment; or
- (b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, a prescribed qualifying period of contribution and in respect of whom, while he was of working age, half of the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, ten years of contribution or employment, or five years of residence.

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4. A proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds ten years of contribution or employment or five years of residence but is less than 30 years of contribution or employment or 20 years of residence; if such qualifying period exceeds 15 years of contribution or employment, a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

Article 19

The benefits specified in Articles 17 and 18 shall be granted throughout the contingency.

.....

PART V. STANDARDS TO BE COMPLIED WITH  
BY PERIODICAL PAYMENTS

Article 26

- 1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his bread-winner and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.
- 2. The previous earnings of the beneficiary or his bread-winner shall be calculated according to prescribed rules, and, where the persons protected or their bread-winners are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.
- 3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this Article are complied with where the previous earnings of the beneficiary or his bread-winner are equal to or lower than the wage of a skilled manual male employee.
- 4. The previous earnings of the beneficiary or his bread-winner, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis.
- 5. For the other beneficiaries the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.
- 6. For the purpose of this Article, a skilled manual male employee shall be -

- (a) a fitter or turner in the manufacture of machinery other than electrical machinery; or
- (b) a person deemed typical of skilled labour selected in accordance with the provisions of the following paragraph; or
- (c) a person whose earnings are such as to be equal to or greater than the earnings of 75 per cent of all the persons protected, such earnings to be determined on the basis of annual or shorter periods as may be prescribed; or
- (d) a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected.

7. The person deemed typical of skilled labour for the purposes of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the bread-winners of the persons protected, as the case may be, in the division comprising the largest number of such persons or bread-winners; for this purpose, the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1958 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.

8. Where the rate of benefit varies by region, the skilled manual male employee may be determined for each region in accordance with paragraphs 6 and 7 of this Article.

9. The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this Article is not applied, the median rate shall be taken.

#### Article 27

1. In the case of a periodical payment to which this Article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain, in respect of the contingency in question, for the standard beneficiary indicated in the Schedule appended to this Part, at least the percentage indicated therein of the total of the wage of an ordinary adult male labourer and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The wage of the ordinary adult male labourer, the benefit and any family allowances shall be calculated on the same time basis.

3. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

4. For the purpose of this Article, the ordinary adult male labourer shall be -

- (a) a person deemed typical of unskilled labour in the manufacture of machinery other than electrical machinery; or

(b) a person deemed typical of unskilled labour selected in accordance with the provisions of the following paragraph.

5. The person deemed typical of unskilled labour for the purpose of subparagraph (b) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency in question, or of the bread-winners of the persons protected, as the case may be, in the division comprising the largest number of such persons or bread-winners; for this purpose the international standard industrial classification of all economic activities, adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1958 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.

6. Where the rate of benefit varies by region, the ordinary adult male labourer may be determined for each region in accordance with paragraphs 4 and 5 of this Article.

7. The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 6 of this Article is not applied, the median rate shall be taken.

#### Article 28

In the case of a periodical payment to which this Article applies -

- (a) the rate of the benefit shall be determined according to a prescribed scale or a scale fixed by the competent public authority in conformity with prescribed rules;
- (b) such rate may be reduced only to the extent by which the other means of the family of the beneficiary exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with prescribed rules;
- (c) the total of the benefit and any other means, after deduction of the substantial amounts referred to in subparagraph (b), shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of Article 27;
- (d) the provisions of subparagraph (c) shall be deemed to be satisfied if the total amount of benefits paid under the Part concerned exceeds by at least 30 per cent the total amounts of benefits which would be obtained by applying the provisions of Article 27 and the provisions of -
  - (i) Article 9, paragraph 1, subparagraph (b) for Part II;
  - (ii) Article 16, paragraph 1, subparagraph (b) for Part III;
  - (iii) Article 22, paragraph 1, subparagraph (b) for Part IV.

Article 29

1. The rates of cash benefits currently payable pursuant to Article 10, Article 17 and Article 23 shall be reviewed following substantial changes in the general level of earnings or substantial changes in the cost of living.

2. Each Member shall include the findings of such reviews in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation, and shall specify any action taken.

SCHEDULE TO PART V. PERIODICAL PAYMENTS  
TO STANDARD BENEFICIARIES

Part	Contingency	Standard beneficiary	Percentage
II	Invalidity	Man with wife and two children	50
III	Old age	Man with wife of pensionable age	45
IV	Death of bread-winner	Widow with two children	45

## PART VI. COMMON PROVISIONS

Article 30

National legislation shall provide for the maintenance of rights in course of acquisition in respect of contributory invalidity, old-age and survivors' benefits under prescribed conditions.

Article 31

1. The payment of invalidity, old-age or survivors' benefit may be suspended, under prescribed conditions, where the beneficiary is engaged in gainful activity.

2. A contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary exceed a prescribed amount; the reduction in benefit shall not exceed the earnings.

3. A non-contributory invalidity, old-age or survivors' benefit may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.



Article 32

1. A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II to IV of this Convention may be suspended to such extent as may be prescribed -

- (a) as long as the person concerned is absent from the territory of the Member, except, under prescribed conditions, in the case of a contributory benefit;
- (b) as long as the person concerned is maintained at public expense or at the expense of a social security institution or service;
- (c) where the person concerned has made a fraudulent claim;
- (d) where the contingency has been caused by a criminal offence committed by the person concerned;
- (e) where the contingency has been wilfully caused by the serious misconduct of the person concerned;
- (f) in appropriate cases, where the person concerned, without good reason, neglects to make use of the medical or rehabilitation services placed at his disposal or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries; and
- (g) in the case of survivors' benefit for a widow, as long as she is living with a man as his wife.

2. In the cases and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned.

Article 33

1. If a person protected is or would otherwise be eligible simultaneously for more than one of the benefits provided for in this Convention, these benefits may be reduced under prescribed conditions and within prescribed limits; the person protected shall receive in total at least the amount of the most favourable benefit.

2. If a person protected is or would otherwise be eligible for a benefit provided for in this Convention and is in receipt of another social security cash benefit for the same contingency, other than a family benefit, the benefit under this Convention may be reduced or suspended under prescribed conditions and within prescribed limits, subject to the part of the benefit which is reduced or suspended not exceeding the other benefit.

Article 34

1. Every claimant shall have a right of appeal in the case of refusal of benefit or complaint as to its quality or quantity.

2. Procedures shall be prescribed which permit the claimant to be represented or assisted, where appropriate, by a qualified person of his choice or by a delegate of an organisation representative of persons protected.

Article 35

1. Each Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose.

2. Each Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of this Convention.

Article 36

Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management under prescribed conditions; national legislation may likewise decide as to the participation of representatives of employers and of the public authorities.

PART VII. MISCELLANEOUS PROVISIONS

Article 37

Any Member whose legislation protects employees may, as necessary, exclude from the application of this Convention -

- (a) persons whose employment is of a casual nature;
- (b) members of the employer's family living in his house, in respect of their work for him;
- (c) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under subparagraphs (a) and (b) of this Article.

Article 38

1. Any Member whose legislation protects employees may, by a declaration accompanying its ratification, temporarily exclude from the application of this Convention the employees in the sector comprising agricultural occupations who are not yet protected by its legislation at the time of the ratification.

2. Each Member which has made a declaration under paragraph 1 of this Article shall indicate in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation to what extent effect is given and what effect is proposed to be given to the provisions of the Convention in respect of the employees in the sector comprising agricultural occupations and any progress which may have been made with a view to the application of the Convention to such employees or, where there is no change to report, furnish all the appropriate explanations.

## APPENDICES

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3. Each Member which has made a declaration under paragraph 1 of this Article shall increase the number of employees protected in the agricultural sector to the extent and with the speed that the circumstances permit.

### Article 39

1. Any Member which ratifies this Convention may, by a declaration accompanying its ratification, exclude from the application of the Convention -

- (a) seafarers, including seafishermen,
- (b) public servants,

where these categories are protected by special schemes which provide in the aggregate benefits at least equivalent to those required by this Convention.

2. Where a declaration under paragraph 1 of this Article is in force, the Member may exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 9; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 16; paragraph 1, subparagraph (b), and paragraph 2, subparagraph (b), of Article 22; and subparagraph (c) of Article 37.

3. Any Member which has made a declaration under paragraph 1 of this Article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of this Convention in respect of a category or categories excluded at the time of its ratification.

.....

### Article 41

1. A Member which -

- (a) has accepted the obligations of this Convention in respect of Parts II, III and IV, and
  - (b) covers a percentage of the economically active population which is at least ten points higher than that required by Article 9, paragraph 1, subparagraph (b), Article 16, paragraph 1, subparagraph (b), and Article 22, paragraph 1, subparagraph (b), or complies with Article 9, paragraph 1, subparagraph (c), Article 16, paragraph 1, subparagraph (c), and Article 22, paragraph 1, subparagraph (c), and
  - (c) secures in respect of at least two of the contingencies covered by Parts II, III and IV benefits of an amount corresponding to a percentage at least five points higher than the percentages specified in the Schedule appended to Part V,
- may take advantage of the provisions of the following paragraph.

2. Such Member may -

- (a) substitute, for the purposes of Article 11, paragraph 2, subparagraph (b), and Article 24, paragraph 2, subparagraph (b), a period of five years for the period of three years specified therein;
- (b) determine the beneficiaries of survivors' benefits in a manner which is different from that required by Article 21, but which ensures that the total number of beneficiaries does not fall short of the number of beneficiaries which would result from the application of Article 21.

3. Each Member which has taken advantage of the provisions of paragraph 2 of this Article shall indicate in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation the position of its law and practice as regards the matters dealt with in that paragraph and any progress made towards complete application of the terms of the Convention.

#### Article 42

1. A Member which -

- (a) has accepted the obligations of this Convention in respect of Parts II, III and IV, and
- (b) covers a percentage of the economically active population which is at least ten points higher than that required by Article 9, paragraph 1, subparagraph (b), Article 16, paragraph 1, subparagraph (b), and Article 22, paragraph 1, subparagraph (b), or complies with Article 9, paragraph 1, subparagraph (c), Article 16, paragraph 1, subparagraph (c), and Article 22, paragraph 1, subparagraph (c),

may derogate from particular provisions of Parts II, III and IV: on condition that the total amount of benefits paid under the Part concerned shall be at least equal to 110 per cent of the total amount which would be obtained by applying all the provisions of that Part.

2. Each Member which has made such a derogation shall indicate in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation the position of its law and practice as regards such derogation and any progress made towards complete application of the terms of the Convention.

#### Article 43

This Convention shall not apply to -

- (a) contingencies which occurred before the coming into force of the relevant Part of the Convention for the Member concerned;
- (b) benefits in contingencies occurring after the coming into force of the relevant Part of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date.

Article 44

1. This Convention revises, on the terms set forth in this Article, the Old-Age Insurance (Industry, etc.) Convention, 1933, the Old-Age Insurance (Agriculture) Convention, 1933, the Invalidity Insurance (Industry, etc.) Convention, 1933, the Invalidity Insurance (Agriculture) Convention, 1933, the Survivors' Insurance (Industry, etc.) Convention, 1933, and the Survivors' Insurance (Agriculture) Convention, 1933.

2. The legal effect of the acceptance of the obligations of this Convention by a Member which is a party to one or more of the Conventions which have been revised, when this Convention shall have come into force, shall be as follows for that Member:

- (a) acceptance of the obligations of Part II of the Convention shall, ipso jure, involve the immediate denunciation of the Invalidity Insurance (Industry, etc.) Convention, 1933, and the Invalidity Insurance (Agriculture) Convention, 1933;
- (b) acceptance of the obligations of Part III of the Convention shall, ipso jure, involve the immediate denunciation of the Old-Age Insurance (Industry, etc.) Convention, 1933, and the Old-Age Insurance (Agriculture) Convention, 1933;
- (c) acceptance of the obligations of Part IV of the Convention shall, ipso jure, involve the immediate denunciation of the Survivors' Insurance (Industry, etc.) Convention, 1933, and the Survivors' Insurance (Agriculture) Convention, 1933.

Article 45

1. In conformity with the provisions of Article 75 of the Social Security (Minimum Standards) Convention, 1952, the following Parts of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention is binding on that Member and no declaration under Article 38 is in force:

- (a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;
- (b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;
- (c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

2. Acceptance of the obligations of this Convention shall, on condition that no declaration under Article 38 is in force, be deemed to constitute acceptance of the obligations of the following parts of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of Article 2 of the said Convention:

- (a) Part IX where the Member has accepted the obligations of this Convention in respect of Part II;
- (b) Part V where the Member has accepted the obligations of this Convention in respect of Part III;
- (c) Part X where the Member has accepted the obligations of this Convention in respect of Part IV.

Article 46

If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member having ratified the said Convention as from the date at which the said Convention comes into force for that Member.

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ANNEX

INTERNATIONAL STANDARD INDUSTRIAL CLASSIFICATION  
OF ALL ECONOMIC ACTIVITIES  
(not reproduced)

Invalidity, Old-Age and Survivors' Benefits  
Recommendation, 1967 (No. 131)

PART I. GENERAL PROVISIONS

1. In this Recommendation -
- (a) the term "legislation" includes any social security rules as well as laws and regulations;
  - (b) the term "prescribed" means determined by or in virtue of national legislation;
  - (c) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;
  - (d) the term "wife" means a wife who is dependent on her husband;
  - (e) the term "widow" means a woman who was dependent on her husband at the time of his death;
  - (f) the term "child" covers -
    - (i) a child under school-leaving age or under 15 years of age, whichever is the higher; and
    - (ii) a child under a prescribed age higher than that specified in subclause (i) of this clause and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions;
  - (g) the term "qualifying period" means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed;
  - (h) the term "contributory benefits" means benefits the grant of which depends on direct financial participation by the persons protected or their employer or on a qualifying period of occupational activity.

II. PERSONS PROTECTED

2. Members should extend the application of their legislation providing for invalidity and old-age benefits, by stages if necessary, and under appropriate conditions -
- (a) to persons whose employment is of a casual nature;
  - (b) to all economically active persons.

III. CONTINGENCIES COVERED

6. With a view to protecting persons who are over a prescribed age but have not attained pensionable age Members should provide benefits, under prescribed conditions, for -

- (a) persons whose unfitness for work is established or presumed;
- (b) persons who have been involuntarily unemployed for a prescribed period; or
- (c) any other prescribed categories of persons for which such a measure is justified on social grounds.

7. The pensionable age should where appropriate be lowered, under prescribed conditions, in respect of any prescribed categories of persons for which such a measure is justified on social grounds.

8. A reduced old-age benefit should be payable under prescribed conditions to a person protected who, by reason only of his advanced age when the legislation giving effect to the Invalidity, Old-Age and Survivors' Benefits Convention, 1967, comes into force, has not satisfied the qualifying conditions prescribed, unless a benefit in conformity with the provisions of paragraph 1, 3 or 4 of Article 18 of that Convention is secured to such person at an age higher than the normal pensionable age.

.....

11. A contributory old-age benefit, or a contributory survivors' benefit payable to a widow, should not be suspended after a prescribed age solely because the person concerned is gainfully occupied.

.....

16. An old-age benefit should be secured at least to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 20 years of contribution or employment or 15 years of residence.

17. Where an old-age benefit is conditional upon a minimum period of contribution or employment, a reduced old-age benefit should be secured at least to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of ten years of contribution or employment.

18. Where an old-age benefit is conditional upon a minimum period of contribution or employment, the amount of old-age benefit should be increased under prescribed conditions -

- (a) where the grant of the benefit is conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions of contribution or employment prescribed for a benefit defers his retirement;
- (b) where the grant of an old-age benefit is not conditional upon retirement from a prescribed gainful activity, if a person who has reached the pensionable age and has fulfilled the qualifying conditions prescribed for a benefit defers his claim to benefit.

.....



20. Where the grant of invalidity, old-age and survivors' benefits depends on a period of contribution or employment, at least periods of incapacity due to sickness, accident or maternity and periods of involuntary unemployment, in respect of which benefit was paid, should be assimilated, under prescribed conditions, to periods of contribution or employment in calculating the qualifying period that has been fulfilled by the person concerned.

21. Where the grant of invalidity, old-age and survivors' benefits depends on a qualifying period of contribution or employment, periods of compulsory military service should be assimilated, under prescribed conditions, to periods of contribution or employment in calculating the qualifying period that has been fulfilled by the person concerned.

#### IV. BENEFITS

22. The percentages indicated in the Schedule appended to Part V of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967, should be increased by at least ten points.

23. National legislation should fix minimum amounts of invalidity, old-age and survivors' benefits, so as to ensure a minimum standard of living.

24. The amount of invalidity, old-age and survivors' benefits should be periodically adjusted taking account of changes in the general level of earnings or the cost of living.

25. Increments in benefits or supplementary or special benefits should be provided, under prescribed conditions, for pensioners requiring the constant help or attendance of another person.

26. Benefits to which a person protected would otherwise be entitled should not be suspended solely because the person concerned is absent from the territory of the Member.

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## APPENDIX II

## CHART OF RATIFICATIONS

SOCIAL SECURITY (MINIMUM STANDARDS) CONVENTION (NO. 102), 1952

This Convention came into force on 27 April 1955

States	Ratification registered on	States	Ratification registered on
Austria <sup>1</sup> =	4.11.69	Luxembourg <sup>3</sup> . * +	31. 8.64
Barbados <sup>2</sup> =	11. 7.72	Mauritania <sup>15</sup>	15. 7.68
Belgium <sup>3</sup> . *	26.11.59	Mexico <sup>16</sup>	12.10.61
Bolivia <sup>4</sup> . * = +	31. 1.77	Netherlands <sup>3</sup> . * =	11.10.62
Costa Rica <sup>5</sup>	16. 3.72	Niger <sup>17</sup>	9. 8.66
Denmark <sup>6</sup>	15. 8.55	Norway <sup>18</sup> . * +	30. 9.54
Ecuador <sup>7</sup> . * = +	25.10.74	Peru <sup>19</sup>	23. 8.61
France <sup>8</sup>	14. 6.74	Senegal <sup>20</sup> . *	22.10.62
Fed. Rep. of Germany <sup>3</sup> . * = +	21. 2.58	Spain	29. 6.88
Greece <sup>9</sup>	16. 6.55	Sweden <sup>21</sup> . * +	12. 8.53
Iceland <sup>10</sup>	20. 2.61	Switzerland <sup>15</sup> =	18.10.77
Ireland <sup>11</sup>	17. 6.68	Turkey <sup>22</sup>	29. 1.75
Israel <sup>12</sup>	16.12.55	United Kingdom <sup>23</sup>	27. 4.54
Italy <sup>13</sup>	8. 6.56	Venezuela <sup>16</sup> . * = +	5.11.82
Japan <sup>14</sup> . *	2. 2.76	Yugoslavia <sup>24</sup> . *	20.12.54
Libyan Arab Jamahiriya <sup>3</sup> . * = +	19. 6.75	Zaire <sup>25</sup>	3. 4.87

<sup>1</sup> Parts II, IV, V, VII and VIII.<sup>2</sup> Parts III, V, VI, IX and X.<sup>3</sup> Parts II to X.<sup>4</sup> Parts II, III and V to X.

Pursuant to Article 3, paragraph 1, of the Convention, the Government has availed itself of the temporary exceptions provided for in Articles 9(d); 12(2); 15(d); 18(2); 27(d); 33(b); 34(3); 41(d); 48(c); 55(d) and 61(d).

<sup>5</sup> Parts II and V to X.<sup>6</sup> Parts II, IV to VI and IX.<sup>7</sup> Parts III, V, VI, IX and X.<sup>8</sup> Parts II and IV to IX.<sup>9</sup> Parts II to VI and VIII to X.<sup>10</sup> Parts V, VII and IX.<sup>11</sup> Parts III, IV and X.<sup>12</sup> Parts V, VI and X.<sup>13</sup> Parts V, VII and VIII.<sup>14</sup> Parts III to VI.<sup>15</sup> Parts V to VII, IX and X.<sup>16</sup> Parts II, III, V, VI and VIII

to X.

<sup>17</sup> Parts V to VIII.<sup>18</sup> Parts II to VII.<sup>19</sup> Parts II, III, V, VIII and

IX. Pursuant to Article 3, paragraph 1, of the Convention, the Government has availed itself of the temporary exceptions provided for in Articles 9(d); 12(2); 15(d); 18(2); 27(d); 48(c) and 55(d).

<sup>20</sup> Parts VI to VIII.<sup>21</sup> Parts II to IV and VI to VIII.

<sup>22</sup> Parts II, III, V, VI and VIII to X. Pursuant to Article 3, paragraph 1, of the Convention, the Government accepts the obligations of the Convention in respect of Parts II and VIII but avails itself of the temporary exceptions provided for in Articles 9(d) and 48(c).

<sup>23</sup> Parts II to V, VII and X.<sup>24</sup> Parts II to VI, VIII and X.<sup>25</sup> Parts V, VII, IX and X.<sup>26</sup> Parts II to IV and VI.

\* Part VI is no longer applicable as a result of the ratification of of Convention No. 121.

= As a result of the ratification of Convention No. 128 and pursuant to to Article 45 of that Convention, certain parts of the present Convention are no longer applicable.

+ Part III is no longer applicable as a result of the ratification of Convention No. 130.

## APPENDICES

### INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS CONVENTION (NO. 128), 1967

This Convention came into force on 1 November 1969

States	Ratification registered on	States	Ratification registered on
Austria <sup>1</sup> .....	4.11.69	Libyan Arab Jamahiriya <sup>3</sup> ...	19. 6.75
Barbados <sup>2</sup> .....	15. 9.72	Netherlands <sup>3</sup> .....	27.10.69
Bolivia <sup>3,*</sup> .....	31. 1.77	Norway <sup>3</sup> .....	1.11.68
Cyprus <sup>4</sup> .....	7. 1.69	Sweden <sup>3</sup> .....	26. 7.68
Ecuador <sup>3,*</sup> .....	5. 4.78	Switzerland <sup>3</sup> .....	13. 9.77
Finland <sup>3</sup> .....	13. 1.76	Uruguay <sup>3</sup> .....	28. 6.73
Fed. Rep. of Germany <sup>3</sup> .....	15. 1.71	Venezuela <sup>3,*</sup> .....	1.12.83

<sup>1</sup> Has accepted Part III. In accordance with Article 39, paragraph 1(b), public servants are excluded from the application of the Convention.

<sup>2</sup> Has accepted Parts II and III.

<sup>3</sup> Has accepted all Parts.

<sup>4</sup> Has accepted Part IV.

\* Pursuant to Article 4, paragraph 1, of the Convention, the Government has availed itself of the temporary exceptions provided for in Articles 9, paragraph 2; 13, paragraph 2; 16, paragraph 2; 22, paragraph 2. The Government has also availed itself of the temporary exclusion provided for in Article 38, paragraph 1, of the Convention.

## APPENDIX III

INFORMATION AVAILABLE  
UNDER ARTICLES 19 AND 22 OF THE CONSTITUTION

Member States	Convention No. 102		Convention No. 128		Recommendation No. 131
	Art. 22	Art. 19	Art. 22	Art. 19	Art. 19
Afghanistan		-		-	-
Algeria		X		X	X
Angola		-		-	-
Antigua and Barbuda		-		-	-
Argentina		X		X	X
Australia		X		X	X
Austria	R*		R*		X
Bahamas		-		-	-
Bahrain		-		-	-
Bangladesh		X		X	X
Barbados	R*		R*		X
Belgium	R*			X	X
Belize		X		X	X
Benin		X		X	X
Bolivia	R*		R		X
Botswana		-		-	-
Brazil		X		X	X
Bulgaria		X		X	X
Burkina Faso		-		-	-
Burma		X		X	X
Burundi		X		X	X
Byelorussian SSR		X		X	X
Cameroon		X		X	X
Canada		X		X	X
Cape Verde		-		-	-
Central African Republic		X		X	X
Chad		X		X	X
Chile		X		X	X
China		X		X	X
Colombia		X		X	X
Comoros		-		-	-
Congo		X		X	X
Costa Rica	R*			-	-
Côte d'Ivoire		X		X	X
Cuba		X		X	X
Cyprus		X	R*		X
Czechoslovakia		X		X	X
Democratic Yemen		-		-	-
Denmark	R			X	X
Djibouti		-		-	-

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Member States	Convention No. 102		Convention No. 128		Recommendation No. 131
	Art. 22	Art. 19	Art. 22	Art. 19	Art. 19
Dominica		-		-	-
Dominican Republic		-		-	-
Ecuador	R		R*		-
Egypt		X		X	X
El Salvador		-		-	-
Equatorial Guinea		X		X	X
Ethiopia		-		-	-
Fiji		-		-	-
Finland		X	R*		X
France	R*			X	X
Gabon		X		X	X
German Democratic Republic		X		X	X
Germany, Federal Republic of	R*		R*		X
Ghana		-		-	-
Greece	R			-	-
Grenada		X		X	X
Guatemala		-		-	-
Guinea		-		-	-
Guinea-Bissau		X		X	X
Guyana		X		X	X
Haiti		-		-	-
Honduras		X		X	X
Hungary		X		X	X
Iceland	R*			-	-
India		X		X	X
Indonesia		X		X	X
Iran, Islamic Republic of		X		X	X
Iraq		X		X	X
Ireland	R			X	X
Israel	R*			X	X
Italy	R			X	X
Jamaica		-		-	-
Japan	R*			X	X
Jordan		X		X	X
Democratic Kampuchea		-		-	-
Kenya		X		X	X
Kuwait		X		X	X
Lao People's Democratic Rep.		-		-	-
Lebanon		-		-	-
Lesotho		-		-	-

REPORT OF THE COMMITTEE OF EXPERTS

Member States	Convention No. 102		Convention No. 128		Recommendation No. 131
	Art. 22	Art. 19	Art. 22	Art. 19	
Liberia		-		-	-
Libyan Arab Jamahiriya	R		R		-
Luxembourg	R*			X	X
Madagascar		X		X	X
Malawi		-		-	-
Malaysia		X		X	X
Mali		X		X	X
Malta		X		X	X
Mauritania	R			-	-
Mauritius		X		X	X
Mexico	R*			X	X
Mongolia		-		-	-
Morocco		X		X	X
Mozambique		X		X	X
Nepal		X		X	X
Netherlands	R*		R*		X
New Zealand		X		X	X
Nicaragua		X		X	X
Niger	R			-	-
Nigeria		X		X	X
Norway	R*		R*		X
Pakistan		X		X	X
Panama		X		X	X
Papua New Guinea		-		-	-
Paraguay		-		-	-
Peru	R*			X	X
Philippines		X		X	X
Poland		X		X	X
Portugal		X		X	X
Qatar		X		X	X
Romania		X		X	X
Rwanda		X		X	X
Saint Lucia		X		X	X
San Marino		X		X	X
Sao Tome and Principe		-		-	-
Saudi Arabia		X		X	X
Senegal	R*			X	X
Seychelles		-		-	-
Sierra Leone		-		-	-
Singapore		X		X	X
Solomon Islands		-		-	-
Somalia		X		X	X
Spain	R	X		X	X

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Member States	Convention No. 102		Convention No. 128		Recommendation No. 131
	Art. 22	Art. 19	Art. 22	Art. 19	Art. 19
Sri Lanka		X		X	X
Sudan		-		-	-
Suriname		X		X	X
Swaziland		-		-	-
Sweden	R*		R*		X
Switzerland	R*		R*		X
Syrian Arab Rep.		-		-	-
Tanzania, United Republic of		-		-	-
Thailand		X		X	X
Togo		X		X	X
Trinidad and Tobago		X		X	X
Tunisia		X		X	X
Turkey	R*			X	X
Uganda		-		-	-
Ukrainian SSR		X		X	X
USSR		X		X	X
United Arab Emirates		X		X	X
United Kingdom	R			X	X
United States		X		X	X
Uruguay		X	R*		X
Venezuela	R		R*		X
Yemen		X		X	X
Yugoslavia	R			X	X
Zaire		-		-	-
Zambia		X		X	X
Zimbabwe		X		X	X

In addition, a total of 29 reports have been received, under article 19 of the Constitution, in respect of the following non-metropolitan territories: United Kingdom (Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Montserrat, St. Helena).

R = Ratified Conventions.

X = Reports requested and received (under article 19 of the Constitution).

- = Reports requested and not received (under article 19 of the Constitution).

\* = Reports received under article 22 of the Constitution for the period ending 30 June 1988.











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