



FIFTH ITEM ON THE AGENDA

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

**Proposal for an article 19 questionnaire
concerning social security instruments**

Introduction

1. At its 303rd Session (November 2008), the Committee discussed the General Surveys and the related report forms under article 19 of the ILO Constitution (article 19 questionnaire) in the context of the implications of the ILO Declaration on Social Justice for a Fair Globalization, 2008 (the Social Justice Declaration) for the standards strategy¹ and in relation to the choice of instruments on which reports should be requested under article 19 of the Constitution.² Following these discussions,³ it was agreed to establish a linkage between the recurrent items, placed on the agenda of the International Labour Conference under the follow-up to the Social Justice Declaration, and the General Surveys. This implied not only an alignment of the topic of the General Surveys with that of the recurrent items, but also a new design of the article 19 questionnaires.
2. Following its decision to place on the agenda of the 2010 Conference a recurrent discussion on the strategic objective of employment, the Governing Body decided to request governments to submit reports under article 19 of the Constitution concerning employment instruments for 2009 with a view to the preparation of a General Survey on employment in November–December 2009. In addition, the Governing Body invited the Office to prepare a proposal for the March 2009 Governing Body concerning the next

¹ GB.303/LILS/4/1, Part 1.

² GB.303/LILS/6.

³ For a more detailed description on the implications of the linkage between the recurrent report and the General Survey, see also GB.304/LILS/4.

article 19 questionnaire on instruments relating to the subject of the second recurrent item in 2011 and to make arrangements for tripartite consultations on this questionnaire.

3. The discussions in the Steering Group on the follow-up to the Social Justice Declaration and the Governing Body point towards an emerging consensus that the subject of the second recurrent discussion on the agenda of the 2011 Conference should address the strategic objective of social protection and, within this objective, focus on social security. Therefore, in accordance with the Governing Body decision,⁴ the Office prepared a proposal concerning an article 19 questionnaire concerning social security instruments and submitted it for discussion to the informal tripartite consultations on the follow-up to the Social Justice Declaration (2–4 February 2009).
4. In the process of developing the questionnaire, the Office consulted the Committee of Experts on the Application of Conventions and Recommendations (CEACR) at its session in November–December 2008 and has since maintained close contact with the members of the Working Party established by the CEACR for the preparation of the General Survey in November–December 2010. A mapping exercise was carried out to get an overview of all the information already available inside and outside the ILO in order to limit the questionnaire to value added questions and minimize the reporting burden on constituents. Consultations were also held with the Social Security Department and the International Social Security Association.⁵
5. Following the informal tripartite consultations, the initial draft questionnaire was reviewed in light of the comments made by the tripartite participants. In particular, the structure of the questionnaire was made more flexible by splitting it into three separate parts and given a more strategic orientation by highlighting the main objectives pursued under each part. A number of questions were simplified or reformulated to take account of specific suggestions made.

Selection of instruments

6. The proposed draft questionnaire covers the following two Conventions and two Recommendations: the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); the Income Security Recommendation, 1944 (No. 67); and the Medical Care Recommendation, 1944 (No. 69). The rationale for the selection of these four instruments has been the following.
7. Out of the total of 21 ILO Conventions on social security, seven are considered as up to date.⁶ Out of these seven Conventions, the CEACR has selected the first one (Convention No. 102) and the last one (Convention No. 168). Convention No. 102 was proposed,

⁴ GB.303/12, para. 70(iv).

⁵ The mapping of information undertaken to date indicates that the Office has available or can access statistical data and basic laws and regulations concerning certain branches of social security in a large number of member States.

⁶ These are the Social Security (Minimum Standards) Convention, 1952 (No. 102); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Maintenance of Social Security Rights Convention, 1982 (No. 157); and Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

because the instrument lays down minimum standards in social security and basic principles on which all subsequent instruments were built. Convention No. 168 was proposed, because it develops the basic concept and principles of social security further and thus has added value to the family of ILO social security standards.⁷ In particular, Convention No. 168 has established the principle of coordination between social security and employment policy, which takes on additional importance in the context of the current crisis and permits linking the first General Survey and the recurrent report on employment with those on social security. With a view to limiting the number of instruments proposed for selection, the more recent social security Conventions Nos 121, 128 and 130 were not included. These instruments relate to particular contingencies and mainly build on the requirements established by Convention No. 102 and set higher objectives both in terms of coverage and level of benefits.

8. It was proposed not to select at this time the Equality of Treatment (Social Security) Convention, 1962 (No. 118), subject of the General Survey in 1977,⁸ since the principle of equality of treatment is also contained in Convention No. 102, which includes a special Part XII on Equality of treatment of non-national residents. The Maintenance of Social Security Rights Convention, 1982 (No. 157), deals with the specific issue of participation in schemes for the maintenance of social security rights of migrant workers. This concerns only a limited number of countries with sufficiently developed social security systems.
9. As regards the Recommendations,⁹ the importance of the selected Recommendations Nos 67 and 69 for the development of modern social security can hardly be underestimated. They establish principles of universal coverage of the population through a combination of protection offered by social insurance, social assistance and public service and provide a larger legal and institutional framework than Convention No. 102.¹⁰ They were adopted in 1944 in parallel with the Declaration of Philadelphia and provided a blueprint for implementing the objective of the Declaration to extend “social security measures to provide a basic income to all in need of such protection and comprehensive medical care”.¹¹ This objective was expressly reconfirmed by the Social Justice Declaration. The choice of these Recommendations for the General Survey responds to the

⁷ Important innovations of Convention No. 168 include application to social security of the fundamental principle of non-discrimination, specific support measures to the most vulnerable groups of the population, social assistance to long-term unemployed who have exhausted their right to unemployment benefit and social benefits to those who enter the labour market for the first time or after a long interruption.

⁸ ILO: *General Survey of the reports relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 118)*; Report of the CEACR, International Labour Conference, 63rd Session, Geneva, 1977.

⁹ The Recommendations accompanying Conventions Nos 121, 128, 130 and 157 were not chosen for the same reason as the Conventions themselves. Recommendation No. 176 accompanying Convention No. 168 was considered too detailed and concerns only one of the nine social security branches covered by Convention No. 102. Convention No. 118 has no accompanying Recommendation.

¹⁰ While the Income Security Recommendation, 1944 (No. 67), is considered as up to date by the Governing Body, the Medical Care Recommendation, 1944 (No. 69), currently has an interim status (i.e. was considered as no longer fully up to date but as remaining relevant in certain respects). The selection of this Recommendation establishing the principle of complete medical care and coverage would offer a unique opportunity to examine its relevance for modern social security systems as well as its role within the family of ILO social security standards.

¹¹ Declaration of Philadelphia, section III(f).

need highlighted by the Social Justice Declaration of adapting the scope and coverage of social security “to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes”.¹²

Structure of the article 19 questionnaire

10. As the previous article 19 questionnaire on employment, the proposed questionnaire on social security is still in an experimental stage of adjusting the design of the article 19 questionnaire to the needs of recurrent discussions by the Conference on each ILO strategic objective. Thus, the questionnaire on social security also uses a table format to facilitate the entry of the information and is split into separate parts pursuing complementary objectives with different levels of technical detail. A particular effort has been made to transform the highly technical and complex language of the social security standards into more easily understandable questions, accompanied in many cases by explanatory examples in brackets.
11. Part I of the questionnaire concerns the development of the basic parameters of the social security system in terms of strengthening its legal framework, financing and scope of coverage. Most social security institutions are constructed and ruled by law. They are rights-based and therefore require the establishment of constitutional and legal guarantees, which should determine the scope of protection, minimum benefits and standards of due process. These issues form part of section A of Part I. Sections B and C address two basic questions facing ILO constituents in countries at different stages of development: how to make existing social security systems sustainable through good governance, especially in the light of the global financial and economic crisis; and how to extend basic social security coverage to those categories of the population, sectors of the economy and whole countries, which still have no such protection. Overall, Part I requires the more technical and specialized answers traditionally sought by article 19 questionnaires to establish the state of compliance by national law and practice with the provisions of the selected instruments. Care was taken to ensure that the questions were not overly simplified and would still permit to gather objective information for the purpose of article 19 of the Constitution.
12. Part II of the questionnaire seeks to contextualize the relevant provisions of the selected instruments with the integrated approach called for by the Social Justice Declaration. It seeks answers of a general nature that would clarify the links and synergies in national law and practice between social security and other strategic objectives of the ILO, and thus permit the elaboration of a comprehensive and consistent decent work strategy at the national and international levels. Section D looks at how fundamental principles and rights at work are promoted in social security. Section E takes up the coordination of employment policy and social security and section F aims at assessing the role of workers’ and employers’ organizations, social dialogue and tripartism in the management of social security. All of these issues reflect key aspects of sound governance of social security and stand high on the agenda of constructing or reforming modern social security systems. Addressing them through the article 19 questionnaire would therefore provide a most useful contribution to the recurrent discussion, presenting a broader picture of the impact of standards on social policies.
13. Part III of the questionnaire contains the standard questions on the impact of non-ratified ILO instruments and the requirements under article 23 of the Constitution concerning communication of reports to workers’ and employers’ organizations. In addition, in order

¹² ILO Declaration on Social Justice for a Fair Globalization, section I(A)(ii).

to facilitate the replies to the third column of Parts I and II of the questionnaire, the Office proposes to attach to the questionnaire a list of social security legislation available in the NATLEX database for each country, requesting the government to complete it with references and missing pieces of basic legislation by providing a corresponding web link or attaching a hard copy.

14. *Subject to the decision of the Governing Body to place on the agenda of the 2011 Conference a recurrent discussion on the strategic objective of social protection (social security), the Committee may wish to recommend the Governing Body to:*

(i) request governments to submit for 2010 reports under article 19 of the Constitution concerning social security instruments; and

(ii) approve the report form concerning social security instruments referred to in the appendix.

Geneva, 16 February 2009.

Point for decision: Paragraph 14.

Appendix

INTERNATIONAL LABOUR OFFICE
 REPORTS ON
 UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

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

REPORT FORM CONCERNING SOCIAL SECURITY INSTRUMENTS
 (ARTICLE 19 QUESTIONNAIRE)

Geneva

2009

INTERNATIONAL LABOUR OFFICE

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

5. In the case of a Convention:
- ...
- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.
- ...
6. In the case of a Recommendation:
- ...
- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

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

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

...

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

...

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

REPORT

to be made no later than 28 February 2010, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of, on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire.

Proposed draft report form concerning social security instruments (article 19 questionnaire)

Conventions Nos 102 and 168, and Recommendations Nos 67 and 69

The following questions cover the nine social risks/contingencies listed in Convention No. 102: medical care, sickness, unemployment, old age, accidents at work and occupational diseases, family benefits, maternity, invalidity and survivors' benefits.	Please give, as appropriate, a general appreciation or a <i>detailed reply</i> .	Please give a precise reference (web links) to provisions of the <i>relevant legislation</i> .
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Part I. Strengthening the legal framework, finances and coverage of social security

A. Constitutional and legal guarantees		[Please refer in particular to Articles 8, 14, 20, 32, 40, 47, 54, 60 and 70 of Convention No. 102 ; Articles 10 and 27 of Convention No. 168 ; and Recommendations Nos 67 and 69 .]	
1. Does the Constitution of your country define a right to social security/protection and, if so, how?	(Including social assistance, access to health care, support of families and children, etc.)	(Including judicial decisions involving questions of principle.)	
2. What is the state of development of the social security legislation in your country and how does it:			
2.1. Define social risks/contingencies listed in Convention No. 102, including preventive, curative and maternity medical care?	(Or any other risk/contingency such as poverty, dependency, paternity, long-term care, etc.)		
2.2. Guarantee minimum income-support benefits, if any, and basic medical care?			

2.3.	Determine how medical care service is organized and financed?	(For example, public service, health insurance, social assistance, out of pocket payments, etc.)	
2.4.	Establish the right of complaint and appeal in social security and make the procedures simple and rapid?		
3.	What measures are taken to ensure enforcement of social security legislation and full collection of social insurance contributions?	(For example, sanctions, labour inspection, anti-fraud measures, etc.)	
B. Financial sustainability and governance of social security		[Please refer in particular to Articles 65, 66, 67, 71 and 72 of Convention No. 102 ; and Recommendation No. 67 .]	
4.	What is the state of social security finances in your country and whether they are sufficient to ensure that:	(Please include appropriate statistics and extracts from performance reports of the benefit schemes.)	
4.1.	The rate of contributory benefits is set so as to replace at least 40 per cent of the previous wage of the insured person?		
4.2.	The rate of non-contributory benefits is set higher than the minimum subsistence level or poverty line?		
4.3.	Benefits are adjusted to inflation to maintain purchasing power and/or to growth in wages to improve the standard of living?		
4.4.	Measures are taken to avoid hardship and ensure coverage of persons of small means?	(For example, state subsidies, contribution or tax reductions, etc.)	
5.	Please explain the role of the State and indicate whether it assumes the <i>general</i> responsibility and takes all measures necessary to ensure:		
5.1.	The financial viability of the system, protection of social security funds, regular actuarial and financial studies and due provision of benefits.	(For example, establishment of the central reserve fund, yearly budgets/performance reports, etc.)	

5.2. The proper administration and supervision of the social security institutions and services, including voluntary and private schemes.		
6. In the light of the global financial and economic crisis, what are the main challenges for the future financial sustainability of the social security system and how does it contribute to cope with the consequences of the crisis?		
C. Extension of social security coverage		[Please refer in particular to Articles 5, 9, 15, 21, 27, 33, 41, 48, 55 and 61 of Convention No. 102 ; and Recommendations Nos 67 and 69.]
7. Please provide the latest available statistics on the total number of persons protected under the main scheme.	(Including the number of active contributors and benefit recipients.)	
8. What measures have been taken or planned to extend social security coverage to unprotected categories of workers and their families in different sectors of the economy, including in the informal economy, agriculture, fishing or other sectors?	(For example, self-employed, temporary workers, workers lacking an employment relationship.)	
9. Does your country consider the establishment of a set of basic guarantees for income security and access to medical care for all and, if so, for what risks/contingencies?	(For example, essential health care, income security during childhood, old-age, invalidity, survivors' benefits, social assistance to unemployed.)	

Part II. Integrating social security into comprehensive strategy for decent work

D. Social security and fundamental principles and rights at work		[Please refer in particular to Articles 68 and 72 of Convention No. 102 ; and Article 6 of Convention No. 168.]
10. How are, or should, fundamental principles and rights at work be promoted in social security, in particular by way of:		

10.1. Enabling workers and employers to set up provident, unemployment, supplementary, etc., schemes (funds) and regulate benefits by means of collective agreements?	(Please specify management arrangements for such schemes.)	
10.2. Applying to social security the principles of non-discrimination on the basis of race, colour, sex, religion, political opinions, national extraction, nationality, ethnic or social origin, disability or age?	(Including promotion of gender equality.)	
10.3. Granting non-national residents and migrant workers the same social security rights as national residents and workers?	(If not, in what respect differ the rights of non-national residents/workers?)	
10.4. Providing universal or targeted (means-tested) benefits to families with children under school-leaving age with a view, inter alia, to preventing child labour?	(Including benefits in kind listed in Article 42 of Convention No. 102.)	
E. Social security and employment policy		[Please refer in particular to Convention No. 168.]
11. To what extent social security benefits are, or should be, coordinated with employment policy and used as a means to increase employability and promote employment, in particular by way of:		
11.1. Professional rehabilitation and cash benefits for vocational training, retraining, and occupational and geographic mobility.		
11.2. Public works/employment guarantee schemes or additional assistance for long-term unemployed.		
11.3. Social benefits (in cash or in kind) and services for prescribed categories of new applicants for employment.	(For example, young persons after studies, military service, released prisoners, previously self-employed persons, etc. listed in Article 26 of Convention No. 168.)	
11.4. Adjusting social security schemes to occupational and family circumstances of specific categories of workers.	(For example, self-employed, seasonal workers, part-time workers, homeworkers, workers with family responsibilities, etc.)	

F. Social security and social dialogue		[Please refer in particular to Article 72 of Convention No. 102 ; and Articles 27 and 29 of Convention No. 168 .]
12. Please describe the role of workers' and employers' organizations, social dialogue and tripartism in the management of social security, indicating in particular:		
12.1. What organizations represent persons protected by social security schemes and how do they participate (together with representatives of the employers and public authorities) in the administration of these schemes?	(For example, trade unions, associations of retired persons, disabled persons, etc.)	
12.2. Whether tripartite consultations at the national level concerning reform and future development of social security have been held or should be held in your country?		

Part III. Impact of ILO instruments

13. What are the obstacles that impede or delay ratification and what are ratification prospects for Convention Nos 102 and 168?	(Including obstacles to the acceptance of the obligations in respect of any of the nine social security benefits covered by Convention No. 102.)
14. To what extent has effect been given, or is proposed to be given, to the non-ratified Convention No. 102 (or non-accepted Parts of Convention No. 102), and Convention No. 168, and to Recommendations Nos 67 and 69?	
15. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO?	(For example, new standards, revision, consolidation, review of the status of the instruments, etc.)

16. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support?	
17. What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?	(For example, promotion of social dialogue in social security, gender audit of social security legislation, a feasibility study for the introduction of a basic social security package, etc.)
18. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.	
19. Please state whether you have received from the organizations of employers and workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.	