

## Governing Body

337th Session, Geneva, 24 October–7 November 2019

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Institutional Section

INS

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THIRD ITEM ON THE AGENDA

### Matters arising out of the work of the 108th Session (2019) of the International Labour Conference

#### Follow-up to the resolution on the ILO Centenary Declaration for the Future of Work: Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work

##### Purpose of the document

To propose a procedural road map for considering the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work (see the draft decision in paragraph 23).

**Relevant strategic objective:** Social protection and Fundamental principles and rights at work.

**Main relevant outcome/cross-cutting policy driver:** Outcome 7: Promoting safe work and workplace compliance including in global supply chains. Outcome 8: Protecting workers from unacceptable forms of work.

**Policy implications:** Implications for the Conference agenda for 2021 or later sessions.

**Legal implications:** Those arising from the decisions which the Governing Body may take.

**Financial implications:** Those arising from the decisions which the Governing Body may take.

**Follow-up action required:** Those arising from the decisions which the Governing Body may take.

**Author unit:** Departments in the Policy Portfolio and in the Field Operations and Partnerships Portfolio.

**Related documents:** Resolution on the ILO Centenary Declaration for the Future of Work; Provisional Record No. 6B(Rev.); ILO Declaration on Fundamental Principles and Rights at work, 1998; ILO Declaration on Social Justice for a Fair Globalization, 2008.



## Origin of the proposals

1. At its 108th Session (2019), the International Labour Conference adopted a resolution on the ILO Centenary Declaration for the Future of Work. The resolution requested the Governing Body “to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”.<sup>1</sup>
2. The resolution followed up on discussions in the Committee of the Whole of Part II, Section C of the ILO Centenary outcome document proposed to the Conference. The proposed text read: “Occupational safety and health is a fundamental principle and right at work in addition to those specified in the ILO Declaration on Fundamental Principles and Rights at Work (1998)”.<sup>2</sup> The Committee did not reach a consensus on the proposed text as a number of legal, technical and practical concerns remained unresolved with respect to declaring safe and healthy working conditions a fundamental principle and right at work in the manner proposed.<sup>3</sup> Instead, the Conference declared that “[s]afe and healthy working conditions are fundamental to decent work”<sup>4</sup> and requested the Governing Body to consider proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work.
3. It may be recalled that the ILO Declaration on Fundamental Principles and Rights at Work, 1998, reaffirms the principles concerning the fundamental rights which are the subject of the fundamental Conventions as follows:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.<sup>5</sup>

## Main contextual elements for a procedural road map

4. A succinct summary of how a right to a safe and healthy working environment has emerged and how the ILO framework of fundamental principles and rights at work has been developed may be useful to inform the examination by the Governing Body of the procedural road map.

<sup>1</sup> [Resolution on the ILO Centenary Declaration for the Future of Work](#) (adopted on 21 June 2019), International Labour Conference, 108th Session, para 1.

<sup>2</sup> [ILO Centenary outcome document](#), Report IV, International Labour Conference, 108th Session (2019).

<sup>3</sup> [Provisional Record No. 6B\(Rev.\)](#), International Labour Conference, 108th Session, (2019), paras 986, 1014 and 1327–1333.

<sup>4</sup> [ILO Centenary Declaration for the Future of Work](#), para. II(D).

<sup>5</sup> [ILO Declaration on Fundamental Principles and Rights at Work](#), 1998, para. 2.

## Contextual elements relating to a right to a safe and healthy working environment

5. The protection of workers against unsafe or unhealthy working conditions has featured prominently among the Organization’s objectives for the past 100 years. The Preamble to the ILO Constitution (1919) noted the “urgently required” improvement of “protection of the worker against sickness, disease and injury arising out of his employment.” The Declaration of Philadelphia (1944) identified a “solemn obligation” of the ILO to further “adequate protection for the life and health of workers in all occupations”.<sup>6</sup> The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), provides that the “right of workers to a safe and healthy working environment” shall be promoted and advanced, at all relevant levels as a matter of national policy.<sup>7</sup> The ILO Declaration on Social Justice for a Fair Globalization, 2008, includes “healthy and safe and working conditions” under the strategic objective of social protection.<sup>8</sup>
  
6. Since 1919, the Organization has devoted a major portion of its standard-setting work to occupational safety and health, adopting 20 Conventions, one Protocol and 27 Recommendations.<sup>9</sup> During the discussion in the Committee of the Whole, some constituents noted that there were a number of Conventions on occupational safety and health while others pointed out that there were only three instruments dealing with fundamental principles of occupational safety and health, namely: the Occupational Safety and Health Convention, 1981 (No. 155); the Occupational Health Services Convention, 1985 (No. 161); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).<sup>10</sup> Just under half of the ILO member States have ratified at least one of these three Conventions to date. During the discussions of the Committee of the Whole, the level of ratifications of Conventions on occupational safety and health was addressed. Some constituents noted that ratification rates for many Conventions were low. Other constituents noted that the low number of ratifications was not a reasonable justification for not selecting occupational safety and health Conventions as fundamental and recalled that at the time of the adoption of the 1998 Declaration, the Minimum Age Convention, 1973 (No. 138), had only 68 ratifications and that as a result of the ratification campaign concerning the fundamental Conventions, this number rose to 171.<sup>11</sup>

<sup>6</sup> [Declaration concerning the aims and purposes of the International Labour Organisation](#) (Declaration of Philadelphia, para. III(g)).

<sup>7</sup> [Convention No. 187](#), article 3(2).

<sup>8</sup> [ILO Declaration on Social Justice for a Fair Globalization](#), 2008, Part I(A)(ii).

<sup>9</sup> The Governing Body does not consider all of these instruments up-to-date. In accordance with its initial programme of work, the Standards Review Mechanism Tripartite Working Group has reviewed 24 instruments, classifying 12 instruments as “up-to-date”; ten instruments as “requiring further action to ensure their continued and future relevance”; and two instruments as “out-dated”.

<sup>10</sup> Provisional Record No. 6B(Rev.), paras 988 and 1004. It may be noted that the Governing Body at its 307th Session (March 2010) adopted a [Plan of Action \(2010–2016\)](#) to achieve widespread ratification and effective implementation of the occupational safety and health instruments (Convention No. 155, its 2002 Protocol and Convention No. 187).

<sup>11</sup> Provisional Record No. 6B(Rev.), paras 988 and 1004.

7. The Governing Body has had the opportunity to consider the synergies between security and productivity generated by occupational safety and health in 2006.<sup>12</sup> The report prepared by the Office for the discussion illustrated, for example:
- (a) a clear economic impact of occupational accidents and ill health at all levels;
  - (b) the positive impact of safe and healthy working conditions on enterprise productivity, while recognizing that the highest possible levels of occupational safety and health cannot be the same under all conditions; and
  - (c) a strong correlation between national competitiveness and national incidence rates of occupational accidents.
8. Outside the ILO, the right to a safe and healthy working environment is recognized in international law. The Universal Declaration of Human Rights (1948) guarantees everyone the right to “life, liberty and security of person” as well as to “just and favourable conditions of work”.<sup>13</sup> The latter notion has subsequently been defined in the International Covenant on Economic, Social and Cultural Rights to include “safe and healthy working conditions”.<sup>14</sup> Similarly, the World Health Organization was founded on the principle that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.<sup>15</sup>
9. Recent editions of the World Congress on Safety and Health have consistently recalled that a safe and healthy working environment should be recognized as a fundamental human right.<sup>16</sup>
10. Universal acceptance of a rights-based approach to the promotion of occupational safety and health is further borne out in the 2030 Agenda for Sustainable Development: target 8.8 aims to “[p]rotect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment”.<sup>17</sup>

<sup>12</sup> [GB.295/ESP/3](#).

<sup>13</sup> [Universal Declaration of Human Rights](#), Articles 3 and 23(1).

<sup>14</sup> [International Covenant on Economic, Social and Cultural Rights](#), Article 7(b).

<sup>15</sup> Preamble to the [Constitution of the World Health Organization](#), 1946.

<sup>16</sup> See the Preamble to the [Seoul Declaration on Safety and Health at Work](#) (2008) and the Preamble to the [Istanbul Declaration on Safety and Health at Work](#) (2011). The XXI World Congress on Safety and Health at Work in Singapore (2017) did not conclude with a Declaration but the ASEAN Labour Ministers’ statement recalled the aspirations of the two previous Declarations and added “that every worker has a right to a safe and healthy working environment”.

<sup>17</sup> The ILO is custodian of an occupational safety and health statistical indicator for target 8.8: “8.8.1: Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status.” Other relevant targets include 3.4 (Reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being); 3.8 (Achieve universal health coverage, including financial risk protection, access to quality essential healthcare services and access to safe, effective, quality and affordable essential medicines and vaccines for all); and 3.9 (Substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination).

**Contextual elements relating to the ILO's framework of fundamental principles and rights at work**

11. When considering proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work, the Governing Body may also be guided by the developments that have led to the determination of the eight fundamental Conventions and the 1998 Declaration, which remain the prevailing promotional ILO framework of fundamental principles and rights at work to date. The main developments may be summarized as follows.
12. In the resolution concerning the 75th anniversary of the ILO and its future orientation adopted at its 81st Session (1994), the Conference noted for the first time "the particular importance of ILO Conventions covering fundamental rights, including Conventions Nos 87, 98, 100, 29 and 105, and 111". The follow-up to this resolution was examined by the Governing Body in November 1994 and then in March 1995,<sup>18</sup> when it requested the Office to undertake a campaign to promote the ILO fundamental human rights Conventions, namely Conventions Nos 29, 105, 87, 98 and 100 and 111.
13. In March 1995, participants at the World Summit for Social Development in Copenhagen, adopted a programme of action for governments to enhance the quality of work and employment by "[s]afeguarding and promoting respect for basic workers' rights, including the prohibition of forced labour and child labour, freedom of association and the right to organize and bargain collectively, equal remuneration for men and women for work of equal value, and non-discrimination in employment, fully implementing the Conventions of the International Labour Organization (ILO) in the case of States parties to those Conventions, and taking into account the principles embodied in those Conventions in the case of those countries that are not States parties to thus achieve truly sustained economic growth and sustainable development" (paragraph 54(b)). On 25 May 1995, the Director-General launched a campaign for the ratification of seven ILO fundamental Conventions: in addition to the six Conventions already identified as fundamental since the 1994 resolution, Convention No. 138 was added to the list.
14. In November 1997, the Governing Body decided to include on the agenda of the 86th Session of the Conference (1998) an item concerning a Declaration on workers' fundamental rights and its appropriate follow-up. The document submitted to the Governing Body recalled that the Constitution has always recognized that the way in which effect is given to certain rights may vary depending on the level of economic development but that there are rights or principles which are essential to the objectives of the Organization. Reference was made to article 41 of the original Constitution, which mentioned methods and principles "of special and urgent importance", including the principle that labour should not be regarded as a commodity or article of commerce. The document added that "[t]he reasons for regarding certain rights as indeed being fundamental, irrespective of levels of development, has become clearer as a result of the debate that has resulted from the increasing interdependence of economies and societies. Those rights are in a sense a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work, account being taken of the circumstances of the countries concerned."<sup>19</sup> The document noted that the rights in question were the subject of consensus beyond the ILO.

<sup>18</sup> [GB.261/LILS/3/1](#), [GB.261/5/27](#), [GB.262/LILS/4](#).

<sup>19</sup> [GB.270/3/1](#), paras 13 and 16.

15. At its 86th Session (1998), the Conference adopted the Declaration which recalled the obligations of Members as regards principles and rights set out in the Constitution and the Philadelphia Declaration, which “have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization”.<sup>20</sup> Its preamble outlines the key aspects of the enabling nature of fundamental principles and rights at work in maintaining the link between social progress and economic growth.
16. At the 87th Session (1999) of the Conference, once Convention No. 182 was adopted unanimously, the Director-General informed the Conference that he would be launching a global campaign for its ratification which became part of the campaign for the ratification of fundamental Conventions launched in 1995.
17. In its 2012 conclusions concerning the recurrent discussion concerning fundamental principles and rights at work, the Conference reaffirmed “the universal and immutable nature of fundamental principles and rights at work” and “their particular significance both as human rights and enabling conditions”.<sup>21</sup>
18. At its 326th Session (March 2016), the Governing Body approved a report form for the Protocol of 2014 to the Forced Labour Convention, 1930, to be sent to member States in line with their obligations to report under article 19, paragraph 5(e) of the ILO Constitution, with respect to unratified instruments in relation to one of the four categories of fundamental principles and rights at work.<sup>22</sup>

## Proposed road map

19. The proposed road map encompasses both a timeline and issues to be examined by the Governing Body.
20. During the discussion of the Centenary Declaration at the 108th Session of the International Labour Conference, constituents raised the question as to whether the 1998 Declaration should be revised and if so what would be the applicable process.<sup>23</sup> Alternatively, the Governing Body could propose to the Conference to declare the right to a safe and working environment a fundamental principle and right at work in a separate outcome document. In any event, it seems that the matter will have to be decided by the Conference. Given the breadth of the issues to be addressed and the time necessary to build consensus on such a

<sup>20</sup> 1998 Declaration, para. 1. As emphasized in the preparatory work for the 1998 Declaration, “fundamental rights are not fundamental because the Declaration says so; the Declaration says that they are fundamental because they are”. These rights and principles are classified as fundamental because, as indicated in the Social Justice Declaration, they are a key means of achieving all the constitutional objectives of the Organization. They are instrumental in promoting international labour standards in general, not to establish hierarchies between them; see ILO: *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Report VII, International Labour Conference, 86th Session, Geneva, 1998, section II.

<sup>21</sup> Para. 5(a) and (b) of the [conclusions](#).

<sup>22</sup> [GB.325/PV](#), para. 64; [GB.326/PV](#), para. 524; [GB.326/LILS/5](#).

<sup>23</sup> Provisional Record No. 6B(Rev.), International Labour Conference, 108th Session (2019), paras 996, 997, 1003 and 1004.

key matter for the ILO, the agenda of the 2021 session of the Conference seems to be the earliest possible date at which a Conference discussion could be held.

21. To facilitate further deliberation and consultation, the Office proposes the following procedural road map:

- **338th Session (March 2020) of the Governing Body:** consideration of substantive questions resulting in the identification of possible building blocks; based on the discussions in the Committee of the Whole as well as further discussion in the Governing Body, these questions may address among others whether a fundamental right to a safe and healthy working environment could be recognized, promoted and realized in the same manner as the four existing fundamental principles and rights at work, the identification of the corresponding Conventions, the ratification rates and the implications of the recognition of a fifth category of fundamental principles and rights, including on the reporting arrangements both as regards the submission of reports under article 22 of the Constitution and under the follow-up to the 1998 Declaration pursuant to article 19 of the Constitution;
- **340th Session (November 2020) of the Governing Body:** consideration of process-related questions and possible forms of the decision of the Conference, including the placement of a technical item on the agenda of the 110th Session (2021) of the Conference;
- **341st Session (March 2021) of the Governing Body:** consideration of the elements of a possible draft outcome document for consideration at the 110th Session (2021) of the Conference and arrangements for the Conference discussion; and
- **110th Session (2021) of the Conference:** consideration of a possible outcome document concerning the inclusion of safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work.

22. The road map is not intended to be a fixed programme of work but a planning tool which may be modified by the Governing Body based on the progress made. The Governing Body may also consider intersessional consultations as and when appropriate. In providing guidance on the proposed road map, the Governing Body may wish to take into account proposals for the Conference agenda presented in a separate paper.<sup>24</sup>

## Draft decision

23. *The Governing Body decided to approve the procedural road map for the consideration of including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work set out in paragraph 21 of document GB.337/INS/3/2.*

<sup>24</sup> [GB.337/INS/2](#).