

EIGHTH MEETING OF THE SRM TRIPARTITE WORKING GROUP

(11-16 SEPTEMBER 2023)

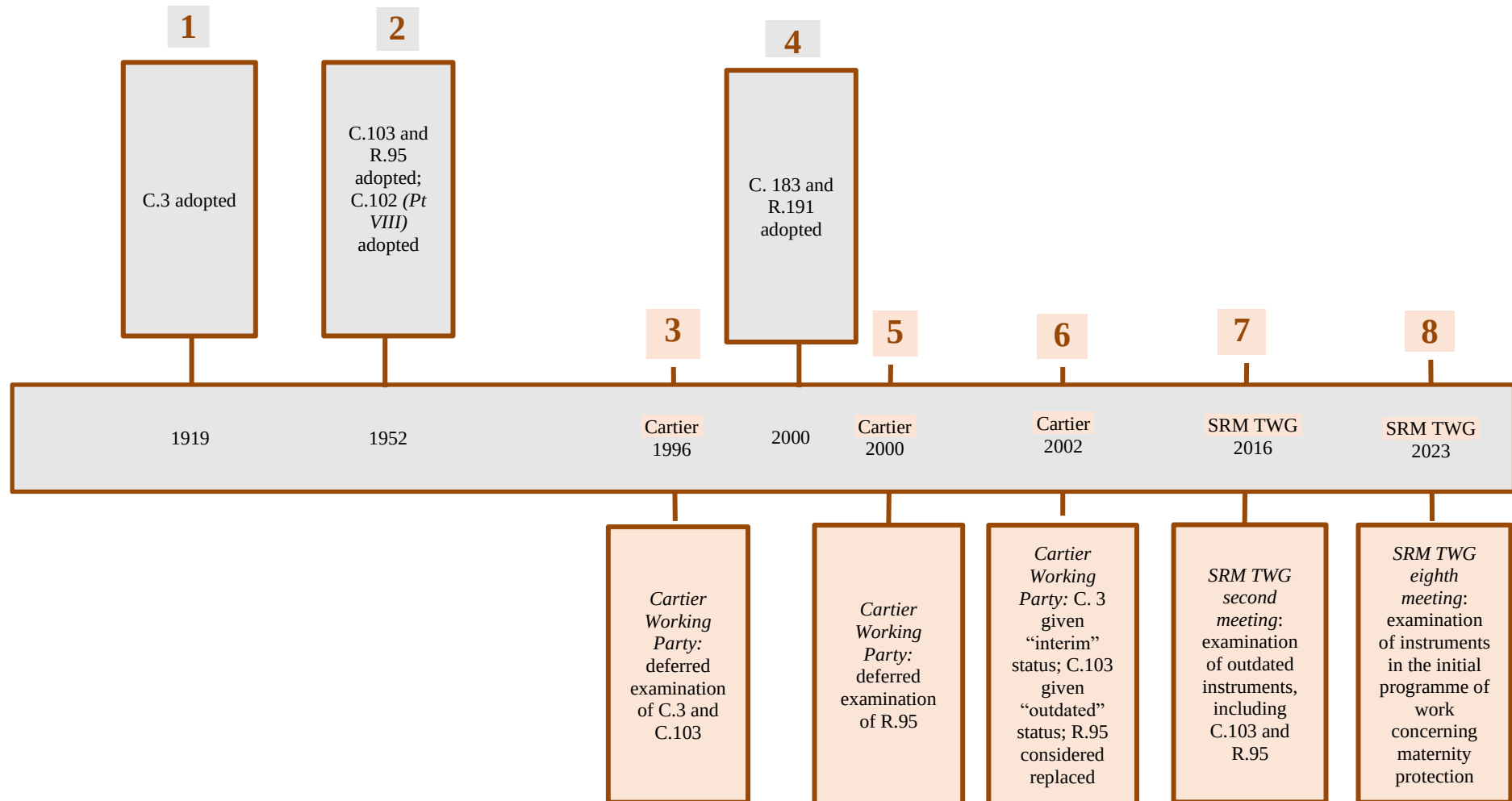
EXAMINATION OF INSTRUMENTS CONCERNING MATERNITY PROTECTION

Technical Note 1.1: Instruments concerning maternity protection

- Five instruments in the SRM TWG's initial programme of work concern maternity protection:
 - Maternity Protection Convention, 1919 (No. 3)
 - Maternity Protection Convention, 2000 (No. 183)
 - Maternity Protection Recommendation, 2000 (No. 191)
 - Maternity Protection Convention (Revised), 1952 (No. 103)
 - Maternity Protection Recommendation, 1952 (No. 95)
- *Current status of instruments:* Convention No. 3 was classified as having interim status by the Cartier Working Party; Convention No. 103 and Recommendation No. 95 were classified as outdated by the Cartier Working Party (confirmed by SRM TWG); and Convention No. 183 and Recommendation No. 191 are considered up-to-date (never reviewed).
- *Possible action to be considered:* acknowledgement of the status of Convention No. 103 and Recommendation No. 95 as outdated; classification of Convention No. 3, Convention No. 183 and Recommendation No. 191; follow-up action as required.

10 August 2023

ILO regulation of maternity protection: Chronology of developments



Regulatory approach to maternity protection

Maternity protection of women at work has been of core importance to the International Labour Organization (ILO) since its establishment in 1919. The Declaration of Philadelphia, adopted in 1944, calls on the ILO: “to further among the nations of the world programmes which will achieve [...] provision for child welfare and maternity protection”. Maternity protection is also recognized as a human right.¹ The International Covenant on Economic, Social and Cultural Rights provides that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.” (Article 10 (2)).

The **Maternity Protection Convention, 1919 (No. 3)** was the first international instrument recognizing the right of women workers to paid maternity leave. In 1952, Convention No. 3 was revised to take into consideration developments in national law and to broaden the protection afforded in the event of maternity, leading to the adoption of the **Maternity Protection Convention (Revised), 1952 (No. 103)**, and the **Maternity Protection Recommendation, 1952 (No. 95)**. By 1999, notable changes in the participation of women in the workforce and an ever growing commitment to eliminate discrimination in employment and occupation lead to the adoption of the **Maternity Protection Convention, 2000 (No. 183)**, and the **Maternity Protection Recommendation, 2000 (No. 191)**, revising the 1952 instruments.

ILO developments since adoption of the instruments

1. 1919: ILC adopted Convention No. 3

Convention No. 3 applies to women employed in industrial and commercial undertakings and recognizes the right of women workers, irrespective of age, nationality or marital status, to paid maternity leave (twelve weeks), funded either out of public funds or by insurance, with free attendance by a doctor or certified midwife, the right to protection against termination of employment and the right to breastfeed at the workplace.

Convention No. 3 was revised in 1952 by Convention No. 103 but, in the absence of final provisions to this effect in Convention No. 3, it was not closed to further ratifications and cannot be automatically denounced.

See: [Convention No. 3](#)

2. 1952: ILC adopted Convention No. 103 and Recommendation No. 95; and Convention No. 102

Convention No. 103 revised Convention No. 3 taking into consideration the development of the concepts of social security and social protection at the international level and the broadening of the protection afforded in the event of maternity in national law and practice. Convention No. 103 significantly expanded the scope and level of protection set out in

¹ Article 25 of the [Universal Declaration of Human Rights](#).

Convention No. 3. Together with Recommendation No. 95, Convention No. 103 applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage-earners working at home. It sets out the basic principles of protection: the right to maternity leave (a 12-week minimum standard), medical care and cash benefits funded either by means of compulsory social insurance or by means of public funds, the right to protection against termination of employment and the right to breastfeed at the workplace.

Convention No. 103 was revised by Convention No. 183 and has been closed to further ratifications since the entry into force of Convention No. 183 on 7 February 2002. A ratification of Convention No. 183 by a State party to Convention No. 103 entails the automatic denunciation of the latter.

The Social Security (Minimum Standards) Convention, 1952 (No. 102) establishes a minimum level of protection in each of the nine branches of social security. Its Part VIII sets minimum standards as to maternity benefits, including cash benefits and maternity medical benefits; Part II establishes the minimum medical care benefits, including maternity care benefits, to be provided to the dependent wives and children of persons protected. According to its Article 74, Convention No. 102 should not be regarded as revising any existing Convention.

See: [Convention No. 103](#) and [Recommendation No. 95](#); [Convention No. 102](#)

3. 1996: Governing Body proposed revision of Conventions No. 3 and 103 and deferred examination of the instruments

Following the recommendation of the Cartier Working Party, the Governing Body proposed that Convention No. 3 should be revised, invited the States parties to Convention No. 3 which had already ratified Convention No. 103 to contemplate denouncing Convention No. 3, and decided that it would re-examine the status of Convention No. 3 in due course.

The Governing Body noted that Convention No. 103 was being considered for revision at the time, proposed that it should be revised, and decided that it would re-examine its status at a subsequent meeting.

See: [GB.267/LILS/WP/PRS/2](#), paras 23-26 (Office background paper for Working Party, November 1996); [GB.267/LILS/4/2\(Rev.\)](#), paras 39-43 (discussion by Working Party, November 1996); [GB.267/9/2](#), para. 14 (discussion by LILS Committee, November 1996)

4. 2000: ILC adopted Convention No. 183 and Recommendation No. 191

Convention No. 183 is the most up-to-date Convention on maternity protection and revises Convention No. 103. It provides for 14 weeks paid maternity leave, health protection for pregnant women and breastfeeding mothers, employment protection and prohibition of discrimination based on maternity. Recommendation No. 191 de facto replaces Recommendation No. 95.

Convention No. 183 differs from Convention No. 103 in a number of ways. As indicated during the discussions leading to its adoption, Convention No. 183 applies to all employed women,

including women in atypical forms of dependent work; possible exclusions have been narrowed; new health-related and non-discrimination protections are included; the minimum period of paid maternity leave is extended and the choice offered between prenatal and postnatal leave is expanded; changes are made to provisions concerning benefits; and the period of protection from dismissal is extended.² The Recommendation was described as elaborating on some issues and going further on others. Convention No. 183 builds on Convention No. 102 (Part VIII), which provides specific provisions for maternity medical care and cash benefits, by establishing higher standards of protection and setting forth a comprehensive approach to maternity protection.

See: [Convention No. 183](#) and [Recommendation No. 191](#)

5. 2000: Governing Body deferred examination of Recommendation No. 95 until Convention No. 183 came into force

In November 2000, the Cartier Working Party noted that Recommendation No. 95 and Convention No 103 to which it is linked, were revised by Convention No 183 and Recommendation No. 191, that was not yet in force. Following the recommendation of the Cartier Working Party, the Governing Body noted the adoption of Convention No. 183 and Recommendation No. 191 and deferred its examination of Recommendation No. 95 until after Convention No. 183 came into force.

See: [GB.279/LILS/WP/PRS/4](#), (Office background paper for Working Party, November 2000) p.13; [GB.279/LILS/3\(Rev.1\)](#), (discussion by Working Party, November 2000); [GB.279/11/2](#), (discussion by LILS Committee, November 2000)

6. 2002: Governing Body considered Conventions Nos 3 and 103 and Recommendation No. 95

The Cartier Working Party re-examined Conventions Nos 3 and 103 and Recommendation No. 95 in its last meeting in 2002. The Office background paper noted that Convention No. 183 and Recommendation No. 191 are the modern instruments in the field of maternity protection. The Office paper noted that : (i) a comparison between the main provisions of the two instruments reveals that they strike two different sets of balance with distinct types of requirements and flexibilities; for Member States bound by both Conventions, these differences could represent problems in terms of application; (ii) although Convention No. 183 represents the modern view of how a system of protection of maternity should be designed, certain countries may, during a transitory period, consider the introduction of such a system of protection to be a challenging and possibly laborious process; (iii) Convention No. 3 is likely to continue to serve a useful purpose during a period of transition from the older to the recent and modern system and will, for certain countries, continue to be a possible option.³ The Cartier Working Party

² ILO: *Record of Proceedings*, No. 20, ILC, 88th Session, 2000, [discussion in plenary](#).

³ [GB.283/LILS/WP/PRS/2](#), p.3

recommended that Convention No. 103 be considered outdated⁴ and Recommendation No. 95 replaced.

On that basis, the Governing Body:

- a) invited the Member States that had ratified Convention No. 3 to contemplate ratifying Convention No. 183, and denouncing Convention No. 3 at the same time;
- b) decided to maintain the status quo of Convention No. 3 and to re-examine its status in due course.
- c) invited the Member States that had ratified Convention No. 103 to contemplate ratifying Convention No. 183, the ratification of which would lead to the immediate denunciation of Convention No. 103;
- d) invited the Member States that had ratified Convention No. 103 to inform the Office of obstacles and difficulties, if any, that might prevent or delay the ratification of Convention No. 183;
- e) noted the replacement of Recommendation No. 95 by Recommendation No. 191.

See: [GB.283/LILS/WP/PRS/2](#), paras 6 and 7 (Office background paper, March 2002);
[GB.283/LILS/5\(Rev.\)](#), paras 45 and 46 (report of the Cartier Working Party, March 2002); [GB.283/10/2](#),
para. 20(b) (discussion of the LILS Committee, March 2002)

7. 2016: SRM TWG examined outdated Convention No. 103 and Recommendation No. 95

The SRM TWG examined Convention No. 103 and Recommendation No. 95 within the context of its 2016 examination of the follow-up to be taken to outdated instruments. In light of its recommendations, the Governing Body requested that:

- (1) the Office commences follow-up within the next 12 months, with the Member States currently bound by Convention No. 103, encouraging them to ratify Convention No. 183 as the most up-to-date instrument in this subject area, which would result in the automatic denunciation of Convention No. 103;
- (2) based on the Office's report concerning the information obtained through that follow-up, the SRM TWG will consider Convention No. 103 and the accompanying Recommendation No. 95, during its later examination of other instruments concerning maternity protection and decide at that time whether or not to recommend their abrogation or withdrawal as appropriate.

See: [GB.328/LILS/2/1\(Rev.\)](#), Annex I (recommendations), para.17 ; [GB.328/PV](#), paras 568-581.

Analysis of Conventions Nos 3 and 183 and Recommendation No. 191

The following table provides a provision-by-provision analysis of the two Conventions that are to be reviewed: Conventions Nos 3 and 183. Convention No. 3 was given interim status by the Cartier

⁴ The category of outdated instruments includes Conventions which the Governing Body has invited States parties to denounce while inviting them at the same time to ratify more recent Conventions on the same subject matter. See GB.283/LILS/WP/PRS/1/2, Appendix II, p. 32, para. 7.

Working Party, while Convention No. 183 is the most up-to-date instrument in respect of maternity protection. Convention No. 103, the other international labour Convention on maternity protection, was considered outdated by the Cartier Working Party and is mentioned to provide some information on the evolution of the instruments.

ANALYSIS OF SUBSTANTIVE PROVISIONS OF CONVENTIONS NOS 3 AND 183	
<i>Scope of application</i>	
Arts 1,2,3 of C.3, Arts 1,2 of C.103 & Arts 1,2 of C.183	• Objective: ○ C.3: applies to any public or private industrial or commercial undertaking other than an undertaking in which only members of the same family are employed. The term “woman” signifies any female person, irrespective of age or nationality, whether married or unmarried; the term “child” signifies any child whether legitimate or illegitimate. ○ C.103: applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home. The term “woman” means any female person, irrespective of age, nationality, race or creed, whether married or unmarried; the term “child” means any child whether born of marriage or not. ○ C.183: applies to all employed women including those in “atypical forms of dependent work”. Possibility to exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature, after consulting the representative organizations of employers and workers concerned. The term “woman” applies to any female person without discrimination whatsoever; the term “child” applies to any child without discrimination whatsoever. • Comparison: C. 183 expanded the scope of maternity protection to cover all employed women, including those in atypical forms of dependent work; adopts a broad approach to the definition of <i>woman</i> and <i>child</i>. • Current relevance: ○ C.3: has a narrower application than C.183; outmoded approach to the definition of <i>woman</i> and <i>child</i>. ○ C.183: adopts a more inclusive and broader approach, aligned with the principle of equality of treatment and non-discrimination. The Convention covers women workers with a contract of employment, whether express or implied, irrespective of their sector of employment or occupation. In addition, the Convention provides protection to women working in situations of disguised employment categorized as self-employed, even if they meet all the criteria, de facto, to be considered dependent employees.⁵
<i>Maternity leave</i>	
Art.3(a)(b) (c) of C.3, Art 3 of C.103 & Arts 4, 5 of C.183	• Objective: ○ C.3: establishes the minimum duration of compulsory postnatal leave at not less than six weeks and the right to leave work with medical certificate stating that confinement will probably take place within six weeks; no mistake in estimating the date of confinement shall preclude a woman from receiving these benefits. ○ C.103: establishes the minimum duration of maternity leave at not less than 12 weeks, which shall include a compulsory six-week period of postnatal

⁵ See ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 257.

	leave. The remainder of the total period of maternity leave may be provided before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of confinement and partly following the expiration of the compulsory leave period. Obligation to extend the prenatal portion of maternity leave by any period elapsing between the presumed date of confinement and the actual date of confinement, without reduction in any compulsory portion of postnatal leave. Establishes the right to leave before or after the maternity leave period in the case of illness medically certified arising out of pregnancy or confinement. ○ C.183: establishes the minimum duration of maternity leave at not less than 14 weeks,⁶ which shall include a compulsory six-week period of postnatal leave, unless otherwise agreed at the national level by the government and representative organizations of employers and workers. Obligation to extend the prenatal portion of maternity leave by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave. Establishes the right to leave before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth, on production of a medical certificate. • <i>Comparison: Minimum duration of maternity leave:</i> C.183 establishes the minimum duration of maternity leave at not less than 14 weeks, which is 2 weeks longer than the minimum duration set out in C.3. <i>Postnatal leave:</i> C.3 sets the unconditional requirement of six weeks of compulsory postnatal leave while C.183 introduces limited flexibility for Member States to determine the duration of the compulsory period of postnatal leave.⁷ <i>Leave in the case of illness or complications:</i> Unlike C.3, C.183 contemplates the provision of leave in case of illness, complications or risk of complications. • <i>Current relevance:</i> ○ C.3: provides narrower protection than C.183. ○ C.183: strengthens maternity leave provided under C.3 and adopts a flexible approach.
Cash benefits and medical care	
Art. 3(c) of C.3, Art. 4(1-3)(5-6) of C.103 & Art. 6(1-7) of C.183	• <i>Objective:</i> ○ C.3: entitlement to maternity leave cash benefits, which shall be sufficient for the full and healthy maintenance of the women and her child. Entitlement to free attendance by a doctor or certified midwife. ○ C.103: entitlement to maternity leave cash benefits, which shall be sufficient for the full and healthy maintenance of the women and her child in accordance with a suitable standard of living; maternity leave cash benefits provided under compulsory social insurance based on previous earnings shall be at a rate of no less than two-thirds of woman's previous earnings; women who fail to qualify for benefits shall be entitled to adequate benefits out of social assistance funds. Medical benefits, which shall include pre-natal, confinement and post-natal care, as well as hospitalisation care where necessary, are to be provided; freedom of choice of doctor and freedom of choice between a public or private hospital shall be respected. ○ C.183: entitlement to maternity leave cash benefits, including for leave in case of illness or complications, which shall be at a level which ensures that

⁶ Art. 4(3) and (4) of [C.183](#): The length of the period of leave shall be specified by each Member State in a declaration accompanying its ratification, which may subsequently be extended.

⁷ This flexibility was introduced to ensure women's freedom to work and to take shorter leave at their own convenience. See ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 562.

	the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living; maternity leave cash benefits based on previous earnings should be of not less than two-thirds of the woman's previous earnings;⁸ the conditions to qualify for cash benefits must be satisfied by a large majority of women covered by the Convention; women who do not meet the conditions to qualify for cash benefits shall be entitled to adequate benefits out of social assistance funds. Medical benefits, which shall include prenatal, childbirth and postnatal care, as well as hospitalization care, when necessary, are to be provided. • <i>Comparison:</i> Unlike C.3, C. 183 provides for cash benefits during maternity leave of at least two third of previous earnings; includes cash benefits in case of leave for illness or complications; the entitlement to medical care includes prenatal, childbirth and postnatal care, as well as hospitalization; protects women who do not meet the conditions to qualify for cash benefits. • <i>Current relevance:</i> ○ C.3: provides basic maternity cash benefits and free medical care for mother and child. ○ C.183: strengthens the protection provided under C.3.
Financing	
Art.3(c) of C.3, Art.4(4)(7-8) of C.103 & Art. 6(8) of C.183	• <i>Objective:</i> ○ C.3: Benefits shall be provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority. ○ C.103: Benefits shall be provided either by means of compulsory social insurance or by means of public funds. No individual liability of the employer for the cost of such benefits due to women employed by him. Any contribution due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits shall, whether paid both by the employer and the employees or by the employer, be paid in respect of the total number of men and women employed by the undertakings concerned, without distinction of sex ○ C.183: Benefits shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. No individual liability of employers for the direct cost of any such monetary benefit without that employer's specific agreement except where: (a) such is provided for in national law or practice in a Member State prior to the date of adoption of this Convention; or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers. • <i>Comparison:</i> Unlike C.3, C. 183 introduces a limited possibility according to which employers may be individually liable for the cost of maternity cash benefits. • <i>Current relevance:</i> C.3 and C.183 are largely consistent and relevant. The flexibility provision in C.183 was introduced to facilitate ratification by taking into account the situation in some countries where no compulsory social insurance system is in place, or the scope of such system is limited.⁹ The Committee of Experts noted in this regard that it "considers it necessary to progressively move from employer's liability

⁸ Where laws stipulate other methods to determine the cash benefits, the amount is to be comparable to the amount resulting on average of such of those earnings as are taken into account for the purpose of computing Benefits. Art. 7 of C.183. Possibility of exemption for Member States whose economy and social security system are insufficiently developed if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

⁹ ILO, *Report of the Committee on Maternity Protection: Second Discussion in Plenary*, 2000, p.3.

	mechanisms to the establishment of social security schemes through which maternity benefits are financed and provided to women workers. The Committee recalls the important role of social security systems based on the principles of collective financing and solidarity, as well as risk sharing, in ensuring better protection of workers and achieving equality of treatment, as provided in particular in Conventions Nos 102 and 183, and Recommendation No. 191.”¹⁰ It also recalled that “the principle of solidarity in financing maternity benefits is also essential to the promotion of non-discrimination at work: when employers are not required to bear the direct cost of maternity benefits, a potential obstacle is removed from the employment of women of childbearing age”.¹¹
<i>Nursing</i>	
Art.3(d) of C.3, Art.5 of C.103 & Art. 10 of C.183	• Objective: ○ C.3: entitlement to two 30-minute breaks a day during working hours to breastfeed. ○ C.103: entitlement to interrupt work to breastfeed at a time or times prescribed by national laws or regulations; these interruptions of work are counted as working time with pay in cases in which the matter is governed by or in accordance with laws and regulations; in cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement. ○ C.183: entitlement to one or more daily breaks or a daily reduction of work hours to breastfeed and that time is counted as working time with pay. • Comparison: C.183 leaves it to national laws and regulations to decide the number and duration of nursing breaks and introduces the possibility of converting daily breaks into a daily reduction of hours of work. • Current relevance: ○ C.3: provides for basic nursing break entitlement during working hours. ○ C.183: C.183 provides for more flexible arrangements for nursing breaks and makes explicit provision for nursing break to be counted as working time and remunerated accordingly; sets out rights to assist mothers to continue breastfeeding upon their return to work.
<i>Prohibition of dismissal and protection of employment</i>	
Art. 4 of C.3, Art. 6 of C.103 & Art. 8(1)(2) of C.183	• Objective: ○ C.3: prohibits the dismissal of a worker during maternity leave or during any extension of such leave that may be necessitated by illness resulting from pregnancy or confinement. ○ C.103: prohibits the dismissal of a women during maternity leave. ○ C.183: prohibits the dismissal during pregnancy, absence on leave or during a period following the return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that reasons for dismissal rests on the employer. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave. • Comparison: C.183 extends the period of protection against dismissal and alters the nature of the protection afforded in order to allow employers to dismiss workers for reasonable causes unrelated to pregnancy or maternity; establishes the right to return to the same position or an equivalent position following maternity leave. • Current relevance:

¹⁰ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 620.

¹¹ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 362.

	○ C.3: the protection under C.3 is less than that provided by the most up-to-date C.183. ○ C.183: extends the period of protection against dismissal provided in C.3 but provides for a possibility for dismissal in case of grounds unrelated to the pregnancy or birth of the child and its consequences or nursing.
Non-discrimination	
Art. 9 of C.183	• <i>Objective:</i> ○ C.3: No provision. ○ C.103: No provision. ○ C.183: requires Member States to adopt measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment, which shall include a prohibition from requiring a test for pregnancy when a woman is applying for employment. • <i>Current relevance:</i> C.183 provides protection against discrimination in access to employment on grounds of maternity.
Health protection	
Art. 3 of C.183	• <i>Objective:</i> ○ C.3: No provision. ○ C.103: No provision. ○ C.183: requires Member States to adopt measures, after consulting the representative organizations of employers and workers, to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child. • <i>Current relevance:</i> C.183 is the first recognition in the ILO's maternity protection standards of the right to health protection for pregnant and breastfeeding women; reaffirmed with the recognition of the right to a safe and healthy working environment as one of the fundamental principles and rights at work.

The following table provides a provision-by-provision analysis of the Recommendation to be reviewed: Recommendation No. 191. Recommendation No. 191, which de facto replaces Recommendation No. 95, represents together with Convention No. 183 the most up-to-date instruments in respect of maternity protection.

ANALYSIS OF SUBSTANTIVE PROVISIONS OF RECOMMENDATION NO. 191	
Maternity leave	
Para. 1	• <i>Objective:</i> calls for the extension of the period of maternity leave referred to in Article 4 of C.183 to at least 18 weeks and in the event of multiple births; measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth. • <i>Current relevance:</i> extends the period of maternity leave provided in C.183 and offers additional flexibility.
Benefits	
Paras 2-3	• <i>Objective:</i> calls to raise the cash benefits to which a woman is entitled to the full amount of the woman's previous earning. Establishes a list of maternal medical benefits: care given by a general practitioner or a specialist; maternity care given by a qualified midwife or by another maternity service; maintenance in a hospital or

	other medical establishment; any necessary pharmaceutical and medical supplies, examinations and tests; and dental and surgical care. • <i>Current relevance</i>: extends the benefits provided in C.183
<i>Financing of benefits</i>	
Para. 4	• <i>Objective</i>: envisages that for the purpose of financing of maternity benefits, contributions and/or taxes, whether paid by both the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex. • <i>Current relevance</i>: ensures that the burden of contribution is borne without distinction based on sex.¹²
<i>Employment protection and non-discrimination</i>	
Para. 5	• <i>Objective</i>: guarantees the right to return to former position or an equivalent position paid at the same rate at the end of the leave; the period of leave referred to in Arts 4-5 of C.183 should be considered as a period of service for the determination of the rights. • <i>Current relevance</i>: calls for maintaining employment-related entitlements and rights during maternity leave.
<i>Health protection</i>	
Para. 6	• <i>Objective</i>: ensures assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child; the results of the assessment should be made available to the woman concerned; protective measures should be taken when work involves health risks and alternatives to the work should be provided to the worker concerned; measures should be taken in particular in respect of certain risks listed. • <i>Current relevance</i>: prevention, mitigation and protection measures to ensure the right to a safe and healthy working environment for pregnant and nursing women represent a particularly important component of maternity protection.¹³
<i>Breastfeeding mothers</i>	
Paras 7-9	• <i>Objective</i>: adapts the frequency and length of nursing breaks to particular needs, on production of a medical certificate or other appropriate; combines the time allotted for daily nursing breaks to allow a reduction of hours of work at the beginning or at the end of the working day; establishment of facilities for nursing under adequate hygienic conditions at or near the workplace, where practicable. • <i>Current relevance</i>: sets out guidance on how to assist mothers to continue breastfeeding upon their return to work.
<i>Related types of leave</i>	
Para. 10	• <i>Objective</i>: provides for an entitlement of employed fathers to use remainder of the mother's postnatal leave entitlement in case of death or if she cannot look after her child due to sickness; entitlement of the employed mother or the employed father to parental leave during a period following the expiry of maternity leave; extension of the protections of the Convention to adoptive parents. • <i>Current relevance</i>: envisages the possibility for the benefits and protective measures set out in the Convention to be granted, under certain circumstances, to fathers and adoptive parents. Envisages the possibility for parental leave.¹⁴

¹² ILO, [Maternity Protection at Work, Revision of the Maternity Protection Convention \(Revised\), 1952 \(No. 103\), and Recommendation, 1952 \(No. 95\)](#), Report V(2), International Labour Conference, 87th Session, 1999, p. 167.

¹³ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 479.

¹⁴ Para. 22 of the Workers with Family Responsibilities Recommendation, 1981 (No. 165) provides that "either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded."

The instruments in 2023

A Policy context

Maternity protection is recognised as a fundamental need and a human right, inherent to all women, regardless of their status or occupation.¹⁵ Effective maternity protection is a key element of social protection, which improves the lives of mothers, secures the health and nutrition of women and children, and contributes to gender equality.¹⁶ Maternity protection is a policy instrument in addressing the demographic challenge of an ageing society by reducing child mortality and slowing the decline in working age population as well as the increase in the dependency ratio.

Globally, only 44.9 per cent of women giving birth receive a maternity cash benefit.¹⁷ Data from the International Social Security Association shows that 174 countries provide statutory periodic maternity cash benefits, which allows women the opportunity to rest prior to childbirth and recover after.¹⁸ The adequacy of the maternity cash benefits provided is assessed based on the amount and the duration of the leave period; however, maternity cash benefits often do not meet the minimum standards set out in international labour instruments.¹⁹ Across the world, only 43.8 per cent of the female labour force are entitled to maternity benefits through social insurance and only 9.7 per cent are covered by statutory non-contributory benefits.²⁰ While the regulation of work conditions for pregnant and breastfeeding women is a key element of maternity protection, “only one in ten potential mothers across the world live in countries where pregnant or breastfeeding workers cannot be obliged to perform dangerous or unhealthy work”.²¹

The coverage of maternity leave provisions for some categories of workers remains particularly low. In 2021, only 13.8 per cent of self-employed women live in one of the 81 countries that provide mandatory coverage for maternity leave cash benefits for self-employed women.²² In addition, only 52 countries offer equal maternity leave rights to adoptive parents.²³

¹⁵ ILO, General Survey, [Achieving gender equality at work](#), 2023, p. 92.

¹⁶ ILO, [World Social Protection Report 2020-2022](#), Social protection at the crossroads – in pursuit of a better future, 2021, p. 117.

¹⁷ ILO, [World Social Protection Report 2020-2022](#), Social protection at the crossroads – in pursuit of a better future, 2021, p. 107.

¹⁸ Data corresponding to a total of 183 countries for which country profiles have been created. See: International Social Security Association, [Country Profiles](#).

¹⁹ ILO, [World Social Protection Report 2020-2022](#), Social protection at the crossroads – in pursuit of a better future, 2021, p. 116.

²⁰ ILO, [World Social Protection Report 2020-2022](#), Social protection at the crossroads – in pursuit of a better future, 2021, p. 114. See also ILO, [Care at work](#), *Investing in care leave and services for a more gender equal world of work*, 2022, p. 25: “2 in 10 potential mothers remain at risk of inadequate protection and discrimination; since in 45 countries the law still requires full payment of maternity leave by employers. Since 2011, only 8 countries have moved away from employer liability schemes to social security or mixed schemes”.

²¹ ILO, [Care at work](#), 2022, p. 183.

²² ILO, [Care at work](#), 2022, p. 76 and 183.

²³ ILO, [Care at work](#), 2022, p. 25.

Over the past decade, national legislation increasingly provides for paternity leave rights,²⁴ recognizing the important role that paternity leave plays in allowing fathers to bond with new-borns, supporting the healthy recovery of the mother and in the sharing of unpaid care work, and challenging the norm that women should be the main caregivers.²⁵ In 2021, 115 countries offered paternity leave, 102 of which offered paid paternity leave. Systems of parental leave, including the duration and distribution of parental leave periods between parents, level of cash benefits, and source of funding, differ significantly between countries;²⁶ and take-up rates by men remain low.²⁷

As maternity protection engenders social and economic development and is essential to achieving the goals of both the ILO Decent Work Agenda and the 2030 Agenda for Sustainable Development, Member States are encouraged to incorporate the ILO's up-to-date standards on maternity protection in their national employment, social protection and development policies.²⁸

B International labour standards context

(1) Information relating to the ratification of Conventions Nos 3, 103 and 183

Convention No. 3 was revised by Convention No. 103 which in turn was revised by Convention No. 183. The adoption of Convention No. 103 did not close Convention No. 3 to further ratifications, but the entry into force in 2002 of Convention No. 183 has closed Convention No. 103 to further ratifications.

Convention No. 183 is in force in 43 Member States; Convention No. 103 is in force in 23 Member States; and Convention No. 3 is in force in 26 Member States.

However, as ratification of Convention No. 183 results in the automatic denunciation of Convention No. 103, but not of Convention No. 3, nine of the twenty-six countries currently bound by Convention No. 3 have also ratified Convention No. 183. As a result, seventeen of those twenty-six Member States are only bound by Convention No. 3.²⁹ In total, thirty-six Member States currently bound by Convention No. 3 and/or Convention No. 103 have not ratified the up-to-date Convention No. 183.³⁰

²⁴ Paternity leave is a leave entitlement which enables fathers to take a short period of leave immediately following the birth of a child. ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 700.

²⁵ ILO, [Care at work](#), 2022, p.98 and p.125.

²⁶ Parental leave consists of relatively long-term leave available to either or both parents, allowing them to care for an infant or young child for a specified period of time. ILO, General Survey, [Achieving gender equality at work](#), 2023, paras 656, 659.

²⁷ ILO, [Care at work](#), 2022, p. 151.

²⁸ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 216.

²⁹ Algeria, Argentina, Cameroon, Central African Republic, Colombia, Croatia, Côte d'Ivoire, France, Gabon, Greece, Guinea, Libya, Mauritania, Nicaragua, Panama, Spain, Bolivarian Republic of Venezuela.

³⁰ Algeria, Argentina, Cameroon, Central African Republic, Colombia, Côte d'Ivoire, France, Gabon, Guinea, Mauritania, Nicaragua, Panama, Bolivarian Republic of Venezuela. Bahamas, Plurinational State of Bolivia, Brazil, Chile, Croatia, Ecuador, Equatorial Guinea, Ghana, Greece, Guatemala, Kyrgyzstan, Libya, Mongolia, Papua New Guinea, Poland, Russian Federation, Spain, Sri Lanka, Tajikistan, Ukraine, Uruguay, Uzbekistan, Zambia.

In the context of article 22 reports, Member States which are bound by Conventions Nos 3 and 103 are only requested to report on the application of Convention No. 103,³¹ implying that the substantive content in these two Conventions overlaps.³² Member States which are bound by both Conventions Nos 3 and 183 are only requested to report on the application of Convention No. 183.

Convention	Effective ratifications:	Further information
Convention No. 3	26 effective ratifications (8 denunciations)	• <u>Last ratification</u>: Montenegro (2006) (denounced on Sep 2012) • <u>Ratification by region</u>: Europe and Central Asia: 16 ratifications;³³ Africa: 9 ratifications;³⁴ Americas: 9 ratifications;³⁵ Asia and the Pacific: 0 ratifications; Arab States: 0 ratification. • <u>Declaration of application to non-metropolitan territories</u>: declarations of applicability (<i>China – Hong Kong Special Administrative Region, New Caledonia, French Polynesia</i>) • Nine of the 26 countries currently bound by C.3 have also ratified C.183
Convention No. 103	23 effective ratifications (18 denunciations)	• <u>Last ratification</u>: Montenegro (2006) (automatic denunciation on Apr 2013 by C.183) • <u>Ratification by region</u>: Europe and Central Asia: 24 ratifications;³⁶ Africa: 4 ratifications;³⁷ Americas: 10 ratifications;³⁸ Asia and the Pacific: 3 ratifications;³⁹ Arab States: 0 ratification.
Convention No. 183	43 effective ratifications	• <u>Last ratification</u>: El Salvador (will enter into force on Jun 2023)

³¹ [GB.267/LILS/4/2\(Rev.\)](#), para. 39; Appendix III to GB.267/9/2. See also under (b) Decisions by the Governing Body at the 209th Session (February-March 1979) following the submission of the Final Report of the Working Party on International Labour Standards (GB.209/PFA/5/3), reproduced in Official Bulletin, 1979, Series A, special number.

³² [GB.283/LILS/WP/PRS/2](#), p.2.

³³ *Bulgaria, Croatia, France, Germany, Greece, Hungary* (denounced on May 2010), *Bosnia and Herzegovina* (denounced on Dec 2011), *Italy, Montenegro* (denounced on Sep 2012), *Latvia, Luxembourg, Romania, Serbia* (denounced on Nov 2000), *Spain, Slovenia* (denounced on Mar 2010) and *North Macedonia*.

³⁴ *Algeria, Guinea, Côte d'Ivoire, Burkina Faso, Cameroon, Mauritania, Libya, Central African Republic and Gabon*.

³⁵ *Argentina, Brazil* (denounced on Jul 1961), *Chile* (denounced on Oct 1997), *Colombia, Cuba, Nicaragua, Panama, Uruguay* (denounced on Oct 1955) and *Bolivarian Republic of Venezuela*,

³⁶ *Austria* (automatic denunciation in April 2005 by C.183), *Azerbaijan* (automatic denunciation in October 2011 by C.183), *Belarus* (automatic denunciation in February 2005 by C.183), *Greece, Hungary* (automatic denunciation in November 2004 by C.183), *Kyrgyzstan, Republic of Moldova* (automatic denunciation in August 2007 by C.183), *Croatia, Bosnia and Herzegovina* (automatic denunciation in January 2011 by C.183), *Italy* (automatic denunciation in April 2009 by C.183), *Montenegro* (automatic denunciation in April 2013 by C.183), *Luxembourg* (automatic denunciation in April 2009 by C.183), *Netherlands* (automatic denunciation in January 2010 by C.183), *North Macedonia* (automatic denunciation in October 2013 by C.183), *Poland, Portugal* (automatic denunciation in November 2014 by C.183), *San Marino* (automatic denunciation in June 2020 by C.183), *Serbia* (automatic denunciation in August 2011 by C.183), *Slovenia* (automatic denunciation in March 2011 by C.183), *Spain, Tajikistan, Ukraine, Uzbekistan and Russian Federation*.

³⁷ *Equatorial Guinea, Libya, Ghana and Zambia*.

³⁸ *Plurinational State of Bolivia, Brazil, Chile, Cuba* (automatic denunciation, June 2005 by C.183), *Ecuador, Guatemala, Uruguay, Bolivarian Republic of Venezuela* (denounced, October 1985), *Bahamas and Belize* (automatic denunciation, November 2006 by C.183).

³⁹ *Mongolia, Sri Lanka and Papua New Guinea*.

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- **Ratification by region:** Europe and Central Asia: 27 ratifications;⁴⁰ Africa: 9 ratifications;⁴¹ Americas: 7 ratifications;⁴² Asia and the Pacific: 0 ratifications; Arab States: 0 ratification.
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(2) Information concerning the implementation of Conventions Nos 3, 103 and 183

There are currently 15 pending comments by the Committee of Experts under Convention No. 3; 24 pending comments under Convention No. 103; and 34 pending comments under Convention No. 183. There is a pending representation, submitted in 2021 under article 24 of the Constitution, alleging non-observance by Colombia of Conventions Nos 3, 12, 17, 18, 24, 25 and 144.⁴³

Under its examination of Convention No. 3, the Committee has noted with satisfaction regulations concerning the protection of employment of women workers in domestic service and agriculture⁴⁴ and measures to promote breastfeeding.⁴⁵ It has considered the duration of maternity leave;⁴⁶ and qualifying periods for the daily maternity allowance,⁴⁷ free health care,⁴⁸ and benefits to women who do not fulfil conditions for entitlement.⁴⁹ The Committee has examined the prohibition of dismissal during maternity leave⁵⁰ and recalled the importance of labour inspection;⁵¹ all women should be entitled to at least two breaks of half an hour to nurse their children.⁵²

Within its examination of Convention No. 103, the Committee has noted progress with regard to the establishment of nursing breaks⁵³ and maternity leave,⁵⁴ including compulsory postnatal leave.⁵⁵ The Committee has stressed that domestic workers should enjoy conditions that are not less favourable than those applicable to workers generally;⁵⁶ has raised the issue of the extension of maternity leave in the event of late childbirth;⁵⁷ and examined limitations to the entitlement to maternity leave.⁵⁸ The Committee has considered the provision of medical care

⁴⁰ Albania, Austria, Azerbaijan, Bulgaria, Germany, Hungary, Republic of Moldova, Bosnia and Herzegovina, Italy, Slovakia, Czechia, Montenegro, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Portugal, Romania, San Marino, Serbia, Switzerland, Cyprus, Belarus, Slovenia, Kazakhstan and North Macedonia.

⁴¹ Morocco, Senegal, Benin, Burkina Faso, Djibouti, Mali, Mauritius, Niger and Sao Tome and Principe.

⁴² Cuba, Panama, Peru, El Salvador, Dominican Republic, Belize and Antigua and Barbuda.

⁴³ Colombia, [Representation](#) - C003, C012, C017, C018, C024, C025, C144 (article 24) (2021).

⁴⁴ Argentina, [observation](#), adopted in 2013; Argentina, [direct request](#), adopted in 2013.

⁴⁵ Argentina, [observation](#), adopted in 2013; Panama, [observation](#), adopted in 2014.

⁴⁶ Colombia, [direct request](#), adopted in 2013; Côte d'Ivoire, [direct request](#), adopted in 2022; Gabon, [direct request](#), adopted in 2013.

⁴⁷ Cameroon, [direct request](#), adopted in 2022.

⁴⁸ Central African Republic, [direct request](#), adopted in 2013.

⁴⁹ Colombia, [direct request](#), adopted in 2013.

⁵⁰ Cameroon, [direct request](#), adopted in 2022; China – Hong Kong Administrative Region, [direct request](#), adopted in 2013.

⁵¹ Mauritania, [direct request](#), adopted in 2021.

⁵² Nicaragua, [direct request](#), adopted in 2022; Mauritania, [direct request](#), adopted in 2021.

⁵³ Zambia, [observation](#), adopted in 2019.

⁵⁴ Zambia, [observation](#), adopted in 2019.

⁵⁵ Zambia, [direct request](#), adopted in 2019; Bahamas, [observation](#), adopted in 2015; Mongolia, [direct request](#), adopted in 2021; Ghana, [observation](#), adopted in 2015; Guatemala, [observation](#), adopted in 2014.

⁵⁶ Bolivia, [observation](#), adopted in 2013.

⁵⁷ Ghana, [observation](#), adopted in 2015.

⁵⁸ Bahamas, [observation](#), adopted in 2015; Ecuador, [direct request](#), adopted in 2014.

benefits,⁵⁹ the right to receive benefits out of social assistance funds,⁶⁰ and the question of the financing.⁶¹ It has examined cases where the prohibition of dismissal during maternity leave was not ensured.⁶²

Under its examination of Convention No. 183, the Committee has examined its scope of application,⁶³ and in particular the coverage of public employees,⁶⁴ and women workers in the informal economy.⁶⁵ The Committee raised the issue of the extension of maternity leave in the event of late childbirth,⁶⁶ the right to additional leave in case of illness or complications,⁶⁷ and the minimum period of compulsory postnatal leave.⁶⁸ With regard to maternity benefits, it has examined the conditions to qualify for cash benefits⁶⁹ and their level;⁷⁰ the entitlement to cash benefits in case of child abandonment;⁷¹ the right to the due provision of medical care benefits;⁷² and the granting of adequate maternity benefits out of social assistance funds.⁷³ The Committee has examined the protection against dismissal,⁷⁴ including the burden of proof,⁷⁵ and requested the reasons for and statistics on the number of dismissals recorded by the labour inspection services.⁷⁶ It has considered the right to return to work to the same or equivalent

⁵⁹ Mongolia, [direct request](#), adopted in 2021; Tajikistan, [direct request](#), adopted in 2021; Bahamas, [observation](#), adopted in 2015; Bahamas, [observation](#), adopted in 2015; Guatemala, [observation](#), adopted in 2014; Chile, [observation](#), adopted in 2022.

⁶⁰ Mongolia, [direct request](#), adopted in 2021.

⁶¹ Uzbekistan, [direct request](#), adopted in 2019; Ghana, [observation](#), adopted in 2015; Greece, [direct request](#), adopted in 2014; Guatemala, [direct request](#), adopted in 2014; Spain, [direct request](#), adopted in 2013.

⁶² Libya, [observation](#), adopted in 2022; Equatorial Guinea, [observation](#), adopted in 2021; Mongolia, [direct request](#), adopted in 2021; Bahamas, [observation](#), adopted in 2015; Ghana, [observation](#), adopted in 2015.

⁶³ Czechia, [direct request](#), adopted in 2022; Niger, [direct request](#), adopted in 2022; Mali, [observation](#), adopted in 2021; Mauritius, [direct request](#), adopted in 2021; Dominican Republic, [direct request](#), adopted in 2020; Benin, [direct request](#), adopted in 2014.

⁶⁴ Latvia, [observation](#), adopted in 2021.

⁶⁵ Mauritius, [direct request](#), adopted in 2021.

⁶⁶ Senegal, [direct request](#), adopted in 2019.

⁶⁷ Burkina Faso, [direct request](#), adopted in 2014; Latvia, [observation](#), adopted in 2021.

⁶⁸ Latvia, [observation](#), adopted in 2021; Morocco, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2019; Bulgaria, [direct request](#), adopted in 2014.

⁶⁹ Dominican Republic, [direct request](#), adopted in 2020; Peru, [direct request](#), adopted in 2019.

⁷⁰ Latvia, [observation](#), adopted in 2021.

⁷¹ Czechia, [direct request](#), adopted in 2022; Niger, [direct request](#), adopted in 2022; Latvia, [observation](#), adopted in 2021.

⁷² Niger, [direct request](#), adopted in 2022; Latvia, [observation](#), adopted in 2021; Mauritius, [direct request](#), adopted in 2021; Montenegro, [direct request](#), adopted in 2021; Dominican Republic, [direct request](#), adopted in 2020; Peru, [direct request](#), adopted in 2019.

⁷³ Czechia, [direct request](#), adopted in 2022; Lithuania, [direct request](#), adopted in 2022; Montenegro, [direct request](#), adopted in 2021; Republic of Moldova, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2019;

⁷⁴ Mali, [observation](#), adopted in 2021; Morocco, [direct request](#), adopted in 2021; Peru, [direct request](#), adopted in 2019; Senegal, [direct request](#), adopted in 2019; Belize, [observation](#), adopted in 2014; Benin, [direct request](#), adopted in 2014; Mauritius, [direct request](#), adopted in 2021; Bulgaria, [direct request](#), adopted in 2014.

⁷⁵ Luxembourg, [direct request](#), adopted in 2021; Montenegro, [direct request](#), adopted in 2021.

⁷⁶ Benin, [direct request](#), adopted in 2014.

position⁷⁷ and to breastfeeding breaks;⁷⁸ and referred to non-discrimination in employment,⁷⁹ the prohibition of pregnancy test requirements,⁸⁰ and health protection.⁸¹

With respect to the implementation of Conventions Nos 3 and 103 by Member States, the Committee has noted issues of coverage, duration of maternity leave, provisions of cash and maternity medical care benefits and breastfeeding arrangements. The Committee may equally raise these points under Convention No. 183.

In its most recent General Survey, the Committee noted that the majority of governments reported no distinction in national legislation regarding the terms “child” and “woman” in relation to entitlement to maternity protection provisions, as provided in C.183.⁸² In 120 out of 184 countries, the situation was in accordance with Article 4(1) of Convention No. 183, with 14 weeks of paid maternity leave, while in 52 countries paid maternity leave was of 18 weeks or more, as called for in Recommendation No. 191. In 44 countries, paid maternity leave was provided in line with the requirements set out in the earlier instruments (12–13 weeks), while in 20 countries, its duration was less than 12 weeks.⁸³ The Committee observed that in a number of countries there was a compulsory period of six-week postnatal leave, in accordance with Convention No. 183 and that, in some countries, the compulsory period of postnatal leave was longer.⁸⁴ However, in many countries, the compulsory period of postnatal leave was either less than six weeks or not specified.⁸⁵ According to ILO estimates, statutory paid maternity leave with benefits at the rate of at least two thirds of the women’s previous earnings for a minimum period of 14 weeks was provided in 66 out of 174 countries; in 23 countries, paid maternity leave with benefits at the full amount of the woman’s previous earnings was provided for at least 18 weeks, which corresponded to the provisions of Recommendation No. 191. However, in a number of countries, the duration or level of benefits did not meet the criteria established by Convention No. 183.⁸⁶ The Committee observed that maternity medical care, as required by Convention No. 183, was guaranteed in a significant number of countries, but that the effective coverage varied significantly.⁸⁷ It observed that maternity cash benefits were funded solely through social protection systems anchored in national social security legislation in 117 countries, covering 76.1 per cent of all potential mothers worldwide; in 45 countries, employers were still directly liable for the cost of maternity cash benefits and, in 20 countries, such

⁷⁷ Mali, [direct request](#), adopted in 2021; Dominican Republic, [direct request](#), adopted in 2020.

⁷⁸ Montenegro, [direct request](#), adopted in 2021

⁷⁹ Netherlands, [observation](#), adopted in 2022; Norway, [direct request](#), adopted in 2022; Peru, [direct request](#), adopted in 2019; Senegal, [direct request](#), adopted in 2019

⁸⁰ Mauritius, [direct request](#), adopted in 2021; Dominican Republic, [direct request](#), adopted in 2020; Senegal, [direct request](#), adopted in 2019

⁸¹ Niger, [direct request](#), adopted in 2022; Mauritius, [direct request](#), adopted in 2021; Montenegro, [direct request](#), adopted in 2021; Republic of Moldova, [direct request](#), adopted in 2021; Dominican Republic, [direct request](#), adopted in 2020; Peru, [direct request](#), adopted in 2019; Burkina Faso, [direct request](#), adopted in 2014; Bulgaria, [direct request](#), adopted in 2014.

⁸² ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 254.

⁸³ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 557.

⁸⁴ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 563.

⁸⁵ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 565.

⁸⁶ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 584.

⁸⁷ ILO, General Survey, [Achieving gender equality at work](#), 2023, para 608-609.

benefits were provided by both social protection systems and employers.⁸⁸ A 2022 study conducted by the ILO shows that, overall, 98 out of 185 countries are in line with the key provisions of Convention No. 183.⁸⁹

► **Table 2.7.** Presence of maternity leave scheme aligned with the provisions of Convention No. 183, by region and by income group, 2021 (no. of countries)

Region/income group	Aligned with C183	Not aligned	Not assessable	Average duration of leave paid at 67% by social insurance only
World	98	82	5	18.9
Africa	22	32	–	13.4
Americas	15	19	–	15.6
Arab States	–	11	–	10.0
Asia and the Pacific	12	20	1	19.7
Europe and Central Asia	49	–	4	21.9
Low-income	9	19	–	13.3
Lower-middle-income	20	26	1	21.7
Upper-middle-income	29	21	–	16.2
High-income	40	16	4	20.7

Note: 185 countries and territories. – = nil; C183 = Convention No. 183. Source: ILO research, see Annex, table A.1 for country-level data and methodological explanation.

Source: ILO, [Care at work](#), 2022, p. 71.

Although none of the standards under examination in the General Survey contained explicit references to paternity leave, the Committee of Experts noted “a positive change in recent years in paternity leave policies as a result of a transformation in societal values and demographic shifts”.⁹⁰ It recalled the 2009 International Labour Conference resolution concerning gender equality at the heart of decent work, that contained a section on the role played by men in gender equality and that the 2021 Conference resolution concerning the recurrent discussion on social protection (social security) recognized the importance of gender-responsive social protection policies, including by fostering income security during paternity leave.⁹¹ The Committee emphasized:⁹²

the importance of including working fathers in childcare leave measures, such as paternity leave, which can have important implications for the equal sharing of family responsibilities and the promotion of genuine gender equality in employment and occupation. The Committee therefore encourages governments to adopt comprehensive

⁸⁸ ILO, General Survey, [Achieving gender equality at work](#), 2023, para 617.

⁸⁹ ILO, [Care at work](#), 2022, p. 25.

⁹⁰ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 699.

⁹¹ ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 699; ILO, [Resolution concerning gender equality at the heart of decent work](#), International Labour Conference, 98th Session, 2009, paras 6, 28 and 42; ILO, [Resolution concerning the second recurrent discussion on social protection \(social security\)](#), International Labour Conference, 109th Session, 2021, para. 13(f).

⁹² ILO, General Survey, [Achieving gender equality at work](#), 2023, para. 702.

and coordinated measures in consultation with the social partners with a view to the establishment in national legislation of a statutory right to paid paternity leave.

Key considerations

In examining Conventions Nos 3 and 183 and Recommendation No. 191 for the purpose of determining their status, the following considerations are particularly relevant:

- Convention No. 3 was revised by Convention No. 103 which was subsequently classified as outdated following its revision by Convention No. 183. Convention No. 3 takes a sectoral approach to maternity protection, applying only to industrial or commercial undertakings, while Convention No. 183 and Recommendation No. 191 expanded the scope of maternity protection to cover all employed women, including those in atypical forms of dependent work.
- Convention No. 3 was classified as having interim status following its review by the Cartier Working Party: it considered that, although Convention No. 183 represented the modern view of how a system of protection of maternity should be designed, certain countries could, during a transitory period, consider the introduction of such a system of protection to be challenging, and so Convention No. 3 could serve a useful purpose during a period of transition from the older to the recent and modern system.
- The number of ratifications of Convention No. 183 by Member States has continued to increase, while the number of effective ratifications of Convention No. 3 has decreased. Currently, 17 Member States bound by Convention No. 3 have not ratified Convention No. 183, while 43 Member States have effective ratifications of Convention No. 183.
- There are few pending comments in relation to Convention No. 3 by the Committee of Experts compared to Convention No. 183.
- Since Convention No. 3 was adopted, there has been considerable evolution in the ILO regulation of the topic. Convention No. 183 and Recommendation No. 191 are the most recently adopted of the international labour standards on maternity protection and contribute to the effective achievement of gender equality.
- Paragraph 10 of Recommendation No. 191 concerns parental leave. In the case of the death or incapacity of mothers before their postnatal leave has ended, employed fathers should be entitled to leave of a duration equal to the unexpired portion of the maternity leave. Employed mothers or fathers should be entitled to parental leave after maternity leave, with its length and distribution determined in any manner consistent with national practice. Paragraph 2 of Recommendation No. 165 also establishes that both parents should have the possibility of parental leave without impact on their employment. The body of international labour standards does not include any further regulation of paternity leave. Recent ILO work suggests that paternity leave contributes to the achievement of equality of women in the workforce, as well as to the health and safety of the mother and benefits to the child.⁹³

⁹³ ILO, [Care at work](#), 2022, p. 125.

The following considerations are particularly relevant when examining the outdated Convention No. 103 and Recommendation No. 95, for the purpose of determining the follow-up to be taken:

- Convention No. 103 was explicitly revised by Convention No. 183, and Recommendation No. 95 was de facto replaced by Recommendation No. 191 in 2000. Both instruments will only be removed from the ILO's body of standards by a Conference's decision to abrogate or withdraw, as relevant.
- The number of ratifications of Convention No. 183, the revising instrument, increasing, while the number of effective ratifications of Convention No. 103 has decreased. Currently, 23 Member States are bound by Convention No. 103, while 43 Member States are bound by Convention No. 183.
- The Committee of Experts has continued its supervision of Convention No. 103 in relation to a number of Member States and has a number of pending comments.

Possible action to be considered in relation to Conventions Nos 3, 103 and 183 and Recommendations Nos 95 and 191

Convention No. 183 and Recommendation No. 191, which are instruments of general application, are the most recent international instruments concerning maternity protection. They adopt a more inclusive and better integrated approach to maternity protection than the earlier instruments, and seek to enable women to successfully combine family life and work. They contribute to achieving gender equality at work. While the topics of the instruments are as relevant now as they were at the time that the earliest instruments were adopted, the regulatory approach has changed.

Following its review of Conventions Nos 3 and 183 and Recommendation No. 191, and consideration of the follow up to be taken to outdated Convention No. 103 and Recommendation No. 95, the SRM TWG will tailor lessons learnt through the SRM TWG process to the specificities of this review.

Based on the preceding information, and ensuring consistency with past SRM TWG recommendations, **the Office recommends consideration of:**

- the classification of Convention No. 3 as an *outdated* instrument and of Convention No. 183 and Recommendation No. 191 as *up-to-date* instruments, while acknowledging the status of Convention No. 103 and Recommendation No. 95 as *outdated* instruments;
- the identification of a *regulatory gap in coverage* in relation to the comprehensive international regulation of maternity protection to contribute to gender equality in the work; and
- *practical and time-bound follow-up action* composed of the non-normative measures set out below.

In this regard, the Office has taken particular account of the existence of the up-to-date instruments on maternity protection, which have broad scope, steadily increasing number of ratifications and take a new regulatory approach, resulting in the older instruments having largely lost their purpose; as well as the role of paternity leave in contributing to the fundamental principle and right of gender equality at work.

The SRM TWG will take decisions concerning the three elements within its mandate and make corresponding recommendations to the Governing Body concerning Conventions Nos 3, 103 and 183 and Recommendations Nos 95 and 191.

1. STATUS OF INSTRUMENTS UNDER REVIEW:

The SRM TWG will consider whether, within their current legal status as active instruments, Conventions Nos 3 and 183 and Recommendation No. 191 should be classified as *up-to-date* instruments, instruments *requiring further action to ensure their continued and future relevance*, or *outdated* instruments, while acknowledging the status of Convention No. 103 and Recommendation No. 95 as *outdated* instruments. In deciding the status of Conventions Nos 3 and 183 and Recommendation No. 191, the SRM TWG will consider whether they are fit for purpose.

2. IDENTIFICATION OF GAPS IN COVERAGE:

In determining whether or not a regulatory gap in coverage exists in relation to maternity protection, the SRM TWG should consider all relevant elements, including that

- i. the subject matter is regulated by two up-to-date instruments: Convention No. 183 and Recommendation No. 191; and
- ii. the possible existence of a regulatory gap in relation to the comprehensive international regulation of paternity protection.

3. FOLLOW-UP ACTION AS APPROPRIATE:

Considering past practices of the SRM TWG and the specificities of the instruments under review, the SRM TWG will consider what follow-up action should be taken:

- i. **If the SRM TWG considers that Convention No. 183 and Recommendation No. 191 are up-to-date instruments**, it could recognize that the aim of avoiding gaps in legal protection in Member States, as well as ensuring the ratification and application of the most up-to-date international standards on maternity protection, requires the *promotion of ratification of relevant up-to-date Conventions in countries in which other related Conventions are still in force*. Accordingly, the SRM TWG could stress that this involves concerted and committed attention by governments and the social partners, supported by the Office. The SRM TWG could recommend that:

- (a) the tripartite constituents should collaborate to take active steps towards ratification and effective implementation of Convention No. 183 by Member States in which Conventions Nos 3 and 103 are currently in force and that have not already ratified Convention No. 183; and

- (b) the Office should support the tripartite constituents in taking steps towards ratification of Convention No. 183 by Member States in which Conventions Nos 3 and 103 are currently in force by implementing a proactive plan of action tailored to each Member State concerned.
- ii. **If the SRM TWG considers that Convention No. 3 has the status of an outdated instrument,** it could decide to recommend that its abrogation or withdrawal is considered either:
 - (a) At a particular session or sessions of the Conference as it determines; or
 - (b) At a time when all Member States currently bound by the outdated Convention have ratified the related up-to-date Convention.
- iii. **Should the SRM TWG alternatively consider that Conventions Nos 3 and/or 183 have the status of instruments requiring further action to ensure their continuing and future relevance,** it could then recommend that the Office take necessary further actions that could include:
 - (a) continuing to provide guidance and technical support to Member States on the application of the maternity protection instruments;
 - (b) developing internal guidelines for the provision of Office advice to Member States considering ratification and implementation of the maternity protection instruments to ensure application in law and practice;
 - (c) conducting research to identify the key challenges and opportunities in relation to the application of the maternity protection instruments, with a view to assessing with tripartite involvement options for possible follow-up action.
- iv. **If the SRM TWG considers that there is a regulatory gap in coverage in relation to paternity protection that should be filled,** it could recommend that the Governing Body consider addressing this gap, including through placing a standard-setting item to that effect on the agenda of the Conference or through non-normative means.
- v. **If the SRM TWG considers that the outdated status of Convention No. 103 warrants a decision to abrogate the Convention by the Conference,** it could decide to recommend that abrogation be considered either:
 - (a) At a particular session or sessions of the Conference as it determines; or
 - (b) At a time when the majority of Member States currently bound by the outdated Convention have ratified the related up-to-date Convention.
- vi. **If the SRM TWG considers that the outdated status of Recommendation No. 95 warrants a decision to withdraw the Recommendation by the Conference as soon as practicable,** it could recommend that withdrawal be considered at a particular session or sessions of the Conference as it determines.