



# Governing Body

341st Session, Geneva, March 2021

Legal Issues and International Labour Standards Section

LILS

International Labour Standards and Human Rights Segment

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## Procedure for the appointment of members of the Committee of Experts on the Application of Conventions and Recommendations

### Purpose of the document

As requested by the Governing Body, this document provides information on the selection and recruitment of experts for the Committee of Experts on the Application of Conventions and Recommendations within the context of the Committee's mandate and function (see the draft decision in paragraph 21).

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

**Main relevant outcome:** Outcome 2: International labour standards and authoritative and effective supervision.

**Policy implications:** None.

**Legal implications:** None.

**Financial implications:** None.

**Follow-up action required:** None.

**Author unit:** International Labour Standards Department (NORMES).

**Related documents:** [GB.334/INS/5](#).

1. At a Meeting of the Officers of the Governing Body and the other members of the tripartite Screening Group, which took place on 15 May 2020 in lieu of the cancelled 338th Session of the Governing Body, the Office was requested to provide clarifications regarding the procedure for filling vacant posts on the Committee of Experts on the Application of Conventions and Recommendations.<sup>1</sup>
2. Clarifications had also been sought by some members of the Governing Body at its 334th Session, who requested the Office to continue to report on progress towards completing the work plan on strengthening the supervisory machinery (formerly also known as the Standards Initiative), including with regard to the review and possible further improvements of the working methods of the supervisory bodies, in order to strengthen tripartism, coherence, transparency and effectiveness.<sup>2</sup> The International Labour Conference, in section IV(A) of the ILO Centenary Declaration for the Future of Work, adopted at its 108th Session (2019), invited the Organization to further enhance transparency, affirming that “the setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO”. At the aforementioned Meeting of the Officers of the Governing Body, the spokesperson for the Africa group expressed the view that, in the interests of transparency and inclusivity, vacancies to the Committee of Experts should be communicated as widely as possible to ensure the broadest possible pool of qualified applicants, and that the process should be competitive so that the best candidates would stand out.
3. This paper provides the information requested at the Meeting of the Officers. In Part I, it recalls the evolution of the composition of the Committee of Experts and in Part II it sets out the criteria and procedure currently in place for the appointment of the Committee’s members.

## ► Part I. Establishment of the Committee of Experts and evolution of its composition

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### Establishment of the Committee of Experts

4. At its Eighth Session in 1926, the Governing Body decided to create the Committee of Experts on the basis of a resolution by the International Labour Conference (ILC).<sup>3</sup> The ILO Constitution, initially Part XIII of the Treaty of Versailles, did not establish a supervisory body with the specific task of examining reports submitted under Article 408 of the Treaty of Versailles (now article 22 of the ILO Constitution) each year by Member States on the measures taken to give effect to the provisions of Conventions to which they were party. It therefore fell to the International Labour Conference to supervise the application of standards. Indeed, until 1924, the reports submitted by governments were communicated to the ILC, first in full and later in summarized form, in the Report that the Director of the Office (now Director-General) submitted to the Conference. The ILC

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<sup>1</sup> Minutes of the meetings of the Screening Group held in preparation of decisions made by correspondence by the Governing Body between March and October 2020, paras 146–156.

<sup>2</sup> GB.334/INS/5, para. 21, as amended by the Governing Body.

<sup>3</sup> Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles [current article 22 of the ILO Constitution], *Record of Proceedings, International Labour Conference, Eighth Session, 1926, Vol. I*, Appendix VII, 429. In accordance with the resolution, the two committees were named, respectively, “Committee of the Conference” and “Committee of Experts”.

examined them in the course of the general discussion on the Director's Report. It rapidly became apparent that the Conference could not continue to carry out this task, given the steadily increasing number of ratifications and reports, compounded by the adoption of new standards each year. Recognition of this gave rise to the establishment of a specific machinery to undertake such an examination. Thus, in 1926, the Conference Committee on the Application of Standards (CAS) and the Committee of Experts on the Application of Conventions (CEAC, later to become the Committee of Experts on the Application of Conventions and Recommendations (CEACR)) were established through the same Conference resolution.<sup>4</sup>

5. Extracts from the *Record of Proceedings* of the ILC in 1926<sup>5</sup> provide useful insight into the rationale behind the creation of these two bodies:

Further, it may be observed that the Conference and its Committees are essentially deliberative and political bodies, composed of the representatives of various interests, national or occupational, and that in general such bodies are not the best suited for the technical work now under consideration.

The Committee of Experts might therefore be, not a committee set up directly by the Conference, but a committee created by the Director, on the instructions of the Conference and with the approval of the Governing Body, to carry out a particular task in view of the technical preparation of one part of the work of the Conference. The Conference itself would conserve its proper political functions, but it would be advised as to the facts by this technical expert Committee, and it would, either directly, or through one of its own Committees, decide upon its attitude and upon what appropriate action it might take or indicate.

6. It was thus understood very early on that an effective supervisory system should involve the combination, on the one hand, of a technical examination involving guarantees of renowned expertise, impartiality and independence<sup>6</sup> and, on the other, an examination by a body of the ILO's supreme political organ, which would therefore be of tripartite composition.<sup>7</sup>

## Evolution of the Committee's composition over time

7. In 1927 and 1928, the membership of the CEACR consisted of eight experts and a substitute member. The experts were initially appointed for the duration of the CEACR's two-year trial period. As from 1934 they were appointed for a renewable three-year period. The number of experts rose to 10 in 1928 and 11 in 1932, with 1 member from

<sup>4</sup> Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles [current article 22 of the ILO Constitution]. The resolution recommended that "a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408". The ILC also requested the Governing Body to: "appoint ... a technical Committee of experts ... for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex his summary of the annual reports presented to the Conference under Article 408."

<sup>5</sup> ILC, *Record of Proceedings*, Eighth Session, 1926, 396–398.

<sup>6</sup> ILC, *Record of Proceedings*, Eighth Session, 1926, 239. The Office indicated that the members of the CEACR should "possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation." ILC, *Record of Proceedings*, Eighth Session, 1926, Appendix V, 401.

<sup>7</sup> ILO, *Monitoring Compliance with International Labour Standards: The Key Role of the ILO Committee of Experts on the Application of Conventions and Recommendations*, 2019, 13.

an “extra-European” country. In 1939, the CEACR had 13 members, 9 from European countries and 4 from non-European countries. In 1945, the Governing Body appointed 9 experts for the 13 vacant seats, which was the authorized number prior to the Second World War. Of those 9, 5 had been members of the CEACR prior to 1939. Following a request by the CEACR for the reinforcement of its membership, which had dropped to 10, and addressing the emerging need for experts qualified to examine the application of Conventions in non-metropolitan territories, the Governing Body had appointed three additional experts by March 1948, including the first woman expert. In 1951, the CAS recommended that the Governing Body examine the possibility of lengthening the duration of the Committee of Experts’ sessions and of, once again, increasing the number of experts. The Governing Body adopted this recommendation and membership rose from 13 to 17 members. In November 1962, the Governing Body appointed an additional member, increasing membership to 18, to ensure broader geographical distribution. Membership subsequently increased further to 19 in 1965 and 20 in 1979.

8. Throughout discussions guiding these developments, constituents stressed the importance of the experts’ individual qualifications, given that “the main requirements for membership were competence, integrity and the ability to make comparative study of the provisions of national legislation and ILO instruments”.<sup>8</sup>
9. The Committee of Experts currently has a membership of 20, based on the latest decision taken by the Governing Body in 1979. In 2002, the Committee of Experts established, by its own initiative, a 15-year limit to the experts’ term of office. This decision has had repercussions; the Governing Body has been increasingly called upon to appoint new members when previously appointed experts have reached 15 years of service.

## ► Part II. Criteria and procedure currently in place for the appointment of the Committee’s members

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10. While criteria for appointment to the CEACR have remained constant, the number of experts and the geographical balance evolved rapidly to respond to the Committee’s increasing workload and the diversification of ILO membership.

### Criteria

11. The selection and appointment of Committee members are based on criteria developed taking into account considerations of the Officers of the Governing Body, expressed over the course of various selection procedures. These criteria, along with ensuring respect for the principle of achieving and maintaining gender balance in the Committee’s composition, have continuously guided selection over the years<sup>9</sup> and include, in no particular order of priority:
  - knowledge and awareness of the ILO;
  - academic and legal standing;

<sup>8</sup> *Governing Body, Minutes, 159th Session (June–July 1964)*, statement by the Employers’ group, 49.

<sup>9</sup> ILC, *Record of Proceedings*, Eighth Session, 1926, 239. See also ILO, *Monitoring Compliance with International Labour Standards*, 2019, 16.

- expertise in labour law, human rights law and international law;
  - ability to accept the essentially administrative nature of the work combined with intellectual incisiveness;
  - ability to contribute within the different economic and cultural context of countries;
  - sensitivity and openness to the views of ILO tripartite constituents;
  - ability to influence or add a dimension to ILO work in the country in which the experts live;
  - ability to operate within the Committee of Experts, possessing the necessary personal qualities for the working environment, considering the international context of the work;
  - linguistic abilities.
- 12.** The selection criteria were set with due regard to the particular nature of the Committee of Experts and international labour standards. In the course of the adoption of the 1926 resolution, the Chairperson and Reporter of the Committee on Article 408 explained that the method of appointment of the members of the Committee of Experts should be left to the Governing Body, but that they “should essentially be persons chosen on the ground of expert qualifications and on no other ground whatever”.<sup>10</sup> As a general rule, the experts tend to be selected among senior judges and academics. Over the years, three judges from the International Court of Justice (ICJ) and numerous Supreme Court judges have served on the Committee. In 2020, members included two former ICJ judges, Mr Koroma and Mr Ranjeva, and three former Supreme Court judges, Ms Dixon Caton, who is also the current Committee’s Chairperson, Mr Lacabarats and the recently appointed Mr Ngcobo. Former members include Mr Bhagwati, Chief Justice of the Supreme Court of India and former Chairperson of the United Nations Human Rights Committee, Mr Ago, Judge at the ICJ, Chairperson of the Committee on Freedom of Association from 1961 to 1995 and member of the Committee of Experts from 1979 to 1995, and Mr Boutros-Ghali, subsequently Secretary-General of the United Nations. The Committee of Experts has progressively achieved broad gender parity; in 2020 its membership comprised 11 men and 9 women, including the first woman Chairperson, who was elected in 2019. Each geographical area is represented by five experts from a broad range of legal systems. The average age of the experts is 66 years.
- 13.** The Committee of Experts is expected to function in full independence, objectivity and impartiality.<sup>11</sup> From the very beginning, these principles were considered vital for ensuring that the Committee’s work enjoyed the highest authority and credibility; they have been consistently upheld by the ILC and the Governing Body as the cornerstone of this Committee and the ILO supervisory system as a whole. Appointments to the Committee of Experts have therefore always been made in the personal capacity of individuals who were recognized as impartial and had the required technical competence and independence.

<sup>10</sup> ILC, *Record of Proceedings*, Eighth Session, 1926, 239. The Office indicated that the members of the CEACR should “possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing, and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation.”

<sup>11</sup> ILO, *Monitoring Compliance with International Labour Standards*, 2019, 17.

## Selection process

14. In order to safeguard these important attributes, the identification of suitable candidates has always been entrusted to the ILO Director-General and the Office, since the Committee's creation. The following selection process is implemented by the Office in a consistent and rigorous manner.
15. As a first step, the Office gathers information on the profiles of eminent personalities from the region relevant to the CEACR vacancy, in consultation with field offices and drawing on, inter alia, records of publications or judicial decisions, memberships in high-level expert and human rights committees, reports on activities concerning the defence of labour and human rights. It then proceeds with the identification of a pool of possible suitable candidates, based on the above-mentioned criteria, limited to eminent independent personalities of the highest technical calibre and moral integrity.
16. Once sufficient information has been gathered, the Director of the International Labour Standards Department contacts the potential candidates and organizes interviews with those who express an interest. On average, five candidates are interviewed for each vacancy. The interviews are all based on the same set of questions, which are framed to assess candidates against the criteria listed above. The Director then presents a summary of the interviews of all candidates to the Director-General, who submits a report to the Officers of the Governing Body, with a commentary on each of the candidates interviewed. After consideration of the report, the Officers select a candidate whose appointment they will propose to the Governing Body. Experts are appointed by the Governing Body for a renewable term of three years. As already mentioned, the tenure is limited to a total of 15 years, representing a three-year term renewable four times.
17. The Governing Body has established similar processes for the appointment of other independent members of supervisory bodies, such as the Chairperson of the Committee on Freedom of Association and the members of ILO commissions of inquiry. Conversely, the tripartite members of supervisory bodies, such as the Committee on the Application of Standards, the Committee on Freedom of Association and ad hoc committees established to examine article 24 representations, are appointed at the initiative of the Government, Employers' and Workers' groups of the ILC and the Governing Body respectively.
18. As indicated at the outset, the system established in 1926 comprises, on the one hand, a political body the composition of which is at the full discretion of the tripartite constituents and, on the other, an independent body composed of eminent experts the appointment of which is made by the Governing Body, on the recommendation of its Officers and a technical assessment carried out by the Office.
19. With regard to the renewal of the term of office of previously appointed experts, the Governing Body has consistently given due consideration to the Committee's autonomy and authority to establish its own internal working methods and the need to respect the experts' independence. As a result, since the introduction of the 15-year limit in 2002, the Governing Body has regularly renewed the term of office of serving experts until the 15-year limit is reached, unless an expert informs the Office that he or she is no longer in a position to serve on the Committee, in which case, the position becomes vacant and a new expert is appointed following the procedure described above.
20. In December 2020, the terms of two members of the Committee of Experts, Mr Bentes Corrêa and Mr Koroma, reached the 15-year limit. The terms of eight other members, namely, Mr Ago, Ms Athanassiou, Mr Filali Mekhnasi, Mr Muntarbhorn, Mr Pougoué,

Ms Sankaran, Ms Thomas-Felix and Mr Waas, are due for renewal in 2021. The list of current members of the Committee, with their dates of initial appointment, is publicly available.<sup>12</sup>

## ► Draft decision

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- 21. The Governing Body took note of the information provided by the Office in document GB.341/LILS/6.**

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<sup>12</sup> ILO, "Members of the Committee of Experts on the Application of Conventions and Recommendations".