

## Governing Body

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GB.337/LILS/PV

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Legal Issues and International Labour Standards Section

LILS

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### MINUTES

## Legal Issues and International Labour Standards Section

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## International Labour Standards and Human Rights Segment

### First item on the agenda

#### **The Standards Initiative: Report of the fifth meeting of the Standards Review Mechanism Tripartite Working Group** (Geneva, 23–27 September 2019)

#### **Report of the Officers, in accordance with paragraph 17 of the terms of reference of the Standards Review Mechanism Tripartite Working Group** ([GB.337/LILS/1](#))

1. *The Chairperson of the Standards Review Mechanism Tripartite Working Group (SRM TWG)* introduced the report of the Officers of the SRM TWG, noting that all the members had been conscious of the importance of the SRM TWG's mandate in the ILO's Centenary year. The discussions at the meeting had been challenging, and the successful outcome reflected the determination of all members to reach consensus. He thanked in particular the Employer and Worker Vice-Chairpersons, as well as his Government colleagues, for their role in that regard.
2. The SRM TWG had proposed time-bound and practical packages of follow-up action for eight instruments on employment policy. He recalled that the SRM TWG's task, as mandated by the Governing Body, involved not only looking to the past, but also looking to the future, to envisage activities to encourage the ratification of up-to-date instruments and identify areas for new standards. He drew attention to the SRM TWG's agreement that effect should be given to earlier decisions of the Governing Body, calling for the Office to prepare proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery. It proposed guidance to be taken into account by the Office when developing those standard-setting proposals, recommending that they should be discussed at the Governing Body's 338th Session (March 2020) for inclusion in future agendas of the International Labour Conference.
3. *The Worker spokesperson* noted the importance of the SRM TWG's recommendations on the practical and time-bound follow-up actions to be taken. Her group remained concerned that the abrogation of Conventions that were in force in member States without the ratification of more modern Conventions in their place could lead to gaps in legal protection in practice. She therefore reiterated the need for active steps towards the ratification of instruments, including proactive and well-resourced campaigns to ensure that member States replaced ratifications of outdated Conventions with ratifications of related up-to-date Conventions. The success of the Centenary ratification campaign had shown what was possible.
4. She highlighted the need for resources to be allocated for the Office to give effect to all of the SRM TWG's recommendations, which over the past five years were considerable. She stressed the importance of the effective implementation of the recommendations for practical

and time-bound follow-up action, which should be considered as part of a package of interconnected, complementary and mutually reinforcing elements.

5. She reiterated that the Workers continued to remain reluctant to set fixed dates for the abrogation or withdrawal of Conventions while there continued to be member States bound by those instruments without having ratified the relevant up-to-date Conventions. In the case of the Unemployment Convention, 1919 (No. 2), for example, three other instruments needed to be ratified to fill the gaps in protection that would be left as a result of its abrogation. Ratification was not a simple matter, but required lengthy tripartite negotiations and commitment at the national level. The abrogation or withdrawal of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which continued to provide protection to workers in some member States, gave rise to the same concerns.
6. She noted that the follow-up to the consensual recommendations on possible standard-setting on four occupational safety and health (OSH) topics had been discussed in three consecutive years. The recommendation to request the Office to initiate the preparation of proposals for possible standard-setting items on four OSH topics must be dealt with as a matter of institutional priority. Her group looked forward to discussing the proposals at the 338th Session (March 2020) of the Governing Body, with a view to agreeing on a schedule for their inclusion on the Conference agenda as soon as possible. The group would measure the success of the SRM TWG by its ability to put forward new standards where gaps had been identified, as well as its efforts to avoid the creation of gaps caused by abrogation or withdrawal. The Workers could support the draft decision in paragraph 5 of the document.
7. *The Employer spokesperson* noted that the Office preparatory documents had not included substantive information on two of the instruments under review: the Employment Service Recommendation, 1948 (No. 83), and the Private Employment Agencies Recommendation, 1997 (No. 188). He trusted that the Office would provide full information on all instruments reviewed in the future. Equally, the SRM TWG should produce more detailed reports in the future, to increase understanding of the viewpoints and arguments expressed in its deliberations.
8. The Employers' group attached great importance to the review of the ILO's body of international labour standards and to the work of the SRM TWG, which was an anchor of the ILO. He stressed the importance of the SRM TWG to standards policy and considered that a better understanding of the body of standards and lessons learnt from earlier standard-setting exercises was fundamental for ensuring that the ILO standards system retained its relevance and met present and future needs. He recalled that the SRM TWG, composed of eight Employer, eight Worker and 16 Government representatives who were not all members of the Governing Body, could only issue recommendations for the Governing Body's autonomous consideration.
9. He agreed that the Office should initiate the preparation of proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards, and guarding of machinery for consideration at the 338th Session (March 2020) of the Governing Body. The decision in principle on standard-setting had already been taken by the Governing Body in October–November 2017, and what had remained to be resolved was how to approach this standard-setting. The SRM TWG had recommended that a thematic integration approach should best guide its preparation. The Employers strongly preferred the adoption of one integrated instrument on OSH risks in general, which could be complemented by technical guidelines, codes of practice and other tools providing more detailed guidance. Opting for one integrated instrument – for instance a protocol or a recommendation to accompany Occupational Safety and Health Convention, 1981 (No. 155) – would help overcome the present dispersion of OSH instruments, achieve wider ratification and improve implementation. The group therefore expected that the document

prepared for the Governing Body's 338th Session would cover all standard-setting options under the thematic integration approach, and include the development of one integrated instrument on OSH risks in general. On that understanding, the group could support the adoption of subparagraph (a) of the draft decision.

10. Turning to subparagraph (c), he said that Convention No. 2, while outdated, remained in force in 54 countries. In fact, the number of ratifications of that Convention was higher than that of three of the more modern instruments that covered the same subject matter: the Private Employment Agencies Convention, 1997 (No. 181), the Private Employment Agencies Recommendation, 1997 (No. 188), and the Labour Statistics Convention, 1985 (No. 160). One reason for this could be that Convention No. 2 was short, simple and straightforward, and allowed for its flexible implementation. Another reason could be that Convention No. 2, in only three substantive provisions, dealt with all major issues related to unemployment in an integrated and comprehensive manner. Its approach could be beneficial to future standard-setting. The SRM TWG review had shed light on the application of outdated parts of some provisions of that Convention, in particular with respect to the requirement in Article 1 for ratifying States to communicate to the ILO information on unemployment at intervals as short as possible and not exceeding three months. Noting that while the report form remained unchanged, this obligation was no longer supervised, he stressed that any decision on supervision should be made by the Governing Body and not by the Office. He asked the Office to clarify its current practice and to systematically inform the Governing Body of provisions that, because the Office considered them to be no longer relevant, were no longer supervised so that the Governing Body could decide to adapt corresponding report forms as appropriate. The adaptation of report forms was an important interim measure to keep the body of international labour standards up to date.
11. His group believed that outdated instruments should be abrogated or withdrawn without delay. He noted that the SRM TWG decided to place an item concerning the abrogation of Convention No. 96 on the agenda of the Conference in 2030; and decided to evaluate the Office follow-up concerning Convention No. 2 in 2026 with a view to then deciding on the appropriate date for the Conference to consider its abrogation or withdrawal. The group considered that it was illogical to defer to such a late stage the decisions on the abrogation of these outdated instruments. It was also illogical to say that Conventions could not be abrogated because without them there would be no legal protection as outdated Conventions already could not provide sufficient or relevant protection. Abrogation of a Convention would not stop national legislation from being applied. The ILO could not address the future of work while holding on to outdated instruments that were not fit for purpose. The group proposed that subparagraphs (e) and (f)(ii) should be amended to reflect that a decision should be made in 2021 regarding the abrogation or withdrawal of those instruments.
12. He welcomed the request contained in subparagraph (d), which would help member States to implement the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). Promoting an enabling environment for sustainable enterprises was an important part of the human-centred approach to the future of work reaffirmed by the Centenary Declaration. The Office should systematically develop complementary non-normative materials relating to Conventions and Recommendations to enhance the visibility of international labour standards and facilitate their implementation. The adoption of any new Convention or Recommendation should automatically be accompanied by the preparation and constant updating, in consultation with ACT/EMP and ACTRAV, of practical guidance material.
13. *Speaking on behalf of the Government group*, a Government representative of Mexico emphasized that the work of the SRM TWG was essential to ensuring that the ILO had a clear, robust and up-to-date body of international labour standards that responded to the changing patterns of the world of work for the purpose of the protection of workers and

taking into account the needs of sustainable enterprises. She noted the wide-ranging discussions of the SRM TWG on the form of standards, the revision and amendment of existing standards, the process of standard setting, and the promotion of ratification and implementation. The group stressed that the Governing Body would benefit from the knowledge gained from the thorough examination of standards by the SRM TWG. The process of standard setting should ensure tripartite inclusivity, time-efficiency and cost-effectiveness. Her group supported the consensually agreed recommendations of the SRM TWG and called on the Office to take the necessary time-bound action required.

14. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of Uruguay noted that the outcome of the fifth meeting of the SRM TWG reflected the current world of work and the current status of the international labour standards under review. Given the high percentage of ratifications of international labour standards in her region, her group attached particular importance to having a clear, robust and up-to-date body of standards. The ratification of any new Convention entailed complex decisions at the national level to implement new legislation or strengthen existing legislation, often posing practical challenges and increasing the workload of the Ministry of Labour. Any gaps, lack of clarity or inappropriate use of the supervisory bodies' procedures may lead to new complaints and discourage States from ratifying new instruments. The group emphasized that international labour standards had guaranteed decent work and sustainable enterprises in countries. The SRM TWG should continue its important work and the ILO, under the guidance of the Governing Body, should implement its recommendations. She noted with satisfaction that Convention No. 88, which had been adopted in 1948, had been classified as an up-to-date instrument, demonstrating the ongoing relevance of international labour standards despite the technological changes affecting the world of work. GRULAC agreed with the classification of the instruments reviewed at the meeting. The group welcomed the recommendations concerning practical and time-bound follow-up action and the provision of technical assistance in the context of Convention No. 88 and Recommendations Nos 83 and 189, which were in line with commitments under the Centenary Declaration. GRULAC called for consistency in the ILO's approach to OSH, which was one of the most important labour rights. Instruments should be prevention-focused and regularly updated. Noting that tripartite decision-making in that respect required a broad understanding of the issues and complementarity between the outcomes of initiatives, she said that the proposals for possible standard-setting items should take into account the recommendations of the SRM TWG. Her group supported the draft decision.
15. *Speaking on behalf of the Asia and the Pacific group (ASPAG)*, a Government representative of the Islamic Republic of Iran said that the SRM TWG was a key pillar of the ILO's work on standards. His group noted the recommendations emanating from the fifth meeting of the SRM TWG and called on the Office to take the necessary follow-up action. ASPAG supported the recommendations to place the withdrawal of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), on the agenda of the Conference in 2021, and the abrogation or withdrawal of Convention No. 96 on the Conference agenda in 2030. As modern instruments cover the provisions of Convention No. 2, it considered it to be outdated.
16. His group welcomed the practical and time-bound packages of follow-up action, including promotional campaigns and technical advice for the ratification of up-to-date conventions, the development of tools and compilation of good practices in relation to public employment services and guidance on the promotion of job creation and decent work in SMEs, and the establishment of an enabling environment for sustainable SMEs. Technological progress, including in the areas of nanotechnology and robotics, necessitated new arrangements and codes of practice on OSH in the workplace, and the Office should compile good practices and develop tools to respond effectively to those emerging needs. His group supported the draft decision.

17. *Speaking on behalf of the Africa group*, a Government representative of Cameroon noted the importance of reviewing and classifying the employment policy instruments given the huge changes in the world of work. His group supported the examination of instruments relating to social security at the sixth meeting of the SRM TWG. Given the legal vacuum that would be created by the abrogation or withdrawal of Convention No. 2, his group urged the Office to implement the SRM TWG's recommendation regarding the provision of technical assistance to ratifying States, to support their ratification of the relevant up-to-date Conventions. His group supported the draft decision.
18. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United States said that her group supported the SRM TWG's recommendations concerning classification of the employment policy instruments and the necessary follow-up action, including approaches tailored to the individual member States concerned. IMEC welcomed the SRM TWG's thoughtful consideration of how best to move forward the follow-up to its recommendations on standard-setting on OSH. The group agreed that the standard-setting process should be flexible and should ensure optimum time efficiency, cost-effectiveness and inclusivity, and could benefit from customized preparatory technical activities. The inclusion of a standard-setting item on the Conference agenda dedicated to SRM TWG follow-up, and possibly allowing for two standard-setting items at a single session of the Conference, could help ensure that the ILO's body of standards remained up-to-date and relevant. IMEC welcomed the SRM TWG's recommendation and agreed that a thematic integration approach should be implemented. Combining binding and non-binding elements in the same instrument could make it easier to update technical provisions and was an approach that may also be appropriate for other standard-setting in the future. The group attached great importance to the SRM TWG, which was strengthening the labour standards work that was at the heart of the ILO. The outcomes of the SRM TWG should be integrated into the Office's activities as a matter of priority to ensure that its work had real world impact. IMEC supported the draft decision.
19. *Speaking on behalf of the European Union and its Member States*, a Government representative of Finland said that Montenegro, Albania, Bosnia and Herzegovina, Norway and Armenia aligned themselves with her statement. The work of the SRM TWG was an institutional priority. The EU and its Member States supported its recommendations, requested the Office to take the necessary follow-up action, and suggested that the standard-setting discussion started with chemical hazards, in line with the Office's current activities. The group emphasized a number of points: the importance of implementing the thematic integration approach, combining binding and non-binding elements in the same instruments and ensuring their easy updating; that the standard-setting process should be flexible, address the four specific topics, ensure time-efficiency, cost-effectiveness and inclusivity; the customization of inclusive, tripartite preparatory technical activities; and the inclusion of a standard-setting item on the agenda of the Conference, with the possibility of considering two such items at a single Conference.
20. The pragmatic approach to OSH standard-setting items with innovative legal instruments and procedures could be used also for other topics and future standard-setting in general. The EU and its Member States recognized the importance of taking active steps towards the ratification of instruments and the need for well-resourced campaigns to encourage member States to replace their ratification of outdated Conventions with ratification of related up-to-date Conventions. Although the abrogation or withdrawal of Conventions could lead to gaps in legal protection, excessive reporting burdens caused by the duplication of standards should be avoided, and national circumstances should always be taken into account.
21. The European Union and its Member States were fully committed to the modernization process of the SRM TWG, which it saw as reinforcing a core function of the ILO. The outcomes of the SRM TWG must be fully integrated into the activities of the Office,

including when setting the agenda of the ILC, as a matter of institutional priority. The resources necessary for the effective implementation of its recommendations should be allocated. They supported the draft decision.

22. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that only the Governing Body could decide when supervision of a Convention should cease. Convention No. 2 was still supervised, with the exception of the requirement in its Article 1 obliging member States to submit statistical information to the Office every three months. Following complex discussions, the SRM TWG identified packages of time-bound and practical follow-up action including different dates for consideration by the Conference of possible withdrawal or abrogation for different instruments, depending on their type and the particularities of each case. In particular, the more States parties there were to a Convention, the more time was granted for preparations for its abrogation or withdrawal, including tripartite dialogue at the national level and parliamentary debate. The Office would follow up all requests for technical assistance.
23. *The Worker spokesperson* sought clarification on whether the Employers' group had proposed an amendment.
24. *The Employer spokesperson* confirmed that his group had proposed an amendment to change the dates in subparagraphs (e) and (f)(ii) of the draft decision to 2021. Given that abrogation would be possible from around 18 months after a Convention was classified as outdated, 2021 would allow ample time. It would be illogical to defer the decisions on the outdated Conventions to 2026 and 2030 respectively.
25. *The Worker spokesperson*, noting that the Governing Body and, in some cases, the Conference was the final decision-making body, said that as spokesperson for the SRM TWG, she was committed to the process and, as much as possible, to the outcome. She had to compromise in good faith and defend the outcome of the SRM TWG within her group and in the Governing Body, irrespective of her group's position. She expected the Employers' group to do the same.
26. Turning to subparagraph (a)(ii) of the draft decision, she recalled that, although there had been opposing views, in the end consensual recommendations had been made on the thematic integration approach on the four standard-setting items on biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery.
27. The Employers' proposed amendment ignored the SRM TWG's extensive discussions on dealing with outdated instruments with a high ratification rate that were still valid in many countries. She questioned the vision of international labour standards that suggested that their withdrawal or abrogation had no impact as it was a matter for member States. In addition, ratification of instruments that revised outdated instruments was often low. Her group had received regular reports from unions that it was employers at the national level who were resisting ratification. She asked the Employers' group and the International Organisation of Employers to confirm if they would actively recommend the ratification of related more modern instruments once an instrument was determined to be outdated. The remarks by the Employers' group challenged its agreement to support the standard-setting and normative mandate of the ILO, which had been reconfirmed in the Centenary Declaration and meant many things, including participating in good faith in the standards review exercise. Her group could no longer commit to participating in good faith during the SRM TWG if the Employers lacked a similar commitment.
28. She acknowledged the Government group's continuing commitment in this regard to address the difficult questions around updating, ratification and new standard setting. The Workers' group could not support the amendment proposed by the Employers' group; indeed, it should



not have been put forward. She expressed the hope that her group's view regarding subparagraph (a)(ii) would be supported clearly and unambiguously by the Government group.

29. *The Employer spokesperson* said that his group did negotiate in good faith; the whole point of social dialogue was that there was no need for constant agreement. If the Governing Body members did not express their views, it would be doing a disservice to their roles as governors. Although his group appreciated and respected the SRM TWG's work, it did not necessarily mean that it would support everything put forward in the Governing Body, including consensual recommendations.
30. *An Employer member from Colombia*, speaking as a member of the Governing Body and as a member and former spokesperson of the SRM TWG, said that the mandate of the SRM TWG was limited and the scope of its work purely technical. Recent discussions in the SRM TWG risked going beyond its mandate. The SRM TWG should focus on identifying gaps in coverage in the topics reviewed, but recent discussions had considered gaps in protection, which related to ways in which States developed and applied domestic legislation to protect workers. Such a development was not part of the mandate of the SRM TWG.
31. The SRM TWG worked on the understanding that the Governing Body would have the final decision, but that it would provide the Governing Body with full information to enable it to take its decisions with the best possible guidance. The Governing Body should not simply approve a text, but also consider it fully and apply changes if it saw fit; that was acting in good faith and respecting ILO principles.
32. *The Employer spokesperson* said that the Governing Body would have to decide on whether or not to support the amendment proposed by the Employers' group. He confirmed that the International Organisation of Employers would support the ratification and implementation of new instruments to replace outdated Conventions, stressing the importance of both ratification and implementation because those had to go hand in hand.
33. *Speaking on behalf of the Government group*, a Government representative of Nigeria said that, following consultations in private, the Government group supported the original draft decision, which reflected hard-won and carefully thought out compromises. His group supported the mandate of the SRM TWG and trusted its recommendations.
34. *The Employer spokesperson* said that, in light of the Government group's comments, his group withdrew its proposed amendment.

## **Decision**

35. ***The Governing Body took note of the report of the Officers concerning the fifth meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) and, in approving its recommendations:***

***(a) further to its earlier decisions, requested the Office to:***

- (i) initiate the preparation of proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery, for consideration at its 338th Session (March 2020) for inclusion in future agendas of the International Labour Conference;***

- (ii) *be guided by the recommendations of the SRM TWG regarding the thematic integration approach and the process of standard setting in preparing those standard-setting proposals for inclusion in the agenda of the Conference at the earliest dates possible and as a matter of institutional priority;*
- (b) *decided that the eight instruments concerning employment policy reviewed by the SRM TWG should be considered to have the classifications it had recommended, and requested the Office to take the necessary follow-up action in that regard;*
- (c) *called upon the Organization and its tripartite constituents to take concerted steps to follow up on all its recommendations as organized by the SRM TWG into practical and time-bound packages of follow-up action, noting in particular tailored plans of action encouraging States party to the Unemployment Convention, 1919 (No. 2), and the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), to ratify related up-to-date Conventions;*
- (d) *requested the Office to commence work on developing tools and a compilation of good practices in relation to public employment services, and guidance on job creation and decent work in SMEs and the establishment of an enabling environment for sustainable SMEs, including consultation with the Bureau for Employers' Activities and the Bureau for Workers' Activities;*
- (e) *noted the SRM TWG's intention to evaluate the Office follow-up involving tailored plans of action concerning Convention No. 2 at its meeting in 2026;*
- (f) *noted the SRM TWG's recommendations concerning the abrogation and withdrawal of certain instruments, in relation to which it will consider (see GB.337/INS/2(Add.1)):*
  - (i) *placing on the agenda of the 110th Session (2021) of the International Labour Conference an item concerning the withdrawal of the Fee-Charging Employment Agencies Convention, 1933 (No. 34); and*
  - (ii) *placing on the agenda of the 119th Session (2030) of the International Labour Conference an item concerning the abrogation or withdrawal, as relevant, of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96);*
- (g) *noted the work undertaken by the Office in follow-up to the recommendations of the SRM TWG at its earlier meetings and requested the Office to continue as a matter of institutional priority that follow-up as planned;*
- (h) *decided that the SRM TWG would examine ten instruments concerning unemployment benefit, comprehensive standards and medical care and sickness (five instruments and five outdated instruments), within sets of instruments 5 and 11 of the revised initial programme of work, at its sixth meeting; and*

- (i) *decided to convene the sixth meeting of the SRM TWG from 14 to 18 September 2020.*

(GB.337/LILS/1, paragraph 5.)

## Second item on the agenda

### Choice of Conventions and Recommendations on which reports should be requested under article 19, paragraphs 5(e) and 6(d), of the ILO Constitution in 2021

([GB.337/LILS/2](#))

36. *The Worker spokesperson* said that her group supported the second option set out in the document, with one modification. The Workers agreed that the application of the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183), were instrumental in ensuring effective protection against discrimination between men and women workers in employment and occupation, as protected by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). It would therefore be pertinent for the Committee of Experts to examine those Conventions and their accompanying Recommendations. A General Survey on those instruments would be timely in providing information on the obstacles to implementation that persisted at the national level, particularly given that the last General Survey pertaining specifically to equality had been carried out more than 20 years previously. The General Survey described in the second option would also contribute to the implementation of the Centenary Declaration, responding to the call for the ILO to direct its efforts to achieving gender equality at work through a transformative agenda.
37. She expressed surprise, however, that the fundamental Equal Remuneration Convention, 1951 (No. 100), and its accompanying Recommendation, the Equal Remuneration Recommendation, 1951 (No. 90), had not been included in the group of instruments proposed. Nationally and globally, the gender pay gap remained one of the most visible manifestations of gender discrimination and inequality at work. Moreover, Conventions Nos 100 and 111 were interlinked, and their aims were mutually reinforcing. In the Programme and Budget for 2020–21, Convention No. 100 was rightly included along with Conventions Nos 111, 156 and 183 in the group of key instruments to be promoted under outcome 6, which focused on gender equality and equal opportunities. Furthermore, including those instruments in the questionnaire would reflect the new modalities for General Surveys introduced by the ILO Declaration on Social Justice for a Fair Globalization (Social Justice Declaration), which sought to take a more holistic and integrated approach.
38. Regarding the first option, the Workers noted that, although the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), and the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), each contained one general provision on non-discrimination, a General Survey on those Conventions would offer a much more limited contribution to the recurrent discussion on fundamental principles and rights at work than the General Survey proposed as the second option. Moreover, the subject matter proposed would be a difficult fit for a General Survey in light of the wide-ranging nature of those social policy Conventions.
39. Regarding the third option, she noted that the Indigenous and Tribal Peoples Convention, 1989 (No. 169), had been submitted for consideration a number of times, most recently in

November 2018. While the Workers' group fully supported the objectives of that Convention, it believed that priority should be given to the work already included in the Programme and Budget for 2020–21, namely support for the establishment and strengthening of mechanisms, institutions and legislative frameworks for the economic empowerment and participation of indigenous and tribal peoples, as well as guidance for ratification and implementation of the Convention. Moreover, the contribution of a General Survey on Convention No. 169 to the recurrent discussion on the strategic objective of fundamental principles and rights at work would appear to be limited, and the focus on only one instrument would not be consistent with a new generation of General Surveys under the Social Justice Declaration. She nevertheless called on the Office to continue to disseminate the comments of the Committee of Experts, including the 2011 and 2018 general observations, which provided useful clarifications on some aspects of the Convention. In conclusion, the Workers supported the second option, with the addition of Convention No. 100 and Recommendation No. 90 to the group of instruments to be considered.

40. *The Employer spokesperson* said that his group had always insisted that the ILO play a central, pertinent and coherent role with respect to Convention No. 169, which was now 30 years old. Although the Convention had received only 23 ratifications, including 15 from Latin American countries, it had served as a basis and inspiration for political and regulatory actions in many other countries, leading to dialogue, understanding and increased participation of indigenous peoples in designing the investment strategies necessary for development.
41. He recalled that, when the Governing Body had discussed the follow-up to the Strategy for indigenous peoples' rights for inclusive and sustainable development in 2018, it had become clear that challenges remained to the implementation of the Convention. Those challenges included the lack of coordination between federal, state, provincial and municipal governments and, in many cases, the absence of a clear distinction between the responsibilities of the State and those of private entities. In addition, the involvement of individuals and organizations that were not always mandated to act, and which often pursued personal interests, created a climate of confusion and mistrust that undermined the purpose of dialogue and the creation of agreements. Furthermore, a lack of awareness about the scope of the Convention abounded even among legitimate stakeholders. The Employers therefore believed that a General Survey on Convention No. 169 would offer a historic opportunity to address such challenges and fully implement the Convention.
42. He also recalled that the 2030 Agenda for Sustainable Development encompassed a firm commitment to empowering and involving indigenous peoples in the implementation and review of SDG 12, and that global indicators had been established to measure progress. A general survey in 2021 and a discussion in the Conference Committee on the Application of Standards in 2022 following on from events to mark the 20th anniversary of the UN Permanent Forum on Indigenous Issues in 2020 and the 30th anniversary of the implementation of Convention No. 169, would highlight the ILO's leadership on the topic. For those reasons, the Employers firmly supported the third option proposed by the Office.
43. While his group did not wish to disregard the other options, it was disinclined to favour them for several reasons. The second option proposed examining not one but six instruments, which made the scope so broad that the General Survey risked losing its focus. In addition, it would go against the call made at the Conference in 2016 to make better use of article 19 of the ILO Constitution and refrain from increasing the obligations on member States with respect to the submission of reports. With respect to the first option, the Employers' group shared the reservations expressed by the Workers, and was of the view that such a wide-ranging General Survey would not make a significant contribution at the current time.

44. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that, based on the discussion at previous sessions of the Governing Body, the outcome of the Centenary Session of the International Labour Conference was intended to inform the future direction of the ILO, and as such the choice of Conventions and Recommendations on which reports should be requested under article 19 of the ILO Constitution in 2021 should be aligned with the Centenary Declaration. All three options presented were pertinent to the recurrent discussion on fundamental principles and rights at work that would take place in 2023; however, the Conventions and Recommendations presented in the first and third options were not found on the list of Conventions and Recommendations on which the Governing Body had previously decided to request reports from governments under article 19 of the Constitution. The topic proposed in the second option, however, had been dealt with numerous times, and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), had last been considered in 2011. The Africa group therefore supported the first option, on social policy. In the light of the Centenary Declaration, the 2030 Agenda and the 2063 Agenda: The Africa We Want, it was important to develop policy that promoted economic growth and offered social prospects. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) – included in the third option – while not selected, had been considered for a General Survey at a number of past sessions of the Governing Body.
45. *Speaking on behalf of ASPAG*, a Government representative of China said that, given the explicit request in the Centenary Declaration for the ILO to achieve gender equality at work through a transformative agenda and to ensure equal opportunities and treatment in the world of work for persons with disabilities and other persons in vulnerable situations, the second option, on discrimination, was the appropriate choice. In line with the Programme and Budget for 2020–21, the role of the General Survey should be broadened to support attainment of the SDGs. In that context, the relevance to most of the SDGs of the Conventions and Recommendations proposed in the first option, on social policy, could also make that option a wise choice. At the same time, the instruments included in the second option were closely linked to a number of SDGs. The General Survey should focus on more inclusive themes and maintain its relevance to all member States with a view to collecting meaningful information on subjects of common interest. In conclusion, his group supported the first or second option.
46. *Speaking on behalf of IMEC*, a Government representative of Greece, noting the importance of the General Surveys to the standards-related work of the ILO, said that she supported the second option, which combined one fundamental Convention and two technical Conventions. It would be a timely choice, given the adoption of the Centenary Declaration, which contained a commitment to ensuring that the ILO had a clear, robust and up-to-date body of international labour standards. Furthermore, gender equality and maternity protection were key components of the transformative framework called for in the 2030 Agenda, and much work remained to be done to eliminate discrimination, particularly against women, in employment. Discussion of those instruments in 2022 would fit well with the recurrent discussion on fundamental principles and rights at work in 2023. Further synergies could be envisaged between discussion of the instruments contained in the second option and the review of the maternity protection instruments by the SRM TWG. She supported the Workers' proposal to include Convention No. 100, in the General Survey under the second option.
47. *Speaking on behalf of the EU and its Member States*, a Government representative of Finland said that Montenegro, Albania, Bosnia and Herzegovina, and Norway aligned themselves with her statement. She supported the statement made on behalf of IMEC. The General Survey discussions held by the Committee on the Application of Standards contributed to maintaining and promoting a robust, up-to-date body of international labour standards, and the links between those discussions, the recurrent discussions and the Standards Review Mechanism should be enhanced. Discussions on the Centenary Declaration served as

inspiration for the choice of instruments considered in the General Survey discussion in 2022. While all three options had value, her group would prefer the second option. Conventions Nos 111, 156 and 183 contained important principles for every ILO member State. Equal opportunities and gender equality were essential to an inclusive labour market and society; the stalling, and in some cases reversal, of progress on closing gender gaps at work was alarming. The promotion of equality was a core element of the goals, legislation and institutions of the EU, including through its commitment to the 2030 Agenda. Convention No. 100 should also be considered for inclusion in the second option for the General Survey.

48. *A Government representative of Brazil* recalled that, as an important tool to promote international labour standards, an effective General Survey should be based on instruments with a large number of ratifications across different regions, in order to provide a comprehensive picture of the implementation of international labour standards. A General Survey of instruments with few ratifications would be of limited interest to member States as a whole and could single out countries or regions. He therefore supported the second option, which presented a manageable number of instruments and included one of the ILO's fundamental instruments.
49. *A Government representative of Uruguay* said that it was important to select instruments with broad ratification, in order to ensure the greatest possible participation of the different regions in the recurrent discussions. It was also important to prioritize Conventions and Recommendations that were interrelated and also related to other issues that were being discussed in the Organization. On that basis, the second option was the most suitable. Although Uruguay had not ratified all the instruments listed, they were essential instruments that dealt with very important labour-related topics. Convention No. 111, and the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), aimed to provide protection for everybody, especially the most vulnerable; Convention No. 156 and Recommendation No. 165 provided protection not only for the majority of workers, but also for their families; and Convention No. 183 and Recommendation No. 191 were fundamental to work–life balance and could contribute to the Organization's efforts to promote gender equality and equal opportunities in the world of work.
50. *A Government representative of India* supported enhanced links between General Surveys, the Standards Review Mechanism and the recurrent discussions. While not all of the Conventions proposed for the General Survey were fundamental instruments, all were relevant to the realization of fundamental principles and rights at work. Since the second option included a fundamental Convention and instruments on maternity protection and workers with family responsibilities, which had not been part of a General Survey for a long time, she supported that option. It offered an opportunity to ascertain the level of gender-based discrimination and the gap in equality of opportunity and treatment in the world of work, and would help to identify any gaps in international labour standards.
51. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that the Office had had lengthy internal discussions on the matter and had ultimately proposed a narrower range of instruments for the second option to give a clear focus to the General Survey. The issue of equal remuneration was indeed inextricably linked to gender discrimination and would be an interesting topic in itself; however, it would raise a range of technical issues to be covered in addition to the instruments proposed for the second option. Experience with the General Survey on employment-related instruments had shown that it was harder to retain a focus, identify priorities and keep the Conference discussion manageable if a larger number of instruments was considered. However, if the Governing Body decided to include Convention No. 100, it would be feasible for the Office, albeit with a broader General Survey as a result.

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52. *The Employer spokesperson* said that having a General Survey covering seven instruments would be inconsistent with the 2016 resolution of the International Labour Conference on Advancing Social Justice through Decent Work, which stated that the reporting obligations of member States should not be increased. It was essential that any General Survey should focus on a single instrument to offer a more in-depth analysis, such as the highly successful 2018 General Survey on the Social Protection Floors Recommendation, 2012 (No. 202). Furthermore, Convention No. 100 had been covered in a General Survey as recently as 2012. He therefore urged the Workers' group to consider supporting the third option.
53. *The Worker spokesperson* said that the appendix to GB.337/LILS/2 showed that there had been a number of occasions when more than eight instruments had been covered by a General Survey. That could be problematic when considering a wide-ranging area, but the proposed focus of gender discrimination was sufficiently narrow for the General Survey not to become unwieldy. As it was difficult to distinguish between the forms in which gender-based discrimination occurred in practice, the wider range of instruments and inclusion of Convention No. 100 and related Recommendation would provide a fuller picture.
54. *The Chairperson*, noting that the Employers' group was the only one to favour the third option, asked whether it could consider the second option in the interest of consensus.
55. *The Employer spokesperson* said that his group could not accept any option covering seven instruments, especially when two had already been covered in the 2012 General Survey. The Employers could accept the second option if it reviewed only Convention No. 156, and Recommendation No. 165. They would be the most useful of the instruments proposed under the second option, and would cover a large number of workers. It would also be easier for governments to provide better-quality information.
56. *Speaking on behalf of IMEC*, a Government representative of Greece said that her group, in the spirit of compromise, would support the second option with or without the inclusion of Convention No. 100.
57. *Speaking on behalf of ASPAG*, a Government representative of China said that his group supported the second option as originally drafted.
58. *Speaking on behalf of the EU and its Member States*, a Government representative of Finland noted that the 2014 General Survey on minimum wage systems had been based on the Minimum Wage Fixing Convention, 1970 (No. 131), and not on Convention No. 100. Her group, in the spirit of compromise, would support the second option with or without the inclusion of Convention No. 100.
59. *A Government representative of Brazil* said that, in the spirit of compromise, his country would support the second option with or without the inclusion of Convention No. 100.
60. *A Government representative of Uruguay* said that he also recalled that the 2014 General Survey on minimum wage systems had been based on Convention No. 131 and not on Convention No. 100 but that the latter could be incorporated in the General Survey. His country, in the spirit of compromise, would support the second option, with or without the inclusion of Convention No. 100.
61. *Speaking on behalf of the Africa group*, a Government representative of Lesotho said that while all options presented in the document were important, her group would support the second option and had no preference with regard to Convention No. 100.
62. *The Worker spokesperson* said that, in the spirit of compromise, her group withdrew its request to include Convention No. 100 so that the second option could be accepted.

63. *The Employer spokesperson* thanked the Workers for their flexibility. His group's flexibility also deserved recognition, since the second option would entail a considerable workload for all constituents. Based on past experience, it was important to ensure that the questions on the questionnaire were specific, brief and focused exclusively on the texts of the Conventions under consideration.
64. *The Chairperson* thanked the Employers for their flexibility and recalled that the chosen theme, rather than the group of relevant Conventions, was always the focus of a General Survey.

### **Decision**

65. *The Governing Body requested the Office to prepare for its consideration at its 338th Session (March 2020) the article 19 report form on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165), and the Maternity Protection Convention, 2000 (No. 183) and Recommendation (No. 191), for the General Survey to be prepared by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2021 to be discussed by the Conference Committee on the Application of Standards in 2022.*

(GB.337/LILS/2, paragraph 25.)