



FOURTH ITEM ON THE AGENDA

**Improvements in the standards-related activities of the ILO**

**Implications of the Social Justice Declaration on the Standards Strategy and update on the implementation of the interim plan of action**

**Introduction**

1. It will be recalled that, at the 303rd Session of the Governing Body (November 2008) the Committee started its examination of the implications of the ILO Declaration on Social Justice for a Fair Globalization (the “Social Justice Declaration”)<sup>1</sup> as the overarching framework for the standards strategy approved in 2005<sup>2</sup> and the implementation of the interim plan of action adopted in 2007<sup>3</sup> to give effect to this strategy. It also examined the specific implications of the Social Justice Declaration for the General Surveys of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in relation to the issue of the choice of instruments on which reports should be requested under article 19 of the Constitution.<sup>4</sup>
2. Following this discussion, the Governing Body invited the Office to: launch a promotional campaign for the ratification and effective implementation of standards that are the most significant from the viewpoint of governance; prepare an evaluation of the grouping of Conventions by subject for reporting purposes that was introduced in 2003; and make proposals for new options for a global approach to streamlining reports, taking into

<sup>1</sup> GB.303/LILS/4/1.

<sup>2</sup> GB.294/LILS/4 and GB.294/9. The standards strategy covers four main components: (1) developing, keeping up to date and promoting ILO standards (standards policy); (2) enhancing the impact and strengthening the supervisory system; (3) improving the impact of the standards system through technical assistance and cooperation; and (4) enhancing the visibility of the ILO standards system (information and communication).

<sup>3</sup> GB.300/LILS/6.

<sup>4</sup> GB.303/LILS/6.

account the decisions taken at its November 2008 and March 2009 sessions relating to the follow-up to the Social Justice Declaration (a progress report in March 2009 and a final report in November 2009). It also asked the Office to: report on the consultations held concerning the Termination of Employment Convention, 1982 (No. 158), and Recommendation (No. 166); make arrangements to hold consultations on standards policy not later than March 2009; and report on the next steps taken for the implementation of the interim plan of action in March 2009. Finally, it invited the Office to submit a progress report on the review of article 22 report forms in November 2009.<sup>5</sup>

## **Tripartite consultations**

3. Two tripartite consultations were scheduled for November 2008 with a view to finalizing the part of the plan of action relating to standards policy. The first consultation concerned the status of Convention No. 158 and Recommendation No. 166 and the second standards policy in general. Tripartite consultations on the status of these instruments were held on 15 November 2008 and a report is included in Part II (section 2) of this document. However, due to time constraints, consultations on standards policy in general had to be postponed. They should take place during the present session of the Governing Body. The purpose of these consultations is to discuss issues on which a consensus still needs to be reached, including: maintaining the body of standards up to date; the development of new standards; and possible revisions and consolidations. These issues now have to be examined in the light of the follow-up to the Social Justice Declaration, including the recurrent reviews.
4. The present paper responds to the various requests made by the Governing Body under the following headings:
  - Part I. Implications of the Social Justice Declaration on the standards strategy;
  - Part II. Update on the implementation of the interim plan of action:
    - section 1: a progress report;
    - section 2: discussion of the status of Convention No. 158 and Recommendation No. 166.

## **Part I. Implications of the Social Justice Declaration on the standards strategy**

5. As observed in November 2008, the implications of the Social Justice Declaration concern all four components of the standards strategy. At its 303rd Session, the Governing Body took decisions on two immediate implications of the Declaration: the promotion of standards that are most significant from the viewpoint of governance; and the linkage between General Surveys and recurrent discussions, including the report forms under article 19 of the Constitution (article 19 questionnaires). It also started to consider the question of streamlining the reporting cycles under articles 19 and 22 of the Constitution in

<sup>5</sup> In addition, in the context of the discussion of the second paper on improvements in the ILO standards-related activities (GB.303/LILS/4/2) entitled *Improving the coherence, integration and effectiveness of the supervisory system through a better understanding of its dynamics (further study from a substantive and practical standpoint)*, the Governing Body asked the Office to prepare a study on the interpretation of international labour Conventions in 2009.

response to the call for proposals to streamline reporting made in the resolution<sup>6</sup> adopted along with the Social Justice Declaration. Some progress was also made in analysing the implications of the Social Justice Declaration for the two other components of the standards strategy: technical cooperation and international labour standards; and the visibility of the standards system through information and communication.

## 1. The governance instruments

6. In November 2008, the Governing Body invited the Office to “launch a promotional campaign for the ratification and effective implementation of standards that are the most significant from the viewpoint of governance (the four priority Conventions: Conventions Nos 81, 122, 129 and 144),<sup>7</sup> and submit a report annually to the LILS Committee on the progress achieved together with the report on the fundamental Conventions”.<sup>8</sup> This new promotional campaign will be launched in 2009<sup>9</sup> and the Office will present a plan of action to the Governing Body in November 2009 to promote the ratification and effective implementation of these instruments, based on a strategy emphasizing the interdependence and interaction between the objectives of the Conventions. The aim of this interaction is to promote employment, while strengthening national systems for ensuring compliance with labour standards, particularly through labour inspection and the active participation of employers and workers and their organizations. Tripartite cooperation for a better application is envisaged not only in Convention No. 144, but also in Convention No. 122 (Article 3) and Conventions Nos 81 (Article 5) and 129 (Article 13). The strategy will take into account the ways in which such cooperation has so far proved valuable and will suggest ways in which it could be enhanced, making use, particularly in relation to enforcement and compliance, of some of the ideas embodied in the Maritime Labour Convention, 2006.

<sup>6</sup> ILO: Resolution on strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization, International Labour Conference, 97th Session, Geneva, 2008.

<sup>7</sup> The Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). These four governance instruments form part of the body of up to date instruments. It may be recalled that, currently, the corpus of up to date international labour standards contains 76 Conventions, including eight fundamental (or core) and four priority (or governance) Conventions, 79 Recommendations, and five Protocols.

<sup>8</sup> GB.303/1, para. 99(i).

<sup>9</sup> As indicated in document GB.303/LILS/4/1, the letter sent on 21 July 2008 by the Director-General to governments of countries that had not ratified all the fundamental Conventions also sought information concerning unratified priority Conventions with a view to undertaking a mapping of the situation. This letter has been complemented by a communication dated 15 August 2008. Further information on the replies is contained below in Part II. This information will be followed up, as appropriate, in the context of the campaign.

## 2. Linkage between General Surveys and recurrent discussions

### 2.1. Outcome of the discussions in November 2008

7. During the discussions in November 2008, it was agreed by the Committee that, as a response to the requirement of the Social Justice Declaration for an integrated approach in helping member States meet ILO objectives through the use of all its means of action, the recurrent reports to be prepared by the Office for discussion at the Conference should take into account the CEACR's General Surveys, among other sources of information. This linkage involves not only an alignment of the subjects of General Surveys with those of recurrent reports, but also a new design of article 19 questionnaires. Accordingly, further to its decision to place on the agenda of the 99th Session of the Conference in 2010 a recurrent item on the strategic objective of employment, the Governing Body also requested governments to submit reports on the employment instruments under article 19 of the Constitution with a view to the preparation of a General Survey on employment by the CEARC in November–December 2009. The new design of the questionnaire, in addition to being simpler and more user-friendly, is intended to respond more effectively to the objective of article 19, namely to obtain information on the law and practice of member States, obstacles to ratification and the effect given or proposed to be given to non-ratified Conventions and Recommendations. It is also intended to provide useful information on the needs of member States, particularly in relation to technical cooperation, and suggestions for standards-related activities.
8. It is expected that the adoption of this approach will enhance the value of General Surveys by: (i) optimizing the use of the information contained in General Surveys; (ii) providing a basis for evaluating ILO standards-related activities by identifying gaps in standard setting and major difficulties in implementation; and (iii) developing an institutional follow-up to General Surveys and ensuring that their impact extends throughout ILO standards-related activities. The CEACR will continue to develop legal analysis of the implementation of Conventions within the framework of General Surveys and the Office will take steps to highlight this specific and valuable product, for example by making it available in a more user-friendly manner through its databases or other means.
9. In examining the linkage between General Surveys and recurrent reports, and the consequent proposal regarding the article 19 questionnaire on employment, the tripartite constituents provided important guidance to the Office. Firstly, it was observed that the process is in an experimental phase and that further improvements will need to be made based on the experience acquired.<sup>10</sup> It was also reaffirmed that there should be no duplication in the nature or work of the supervisory procedures.<sup>11</sup> General Surveys are recognized as an invaluable tool in gathering objective information on national law and practice relating to the respective standards, from which the recurrent report can benefit. The quality and character of General Surveys should be retained. There should be no over-simplification of report forms in order to ensure that useful information continues to be gathered, in accordance with the objective of article 19, and General Surveys should continue to make a comprehensive assessment of the impact and usefulness of international labour standards.<sup>12</sup> It was recalled that the information contained in General Surveys should continue to serve as a reference for the judiciary and the social partners at

<sup>10</sup> GB.303/12, para. 41.

<sup>11</sup> *ibid.*, para. 40.

<sup>12</sup> *ibid.*, paras 42 and 57.

both the national and international levels.<sup>13</sup> Emphasis was also placed on the value of General Surveys for governments in improving national labour legislation and for ILO officials in targeting technical cooperation, promoting ratification and providing assistance in the drafting of labour laws.

10. The reporting burden on governments was another important concern. Consequently, the questionnaire that was finally adopted for the current exercise moved away from the initial objective of covering all up to date instruments relating to the strategic objective of employment and was limited to those that are most relevant. A number of constituents also clearly indicated that it would be useful for the CEACR to indicate its views,<sup>14</sup> particularly regarding the impact of the new questionnaire on its workload and methods of work.<sup>15</sup>

## **2.2. Follow-up in the context of the CEACR**

11. The Office briefed the CEACR extensively at its 79th Session (November–December 2008) on the possible implications of the Social Justice Declaration for its work. The CEACR welcomed the reaffirmation by the Declaration of the ILO's decisive role in promoting and achieving progress and social justice in the current context of globalization, and the particular importance of international labour standards for this purpose.
12. A working group was set up by the CEACR to assist the Office in the preparation of the next article 19 questionnaire on instruments relating to social security, which is to be submitted to the Governing Body at its present session.<sup>16</sup> It was agreed that the CEACR will, as appropriate, continue to provide guidance on the preparation of future article 19 questionnaires through the members who have main responsibility for the respective Conventions.<sup>17</sup>
13. The special sitting of the CEACR attended by the Vice-Chairpersons of the Conference Committee on the Application of Standards (the Conference Committee) also addressed the implications of the Social Justice Declaration for the work of both Committees in relation to General Surveys and held an exchange of views on the recent decisions taken by the Governing Body in this respect. While emphasizing the need to preserve the authoritative value of General Surveys, it was recognized that the new approach could open up new possibilities to increase the impact of the standards system, particularly by providing a holistic view of national situations, a clearer understanding of gaps in law and practice relating to the implementation of international labour standards and of gaps in standard-setting action. In this context, with a view to optimizing the work of both Committees in relation to future General Surveys, it was also acknowledged that certain aspects of their respective organization of work would have to be reviewed. In the context of the Conference Committee, this could relate, for instance, to the timing for the discussion of the General Survey. This reflection will be pursued by the tripartite working group of the Conference Committee and by the Conference Committee itself. The CEACR

<sup>13</sup> *ibid.*, para. 49.

<sup>14</sup> *ibid.*, para. 41.

<sup>15</sup> *ibid.*, para. 45.

<sup>16</sup> See GB.304/LILS/5.

<sup>17</sup> CEACR, General Report (2009), para. 9(3).

has already begun to make arrangements concerning its working methods to better deal with the new General Surveys.<sup>18</sup>

### **2.3. First impact of the new generation of article 19 questionnaires and General Surveys on the methods of work of the Office**

14. *Cooperation within the Office and mobilization in the field.* With respect to the article 19 questionnaire on employment instruments, prepared in collaboration with the Employment Sector, a memorandum has been sent out by the Executive Directors of the Employment and the Standards and Fundamental Principles and Rights at Work Sectors to all ILO Regional Directors and the Directors of ILO Field Offices: the memorandum requests the standards, employment, gender, workers' and employers' activities specialists in the field to provide assistance to member States for the completion of the questionnaire. In addition, in January 2009 during a workshop organized for International Labour Standards Department (NORMES) staff, including all standards specialists in the field, a full day was devoted to the follow-up to the Social Justice Declaration and the specific role of standards specialists in this context. NORMES has also worked closely with the Social Security Department (SECSOC) to produce a first draft of the article 19 questionnaire on the social security instruments, based on guidance from the CEACR. The draft questionnaire was submitted to the informal tripartite consultations on the follow-up to the Social Justice Declaration in February 2009.

### **3. Improvements in information and knowledge sharing**

15. Information clearly has a key role to play in the follow-up to the Social Justice Declaration. In developing article 19 questionnaires for the new generation of General Surveys, progress has been made in the use of the information already available to the ILO and emphasis is being placed on making this information more accessible to constituents. The article 19 questionnaire on the employment instruments is now available on the ILO web site, and member States can download and complete the questionnaire before sending it to the Office electronically.<sup>19</sup> Other materials relevant to the General Survey can also be accessed on the same web site. With a view to the preparation of the next article 19 questionnaire on the social security instruments, the Office has embarked on a mapping exercise of all social security data already available inside and outside the ILO so as to limit requests in the questionnaire to information that offers added value. For this purpose, NORMES has also consulted and established cooperation with the International Social Security Association (ISSA).

16. When analysing replies, it is expected that the format of the questionnaire will facilitate the entry of a summary of the information received into a database. As a result, when the subject is re-examined in future it will only be necessary to ask constituents to provide updated information. Developing an online reporting system to alleviate the reporting burden of governments and facilitate the work of the Office is becoming a major priority in this context.<sup>20</sup>

<sup>18</sup> See para. 12 above.

<sup>19</sup> [www.ilo.org/ilolex/english/reportforms/reportformsE.htm](http://www.ilo.org/ilolex/english/reportforms/reportformsE.htm).

<sup>20</sup> See also paras 64 and 65.

#### **4. Sending and processing of information and reports under articles 19 and 22 of the Constitution and consideration of a possible review of the reporting cycle**

17. The issue of streamlining the sending and processing of information and reports under articles 19 and 22 of the Constitution and the consideration of a possible review of the reporting cycle are core elements of strengthening and enhancing the impact of the supervisory system. The interim plan of action includes the following actions in this respect: (1) an assessment of the follow-up as regards compliance with reporting obligations undertaken by the Office; (2) an evaluation of the grouping of Conventions by subject for reporting purposes; (3) measures to review report forms focusing, on a trial basis, on a group of Conventions and to enable governments to focus on urgent issues raised by the supervisory bodies; and (4) new options for a global approach to streamlining taking into account the evaluation of the grouping of Conventions and in the light of the follow-up to the Social Justice Declaration. The Office will report on all these elements in November 2009. For the present session, the Governing Body has asked the Office to prepare a progress report on issues (2) and (4).

##### **4.1. Evaluation of the grouping of Conventions for reporting purposes and new options for a global approach**

###### **4.1.1. Adjustments to the reporting procedures since 1959**

18. The ILO supervisory mechanism is generally regarded as the most advanced and effective in the United Nations system. At the same time, it is confronted with the permanent challenge of maintaining and improving its effectiveness in light of the steadily increasing number of reports received, due to the rising numbers of ratifications, member States and Conventions. The reporting system has periodically been adjusted by the Governing Body to respond to this challenge.

19. In 1959, the reporting cycle was lengthened from one to two years and a general report was requested for Conventions on which no regular report was due that year.<sup>21</sup> In 1976, the Governing Body decided to further lengthen the reporting cycle for Conventions from two to four years, except for the “most important” Conventions.<sup>22</sup> It also approved a number of safeguards to ensure that the introduction of a longer reporting cycle did not weaken the effectiveness of the supervisory system.<sup>23</sup> In 1985, the Governing Body decided that, subject to certain conditions and safeguards, reports should no longer be requested for a group of Conventions that do not correspond to present-day needs.<sup>24</sup> At present, 25 such

<sup>21</sup> GB.142/205.

<sup>22</sup> GB.201/SC/1/2 and GB.201/14/32. The 17 Conventions on which reports were due every two years were those on freedom of association (Nos 11, 84, 87, 98, 135, 141), forced labour (Nos 29 and 105), equal treatment (Nos 100 and 111), employment policy (No. 122), migrant workers (Nos 97 and 143), labour inspection (Nos 81, 85 and 129), and tripartite consultation (No. 144). The list was extended later to 20 to include Conventions Nos 151 and 154 (labour relations) and Convention No. 147 (merchant shipping).

<sup>23</sup> The cases in which more frequent reporting were to be requested were the following: failure to report or to reply to comments made by the supervisory bodies; serious problems of application; observations by workers’ or employers’ organizations; and Governing Body decisions.

<sup>24</sup> GB.229/10/19.

Conventions have been shelved and reports are no longer requested on them on a regular basis (the safeguards continue to apply).

20. In 1993, the Governing Body decided that detailed reports should be made at two-yearly intervals on a smaller group of ten “priority” Conventions.<sup>25</sup> For all the others, the four-year reporting cycle was replaced by a five-year interval with “simplified” reports, subject to certain safeguards. A distinction was therefore made between detailed and simplified reports. In its decision, the Governing Body retained the possibility of periodically reviewing the list of priority Conventions.<sup>26</sup> Other elements in the 1993 modifications included: the reduction in the number of detailed “first” reports from three to two; the discontinuation of requests for annual “general” reports; and the change in the date of the meeting of the Committee of Experts from March to November–December, with the due dates for reports on ratified Conventions being changed from 15 October to the period between 1 June and 1 September.<sup>27</sup>
21. In addition to reducing the workload of both constituents and the Office, the purpose of these changes was “to maintain and improve the quality of the supervisory machinery, and to focus the requests for reports on cases where serious problems of application arise”.<sup>28</sup> The strengthening of the supervisory machinery was based on widening the scope for requesting non-periodic reports.<sup>29</sup> The modifications were fully implemented in 1996 after a transitional period.
22. The evaluation in 2001 of the changes introduced in 1993 found that, after a relative decline in 1996, the absolute numbers of reports received at each stage had grown steadily, with a few minor exceptions.<sup>30</sup> The evaluation concluded that some further modifications should be envisaged to the reporting procedures to lighten the reporting workload. However a lengthening of the cycle was not proposed and the two- and five-year reporting cycles were maintained for the same groups of Conventions. Certain specific measures were adopted. It was decided to discontinue: detailed reports on fundamental and priority Conventions, unless changes had occurred or such reports were requested by the supervisory bodies; the automatic requirement to send a detailed report if the government failed in its obligation to provide a simplified report; and the automatic requirement for detailed second “first” reports.<sup>31</sup>
23. It was also considered that improvements in reporting procedures could be obtained through the grouping of Conventions for reporting purposes. In particular, governments indicated that reporting in the same year on all, or at least a significant number of Conventions covering similar subjects, would ease their administrative burden and facilitate information gathering at the national level, as ministries of labour could engage

<sup>25</sup> Conventions Nos 29 and 105, 87 and 98, 100 and 111, 81 and 129, and 122 and 144.

<sup>26</sup> The two child labour Conventions (Nos 138 and 182) were included in this list later: since the 1995 promotional campaign for Convention No. 138 and since its adoption in 1999 for Convention No. 182.

<sup>27</sup> GB.258/6/19.

<sup>28</sup> GB.258/LILS/6/1, para. 2.

<sup>29</sup> *ibid.*, para. 14.

<sup>30</sup> GB.282/LILS/5.

<sup>31</sup> GB.282/8/2.

in more concentrated consultations with other ministries and national institutions and authorities, and send the related information to the Office in a more coordinated form. It was further considered that the grouping of Conventions for reporting purposes would contribute to greater consistency in the analysis of reports and provide a more comprehensive view of the application of Conventions in a given subject area.<sup>32</sup> Accordingly, the Governing Body approved a grouping of Conventions by subject for reporting purposes in November 2001 and March 2002. The grouping was applied as of 2003 and the Office was invited to make an assessment after a complete five-year cycle.<sup>33</sup>

#### 4.1.2. Elements for evaluating the grouping of Conventions and possible new options

- 24.** In March 2007, the Governing Body discussed various options for streamlining the submission of information and reports under article 22 of the Constitution, including a country-based approach. It expressed a preference for an intensified thematic approach to non-fundamental and non-priority Conventions. Moreover, constituents started to discuss the possibility of extending the reporting cycle from two to three years for fundamental and priority Conventions.
- 25.** In light of the alignment of the themes of recurrent reviews and General Surveys, it was indicated in November 2008 that it would be useful to examine the possibilities for synchronization between the various reporting cycles (recurrent reviews, article 19 and article 22) with a view to ensuring the best use of the information available to the Office and achieving reporting synergies. At the same time, it should be borne in mind that the primary purpose of article 22 reporting is to facilitate supervision of the application of ratified Conventions.
- 26.** Before proposals can be made on a global approach to the streamlining of reporting, a decision will have to be made by the Governing Body on the complete cycle of recurrent reviews. However, in the meantime, the Committee could already give guidance on the criteria that should be used by the Office in evaluating the grouping of Conventions and developing new options for the reporting system. In this respect, the following criteria and considerations might be taken into account:

(a) *Qualitative:*

- Has the grouping improved the quality of the reports received?
- Has it facilitated the task of national administrations in meeting their reporting obligations?
- Has it enhanced the participation of the social partners in the reporting exercise?
- Has it created greater efficiency for the Office (headquarters and the field)?
- Has it improved the coherence of CEACR comments?

(b) *Quantitative:*

- What has the impact been in terms of the number of reports received?

<sup>32</sup> GB.283/LILS/6.

<sup>33</sup> GB.282/8/2 and GB.283/10/2.

- Has there been an improvement in the timeliness of reports?
  - Has the burden on the Office and the CEACR of processing article 22 reports been balanced through the different years of the cycle?
- (c) It is also proposed to present a simulation and to analyse the implications of an article 22 cycle aligned to a certain extent with the cycle of recurrent reports that will be adopted.
- (d) Were the Governing Body to consider options for a lengthened cycle, both in response to the increased workload<sup>34</sup> and with a view to enhancing synergies between the various requests for reports, it might also wish to discuss ways of improving the follow-up of progress made at the national level between reporting cycles to enhance the effectiveness of the supervisory system.

## **5. Aligning the technical cooperation strategy with the follow-up to the Social Justice Declaration**

**27.** On 19 December 2008, the United Nations General Assembly unanimously adopted the resolution entitled *ILO Declaration on Social Justice for a Fair Globalization*.<sup>35</sup> This resolution has the potential to create synergies with the follow-up of the Social Justice Declaration and clearly states that the commitment to full and productive employment and decent work for all is “a central objective of relevant national and international policies as well as national development strategies, including poverty reduction strategies, as part of the efforts to achieve the Millennium Development Goals”.

**28.** This reinforcement of the link between the Decent Work Agenda and the broader development agenda is of great importance for efforts to improve the impact of international labour standards through technical cooperation. The Social Justice Declaration recognizes that the ILO’s standards system constitutes its unique advantage. It reaffirms that the respect, promotion and realization of fundamental principles and rights at work are of particular significance, as both rights and enabling conditions necessary for the full realization of all of the strategic objectives of the Decent Work Agenda. It also states that the four strategic objectives are inseparable, interrelated and mutually supportive and that efforts to promote them should be part of an ILO global and integrated strategy for decent work. The Social Justice Declaration therefore reinforces the strategy for improving the impact of international labour standards through technical cooperation that was endorsed by the Governing Body in November 2007.<sup>36</sup>

**29.** In line with the Social Justice Declaration, the strategy is aimed at mainstreaming standards into Decent Work Country Programmes, which are the ILO’s main delivery mechanism at the country level, and more broadly into the framework of the United Nations system. In short, the following operational steps are essential for the implementation of the strategy:

<sup>34</sup> For example, in 2003, 1,544 article 22 reports were received in time for the session of the CEACR and 123 observations were received (directly) from the employers’ and workers’ organizations. In 2008, the figures for the same reports were the following: 1,768 article 22 reports and 272 observations.

<sup>35</sup> A/RES/63/199.

<sup>36</sup> GB.300/LILS/6.

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- the identification of priorities for the provision of advice and technical cooperation based on the guidance provided by the comments of the supervisory bodies, General Surveys, recurrent discussions at the Conference and requests from constituents;
  - the elaboration of country profiles, based on the above sources of information, to guide country-specific interventions;
  - the strengthening of mechanisms for the mainstreaming of standards in the ILO's general technical cooperation activities, and particularly in Decent Work Country Programmes;
  - the development of specific technical cooperation projects to promote and implement international labour standards at both the country and global levels and to address country-specific and overall thematic priorities;
  - the mobilization of resources, as necessary, to strengthen operations at all levels; and
  - the development of mechanisms for the mainstreaming of international labour standards in the broader United Nations framework, including Common Country Assessments (CCAs), United Nations Development Assistance Frameworks (UNDAFs) and Poverty Reduction Strategy Papers (PRSPs).
- 30.** The successful completion of all of the above operational steps requires close coordination and collaboration between staff at headquarters and in field offices, the tripartite constituents, United Nations Country Teams and bilateral and multilateral agencies at all levels.
- 31. *In light of the above, the Committee may wish to:***
- (i) discuss the issues raised in Part I of the present paper and provide any guidance that it considers appropriate for the further work of the Office; and*
  - (ii) recommend to the Governing Body that it invite the Office to prepare a report in the context of the follow-up to the Social Justice Declaration setting out a final action plan for the implementation of the standards strategy, including:*
    - (a) a specific plan of action for a promotional campaign for the ratification and effective implementation of the standards that are the most significant from the viewpoint of governance;*
    - (b) the various elements of the component of the standards strategy concerning the supervisory system set out in paragraph 17; and*
    - (c) standards policy options, in the light of the tripartite consultations.*

## **Part II. Update on the implementation of the interim plan of action since the 303rd Session (November 2008) of the Governing Body**

32. As indicated in paragraph 3 above, the plan of action on the standards strategy has still to be finalized in relation to standards policy. Based on the tripartite consultations that should be held during the present session of the Governing Body, options will be prepared for submission to the Committee in November 2009.

### **1. Progress report**

#### **1.1. Promotion of up to date standards**

33. In addition to the various promotional activities of which the Governing Body is regularly informed, it should be noted that further progress is being made in the mainstreaming of international labour standards in the activities of all technical departments and technical cooperation programmes. In particular, in the context of the proposals for the Programme and Budget for 2010–11 and the Strategic Policy Framework 2010–15, all outcome strategy texts should now specify their contribution to the achievement of all four strategic objectives, with special attention being given to the manner in which international labour standards and tripartism are integrated in the strategy with a view to achieving the outcome. With regard to indicators, the criteria for assessing results have to include the main provisions of the relevant international labour standards. Another key development is the establishment of an Office-wide procedure for the appraisal of technical cooperation projects, under which all project proposals must include a specific relevant international labour standards component (see details in paragraph 56).
34. Concerning the implementation of the strategic objectives, the Social Justice Declaration provides that member States may consider, among other steps, the review of their situation as regards the ratification or implementation of ILO instruments with a view to achieving a progressively increasing coverage of each of the strategic objectives.<sup>37</sup> It should be emphasized that a group of relevant standards related to the different strategic objectives will be systematically examined in the context of the preparation of the new generation of General Surveys. Important information will therefore be received on obstacles to the ratification of the respective Conventions, the extent to which effect has been given to non-ratified Conventions and Recommendations, and possible technical cooperation needs.

##### **1.1.1. Priority and recently adopted Conventions**

###### *Priority Conventions*

###### **The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture), Convention, 1969 (No. 129)**

35. Since November 2008, the total number of ratifications of these Conventions has remained the same: 138 for Convention No. 81 and 46 for Convention No. 129. It should be noted that the responses from governments that were invited by the Director-General in a letter dated 21 July 2008 to provide information on their intentions concerning ratification mainly related to Convention No. 129, as many were already bound by Convention No. 81.

<sup>37</sup> Social Justice Declaration, section II(B)(iii).

They referred to the same obstacles as in their 2005 article 19 reports, namely the incompatibility of national legislation with the obligations set out in the instrument or the lack of legislation on the protection of agricultural workers. For countries that had ratified neither of the two Conventions, the obstacles noted remained the non-conformity of national legislation with the obligations of the Conventions, the rigidity of certain provisions in the instruments or the absence of a need for ratification due to de facto implementation. In reply to this letter, one request<sup>38</sup> for technical assistance with a view to the ratification and implementation of the priority Conventions, was received to date.

- 36.** Increasing demands for technical assistance have been received from governments that have ratified one or both Conventions,<sup>39</sup> and from several organizations of employers and workers, with a view to a more effective implementation of the instruments. These requests mainly concerned the training of inspectors, the preparation of annual inspection reports and resources to strengthen the capacity of labour inspectorates.
- 37.** Following Honduras and El Salvador, both Guatemala and the Republic of Moldova benefited from labour inspection audits in 2008. Requests from the Syrian Arab Republic, Lebanon, Oman and Yemen for the same purpose are currently being examined, using resources donated by Norway. Some of these resources are also to be used to reinforce labour inspection in Albania, Armenia, Kazakhstan, The former Yugoslav Republic of Macedonia and Montenegro.<sup>40</sup> It is greatly hoped that action plans in these countries will include technical assistance with a view to drafting and publishing an annual report on the activities and results of the labour inspectorate, the contents of which should assist in evaluating and improving the functioning of their labour inspection systems.
- 38.** It should be noted that in 2007 the CEACR addressed a general observation to all member States that have ratified Conventions Nos 81 and 129 in which it emphasized the importance of promoting an effective cooperation between labour inspection services and the justice system. This observation was followed, particularly in French-speaking African countries, by related ILO training activities for various authorities and bodies involved in labour inspection in the framework of the Labour Administration (ADMITRA) project. The CEACR observation has continued to generate a wealth of information from governments in their article 22 reports, as well as from employers' and workers' organizations, on the measures taken, planned or desired to promote such cooperation. At its last session, the CEACR once again observed the tendency of some countries to use labour inspection resources and the powers of labour inspectors to implement policies with objectives other than the protection of workers while engaged in their work, and it drew attention of governments on the risks that this might have on the perception and effective functioning of labour inspection, as defined in Conventions Nos 81 and 129.
- 39.** A set of ethical guidelines on labour inspection, drafted by France with the technical assistance of the Office, is due to be approved shortly and will be posted on the ILO web site as an example of good practice.

<sup>38</sup> From Kiribati.

<sup>39</sup> Convention No. 81 (Benin, Comoros, Djibouti, Dominican Republic, Ecuador, Egypt, Gabon, Grenada, Haiti, Indonesia, Kenya, Malawi, Panama, Senegal and Yemen) and Convention No. 129 (Burkina Faso, Guyana and Kenya).

<sup>40</sup> Albania, Armenia, El Salvador, Honduras, Kazakhstan, Republic of Moldova, Syrian Arab Republic and Yemen are covered by the respective Decent Work Country Programme.

**The Employment Policy Convention, 1964 (No. 122), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)**

40. Since November 2008, Convention No. 122 has been ratified by Albania, bringing the total number of ratifications to 99. This ratification means that all the countries covered by the Subregional Office in Budapest have now ratified the instrument.
41. In a communication of November 2008, the Government of Luxembourg indicated that the competent units of the Ministry of Labour and Employment were examining the prospects of ratifying Conventions Nos 122 and 144. Morocco also indicated that the ratification procedures for Convention No. 144 would be launched without delay. A study on the promotion of Convention No. 144 and the obstacles to ratification in Rwanda, financed by the One UN Fund, was examined by a national tripartite seminar in February 2009, which also addressed the possible ratification and implementation of Convention No. 122. The Parliamentary Committee for Foreign Relations of the National Assembly of Afghanistan favourably examined the ratification of Convention No. 144, among other instruments, in November 2008. The following month, the Deputy Minister of Labour confirmed that few steps remained to be taken to complete the national procedures necessary for the ratification of Conventions Nos 138, 144, 159 and 182, and the 1997 Instrument of Amendment to the ILO Constitution.
42. Convention No. 122 has been chosen as the umbrella Convention for the General Survey on the employment instruments, which is to be prepared by the CEACR at its session in November–December 2009. The reports that are due in May 2009 will provide new information on the reasons that are impeding or delaying the ratification or implementation of Convention No. 122, as well as other relevant employment instruments.

*Promotion of the four most recent Conventions***The Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)**

43. Yemen ratified Convention No. 185 in October 2008. Thus, there are now 14 ratifications and one declaration of provisional application. Testing has continued of the biometric products required for compliance with the Convention and the ILO SID-0002 standard. It is hoped that a new list of products will be ready for submission to the next session of the Governing Body. There have also been useful contacts between the Office and other international organizations. In particular, the biometric profile that is being developed by a working group of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) is near completion.<sup>41</sup> The Office will report on progress at the next session of the Governing Body. These indications at the international level confirm the viability of the Convention, which may be helpful in accelerating the relatively slow pace of ratification.

**The Maritime Labour Convention, 2006**

44. It will be recalled that in November 2008 the Governing Body considered a number of promotional activities undertaken within the framework of the five-year *Action Plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006*.<sup>42</sup> This Action Plan might be considered as a useful model for

<sup>41</sup> GB.303/LILS/4/1, para. 43.

<sup>42</sup> *ibid.*, paras 44–46.

promotional activities for other Conventions, at least in certain respects, as it adopts a multi-pronged and multi-level approach involving international, regional and national promotional activities and requiring cooperation in delivery with sectoral experts and regional offices, in many cases linked to Decent Work Country Programmes. These elements, as well as the interdepartmental interdisciplinary team-based approach, involving both legal and sectoral experts engaged in technical cooperation activities under the Action Plan, reflects the strategic approach called for by the Social Justice Declaration.

45. The Action Plan contains specific targets or indicators to mark achievements leading to the entry into force and effective implementation of the Maritime Labour Convention by 2011. With respect to ratifications, the targets of the Action Plan are likely to be met and perhaps exceeded. The ratification of the Convention by Panama was registered on 6 February 2009. Norway was the first European member State to ratify the Maritime Labour Convention on 10 February 2009. The Maritime Labour Convention, 2006, requires two conditions to be met for its entry into force: ratification by at least 30 member States and coverage of at least 33 per cent of the world gross tonnage. With these two most recent ratifications, one of the two conditions for entry into force has been met and even exceeded. With the five ratifications,<sup>43</sup> more than 40 per cent of the world gross tonnage of ships is now covered by the Convention. Based on the mapping exercise being undertaken by the Office for 135 member States, the information available shows that a number of countries in various regions have now completed the national processes that will allow ratification in the near future.
46. Since November 2008, in the context of its activities to promote the Maritime Labour Convention, the Office has:
- participated in a tripartite regional seminar hosted by the Government of Germany for European Union and other European countries in December 2008;
  - participated in an international conference for the maritime sector organized by the Government of Panama (February 2009);
  - engaged in inter-agency cooperation meetings with the International Maritime Organization with a view to examining steps that could be taken to implement a resolution on this matter adopted by the 94th International Labour Conference to accompany the Maritime Labour Convention;
  - published the *Guidelines for flag State inspections under the Maritime Labour Convention, 2006*<sup>44</sup> and the *Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006*;<sup>45</sup> and
  - finalized materials developed in cooperation with the Turin Centre and interested constituents for a two-week programme for the training of trainers aimed at developing national capacity to train inspectors who will be responsible for carrying

<sup>43</sup> The following countries have now ratified the Maritime Labour Convention, 2006: Liberia, Marshall Islands, Bahamas, Panama and Norway.

<sup>44</sup> [www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/doc/Name--WCMS\\_101788/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/doc/Name--WCMS_101788/index.htm).

<sup>45</sup> [www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/doc/Name--WCMS\\_101787/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/doc/Name--WCMS_101787/index.htm).

out flag State inspections and port State control under the Maritime Labour Convention.<sup>46</sup>

### **The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)**

47. Over the past year, efforts to promote the ratification of Convention No. 187 have yielded concrete results and the ratification rate appears to be increasing rapidly. Convention No. 187 has now been ratified by eight member States<sup>47</sup> and entered into force on 20 February 2009. In addition, on the basis of the information received in article 19 reports on the submission of instruments to the competent authorities and for the General Survey on occupational safety and health,<sup>48</sup> the ratification process is in its final stages in nine countries<sup>49</sup> and another nine countries are considering ratification favourably.<sup>50</sup>
48. In keeping with the strategic framework of the Programme and Budget for 2008–09,<sup>51</sup> Convention No. 187 and Recommendation No. 197 are central to the work of the ILO to strengthen institutional capacity for the improvement of occupational safety and health (OSH) worldwide. In the context of the General Survey on occupational safety and health, the CEACR emphasized that the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981, and the Protocol of 2002 to Convention No. 155, had laid the foundations for the preventative safety and health culture advocated in Convention No. 187 and Recommendation No. 197, and that the former instruments should be promoted together with Convention No. 187 and Recommendation No. 197 and given effect as a matter of priority.
49. The strategy for the promotion of Convention No. 187 and Recommendation No. 197 has been pursued and further progress has been noted. National OSH profiles have been completed for Armenia and Georgia and a national OSH profile for China is being revised and updated with the support of the ILO and the WHO. The European Commission has recently agreed to fund a project to promote the approach advocated in Convention No. 187, namely the reinforcement of national OSH systems, including labour inspection systems. Moreover, technical cooperation projects funded by Japan and the Republic of Korea continue to support the preparation of national OSH profiles and OSH programmes in ASEAN countries and Central Asia. Together with the WHO, the ILO also co-sponsored an international conference “Building a bridge between international and national strategies on health and safety at work” (Dresden, 28–30 January 2009), organized by the German Social Accident Insurance, which reflected the increasing interest in Convention No. 187 as a basis for planning national OSH strategies. The Seoul Declaration on Safety

<sup>46</sup> A two-week “pilot” session involving interested governments and representatives of seafarers and shipowners took place from 16 to 27 February 2009 in Turin and Genoa.

<sup>47</sup> Cuba, Denmark, Finland, Japan, Republic of Korea, Sweden, Czech Republic and the United Kingdom.

<sup>48</sup> ILO: *Occupational safety and health*, Report III (Part 1B), ILC, 98th Session, Geneva, 2009.

<sup>49</sup> Austria, Belgium, Burkina Faso, Republic of Moldova, Mongolia, Niger, Philippines, Serbia and Singapore.

<sup>50</sup> Australia, Cameroon, Cyprus, Lithuania, Malawi, Peru, Seychelles, Syrian Arab Republic and Zambia.

<sup>51</sup> See the Programme and Budget for 2008–09, para. 202.

and Health at Work<sup>52</sup> calls for global action to reinforce OSH as the responsibility of society as a whole and highlights the importance of international labour standards, and particularly Conventions Nos 155 and 187. The Social Justice Declaration has given additional impetus to national tripartite dialogue for the promotion of OSH and the ratification of the ILO's OSH Conventions.

### **The Work in Fishing Convention, 2007 (No. 188)**

- 50.** The Office continues to actively promote the Work in Fishing Convention, 2007 (No. 188). Among the activities carried out in 2008, reference should be made to the Asian Regional Seminar on Convention No. 188 (Seoul, September 2008), the fishing seminar for West African countries (Dakar, October 2008) and the fishing seminar for Peru and Ecuador (Lima, September 2008).
- 51.** More activities are scheduled for 2009, including a Maritime Labour Convention/fishing seminar in Senegal (March 2009) and another in Spain (May 2009), both under an ongoing technical cooperation project funded by Spain. The possibility of holding a Latin American regional seminar on Convention No. 188 in Brazil in August 2009 is under consideration, while requests for country-specific assistance have been received from several Asian countries, including India and Indonesia. Training materials and tools will be developed for standards specialists in the field for use in future promotional activities.
- 52.** Preliminary work has begun on the preparation of a tripartite meeting, scheduled for early 2010, for the adoption of guidelines for flag and port State inspection under Convention No. 188. The meeting will be funded through a Norwegian-funded project to promote labour inspection initiatives in general.

## **1.2. Enhancing the impact of the standards system through technical cooperation**

### **1.2.1. Progress of implementation**

- 53.** Since 2005, a NORMES task force on technical cooperation has coordinated the implementation of this component of the standards strategy. The task force has undertaken a series of initiatives and made substantial progress in capacity building and the strengthening of partnerships and the modalities of collaboration with technical departments, including the Bureau of Programming and Management (PROGRAM) and the Partnerships and Development Cooperation Department (PARDEV).<sup>53</sup> These initiatives, which are being further reinforced through Office-wide efforts to ensure the follow-up of the Social Justice Declaration, are based on the areas for action outlined in paragraph 29 above and have so far resulted in the following main achievements.

### ***Mainstreaming of international labour standards beyond the ILO***

- 54.** Following its participation in the UN's Third Inter-Agency Workshop on Implementing a Human Rights-Based Approach (HRBA),<sup>54</sup> the Office has continued its efforts to ensure

<sup>52</sup> Adopted at the Safety and Health Summit held in June 2008 on the occasion of the 18th World Congress on Safety and Health at Work.

<sup>53</sup> See, for example, GB.303/LILS/4/1.

<sup>54</sup> Third Inter-agency Workshop on Implementing a Human Rights-based Approach to Development, Tarrytown, New York, October 2008.

the inclusion of international labour standards in the normative basis for the HRBA. As a result, the December 2008 revision of the UN CCA/UNDAF Guidelines recognizes for the first time that the relevant instruments of a specialized agency are to be considered as international human rights instruments for the purpose of applying a HRBA throughout the CCA/UNDAF process. The Office will further pursue progress in this area through the Working Group on Programming Issues of the United Nations Development Group and the Inter-Agency Network on Human Rights, which will be established by the United Nations system in the near future. In late 2008, the Director-General proposed to the High Commissioner for Human Rights that the ILO and her Office should reinforce cooperation and coordination in the promotion of ILO and United Nations instruments in operational activities. Following a positive response from the High Commissioner, a working group of senior officials is elaborating a joint action plan. The integration of international labour standards beyond the ILO framework has also resulted in the inclusion of specific international labour standards-related results in overall national development frameworks. One such example is the national PRSP in Bangladesh, which reflects the concerns and rights of indigenous peoples in this country and explicitly mentions the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). NORMES is developing a technical cooperation project to support the efforts of the Bangladeshi Government in this regard, focusing on capacity building on indigenous peoples' rights, mainstreaming of the concerns and rights of indigenous peoples in national policies, and ensuring a participatory approach to local and national decision-making.

*Strengthening the focus on international labour standards in ILO technical cooperation*

### **The Strategic Policy Framework**

55. The Strategic Policy Framework for 2010–15 contains three outcomes directly addressing international labour standards, namely: (1) the right to freedom of association and collective bargaining; (2) the elimination of child labour, forced labour and non-discrimination; and (3) the ratification and application of international labour standards. Special emphasis is placed on the importance of interaction between normative action, supervision and technical cooperation for the effective implementation of standards and on the need to intensify technical cooperation, making full use of Decent Work Country Programme processes.

### **Integration of international labour standards in Office-wide appraisal mechanisms**

56. Another key development is the establishment of an Office-wide procedure for the appraisal of technical cooperation projects, which, inter alia, will ensure that international labour standards are addressed in a coherent manner in all technical cooperation activities across the Office. The appraisal procedure explicitly provides that all project proposals have to integrate international labour standards and that proposals have to be examined thoroughly by officials with no direct affiliation with the project. This independent appraisal allows the incorporation of international labour standards as a key parameter in assuring the quality, and consequently the approval of the project.

### **Initiatives and achievements within the International Labour Standards Department**

57. Through NORMES and the standards specialists in the field, the Office continues to provide direct technical assistance to countries in Africa, Asia, Europe and Latin America, based on the recommendations of the supervisory bodies. In parallel, continuing efforts are being made to strengthen the focus on international labour standards in the design of Decent Work Country Programmes through the quality assurance mechanism. This

mechanism provides the Office with an opportunity to assess whether international labour standards have been adequately addressed and, if not, to raise the relevant issues. For this purpose, the Office has put in place regional standards focal points with responsibility for reviewing draft Decent Work Country Programmes from all regions. The regional focal points have also been requested to participate in the elaboration of new Decent Work Country Programmes and to assess the work carried out so far by developing an inventory of best practices in this respect.

58. As an integral part of the strategy, regional focal points, in consultation with the field standards specialists, are preparing and updating standards-related country profiles. The country profiles will facilitate the identification of thematic and geographical priorities, strengthen the focus on international labour standards in Decent Work Country Programmes and eventually form the basis for additional resource mobilization.
59. The guide *Improving the impact of international labour standards through technical cooperation* was finalized and submitted to the Governing Body in November 2008.<sup>55</sup> It has since been disseminated in three languages to staff and partners, both inside the Office and externally. The guide will be continuously updated to further integrate experience and ensure its alignment with new policy and programme developments within the ILO and the United Nations system.
60. Staff training is a crucial element in the implementation of the standards strategy. In this respect, the workshop organized for all NORMES staff, including field specialists, in January 2009<sup>56</sup> included topics such as: international labour standards in the global development framework; international labour standards and the human rights-based approach; the mainstreaming of international labour standards in Decent Work Country Programmes; priority-setting and resource mobilization for technical cooperation projects; and project cycle management. Technical departments participated by presenting their core areas of expertise. In parallel, training activities for tripartite constituents are continuing on a regular basis through the institutionalized collaboration between NORMES, the Bureaux for Employers' and for Workers' Activities, and the Turin Centre with a view to strengthening capacity to promote and implement standards and fundamental principles and rights at work.
61. A series of initiatives have been taken to generate additional resources for standards-related technical cooperation. Funding for activities to eliminate discrimination against indigenous and tribal peoples has increased considerably, with new national and regional projects being initiated in Bangladesh, Cambodia, Cameroon, Namibia, Nepal and the Latin American region. A large-scale programme proposal to enhance the impact of the supervisory machinery has also been elaborated in collaboration with PARDEV and the Turin Centre and will be submitted to interested donors. Other proposals that are currently under development include a project to promote the ratification and application of the Maritime Labour Convention and a collaborative effort on freedom of association with the Bureaux for Employers' and for Workers' Activities and the Programme for the Promotion of the (1998) Declaration. Dialogue is ongoing with interested bilateral donors.
62. The above activities and achievements are in line with the call made by the Social Justice Declaration for the strengthening and streamlining of technical cooperation activities within the framework of Decent Work Country Programmes and United Nations system

<sup>55</sup> GB.303/LILS/4/1, para. 58. The guide can be found at [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_100381.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_100381.pdf).

<sup>56</sup> See para. 14 above.

programmes. The Office will continue to strengthen its action in all of these areas of work and will report to the Governing Body in November 2009 on further progress.

### **1.3. Enhanced access to and broader visibility of the standards system**

**63.** In order to enhance the visibility of the standards system, the Office has continued to pursue the three objectives identified in this respect, namely:

- streamlining the supply of reports by governments through an innovative use of information technology;
- providing enhanced access to information on international labour standards stored in a reliable and up to date knowledge base; and
- improving the visibility of international labour standards by reaching out to the ILO's tripartite constituents and the broader public.

#### **1.3.1. Streamlining the supply of reports by governments through an innovative use of information technology**

##### *Brief update on the upcoming online reporting system*

**64.** In 2008, the Office received 70 per cent of the reports requested from governments on the application of ratified Conventions under article 22 of the Constitution in time to be examined by the CEACR. Moreover, 32 per cent of reports were received by 1 September 2008. The Office is doing its utmost to improve these figures with a view to the sound functioning of the supervisory system. In this context, it should be recalled that the main objective of developing an online reporting system is to facilitate and streamline the reporting burden on governments, which should then translate into a higher number of reports received by the Office, as well as a higher percentage of reports received before the 1 September deadline. The development of such a system, which was described in detail to the Governing Body at its 301st Session (March 2008),<sup>57</sup> would include:

- information relating to reporting obligations;
- the collection of data and storage of reports for member States;
- the availability of all report forms with the possibility to fill them in online; and
- all the comments of the supervisory bodies, as well as historical data for each country.

**65.** It should be recalled that such a comprehensive online reporting system will require major technological investment and development in the coming years to expand the current databases, which would form the basis of the system and therefore have to be gradually upgraded to support and store the information generated by the new system. An online reporting system will require a unified data model, which would offer better search facilities across the application and lower maintenance costs. The Office has been working to identify additional financial resources, through external funding and continued donor support, to supplement the internal funds that may be available. It hopes to be able to provide a further update on this project in November 2009.

<sup>57</sup> GB.301/LILS/6(Rev.), paras 88–93.

### 1.3.2. Enhanced access to information on international labour standards through a reliable and up to date knowledge base

66. The ILO web site is continuously being updated and improved to make it more user-friendly for constituents and the general public. Improvements in relation to article 19 questionnaires have been described above.<sup>58</sup> The four standards-related databases are also updated on a regular basis. In this regard, it should be noted that the NATLEX database on national labour, social security and related human rights legislation now contains over 80,000 laws and regulations. On average, there are around 300 new entries a month. For instance, the new entries in December 2008 included: the decrees adopted in 2008 by Tajikistan establishing a tripartite commission and relating to wage reforms; Zambia's new Anti-Human Trafficking Act, 2008; the Employment Rights Act, 2008, and the Employment Relations Act, 2008, adopted by Mauritius; and new standards concerning occupational safety and health adopted by Mexico in 2008.<sup>59</sup> This continued updating ensures that NATLEX remains a very valuable tool that is highly appreciated by its many users throughout the world.

### 1.3.3. Reaching the ILO's tripartite constituents and the broader public

67. In recent months, coordination has continued to be strengthened between NORMES and other departments, including the Bureaux for Employers' and for Workers' Activities. NORMES is currently revising and updating its key publication from 2005 *Rules of the game: A brief introduction to international labour standards* so as to integrate the latest standards-related developments and new instruments. The revised edition is due to be released in time for the Conference in June 2009. In terms of new publications, in recent months NORMES has produced several tools for the dissemination of information on international labour standards to a wide audience, including: *A practical guide to Convention No. 94 and Recommendation No. 84 on labour clauses in public contracts* and a *Compendium of maritime labour instruments*. Finally, the annual *Information document on ratifications and standards-related activities*, which is published in March, has been improved through the expansion of the country profiles in Part III of the document, which provide information by country on the ratification and application of Conventions. It should be recalled that more detailed and comprehensive information by country is always available and constantly updated in the NATLEX country profiles database.<sup>60</sup>

68. In conclusion, in respect of this component, the following actions would be required:

- (a) the creation, with appropriate funding, of a comprehensive online reporting system, which would include access to a consolidated application to facilitate the reporting exercise for member States;
- (b) the maintenance and upgrading, with appropriate funding, of the four databases on international labour standards (ILOLEX, APPLIS, LIBSYND and NATLEX) as major tools for a reliable and up to date knowledge base on the standards system; and

<sup>58</sup> See para. 15.

<sup>59</sup> NATLEX is available at the following address:  
[www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en).

<sup>60</sup> See [www.ilo.org/dyn/natlex/country\\_profiles.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en).

- (c) in cooperation with the Turin Centre, continued enhancement of the visibility of the standards system in current training activities and the dissemination of standards-related information through actions targeting specific audiences.

## **2. Discussion on the status of Convention No. 158 and Recommendation No. 166**

### **2.1. Brief report on the tripartite consultations held in November 2008**

- 69.** At its 300th Session (November 2007), the Governing Body agreed to resume discussions on the Termination of Employment Convention (No. 158), and Recommendation (No. 166), 1982. In March 2008, it invited the Office to make appropriate arrangements with a view to holding consultations on the status of these instruments not later than November 2008. The following paragraphs seek to provide a brief overview of these discussions and to explore a way forward in light of recent developments.
- 70.** Tripartite consultations were held on Saturday, 15 November 2008, during the 303rd Session of the Governing Body to consider the status of Convention No. 158 and Recommendation No. 166. To facilitate the consultations, the Office prepared an informal background note on the two instruments, which consisted of four parts: (i) an overview of the content and operation of the key provisions of the instruments; (ii) a review of the termination of employment provisions in the national legislation of 55 countries; (iii) consideration of the influence of the Convention on the jurisprudence of national courts; and (iv) an economic perspective of the Convention, including discussion of the flexibility that the Convention provides. The participants in the consultations exchanged views on the status and content of the two instruments. The consultations were chaired by the Director of NORMES.
- 71.** During the consultations, the Employer members reminded the participants that they had consistently raised concerns over the two instruments in the past. They noted that, although 25 years had passed since its adoption, the Convention only covered a very small proportion of the global labour force as the most populated countries had not ratified it, and one had denounced it. They observed that the Convention and Recommendation were difficult to apply in practice and were not flexible. They further considered that protection against dismissal, as promoted by the two instruments, had a negative impact on employment and economic growth. They noted that there were more market-compatible forms of protection against dismissal, such as flexicurity, and they questioned whether the Convention was in line with the concept of flexicurity. They emphasized that there was a need to prove that the two instruments provided effective worker protection without unduly restricting the freedom of employers and entrepreneurs. For the purposes of discussing the status of the two instruments, the Employers members invited those seeking to advocate their continued relevance to provide evidence that the instruments afforded effective protection to the majority of workers, and not just to a privileged few.
- 72.** The Worker members noted that, despite the absence of a promotional campaign by the Office, there had been a steady increase in ratifications of the Convention since the 1995 General Survey. They suggested that greater emphasis should be placed on the actual implementation of the Convention, and that the Office should take supplementary action in the form of assistance to governments and the social partners. They further suggested that the Office should undertake promotional activities on the Convention with a view to improving its ratification rate. In their view, the Convention should be considered as a priority Convention, as it was of importance from the point of view of governance. They emphasized that protection against unfair dismissal formed part of the notion of decent

work, and of human rights generally. They further emphasized that this matter should remain within the ambit of the ILO so as to ensure the Organization's continued relevance in today's economic climate, in view of the increasing number of dismissals that were likely to arise as a result of the current global crisis. They considered that there was neither economic proof nor consensus to support the suggestion that the instruments impaired economic growth.

73. The Worker representative of Singapore stated that, while it was a valid observation that the rate of ratification of the Convention was low and the larger countries had not ratified it, it was erroneous to assume that this meant such countries did not agree with the principles contained in the Convention. Making the instrument a priority Convention would serve to increase ratifications.
74. The Worker representative of South Africa stated that the argument that the status of the Convention was contentious upon its adoption did not affect its legal status. Similarly, the fact that many large countries had not ratified the Convention did not undermine its validity. In his view, there was a need to find a balance between the economic argument that it was necessary to respond with speed and validity, and the need for an obligation to give a valid reason for dismissals.
75. The Employer representative of the United States observed that what had seemed appropriate in 1982 was no longer appropriate at the present time. She indicated that the issue at hand was one of balance, flexibility and effect. She recalled that the Employers questioned whether the Convention contained the necessary provisions to protect workers, for employers to protect workers and for Governments to ratify it. She doubted whether the Convention reflected an appropriate balance.
76. The Employer representative of France considered that States faced three main difficulties with the Convention. Firstly, he observed that there had been a number of social and economic reforms in recent years, such as the adoption of national legislation to facilitate lay-offs, which led to increased social protection and introduced innovative protection mechanisms for workers. He noted that these types of reforms were difficult to implement in the context of the Convention, as the Convention served to prevent the creation of a more fluid job market. Secondly, member States hesitated to ratify the Convention due to the limited possibilities to make use of the flexibility devices, as his country had found in recent years. Finally, he submitted that the debate did not relate to the values set out in the Convention, but the interpretation given to its provisions.
77. The representative of the Government of Germany, speaking on behalf of the IMEC countries, recognized that the Convention represented an important basic instrument for the protection of employment. She observed, however, that member States had legislation and national practice that were largely compatible with the provisions of the Convention but, for various reasons, were not in a position to ratify it. She suggested that the low rate of ratifications was linked to legal obstacles and noted that there was a degree of uncertainty as to the margin left to the CEACR and national tribunals in applying the flexibility of the Convention.
78. The representative of the Government of the Bolivarian Republic of Venezuela recalled that in a financial crisis there was a need to protect workers from unjust dismissal. The representative of the Government of Brazil informed the meeting that consultations were ongoing in his country on prospects for ratifying the Convention. The representatives of the Governments of Brazil and Argentina both invited the Office to raise awareness of the Convention.

79. The Employer representative of Brazil recalled that his country had denounced the Convention following a political decision to liberalize the labour market. He indicated that this decision was under examination by the national tribunals. He further noted that many guarantees offered by the Convention were already foreseen in national laws, collective agreements and jurisprudence. He observed, however, that employers were generally reluctant to share information with courts or administrative authorities about the economic difficulties that the enterprise might be facing to justify the dismissal of workers.
80. The Employer representative of Gabon drew upon the experiences faced by her country following the ratification of the Convention. She noted that in Gabon, the Labour Code applied, without distinction, to multinationals, SMEs and very small firms. Experience showed that this required a full-time human resources director to manage lay-offs, which was something small and medium-sized enterprises and very small firms could not afford. She emphasized that the Convention should not be rejected entirely, but should be more flexible.
81. The Worker representative of Colombia placed emphasis on the relevance of the Convention in the current crisis. The Convention protected workers engaged under precarious contracts. He observed that, while it may be true that some countries offered better protection than that envisaged by the Convention, the instrument should be promoted in many countries where the protections afforded to workers remained very low.
82. Following group consultations, the Workers' and Employers' groups proposed a way forward that could be submitted for consideration to the Governments, namely the inclusion of Convention No. 158 in the package of instruments for consideration under the General Survey on employment in 2010.
83. In introducing the proposed compromise between the Workers' group and the Employers' group, the Worker representative of South Africa recalled that the best way to know the position of member States regarding the effect given to non-ratified Conventions and Recommendations was by requesting reports under article 19 of the Constitution.
84. The Workers' and Employers' groups confirmed the agreement reached in the Committee to examine six instruments (four Conventions and two Recommendations) in the 2010 General Survey on employment. However, they proposed that Governments should favourably consider replacing Convention No. 142 by Convention No. 158 and Recommendation No. 189 by Recommendation No. 198. They requested the Government representatives present at the session to consult their regional groups concerning the possibility of modifying the selection of instruments made earlier by the Committee on the occasion of the adoption of the Committee's report by the Governing Body. However, a number of the Government representatives present at the meeting expressed concern at the prospect of reopening a decision that had previously been adopted by the Committee.
85. When, on Tuesday, 18 November 2008, the Government group reviewed the proposals made by the Workers' and Employers' groups, several Government representatives reiterated their concern at reviewing in the Governing Body session a decision that had already been reached by the Committee. In the absence of consensus on the matter, the recommendations of the Committee remained unchanged.

## **2.2. Recent developments in the context of the CEACR**

86. At its 79th Session in November–December 2008, the CEACR adopted a general observation on Convention No. 158 in which it noted that “many more countries than those that have ratified the Convention give effect to its basic principles, such as notice, a pre-termination opportunity to respond, a valid reason and an appeal to an independent body.

Most countries, be they ratifying or otherwise, have provisions in force at the national level that are consistent with some or all of the basic principles of the Convention". The CEACR added that the "principles of the Convention are an important source of law for labour courts and tribunals in countries that have or have not ratified the Convention".

87. The CEACR further noted that "the principles underlying the Convention constitute a carefully constructed balance between the interests of the employer and the interests of the worker as evidenced by the provisions relating to termination on grounds of operational requirements of the enterprise". It considered that "this is of particular relevance given the current financial crisis [...] [b]ecause the Convention supports productive and sustainable enterprises, it recognizes that economic downturns can constitute a valid reason for termination of employment". The CEACR emphasized that "social dialogue is the core procedural response to collective dismissals – consultations with workers or their representatives to search for means to avoid or minimize the social and economic impact of terminations of employment for workers".
88. Following the examination by the CEACR at its last session of certain government reports on the application of the Convention, the Office has released an updated version of the background note prepared for the consultations.<sup>61</sup>

### 2.3. *Proposal*

89. In the current context of declining levels of economic growth and rising unemployment, the issue of dismissal is of particular relevance. Accordingly, consideration might be given to a way forward on these two instruments.
90. In line with the views expressed in the consultations, it might be considered important to:
- (i) promote the core principles of the instruments of termination of employment; and
  - (ii) explore the possibility of reviewing the flexibility clauses in the Convention.
91. Promotional activities might be undertaken in conjunction with a process of considering the partial revision of the provisions of Article 2 of the Convention through the adoption of a Protocol. Consideration might also be given to introducing greater flexibility for ratifying States to avail themselves of the exclusions in the application of the Convention, while making provision for effective tripartite consultations prior to having recourse to the exclusions.
92. *In light of the above, the Committee may wish to:*
- (i) *take note of the information contained in Part II, section 1, of the present document and provide any guidance that it considers appropriate for the further work of the Office;*
  - (ii) *provide guidance on the issues raised in Part II, section 2, in particular paragraphs 89–91.*

Geneva, 18 February 2009.

*Points for decision:* Paragraph 31;  
Paragraph 92.

<sup>61</sup> See [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/meetingdocument/wcms\\_100768.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_100768.pdf).