

International Labour Conference, 100th Session, 2011

**General Survey concerning social security instruments
in light of the 2008 Declaration on Social Justice for a
Fair Globalization**

**Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations**

**Report of the Committee of Experts
on the Application of Conventions and Recommendations
(articles 19, 22 and 35 of the Constitution)**

Report III (Part 1B)

Social security and the rule of law

INTERNATIONAL LABOUR OFFICE GENEVA

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Introduction

1. In March 2009, at its 304th Session, the Governing Body of the International Labour Organization decided that the recurrent item on the agenda of the 100th Session (2011) of the International Labour Conference should address the ILO strategic objective of enhancing the coverage and effectiveness of social protection, and within this objective focus on social security.¹ In an effort to align the General Survey of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) with the recurrent item report, the Governing Body decided that the General Survey will cover the first and the last on the list of the up-to-date social security Conventions – the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).² Separated in time by 36 years, these Conventions conceptually encompass the period during which the main edifice of international social security law has been constructed. The idea of social security itself and the master plan for its subsequent development into legally binding standards were laid down in 1944 by the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), which were therefore also included in the Survey.

2. Together, these four instruments provide perhaps the most comprehensive reflection of the economic thinking, legal doctrine and technical solutions, as basic minimum standards, that have been driving the development of social security in the past century. The Committee of Experts has been carefully attentive to this heritage, while also recognizing that in the twenty-first century ILO standards must face the new realities of globalization and a growing informal economy that have been reshaping the classic social security architecture. **Surveying the legacy of the social security standards adopted in the 1950s and 1960s, the Committee observes that there is now a clear need for the adoption of new complementary approaches to help guide the future policy choices of ILO constituents.**³ The Committee sees these possible new approaches as promoting continuity, coherence and sustainability, and as further developing social security based on the unwavering principles of social justice, fairness and solidarity.

¹ GB.304/LILS/5.

² The other up-to-date social security Conventions are as follows: the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); and the Maintenance of Social Security Rights Convention, 1982 (No. 157).

³ The Committee decided to highlight in bold certain statements throughout the General Survey, to which it attaches particular importance.

The new format of the Survey

3. The four surveyed social security instruments together encompass 132 standard pages of printed text and over 700 paragraphs of legal provisions. The sheer volume and the technical complexity of the instruments explain the unusual length of the present General Survey. In addition, the Committee was charged with incorporating the new format of the article 19 questionnaire on social security instruments adopted by the Governing Body. An important emphasis of this questionnaire was on elucidating the interaction of social security, as part of the ILO strategic objective of social protection, with the other strategic objectives, which the Declaration on Social Justice for a Fair Globalization of 2008 views as “inseparable, interrelated and mutually supportive”.⁴ The Survey therefore includes chapters exploring the multiple linkages between social security and the fundamental principles and rights at work (Part II, Chapter 2), social security and employment policy (Part IV, Chapter 2), as well as social security and social dialogue (Part IV, Chapter 3).

4. The Committee of Experts observes that comprehensive legal frameworks for policy coordination in these areas exist mostly in the form of ideas and plans; in practice, coordination is often weak or non-existent. Policy integration issues have gained particular prominence in the context of the global financial and economic crisis, which has adversely impacted many social security systems by drawing them into a negative synergy involving low growth, high unemployment and budget deficit. Uncertainty as to the effectiveness of various “crisis recovery” strategies and the gravity of the austerity measures taken in many countries amplified the Committee’s concerns over the sustainability of social security finances and related administration. These concerns are addressed in the chapter dealing with the protection of social security funds (Part IV, Chapter 1).

Information available

5. Given that social security or its absence touches nearly everyone on the planet, it is not surprising that the topic of the Survey has drawn increased attention from the ILO tripartite constituency. The Committee observes with **satisfaction** that, in spite of the very technical and complex nature of social security instruments, 116 member States,⁵ a record number in the last 15 years, have submitted in total 424 reports representing 62.3 per cent of the reports requested (681). According to its usual practice, the Committee has also made full use of the reports submitted under articles 22 and 35 of the ILO Constitution by those member States that have ratified Conventions Nos 102 and 168. The Committee wishes to acknowledge particular efforts undertaken by many countries in preparing informative reports, which in quite a number of cases ran into several dozens of pages.⁶ These valuable submissions have contributed to the volume of the Survey. While on some questions posed by the article 19 questionnaire the Committee would have wished more reports to contain more precise information, overall the information provided presented a sufficiently clear and comprehensive picture of the situation.

⁴ ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008, Part I(B).

⁵ For details see Annex V to the present Survey.

⁶ For example, the report of *Canada* comprised 137 pages, *Peru* 105 pages without counting the annexes, *Belarus*, 102 pages, etc.

6. An important contribution to the Committee's knowledge and understanding also came through the replies from 47 organizations of employers (six reports) and workers (41 reports) from 32 countries – one of the highest rates of replies in years. The Committee cannot overemphasize the significance attributed to the comments of employers' and workers' organizations in respect of the difficulties and dilemmas that the application of ILO standards may entail in practice, and it welcomes these organizations sharing valuable observations and insights, which the Committee has reviewed in a special section of the Survey.⁷

Structure of the Survey

7. Social security schemes are in one sense financial mechanisms fulfilling economic and social purposes, but they are established and configured through law. From the individual's point of view, social security is rights based: it consists of prescribed entitlements, qualifying conditions and procedural guarantees, the details of which are defined in national laws and regulations. The General Survey seeks to describe the main features of social security as they have developed under international law, set forth primarily in the ILO standards. The Survey also discusses and analyses ways in which social security protections may be extended, strengthened and in some instances preserved under the often challenging economic conditions faced by many countries. The Committee has attempted to fulfil these central descriptive and analytic goals by dividing its General Survey into five parts.

8. International social security law has developed a consolidated body of standards, organized into a single branch of legislation and applied under a common jurisprudence. *Part I* of the Survey traces the development of three generations of ILO standards in social security over a period of 90 years, in order to describe the foundation of international social security law and identify important elements of its integrity and flexibility (Chapter 1). This Part then examines efforts by the Committee to monitor and supervise these standards in order to maintain social security rights during the last 20 years, in the face of competing pressures such as deregulation, privatization and globalization – processes challenging the rule of law – which are examined in Chapter 2.

9. International social security law has witnessed a movement in recent decades from a rights-based to a more market-oriented approach. There is now an urgent need to deal with risks to social security systems by strengthening regulation and restoring adequate levels of protection. *Part II* of the Survey addresses the way towards a rights-based approach to social security by discussing it as both a human right and a duty of the State (Chapter 1), by linking social security rights to fundamental principles and rights at work (Chapter 2), and by highlighting the emergence of social security as a constitutional right and the increasing role of the courts in giving substance to this right (Chapter 3).

10. The Committee in *Part III* examines what it regards as three key aspects of strengthening legality in social security. Social security law should provide a basic floor of benefits and support, and coverage should be extended to all (Chapter 1). Social security law should define stakeholders' responsibilities and establish effective inspection and enforcement mechanisms (Chapter 2). Finally, the law must provide for certain core due process protections applicable to complaints and appeals brought by the beneficiaries (Chapter 3).

11. Substantial gaps in coverage or deficits in regulatory oversight are not compatible with the ILO's strong commitment to social security. Addressing these

⁷ See Part IV, Chapter 3(A): "Issues raised in replies to the article 19 questionnaire".

gaps and deficits, many of which stem from developments over recent decades, may become the ILO's mission in the near future. In *Part IV* the Committee identifies some major deficits in social security regulation in the areas of protection of social security funds (Chapter 1), effective coordination between social security and employment policy (Chapter 2), and advancing social security through social dialogue (Chapter 3).

12. Finally, *Part V* of the Survey addresses ways to strengthen the regime of international social security law through technical cooperation and normative action. The Committee reviews the needs of ILO constituents in terms of policy support and technical assistance in social security matters (Chapter 1), then explores options for extending and strengthening the impact of ILO social security standards (Chapter 2).

13. The value of this study to ILO constituents and to the general reader may be amplified by the fact that such a comprehensive General Survey on key social security instruments has been carried out by the Committee of Experts for the very first time. The Committee expresses the hope that this Survey will contribute to a better understanding and fuller application of the provisions of the surveyed instruments and of ILO social security standards in general.

Part I. The right to social security in international law

Chapter 1

Ninety years of standard setting in social security

14. From an embryonic institution limited to only a few countries in the wake of the twentieth century, social security developed into one of the main social institutions of today's societies more so industrial societies. It played a key role in the quest for greater protection from uncertainty, disease and deprivation shared by all nations and peoples of the world. Even in the most economically developed countries, social security can truly be considered as one of the great achievements of the twentieth century. In industrialized countries, social security systems have gradually covered all those in need of assistance whether through loss of health or income or the need to care for children or dependent persons. From an instrument of social control providing minimum standards of well-being to people in dire circumstances, social security has evolved into an instrument for promoting economic development, social cohesion and democracy. It was fused with the core functions of the State to form the welfare state as the distinct model of social development, which engendered and sustained a general belief in the ability of all countries to meet the pervasive challenge of putting in place a social security system accessible to all.

15. Social protection has come to be regarded as a productive factor⁸ preserving and enhancing the health, productivity and quality of the workforce and creating new employment in the social services sector. By providing replacement income it maintains domestic demand and helps stabilize the economy, particularly in the time of recessions. Where economic and social development are seen as mutually reinforcing processes, social protection systems are considered a societal investment in social and human capital⁹ necessary for stable long-term economic growth. The right to social protection was universally recognized as a fundamental human right guaranteeing a secure, healthy and decent standard of living necessary for the realization of a human being.¹⁰ The ILO

⁸ ILO: "Social protection as a productive factor", GB.294/ESP/4, Geneva, Nov. 2005.

⁹ The concepts of "social capital" and "human capital", widely used in economic and sociological literature, stem from the premise that capital today is embodied less in land, factories and machines than, increasingly, in the knowledge, education and skills of human beings and their ability to associate with each other and form groups and communities based on shared social and ethical norms, values and trust. A healthy economy is considered one in which there is sufficient social capital in the underlying society to permit businesses, corporations, networks, non-governmental organizations, and the like to be self-organizing. Investments in conventional human capital include measures aimed at improvement of the quality and employability of the labour force through vocational guidance, training and skills development, and health protection measures, among others.

¹⁰ See Part II, Chapter 1A: Social security as a human right and a duty of the State.

stood at the source of this process. **The body of standards it has produced over the years brought into existence the international social security law, which gave the firm legal foundation for the human right to social security and brought national social security systems under the rule of law.** The following sections mark the key stages in the 90 years' history of ILO's normative action in social security.

A. The ILO's mandate and standards in social security

1. Evolution of the ILO's mandate in the field of social security

In 1919

the ILO Constitution

gave the ILO a dynamic and creative mandate

for developing international social security law

16. Although the concept of *social security*, as it is known today, only emerged in the middle of the twentieth century, the ILO's first standard-setting activities in this field date back to the origins of the Organization and have evolved together with the mandate conferred to the ILO. The Preamble to the ILO Constitution recognized the need to improve conditions of labour in respect of "prevention of unemployment, ... the protection of the worker against sickness, disease and injury arising out of his employment, ... provision for old age and injury" and established the permanent international organization to promote these goals. The ILO's competence in these areas became an essentially dynamic concept, a continuing creative process based on the assumption that "the Organization *is* labour, and nothing that concerns labour is alien to it".¹¹ Realizing this mandate in the first 20 years of its existence, the Organization had adopted 14 Conventions and 11 Recommendations in the social security field, transforming workers' aspirations into legal rights and bringing the social security movement under the aegis of international law.

1944

Declaration of Philadelphia

extended mandate to cover economic and financial policies and

defined social security as provision of basic income and medical care to all

17. A quarter of a century later and surviving the World War, in 1944 the challenge was to "fit the ILO for the tasks that it needed to perform in a world very different from that of 1919".¹² With the vivid memories of the Great Depression of the 1930s and facing the enormity of the reconstruction task after the war, the Declaration of Philadelphia empowered the ILO to consider "all international economic and financial policies and measures" and to cater to "all human beings, irrespective of race, creed or sex" (Part II(a)). Shaping the world order where economic, financial and social policies should work in unison to relieve the peoples from fear and want, the Declaration included the new concept of "social security" among the "fundamental principles" for the work of the Organization, principles that were "a matter of concern to the whole civilized world". The ILO was called "to extend social security measures to provide a basic income to all in need of such protection and comprehensive medical care" (Part III(f)). This new mission and mandate of the ILO gave rise to the adoption of a series of reference international Conventions and Recommendations transforming the concept of social security into a statutory institution of the modern State. All of these instruments maintain their relevance up to date.

¹¹ ILO: *L'organisation internationale du travail: Ce qu'elle est, ce qu'elle fait*, 1936, p. 30.

¹² Opening statement of the Conference made by the Chairperson of the Governing Body, *Record of Proceedings*, International Labour Conference, 26th Session, Philadelphia, 1944, p. 7.

Since 1999

Decent Work Agenda

**called to make up the
global deficit of
social security**

18. Fifty-five years after the Declaration of Philadelphia, the world at large and the world of work have undergone a profound change, making it necessary to adjust social security systems to demographic and economic changes, improve their design and governance, and bring them in closer coordination with labour market and employment policies. In 1999, the Report of the Director-General entitled *Decent work* confronted the ILO with the challenge “to find solutions that increase protection and embrace respect for basic principles of social security”¹³ in the context of globalization. To these priorities the Decent Work Agenda, which has set the ILO programme of action at the start of the twenty-first century, added the need to make up the deficit of social security in a global economy by extending its coverage in the third world.

2001

**ILC general
discussion on social
security**

**gave the highest
priority to the
extension of social
security coverage
worldwide and
stressed promotion of
ILO standards**

19. Armed with the Decent Work Agenda, the Organization moved rapidly and took the lead in building the social dimension of globalization. In 2001, the International Labour Conference held a general discussion with the objective of determining the ILO’s vision of social security in the twenty-first century.¹⁴ In the conclusions adopted by the Conference, social security was recognized as a basic human right and a fundamental means for creating social cohesion and strengthening social peace and social inclusion. If properly managed, it enhanced productivity by providing health care, income security and social services. Social security systems therefore were destined to become more comprehensive in their personal and material coverage. Each country was called upon to determine a national strategy for working towards social security for all, closely linked to its employment and social policies. In order to be effective, initiatives to establish or extend social security required social dialogue and good governance. The Conference reaffirmed the Organization’s leading role in the promotion and extension of social security worldwide and stressed that ILO activities should be anchored in the Declaration of Philadelphia, the decent work concept and ILO social security standards.¹⁵

2003

**Global Campaign on
Social Security and
Coverage for All**

20. In 2003, the Conference concluded that the “highest priority should go to policies and initiatives, which can bring social security to those who are not covered by existing systems”. In that year, the ILO launched the Global Campaign on Social Security and Coverage for All, which implemented in practice the global consensus of governments, employers’ and workers’ organizations to broaden social security coverage, particularly in the informal economy, and raise awareness of its constructive role in economic and social development.

¹³ ILO: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, 1999 (available at www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm).

¹⁴ The important results of this discussion are best reflected in ILO: *Social security: A new consensus*. Geneva, International Labour Office, 2001.

¹⁵ ILO: *Provisional Record* No. 16, Report of the Committee on Social Security, “Conclusions concerning social security”, International Labour Conference, 89th Session, 2001.

2008

Social Justice Declaration

sets the global integrated strategy for decent work, which

includes social security extension and adaptation and

promotes standards as cornerstones of ILO action

21. In 2008, the Declaration on Social Justice for a Fair Globalization restated the ILO's mandate and objectives with a view to giving globalization a strong social dimension for improved and fair outcomes for all. The Declaration organized the ILO's mandate around the four strategic objectives of employment promotion, social protection, social dialogue and rights at work, and affirmed that these objectives are "inseparable, interrelated and mutually supportive". All Members of the Organization have a key responsibility to contribute, through the implementation of these objectives, to the realization of an "ILO global and integrated strategy for decent work". The objective of social protection includes "the extension of social security to all, including measures to provide basic income to all in need of such protection and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes". To assist its Members' efforts, the ILO must "promote the ILO's standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization".¹⁶ The realization of the ILO's evolving mandate in social security through the adoption of international social security standards is examined by the Committee in the next section of the Survey.

2. Three generations of social security instruments

A total of 31 Conventions and 23 Recommendations comprising one-sixth of all international labour standards and reflecting the concepts of:

■ **social insurance**

■ **social security**

■ **social protection**

22. The ILO's standard-setting activities in the field of social security have evolved together with its mandate. Between 1919 and 2010, the ILO adopted 31 Conventions and 23 Recommendations in the area of social security,¹⁷ which account for a respectable 16.5 per cent of all international labour Conventions and represent 11.5 per cent of the total number of ratifications. Social security is undoubtedly one of the major areas of the standard-setting and supervisory activities of the ILO. A review of 90 years of ILO normative activities in the field of social security shows that, historically and conceptually, these standards comprise three generations based on evolving approaches. In the first generation, the standards were inspired principally by the concept of social insurance. The second generation standards reflected a more general concept of social security codified in the Social Security (Minimum Standards) Convention, 1952 (No. 102). The instruments adopted subsequently, in the third generation, while drawing upon the model of Convention No. 102, took social security two steps further: first, by raising the level of protection offered; and, second, by broadening the concept of social security to include additional forms of social benefits, support and services.

¹⁶ ILO Declaration on Social Justice for a Fair Globalization, op. cit., Preamble and Part IA(ii).

¹⁷ Including Conventions and Recommendations on the social security of seafarers.

1919–39**First generation of Conventions covered the risks of:**

- **Maternity**
- **Employment injury**
- **Occupational disease**
- **Sickness**
- **Old age**
- **Invalidity**
- **Survivors**
- **Unemployment**

Organizing power of the first Conventions

23. The first generation standards pertain to the “social insurance era”. Social insurance schemes, which had become widely spread among industrial nations at the beginning of the twentieth century, were based on the principles of compulsory affiliation; administration by non-profit, self-governing institutions; administrative and financial supervision of the State; and association of insured persons to the management of social insurance institutions. From 1919 to 1939 the ILO adopted 15 Conventions and 11 Recommendations, which affirmed, developed and consolidated the social insurance model on the above principles.¹⁸ Each instrument covered a specific risk and separate instruments were adopted in respect of workers in industry and commerce and those in agriculture. The resulting set of standards established the first international inventory of recognized social risks, the protection against which should not be left to the goodwill of individuals but dealt with through collective mechanisms especially set up for this purpose. The first generation standards introduced certain basic principles on which most social insurance models were founded. In many respects, these principles – such as compulsory affiliation and the non-profit seeking nature of insurance institutions – have kept their relevance in today’s world as illustrated by the use of special procedures under article 24 of the ILO Constitution concerning the non-observance by Chile of Convention No. 35 following this country’s decision to introduce a fully funded pension scheme and to entrust its administration to profit-seeking private companies.¹⁹ The ILO’s standard-setting activities in the first 20 years carried forward the social insurance model into the law and practice of the majority of the industrialized and industrializing countries, which then formed part of the ILO’s membership. This “organizing power” of social insurance Conventions was described by Albert Thomas in 1931 as “the regulation of social insurance based on those principles in national systems which have best stood the test of time, it is a synthesis of all the characteristic trends of the insurance movement. It stimulates States to fresh progress and prevents any tendency to slip back. It is the point

¹⁸ **Maternity Protection** Convention, 1919 (No. 3) and Maternity Protection (Agriculture) Recommendation, 1921 (No. 12), **Unemployment (Agriculture) Recommendation**, 1921 (No. 11), **Workmen’s Compensation (Agriculture) Convention**, 1921 (No. 12), **Social Insurance (Agriculture) Recommendation**, 1921 (No. 17), **Workmen’s Compensation (Accidents) Convention**, 1925 (No. 17), **Workmen’s Compensation (Occupational Diseases) Convention**, 1925 (No. 18), **Equality of Treatment (Accident Compensation) Convention**, 1925 (No. 19), **Workmen’s Compensation (Minimum Scale) Recommendation**, 1925 (No. 22), **Workmen’s Compensation (Jurisdiction) Recommendation**, 1925 (No. 23), **Workmen’s Compensation (Occupational Diseases) Recommendation**, 1925 (No. 24), **Equality of Treatment (Accident Compensation) Recommendation**, 1925 (No. 25), **Workmen’s Compensation (Occupational Diseases) Convention (Revised)**, 1934 (No. 42), **Sickness Insurance (Industry) Convention**, 1927 (No. 24), **Sickness Insurance (Agriculture) Convention**, 1927 (No. 25), **Sickness Insurance Recommendation**, 1927 (No. 29), **Old-Age Insurance (Industry, etc.) Convention**, 1933 (No. 35), **Old-Age Insurance (Agriculture) Convention**, 1933 (No. 36), **Invalidity Insurance (Industry, etc.) Convention**, 1933 (No. 37), **Invalidity Insurance (Agriculture) Convention**, 1933 (No. 38), **Survivors’ Insurance (Industry, etc.) Convention**, 1933 (No. 39), **Survivors’ Insurance (Agriculture) Convention**, 1933 (No. 40), **Invalidity, Old-Age and Survivors’ Insurance Recommendation**, 1933 (No. 43), **Unemployment Provision Convention**, 1934 (No. 44), **Unemployment Provision Recommendation**, 1934 (No. 44), **Unemployment (Young Persons) Recommendation**, 1935 (No. 45).

¹⁹ For the full list of article 24 representations concerning social security Conventions, see Appendix III.

1944–1964

second generation of standards covered

- Income security
- Armed forces
- Medical care
- Minimum standards
- Maternity
- Equality of treatment

established a unified system of social security

round which the national movements are coordinating their progress slowly or occasionally with rapidity, as is proved by recent history”.²⁰

24. The second generation standards correspond to the era of social security.²¹ They comprise only three Conventions and four Recommendations, but the importance of these instruments extends all the way up to the present time.²² During the Second World War the nations of the free world were intensively seeking to build such post-war order where “all the men in all lands may live out their lives in freedom from fear and want”. In 1941, the Atlantic Charter expressed the “desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security”. The report of Lord Beveridge on social insurance and allied services (1942) systematized the concept of social security assuming that “social insurance should be treated as one part only of a comprehensive policy of social progress”. The new concept of social security implied universal coverage of the population, provision of benefits compatible with human dignity, and social assistance to those not benefiting from social insurance. Based on the broader mandate and vision established by the Declaration of Philadelphia, the second generation of social security standards established basic principles and a legal framework necessary for the creation and proper functioning of entire social security systems. These standards consolidated different branches into a unified or coordinated social security system, broadened the range of recognized social risks to include new branches of family benefit and medical care, extended protection to the self-employed and non-working population. The novelty of these standards laid in the comprehensiveness of coverage in respect of persons and contingencies, as well as in the coherent and codified form of presentation.

1950–52

An ambitious plan of adopting minimum standard for less developed countries

25. At the time of the adoption, in 1944, of Recommendations Nos 67 and 69, which laid down the blueprint for the development of social security for the years to come, it was considered that sometime in the future they would be converted into Conventions based on acquired experience. The rapid progress made by the social security movement in the following years advanced the idea to adopt a binding standard to give the movement a new impetus and to guide countries in the creation or reconstruction of their social security systems. Initially, the new instrument aimed at establishing a dual architecture of setting up two standards: a “minimum standard” for less developed countries desiring

²⁰ ILO: *The International Labour Organization: The first decade*, Geneva, 1931, pp. 9 and 154.

²¹ The concept of “social security” was formalized in 1934 when the United States Congress passed the Social Security Act pioneered by President Roosevelt, who believed that “these three great objectives – the security of the home, the security of livelihood, and the security of social insurance – ... constitute a right which belongs to every individual and every family willing to work”, stated during his message to Congress reviewing the broad objectives and accomplishments of the administration, 8 June 1934.

²² Income Security Recommendation, 1944 (No. 67), Social Security (Armed Forces) Recommendation, 1944 (No. 68), Medical Care Recommendation, 1944 (No. 69), Social Security (Minimum Standards) Convention, 1952 (No. 102), Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation (No. 95), Equality of Treatment (Social Security) Convention, 1962 (No. 118). Not counting standards on the social security of seamen.

**and advanced
standard for more
developed countries**

to create their national systems of social security; and an “advanced standard” for countries with already developed systems. The minimum standard had to be not lower than the standards set by the first generation Conventions, but allow temporary exceptions for less developed countries, notably with regard to the range of the persons protected. With regard to the advanced standard, due to the complexity of the debate and the lack of time, the idea was ultimately abandoned. The completion of the original dual architecture was therefore split in stages: whereas the advanced stage was relegated to the third generation standards, minimum standards were set in the second generation by Convention No. 102.

1965–88

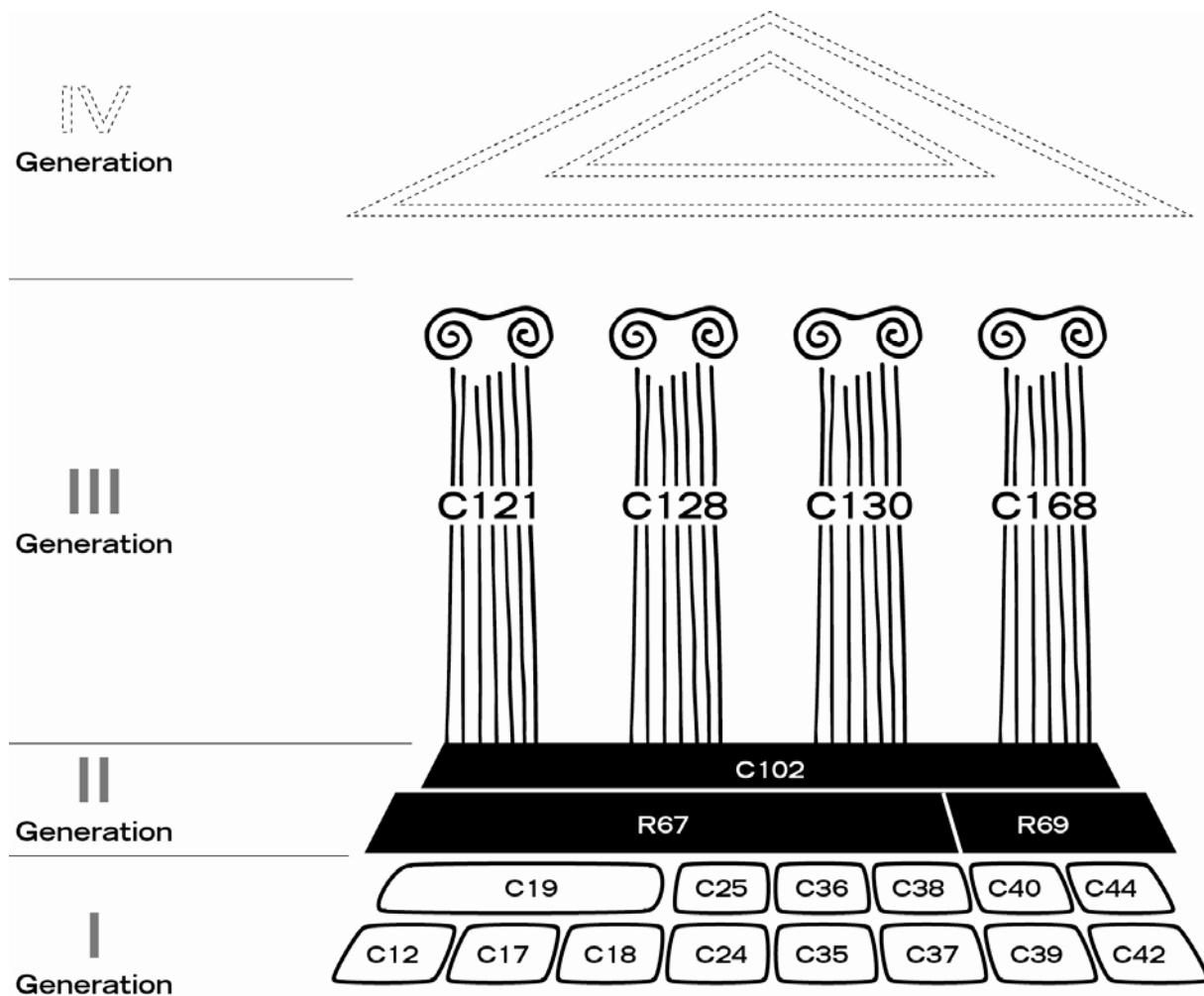
**Advanced standards
of the third
generation on**

- **Employment
injury benefit**
- **Pension system**
- **Health system**
- **Maintenance of
rights**

- **Unemployment
protection system**

26. The third generation standards focused on the consolidation of social security systems and raising the level of protection in terms of the population covered, rates and types of benefits. They completed the original architecture imagined in the early 1950s and revised the first generation instruments on the basis of the common principles of organization, management and financing of the social security systems established by Convention No. 102. From 1964 until 1988, the ILO adopted five new social security Conventions accompanied by five Recommendations. In 1964, Convention No. 121 and Recommendation No. 121 regrouped into a single instrument employment injuries and occupational diseases, which had been covered by separate standards in the first generation. Long-term benefits were also regrouped into one instrument— Convention No. 128 and Recommendation No. 131 of 1967 on invalidity, old-age and survivors’ benefits – reflecting the trend to have these three branches in a single national pension system. Medical care was taken together with sickness benefit in Convention No. 130 and Recommendation No. 134 of 1969, reflecting the trend towards establishing comprehensive health insurance systems. In 1982, the adoption of the Maintenance of Social Security Rights Convention, 1982 (No. 157), specifically addressed the issue of the maintenance of social security rights of migrant workers and complemented the provisions of Equality of Treatment (Social Security) Convention, 1962 (No. 118), focusing on equality of treatment and exportability of benefits.

27. Finally, in 1988, the Conference adopted Convention No. 168 and Recommendation No. 176 on employment promotion and protection against unemployment, which moved to understanding social security as part of a broader set of social policies directed at one priority goal – promotion of full, productive and freely chosen employment. Social security was brought in coordination with other means for the attainment of this objective, such as special employment programmes and active labour market measures, employment services, vocational training and guidance, rehabilitation services and the like. Convention No. 168 triggered the process of more profound social thinking bringing to light the fact that social security was most effective when integrated in a wider framework of socio-economic and human resources development. Since 1988, normative action in social security marked a prolonged pause with no new standards initiatives being brought before the Conference for over 20 years.



1989–2011

The challenge of implementation and a pause in standard setting

As the product of the industrial society, up-to-date standards are

more suitable for ratification by the industrialized countries,

28. This lengthy period hides what might be called the missing generation of international social security standards, which, if adopted in the nineties, might have better guided social security into the new era of globalization, deregulation and privatization engendering integrated policies, social safety nets and public and private partnerships. The reasons why the succeeding generation of social security standards has not seen the light should in all probability be found in the general retreat of the welfare state shifting large part of its social responsibilities to the care of the private sector, financial markets and the providence of individuals themselves. Whatever the reason, the fact remains that, apart from Convention No. 168 adopted in 1988, the rest of the advanced social security standards were adopted in the period 1952–69 and embodied the concept of the “industrial society” at the peak of its historical development. To the extent that the high-income countries have since moved on to a model of society based on services and information and low-income countries were engulfed by the informal economy, the ratification prospects of these standards have been progressively shifting to the newly industrializing countries joining the segment of middle-income economies. Indeed, the low rate of ratification of the advanced social security standards might well be explained by the limited number of countries which grew to become new industrial economies. However, even without ratification, the existing Conventions and Recommendations have provided a structure

for countries wishing to adopt new social security laws. The challenge for all countries has been to implement the key tenets of these instruments, including income security and access to medical care.

where the standard beneficiary is a blue collar employee or an ordinary industrial labourer, but are

ill adapted to provide coverage of rural labourers, informal sector workers and atypical forms of flexible employment

Current social security standards have become insufficient means to implement the ILO's mandate to extend social security to all

and cast a social security floor under the global economy

29. The Committee observes that the second and third generation social security standards reflected the nascent development thinking of the 1960s, which saw the world economy following the one and only path of industrial growth traced by the Western economies, imagining the standard social security beneficiary as a blue collar worker or an ordinary industrial labourer. Needless to say that this development paradigm sidelined those countries, which remained essentially rural societies with small landholders practising subsistence agriculture. The developmental thinking changed radically after the first oil shock of 1973, when the “golden era” of rapid economic growth after the Second World War suddenly came to an end: the heretofore straightforward path to development split into the multitude of economic scenarios. No new substantial social security standards were adopted after this period to capture the new thinking. Conventions Nos 102, 121, 128 and 130 remained forever the product of the industrial society at its best, but adopted at the time when such notions as sustainable development, governance and globalization – key to understanding the present world – did not yet exist.

30. With regard to second and third generation social security standards, the issue is their applicability and adaptability to changing socio-economic conditions, fragmented labour markets of the service economies characterized by the increase of flexible, temporary, atypical and precarious forms of employment, as well as their possible extension to the informal sector and their relevance to developing countries. Increasingly, the question of non-citizens, including migrant workers, and their access to social security poses a key challenge to the international community. The Committee highlights the challenges and difficulties encountered in the application of ILO social security standards in the last two decades in the next chapter concerned with “Maintaining social security rights through effective supervision”. **What needs to be clearly stated here, however, is that the current ILO mandate in social security, as reaffirmed and updated by the Declaration on Social Justice for a Fair Globalization of 2008, has largely outgrown the standards with which it has to be implemented. The available means are no more sufficient to meet the new ends. This is particularly evident as regards the objective of extending social security coverage to all, beyond the formal economy to the masses of population living in abject poverty and insecurity, which is placed at the heart of the ILO's mandate and mission.**

They need to be supplemented by a new high-impact instrument

setting the obligation of the State to provide a set of basic benefits to all residents,

which would be acceptable to all member States

31. The Committee largely shares the analysis of the present state and practice and of future options for global social security standard setting in the International Labour Organization undertaken by the Social Security Department of the ILO.²³ The above analysis leads to the conclusion that “none of the current up-to-date ILO social security Conventions can be regarded as an appropriate tool for the ILO in pursuing its constitutional mandate to extend social security to all through the implementation of the social security floor. It is rather Recommendations Nos 67 and 69 that lay down the relevant standards for implementing the minimum social security floor. Due to their legal nature, however, they do not provide binding obligations for ILO member States in this regard.” As to Convention No. 102, it also “does not effectively establish a binding obligation to extend a basic but comprehensive set of priority benefits to all people in the global economy and society”.²⁴ **The Committee is certain that the task of globalizing social security requires the ILO to complement the current set of up-to-date standards with a new high-impact instrument embedding social security in a new development policy paradigm and designed so as to be accepted by all ILO member States.** In this respect, the Committee examines the proposal of setting the global social security floor in Chapter 1 of Part III of the present Survey.

3. Integrity and flexibility of the current up-to-date social security standards

1995–2002

Cartier Working Party

**Up-to-date Conventions:
Nos 102, 118, 121,
128, 130, 157 and 168**

32. Between 1995 and 2002 the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards of the Governing Body (Cartier Working Party) reviewed all ILO standards adopted before 1985 to determine whether they needed to be revised. In 2000, it classified Recommendation No. 67 as an “up-to-date” and Recommendation No. 69 as an “interim” standard, which is not considered as fully up to date but still relevant in certain respects. In 2002, following the recommendations of the Cartier Working Party, the Governing Body of the ILO has decided to concentrate efforts on promoting the ratification of a set of seven Conventions and five Recommendations considering them up to date.²⁵

Establish a unique set of common principles:

■ **social solidarity**

33. These Conventions form a compact body of instruments establishing both minimum and higher standards for the nine principal social security branches (medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors’ benefit). They were

²³ ILO: *Setting social security standards in a global society*, Social Security Policy Briefings, Paper 2, Social Security Department, 2008, p.22.

²⁴ *ibid.*

²⁵ ILO: GB.276/LILS/WP/PRS/1, Geneva, Nov. 1999. The instruments adopted after 1985 are automatically considered as up to date.

- **compulsory affiliation** developed in the second half of the twentieth century as a normative framework held together by a unique set of common aims and principles underpinning the social security system. This integrity of international social security law is an invaluable achievement to be preserved and consolidated in the ILO's future standard-setting activities in the field of social security.²⁶
 - **risk pooling**
 - **collective financing**
 - **defined benefit**
 - **guaranteed minimum**
 - **supervision by a public authority**
 - **participatory management**
 - **strong role of the social partners**
 - **overall responsibility of the State**
- The largest set of flexible options allows each country**
34. International labour standards on social security help materialize the aspirations set forth in the Universal Declaration of Human Rights that the fundamental human right to social security be protected by the rule of law. They are aimed at providing the broadest possible protection in terms of personal coverage, risk coverage and an adequate level of compensation. They aim to strengthen social cohesion by promoting solidarity between active and non-active members of society, between rich and poor and between present and future generations. Strengthening people's security through greater social solidarity means basing social security systems on such organizational principles as risk pooling and collective financing by the members of the community, and guaranteeing a minimum level of protection sufficient to maintain the family of the beneficiary in health and decency. These organizational principles must be complemented by the no less fundamental principles of governance: the system shall be supervised by the public authorities or administered jointly by employers and workers whose contributions represent the largest share of social security revenues; representatives of the persons protected, which include social groups outside wage employment, shall participate in management if the administration is not entrusted to a public institution; and the State must accept general responsibility for the due provision of benefits and for the proper administration of the institutions and services concerned.²⁷
35. It is often alleged that ILO Conventions are excessively rigid. Attachment to principles, however, does not mean rigidity and inflexibility. On the contrary, it is unity in principle and purpose that permits greater diversity in detail and means of implementation. Viewed in this light, international social security Conventions offer perhaps the largest set of options and flexibility clauses allowing for the goal of universal coverage to be attained gradually and in step with economic development. Each country is offered the possibility of implementing them by combining contributory and non-contributory benefits, different methods of computing benefits, general and occupational schemes, compulsory and voluntary insurance, public and private tiers into the mix of protective measures best suited to its needs.²⁸ In substance, the ILO instruments open the door to progressive implementation of social security to the maximum extent of a country's available resources and their principles are pertinent to all countries.
- to adopt its proper mix of protective measures**

²⁶ Report of the CEACR, Report III(1A), ILC, 89th Session, 2001, para. 154 (hereafter CEACR, General Report, 2001, para 154).

²⁷ *ibid.*, para. 155.

²⁸ *ibid.*, para. 156.

but protects against the risks of:

- **privatization**
- **loss of state guarantees**
- **exclusion of democratic oversight**
- **hardship for poor people**
- **pre-selection of risks**
- **discrimination**

36. By making it possible to achieve the same objectives of social security by a variety of methods, current up-to-date Conventions leave sufficient room to accommodate in part the redistribution of risks and responsibilities between the State and the principal economic players, which characterizes social security reforms in many parts of the world. The new social security mix now emerging, in which the share of responsibility relinquished by the State is taken up by private insurers, enterprises or the insured themselves, is not necessarily at odds with the social security model established by ILO standards. However, it might mask the danger of excluding public authorities and the insured from participating in the administration or management of private insurance schemes and exposing their members to greater financial risks without sufficient guarantee from the State of the due provision of benefits. Concerned at the direction the reform process was taking in certain countries, the Committee considered itself bound to repeatedly draw governments' attention to the need to safeguard, in the process of reform, these basic principles of organization and management which should continue to underlie the structure of the social security systems.²⁹

37. The primary responsibility lies on the State to help realize the right to social security. While there may be some space for private insurance as a complement to the State's mandatory responsibility, the State is still obliged to fulfil its duties. Placing the general responsibility on the State, ILO standards oblige it to regulate the provision of private social security so as to mitigate the negative effects of profit-seeking private insurance markets, high insurance premiums causing hardship for persons of small means, gaps in coverage, pre-selection of risks and discrimination. These issues are further elaborated upon by the Committee in the subsequent sections of the Survey.

B. Recommendations Nos 67 and 69 – The blueprint for income security and universal medical care for the post-war world

Combining social insurance with social assistance

systemic approach to lawmaking

38. Recommendations on income security (No. 67) and medical care (No. 69) were adopted to give effect to the ideas contained in the Declaration of Philadelphia: the first traced the way to ensure basic income for all; the second – to deliver comprehensive medical care. In doing so, they combined the advantages of the social insurance model of the first generation standards with the broad reach of social assistance, included in the second generation standards. The Recommendations stand out as the first instruments to apply a systemic approach to lawmaking characterized by comprehensive coverage, internal coherence and a codified form of presentation. Together they established guiding principles for all social security contingencies involving the loss of income and dedicated a separate standard to medical care as a new branch of social security.

²⁹ *ibid*, para. 157.

Visionary instruments**espousing the doctrine of universality****tracing the way for the social security movement worldwide****building a public service for the whole of society**

39. The income security and medical care Recommendations were visionary instruments, which laid down the new doctrine of universality as the basis for the development of social security. These two Recommendations reflected a fundamental change of paradigm in social security policies, as focus was shifted from social security protection for *workers* to the protection of the *whole population*. They paved the way for the adoption of the Universal Declaration of Human Rights (1948) and of the International Covenant on Economic, Social and Cultural Rights (1966) and to the inclusion of the right to social security in national Constitutions. The 1944 Recommendations were based not so much on experience but constituted essentially the forecast of the tendencies that social security policy would follow in the post-war period. **Indeed, it happened to be one of the most accurate social forecasts ever, as the subsequent development of social security worldwide closely followed the blueprint drawn by these Recommendations.** The new doctrine was transforming the pre-war systems of social insurance into a generalized movement towards including additional classes of the population, covering a wider range of contingencies, providing benefits in relation to needs, and in general, unifying the financing and administration of branches hitherto separate. Social insurance mechanisms were placed alongside universal schemes and social assistance to produce a new organization for social security, which served the whole of society as a public service for the citizenry at large.

1. The Income Security Recommendation, 1944 (No. 67)

Foreseeing income security for all workers and their dependants**Grouped together all income replacement mechanisms****Established three sets of guiding principles**

40. Recommendation No. 67 brought together in a single instrument all provisions for income maintenance in case of inability to work or to obtain work and recommended the extension of these provisions to all workers, whether employed, self-employed, urban or rural, as well as to their dependants. While relying on social insurance as the main protection mechanism, the Recommendation was the first international instrument to define social assistance as a complement to social insurance extending protection to the vulnerable and needy population. In brief, recognizing that “income security is an essential element in social security”, Recommendation No. 67 grouped together all the income-replacement mechanisms necessary to construct an integrated social security system, the task which was later accomplished by Convention No. 102.

41. Recommendation No. 67 is structured around three sets of guiding principles for the development of income security schemes: general guiding principles; guiding principles concerning social insurance; and guiding principles concerning social assistance. In addition, an extensive appendix to the Recommendation complements these principles by providing suggestions as to their implementation in practice.

General guiding principles	42. The Recommendation invites member States to establish income security schemes aimed at relieving want and preventing destitution by restoring lost income up to a reasonable level in case of inability to work or to obtain remunerative work or by reason of the death of a family's breadwinner. Income security should be ensured by way of compulsory social insurance through the provision of benefits upon the realization of defined contingencies and whenever the insured persons fulfil the prescribed qualifying conditions. For needs that would remain not covered by way of social insurance, the State was to complement social insurance by social assistance.
Paragraph 1	
Paragraph 2	
Paragraphs 3–4	
Guiding principles on social insurance	43. The guiding principles set out in respect of social insurance relate to the main parameters of social insurance schemes such as the range of contingencies covered, the persons to be covered, the level of benefits, the contribution conditions, as well as the financing and administration of social insurance schemes.
Paragraphs 5–27	
Guiding principles on social assistance	44. Social assistance protection mechanisms were assigned the role of complementing social insurance with a view to securing the well-being of dependent children, as well as of providing special maintenance allowances directed to invalids, aged persons and widows who are not receiving social insurance benefits and whose incomes do not exceed a prescribed level. In addition, appropriate allowances in cash or partly in cash and partly in kind were to be provided for all persons in need.
Paragraphs 28–30	

2. The Medical Care Recommendation, 1944 (No. 69)

Instituting a new branch of the social security system	45. For Recommendation No. 69 the availability of adequate medical care was “an essential element in social security” on a par with income security. Together they offered comprehensive protection: Recommendation No. 67 against economic risk of the loss of income and Recommendation No. 69 against biological risks of illness and disability. Recommendation No. 69 organized medical care as a separate branch of social security and put forward the principle that the nature and the extent of the care provided by the branch should be defined by law. Comprehensive health care should be guaranteed to all members of the population, whether or not gainfully occupied through a combination of social insurance complemented by social assistance or through a public health service.
providing protection against biological risks of illness and disability	
Establishing basic principles of organization and management of medical care	46. Recommendation No. 69 laid down basic principles of organization and management of medical care – those specific to the medical care branch, as well as those common to the social security system as a whole. The <i>principles specific to organization and management of the medical care branch</i> include the following:
Complete and readily available care	(1) Medical care should be complete (preventive and curative care) and readily available at any time and place to all persons protected, under the same conditions, without any hindrance of an administrative, financial or political nature, or otherwise unrelated to their health.

without time limit and of the highest standard of quality	(2) Medical care should meet the need of the individual for care without time limit and provide the highest possible standard of care and of professional skill and knowledge with a view to maintaining, restoring and improving the health of the persons protected, subject only to such reasonable limitations as may be imposed by the technical organization of the service.
centrally supervised, efficient and available throughout the country	(3) All medical care should be rationally organized throughout the country with a view to the greatest possible economy and efficiency, centrally supervised, and closely coordinated with general health services in the country.
47. <i>General principles</i> common to all branches of the social security system, being applied to the medical care branch, require countries to orient their health-care strategy in the following directions:	
covering all members of the community	(1) According to the <i>principle of universal coverage and social inclusion</i> , the medical care service should be accessible to all members of the community, irrespective of whether or not they are gainfully occupied and possess the means necessary to pay for such care.
financed collectively	(2) According to the <i>principle of resource pooling and solidarity</i> , a medical care branch should be financed collectively so as to ensure its long-term viability and progressive development promoting social stability and cohesion in the society.
under the general responsibility of the State	(3) According to the <i>principle of the general responsibility of the State</i> , the central government should be responsible for formulating the national health policy and for supervising all medical care and general health services, so as to ensure the due provision of care and the proper administration of all the institutions and services concerned, irrespective of the adopted method of financing or administration.
and oversight by the beneficiaries and the medical profession	(4) According to the <i>principle of democratic and transparent governance of the social security system</i> , the management of the health sector should be exercised with the participation of the representatives of the persons protected, of the contributors, and of the medical and allied professions, and provide for a quick and effective procedure of complaint or appeal as to the decisions made.
Structure	48. The Recommendation is divided into six parts addressing respectively the essential features of a medical care service; the persons covered; the provision of medical care and its coordination with general health services; the quality of service; the financing of the medical care service; and the supervision and administration of the medical care service.

Form of medical service

49. As to the form of the service, the main objective being to guarantee universal access to health-care services, it is recommended that it should be provided through a publicly funded medical care service. Alternatively, medical care could be provided indirectly through social insurance and uninsured persons should receive care through social assistance mechanisms whenever they are unable to obtain it at their own expense. Recommendation No. 69 considers social assistance and social insurance as complementary means that need to be coordinated and act together so as to reach all members of society. Medical care and general health services should be centrally supervised by an authority representative of the community and the beneficiaries should have a voice in the administration of the service.

3. Continuing relevance of Recommendations Nos 67 and 69

A source of reference for the world of work

50. Although Recommendations Nos 67 and 69 were adopted more than 65 years ago, their continued pertinence and usefulness is confirmed by country reports. National law and practice in responding member States largely follows these Recommendations, in particular as regards the branches, organization and coverage of the social security system. The Committee welcomes the positive responses to Part III of the article 19 questionnaire, which asked member States, inter alia, about the impact of Recommendations Nos 67 and 69 and the effect given to these instruments. As regards the Income Security Recommendation, 1944 (No. 67), a number of member States expressly report that they are largely complying with its provisions,³⁰ for many others it goes without saying. *Algeria, Costa Rica, Czech Republic, El Salvador* and *Malaysia* indicate that Recommendation No. 67 is a source of reference for national legislation and the world of work. *Swaziland* reports that the provisions of the Recommendation are applied on a limited scale and the Government of *Saudi Arabia* states that, although domestic laws are currently not in compliance with the Recommendation, the Government has the intention to develop a system of social protection in pursuit of social justice.

Many countries comply with Recommendation No. 67

The objective of universal health care underpins the global social protection floor

51. The continued relevance of the medical care Recommendation is determined by the fact that for most countries in the world the objective of universal health care still points to the distant future. Basic health care is part and parcel of the global social protection floor initiative. The ILO's Global Campaign on Social Security and Coverage for All is inspired by the objectives of Recommendation No. 69, as much as Recommendation No. 67, stressing the continuing guiding nature of both instruments. Even in highly developed countries there is still scope for improvement in the manner in which effect is given to Recommendation No. 69 in terms of the coverage and quality of benefits, as manifested by the two notable initiatives to achieve universal health care in the last decade. In 2000, *France* introduced the universal health coverage (*couverture maladie universelle*) (CMU),

Introduction of universal health

³⁰ *Algeria, Austria, Argentina, Bosnia and Herzegovina, Costa Rica, Czech Republic, El Salvador, France, Honduras, Indonesia, Israel, New Zealand and Philippines.*

**coverage in France
in 2000**

**and in the United
States in 2010**

which provides a social benefit for access to care, reimbursement of care, and medical benefits to any person residing in France who is not already covered by any other compulsory health insurance. The system has significantly contributed to improving the health of the least affluent. The *United States* recently passed legislation,³¹ which establishes a mandate for most legal residents of the United States to obtain health-care insurance. Its provisions will take effect over the next four years by means of expanding Medicaid eligibility, subsidizing insurance premiums, providing incentives for businesses to offer health-care benefits, prohibiting denial of coverage/claims based on pre-existing conditions, etc.

**The objectives of
Recommendation
No. 69 are shared by
most States**

**with many providing
basic medical care to
their population free
of charge**

52. Eighteen member States report that they recognize the value of Recommendation No. 69 and are largely complying with its provisions.³² The overall replies to the questionnaire show that most responding States, even without specifically mentioning the Recommendation, are actually complying with or working towards achieving the objectives set out in the Recommendation. In *Mauritius*, for example, medical care is provided free of charge for everyone. The legislation in the *Bolivarian Republic of Venezuela* guarantees without distinction free medical care to all residents. In *Gambia*, although health care is not entirely free, individuals only pay a nominal fee. Other countries are in the process of developing universal health-care systems. In *Saint Vincent and the Grenadines* a feasibility study for health insurance is being carried out and discussions on the implementation of a programme are under way.

**While conserving
their relevance,
Recommendations
Nos 67 and 69 have
now largely lost their
motivational force**

53. The Committee considers that Recommendations Nos 67 and 69 and their universal approach to social security are still pertinent, in particular in terms of the guiding principles they set forward for national law and practice and for ILO action on the extension of social security to all. However, the low number of government reports specifically mentioning these instruments attests to the fact that, while still being used for reference, Recommendations Nos 67 and 69 have largely lost their motivational force and hardly inspire countries to build modern social security systems according to the blueprint drawn 66 years ago. Recommendations Nos 67 and 69 have played a pioneering role in the history of the social security movement, but the world has not lived up to their ambitious objectives “to relieve want and prevent destitution”. **The persistent realities of poverty and informality call for drafting a new blueprint for the development of social security in the twenty-first century, equipping it with more effective means**

³¹ The Patient Protection and Affordable Care Act (PPACA, Pub. L. No. 111-148) was signed into law in the United States on 23 March 2010; and the Health Care and Education Reconciliation Act of 2010 was signed into law on 30 March 2010.

³² *Algeria, Austria, Bosnia and Herzegovina, Costa Rica, Czech Republic, El Salvador, France, Honduras, Indonesia, Israel, Republic of Korea, Kuwait, Malaysia, Montenegro, New Zealand, Peru, Syrian Arab Republic and Bolivarian Republic of Venezuela.* Bosnia and Herzegovina refers in this respect to its Law on Health Insurance (*Official Gazette of the Federation BiH*, No. 30/97). Peru gives effect to Recommendation No. 69 through the Comprehensive Health Insurance, ESSALUD, and more recently through the gradual implementation of the new Law on Universal Health Insurance.

Social security is moving to integrated forms of social protection,

which should continue to respect the principles of universality and social solidarity

to alleviate poverty. The idea of underpinning the world economy by a global social security floor has the potential of once again changing the social security paradigm, the ways and means with which social security is going to be provided in the coming future, moving away from the risk-based towards more integrated forms of social protection. What Recommendations Nos 67 and 69 could still contribute to this process are the same fundamental objectives and principles, for which social security systems have been established in the first place: universality of coverage, social solidarity, certainty and regularity of support, oversight by the persons protected and the primary role of the State. The Committee strongly believes that the new social security paradigm will continue to respect those principles.

C. Convention No. 102 – Foundation of international social security law

1. Defining the very principle of social security

A landmark instrument

54. In almost 60 years of existence, Convention No. 102 has had a substantial influence on the development of social security in the various regions of the world, and is therefore deemed to embody an internationally accepted definition of the very principle of social security.³³ Taking into consideration the wide variety of existing social security schemes, Convention No. 102 focused on questions considered to be of major importance, on which international agreement was considered desirable and likely, and left outside its scope many questions of secondary importance. In contrast with the earlier instruments, Convention No. 102 established targets to be achieved rather than the applicable techniques.³⁴

establishing a separate branch of social security law

as a system of legal rights

unified by common principles and organized into a social institution

55. Convention No. 102 transformed the ideas of the 1944 Recommendations into legal obligations and became the landmark international instrument establishing social security as a separate branch of international law. It regrouped into a single, comprehensive and legally binding instrument the range of nine benefits considered to form the core of social security (medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit), and placed them under the principles of governance applicable to the entire social security system. The Convention set the basic parameters of social security organized as a social institution, the sole objective of which was to maintain the beneficiaries and their families in health and decency throughout the contingencies covered.

³³ CEACR, General Report, 2003, para. 53.

³⁴ CEACR, General Report, 2003, para. 48.

**Convention No. 102
set quantitative
standards of
minimum protection**

**and targets for social
progress,**

**established common
rules of collective
organization,
financing and
management of social
security**

**as well as principles
of good governance
of the system under
the general
responsibility of the
State – Part XIII
(Common
provisions);**

**right to due process –
Article 69; and**

**equality of treatment
of non-national
residents – Article 68**

**Protection may be
ensured by the
flexible mix of**

**■ contributory and
non-contributory
benefits**

56. Convention No. 102 gave an internationally accepted definition of the material scope of social security and supplied a yardstick for measuring the extent to which existing national systems reach or exceed the prescribed level. New to international law were the Convention's provisions setting quantitative standards of basic protection and statistical requirements as to the minimum coverage of the population and the rate of benefits.³⁵ By setting a socially acceptable minimum level of protection to be achieved worldwide, it established a symbol of social progress and set in motion a dynamic process of gradually raising the basic parameters of the social security programmes to higher levels. As the protection mechanism of the entire society, the social security system is founded on the collective approach to dealing with social risks. Compulsory membership and financing through contributions or taxes are indispensable to give effect to such fundamental objectives as social solidarity and cohesion, equality and non-discrimination, protection of the poor and vulnerable members of the community.

57. Convention No. 102 formulated common rules of collective organization, financing and management of social security systems and complemented them by the no less fundamental principles of governance: the system shall be supervised by the public authorities or administered jointly by employers and workers whose contributions represent the largest share of social security revenues; representatives of the persons protected, which include social groups outside wage employment, shall participate in management if the administration is not entrusted to a public institution; and the State must accept general responsibility for the due provision of benefits and for the proper administration of the institutions and services concerned.³⁶ Convention No. 102 established procedural rights in social security law regulating the suspension of benefits, the right of appeal in the event of the refusal of a benefit or of a complaint as to the quality or quantity of benefits. It also recognized the principle of equality of treatment between non-nationals residing in a given country and nationals of that country.³⁷

58. Convention No. 102, in the same way as the later instruments, militates against the idea of rigidity that is often held of Conventions. It offers a range of options and flexibility clauses making it possible to attain gradually the objective of broad coverage in harmony with the rate of national economic development. Each country may apply the Convention through a combination of contributory and non-

³⁵ Quantitatively the minimum level of social security was to be determined by each country for itself by reference to the selected national indicators (reference wage), which made the system adaptable to the prevailing socio-economic conditions of any country. Comparability and equalization of the conditions between countries was ensured through the common methodology of selecting prescribed national indicators. Convention thus established a legally binding minimum normative framework for the design, measurement and development of social security systems worldwide.

³⁶ CEACR, General Report, 2003, para. 49.

³⁷ With a view to operationalizing the application of this principle throughout the entire social security system and to permit the exportability of long-term benefits, in 1962, the Conference adopted the Equality of Treatment (Social Security) Convention, 1962 (No. 118), which was the subject of a General Survey in 1977; see International Labour Conference, 63rd session, 1977, Report III (Part 4B).

■ **compulsory and voluntary insurance**

■ **general and occupational schemes**

complying with the minimum social threshold

Coexistence of public and private schemes is compatible with Convention No. 102, provided its general principles are respected

contributory benefits, general and occupational schemes, compulsory and voluntary insurance, through different methods for the administration of benefits, and public and private participation, all intended to secure an overall level of protection which best responds to its needs.³⁸ Convention No. 102 is inspired by the idea that there is no perfect model for social security: each society has to develop the best means of guaranteeing protection of its members. The method selected must reflect the social and cultural values, history, institutions and level of economic development. The Convention does not therefore require a specific approach by member States; instead, it sets out an integrated series of objectives based on commonly accepted principles establishing a minimum social threshold for all member States.³⁹

59. The flexibility contained in its provisions has permitted the Convention to pass the test of time, and to encompass the new model of social security, in which the part of responsibility that is renounced by the State is taken up by private insurance schemes, enterprises and insured persons themselves. **The Committee of Experts has indicated in this respect that the coexistence of a dual social security system, both public and private, as is the case in various Latin American countries, is not in itself incompatible with Convention No. 102, which allows for the attainment of a minimum level of social protection through different methods. However, the Convention sets forth certain principles of general application relating to the administration, financing and functioning of social security schemes. What is of interest to the Committee, in the last resort, is to ascertain that, irrespective of the nature of such schemes, the main principles are observed and the level of benefits prescribed by the Convention is attained in full.**⁴⁰

2. Setting minimum standards for building viable systems

Structure of Convention No. 102

Parts II–X establish nine branches covering major social risks

Parts XI–XIII establish common provisions

60. Convention No. 102 is composed of 87 Articles regrouped into 15 parts.⁴¹ As such, it was the longest international labour standard only recently overtaken by the Maritime Labour Convention, 2006. Parts II–X establish minimum standards of protection in respect of the following nine social risks: medical care, sickness, unemployment, old-age, employment injury, family, maternity, invalidity and survivors' benefits. In addition to branch-specific provisions, the Convention lays down provisions common to all branches: flexibility options in ratification and implementation of the Convention (Part I), quantitative standards for periodical payments (Part XI), equality of treatment of non-national residents (Part XII), rules for suspension of benefits, right of appeal, financing and administration (Part XIII).

³⁸ CEACR, General Report, 2003, para. 51.

³⁹ CEACR, General Report, 2003, para. 56.

⁴⁰ CEACR, General Report, 2003, para. 52.

⁴¹ Part XIV contains miscellaneous provisions regarding the effects of the Convention in time, whereas Part XV contains the final provisions related to its ratification and entry into force.

Article 2 – Initial acceptance of minimum three Parts

61. The minimum requirement for the ratification is the acceptance of three of the nine Parts relating to benefits. In order to ensure that the obligations resulting from the choice of benefits are reasonably equivalent, the accepted Parts need to include at least one among those relating to unemployment, employment injury, old age, invalidity or survivors. The Convention further provides that Members, which ratify only certain of Parts II–X, may subsequently accept the obligations under other Parts, and move gradually towards full achievement of the aims of the Convention.

Article 4 – Subsequent acceptance of additional Parts**Flexibility clauses**

62. The level of the minimum standard applicable to developing countries was the source of a dilemma: on the one hand, the Convention had to acknowledge the difficulties encountered by slightly developed countries in setting up a social security system; on the other hand, it should not lower the level fixed by the first generation Conventions. The compromise consisted of allowing temporary exceptions for developing countries with respect to the range of persons protected, and the rate and duration of benefits in certain branches. For example, countries whose economies and medical facilities are insufficiently developed may, for all nine branches, initially restrain coverage to prescribed classes of employees constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more.

Article 3 – For Members with insufficiently developed economy and medical facilities**Compulsory affiliation – Article 5**

63. Convention No. 102 requires member States to determine in law the classes of employees or economically active population, which shall comprise the persons protected under each branch. Compulsory affiliation of the persons protected has been a constant feature of international social security standards as it allows pooling the risks throughout the largest possible number of affiliates. This economic rationale of compulsory affiliation was complemented by the legal rationale of subjecting entitlement to social security rights to objective conditions of affiliation equal to all. The principle of compulsory affiliation thus laid a foundation for the emergence of the rights-based approach to social security. Its continued relevance has never been put into question.

Voluntary insurance Article 6

64. The Convention also determines the conditions under which non-compulsory insurance could be taken into account for the purpose of compliance with the level of protection in specified branches. Voluntary insurance schemes must fulfil the following conditions: they must be supervised by the public authorities or administered by joint operation of employers and workers, cover a substantial part of the persons whose earnings do not exceed those of the skilled manual male employee, and comply, in conjunction with other forms of protection, where appropriate, with the relevant provisions of the Convention. Voluntary coverage however is not accepted in such branches as employment injury, family benefit and maternity benefit, where only compulsory protection could be taken into account. Questions of coverage are examined in detail in Chapter I of Part III of the present Survey.

Minimum configuration of each branch includes:

- (i) **definition of the contingency;**
- (ii) **persons protected;**
- (iii) **type and rate of benefit;**
- (iv) **length of the qualifying period;**
- (v) **duration of benefit and waiting period.**

65. Each of the Parts from II to X of the Convention is composed of six Articles setting the legal structure of each branch, the first establishing the duty of the State to secure by, or in virtue of, national laws or regulations the provision of the benefit concerned, while the other five Articles establish the minimum set of the qualitative and quantitative parameters listed in the left column. These parameters are set to values which together determine the minimum standard of protection in the given branch. Consequently, while it is possible to raise the level of protection, by for example reducing the length of the qualifying period or increasing the duration of the benefit, setting any of the basic parameters to values violating the limitations established by the Convention would signify non-observance of the minimum standard prescribed by it. The description and values of these parameters are given in the tables in the appendix to the Survey. The interrelation between the parameters by the type of scheme covering different categories of persons protected is shown in table 1.

Table 1. Main types of social security programmes covered by Convention No. 102

Persons protected	Type of programme	Source of financing	Type of benefit	Rate of benefit
Employees	Compulsory social insurance	Contributions	Wage-related (Article 65)	At least 40–45–50% of the beneficiary's previous wage
Economically active population	[Voluntary social insurance]	Contributions or taxes	Flat rate (Article 66)	At least 40–45–50% of the national reference wage
All residents	Rights-based social assistance.	Taxes	Income dependent (Article 67)	Prescribed minimum amount
	Universal schemes	Taxes	Irrespective of income	

Exhaustive list of grounds for suspension of benefits –**Article 69****Right of complaint and appeal – Article 70**

66. Convention No. 102 contains a list of cases in which the benefit due to a person protected may be suspended to the extent prescribed, including a number of cases related to the personal conduct of the beneficiary where the suspension of benefit amounts to a sanction. These include, for example, submitting a fraudulent claim, cases where the contingency has been caused by a criminal offence or the wilful misconduct of the person concerned, failure to make use of the appropriate services (medical or rehabilitation services, or employment services) or failure to comply with the rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries. **It is important to underline that the list of the grounds authorizing suspension of benefits given in Article 69 is exhaustive and therefore limits suspension of benefits in any other circumstances.** The regime of sanctions permitted by the Convention is counterbalanced by the right of appeal in the event of the refusal of a benefit or of complaint as to its quality or quantity recognized by Article 70 of the Convention and examined in detail in Chapter 3 of Part III of the present Survey.

**Financing and
administration –
Articles 71 and 72**

67. The Convention accepts varying methods for the provision of protection through the mechanisms of social insurance, social assistance or universal public service, so as to leave more options to member States in the methods of organizing, financing and administering benefit schemes. Questions of financing and administering social security are examined in detail in Chapter 1 of Part IV of the present Survey.

**Participatory
management –
Article 72(1)**

on a tripartite basis

68. A scheme may be administered by a government department or by an institution regulated by the public authorities, or by any other body, provided that the representatives of the persons protected participate in the management or are associated therewith. Moreover, national laws or regulations may envisage the participation of representatives of employers and of the public authorities, thus putting the management of a scheme on a tripartite basis. Participation of the social partners in the administration of social security institutions has had an essential role in ensuring sound governance of social security systems and has been recognized by all three generations of ILO social security instruments. In this respect, the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), reinforced the principle of participative management by guaranteeing the participation in an advisory capacity of employers' representatives, together with the representatives of the protected persons, even in cases where the administration is directly entrusted to a government department responsible to Parliament. **In application of the above provisions and in line with the objective of social dialogue pursued by the ILO, the Committee has consistently called for a strong role of the workers' and employers' organizations in the management of social security.** Measures of advancing social security through social dialogue are reviewed in Chapter 3 of Part IV of this Survey.

**Strong role for the
social partners**

**General
responsibility of
the State –
Articles 71(3)
and 72(2)**

69. Compensating for the absence of detailed provisions regarding the financing and administration of social security, ILO social security instruments placed on the State the general responsibility for the proper administration of social security institutions and services, as well as for the due provision of social security benefits. **The principle of the overall state responsibility also guarantees that the State cannot invoke administrative decentralization in order to avoid being held accountable for bad management or lack of ensuring effective protection under national social security schemes. The Committee has interpreted the State's supervisory powers as not allowing it to use the assets of its social security system for purposes other than financing protection measures, which would inevitably lead insured persons to lose confidence in the institutions responsible for their protection.**

3. Guiding the development of social security standards at the regional level

Convention No. 102 served as a blueprint for the

European Code of Social Security

and paved the way to higher standards in Europe

Protocol to the Code

ILO Committee of Experts supervises the application of the European Code of Social Security with

- **independence**
- **impartiality**
- **objectivity**

Close cooperation between the ILO and the Council of Europe

70. The impact of the Convention at the regional level and in the regional setting is of great significance. The European region has been particularly influenced by Convention No. 102. In other regions, the Convention's principles have provided guidance to countries, even where they have not ratified the Convention. In Europe, Sweden was the first country to ratify Convention No. 102 in 1953. The second ratification necessary for the formal entry of the Convention into force also came from a European State – the United Kingdom – in 1954. Placing the principles of social protection and social cohesion at the centre of their post-war development model in the middle of the past century, the States Members of the Council of Europe incorporated the minimum standards of social security embodied in Convention No. 102 into the European Code of Social Security (ECSS) signed in Strasbourg on 16 April 1964. The Preamble of the Code especially recognizes the collaboration of the International Labour Office in the preparation of this instrument, which was aimed “to encourage all Members to develop further their system of social security”. By 1964, ten European States had already ratified Convention No. 102 and successfully applied its provisions in national law and practice. Their experience, monitored by the ILO's supervisory system, convinced the authors of the Code, as it is stated in the Preamble, “that it is desirable to establish a European Code of Social Security at a higher level than the minimum standards embodied in international labour Convention No. 102 concerning minimum standards of social security”. Such higher standards were also prepared by the Council of Europe with the active collaboration of the International Labour Office and embodied in the Protocol to the Code.

71. The collaboration of the International Labour Organization was further solicited in the establishment of the procedures on the monitoring and supervision of the application of the Code and its Protocol. For this purpose, in accordance with Article 74, paragraph 4, of the Code, the Director-General of the ILO was requested to designate the appropriate body of the ILO to examine the annual reports on the Code and to transmit its conclusions to the attention of the Council of Europe. Thus, the Committee of Experts on the Application of Conventions and Recommendations has been designated as the “appropriate body” of the ILO, not least because of the principles of independence, impartiality, objectivity, competence and first-hand experience of different legal, economic and social systems which underlie its methods of work.

72. On the occasion of the 50th anniversary of Convention No. 102, the Committee of Experts on Standard-Setting Instruments in the Field of Social Security (CS-CO)⁴² of the Council of Europe, at its fourth meeting in September 2002, expressed its gratitude towards the International Labour Organization for its fundamental work in the field of social security standard setting, which had also laid the basis for the

⁴² Now the Committee of Experts on Social Security (CS-SS).

European Code of Social Security, and for the excellent cooperation between the two organizations over all these years. The CS–CO also stressed the continued relevance of ILO Convention No. 102 and the Code. **From its side, the ILO Committee of Experts considers it very important that the supervisory bodies of the ILO and the Council of Europe in the field of social security standard setting continue to share the basic principles and approaches and stay in close cooperation ensured by the secretariats of both organizations.**⁴³

**Harmonizing
European and ILO
standards and**

**positions of the
supervisory bodies**

**identifying best
practices**

**Role of the
supervisory system**

**to maintain
progressive
orientation of
reforms in Europe**

73. This double responsibility of examining reports on the Code and on Convention No. 102 permits the Committee to develop its approaches with a view to ensuring compatibility and consistency in the interpretation and application of these instruments, thus harmonizing the development of the social security law in regional, European, and international instruments. Cross-referenced comments by the ILO and European supervisory bodies have a much more authoritative and cumulative impact on countries, resulting in a long list of cases of progress in the application of both European and ILO standards.⁴⁴ It also enables it to draw the attention of ratifying States to the need to coordinate their regional legal obligations under the Code with their international obligations under the ILO social security Conventions. As a result of its role in the supervision of the European Code on Social Security, the Committee is at the forefront of developments in the field of social security and is in a position to link developments at the European level to the international level, offering member States innovative and modern solutions by drawing on best practices.

74. The system of supervision and promotion of the Code established by the Council of Europe, of which the ILO Committee of Experts is an essential part, fulfils the crucial function of maintaining social protection in Europe at the highest level in the world and serves as an effective instrument for progressive development of the social security systems of European States. The Committee has no doubt that it would continue to do so until there remains common political will within European institutions to maintain the progressive orientation of social security reforms. In this respect, it notes with satisfaction the strong commitment and determination expressed by the governing bodies of the Council of Europe to work towards wider ratification of the Code, the Protocol thereto and the revised Code, as well as the programme of bilateral and regional activities supporting country efforts to adhere to these instruments and develop a national social security framework in line with European standards. The Committee wishes to emphasize, as did the Parliamentary Assembly of the Council of Europe in 2002, that “these standards are relevant even in today’s changing climate and provide a solid foundation on which to make further progress

⁴³ CEACR, Report on the ECSS, 2002, para. 24.

⁴⁴ See CEACR: “Supervision of the European Code of Social Security during the crucial decade of 1995–2005”, Report on the ECSS, 2006.

**Continuous
relevance of the
European Code of
Social Security and
Convention No. 102
for the European
Social Model, rights-
based development,**

**transformation of
social security
systems of transition
countries**

**European Code of
Social Security and
Convention No. 102
act as safeguards of
acquired rights**

towards the ideal of a uniformly high level of social security in the member States".⁴⁵

75. To mark the 40th anniversary of the Code in 2004, the Committee observed that, together with the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Code:

- (1) formed the hard core of the European Social Model;
- (2) filled the basic human right to social security proclaimed in the European Social Charter with concrete substance and guarantees;
- (3) provided the benchmark to judge the effective exercise of the right to social security in the European countries;
- (4) establishing minimum standards of social security in itself and higher standards in its Protocol, the Code traced a straightforward vector for progressive development of social security systems in Europe;
- (5) during the last decade of the twentieth century, the Code/Convention No. 102 remained a stronghold against the excesses of certain neo-liberal economic policies, putting in danger social cohesion and solidarity in the European nations;
- (6) gave the necessary guidance to Central and Eastern European countries transforming their social security systems to provide protection in the emerging market economy;
- (7) at the beginning of the twenty-first century, the Code/Convention No. 102 continued to be an important reference point in the accelerating process of reforms in social security extending throughout the continent;
- (8) safeguarding the acquired standards of social protection, orient the Code/Convention No. 102 the reform process towards guaranteeing better social security in Europe with a higher level of protection of the population and prevents this level from sliding backwards.⁴⁶

4. Measuring impact by cases of progress

**122 cases of progress
and interest since
1964**

76. A way to measure the impact of ratification on the development of national law and practice is to consider the cases in which the Committee has expressed its satisfaction or interest at the progress achieved in the application of the respective Conventions. An examination of the application by member States that have ratified Convention No. 102 shows that, since 1964, in 40 cases ratifying States have brought their national law and practice into conformity with the Convention following recommendations by the Committee, while in 82 cases the Committee has expressed interest in the measures taken. That means that in the last 45 years the Committee has been registering on average 2.7 cases of progress or interest per year. Adding cases of progress in the application of the European Code of Social Security, which the Committee has been registering since 2000, will bring that

⁴⁵ CEACR, Report on the ECSS, 2003, para. 28.

⁴⁶ CEACR, Report on the ECSS, 2003, para. 27.

Three cases of progress or interest per year

number to three cases per year. Table 2 lists the cases, in which the Committee has expressed “*satisfaction*” and “*interest*” as regards the application of Convention No. 102.

Table 2. Cases of progress in respect of Convention No. 102 (1965–2010)

The Committee expresses *satisfaction* in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In general, cases of *interest* cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

1965	Sweden	Satisfaction		Barbados	Interest
1967	Israel	Satisfaction		Iceland	Interest
1969	Denmark	Satisfaction		Israel	Interest
1970	Belgium	Satisfaction		Libyan Arab Jamahiriya	Interest
	Federal Republic of Germany	Satisfaction		Luxembourg	Interest
1971	Peru	Satisfaction		Mauritania	Interest
1972	Belgium	Satisfaction		Zaire	Interest
	Mexico	Satisfaction	1995	Belgium	Interest
1973	Federal Republic of Germany	Satisfaction	1996	Venezuela	Interest
	Peru	Satisfaction	1997	Switzerland	Satisfaction
1974	Federal Republic of Germany	Satisfaction		Switzerland	Interest
1975	Denmark	Satisfaction		Venezuela	Interest
	Mexico	Satisfaction		United Kingdom	Interest
	Norway	Satisfaction		Netherlands	Interest
	Peru	Satisfaction		Cyprus	Interest
	Senegal	Satisfaction		Barbados	Interest
	Sweden	Satisfaction	1998	Spain	Satisfaction
1976	Yugoslavia	Satisfaction		Iceland	Interest
1977	Austria	Satisfaction		Italy	Interest
1978	Greece	Satisfaction		Netherlands	Interest
	Yugoslavia	Satisfaction		Mauritania	Interest
1981	Ireland	Satisfaction	1999	Croatia	Interest
	Norway	Satisfaction		United Kingdom	Interest
	Yugoslavia	Satisfaction		Portugal	Interest
	Denmark	Interest	2001	Cyprus	Satisfaction
	Ireland	Interest		Costa Rica	Interest
	Norway	Interest		Mexico	Interest

1982	Peru	Satisfaction		Spain	Interest
	Niger	Interest	2002	Croatia	Satisfaction
1984	Costa Rica	Satisfaction		Croatia	Interest
1985	Denmark	Interest	2003	France	Satisfaction
	Federal Republic of Germany	Interest		United Kingdom	Satisfaction
1986	Belgium	Satisfaction		Italy	Interest
1989	Costa Rica	Satisfaction		Libyan Arab Jamahiriya	Interest
	Mexico	Satisfaction		Mexico	Interest
	Federal Republic of Germany	Interest		Netherlands	Interest
	Costa Rica	Interest		Peru	
	Bolivia	Interest		Switzerland	Interest
	Israel	Interest		Japan	Interest
	Mexico	Interest		Senegal	Interest
	Norway	Interest		The former Yugoslav Republic of Macedonia	Interest
	Senegal	Interest	2004	Costa Rica	Interest
	Turkey	Interest		Serbia and Montenegro	Interest
	Peru	Interest	2005	Libyan Arab Jamahiriya	Interest
1990	Iceland	Interest		Peru	Interest
	Barbados	Interest	2006	Germany	Satisfaction
	Austria	Interest	2007	Portugal	Satisfaction
	Libyan Arab Jamahiriya	Interest		Switzerland	Satisfaction
1991	Denmark	Interest		Peru	Interest
	Netherlands	Interest		Portugal	Interest
1992	Austria	Interest		Spain	Interest
	Costa Rica	Interest		Turkey	Interest
	Luxembourg	Interest	2008	Costa Rica	Interest
1993	Denmark	Satisfaction		Italy	Interest
	Spain	Interest		Libyan Arab Jamahiriya	Interest
	Germany	Interest		Niger	Interest
	Greece	Interest		France	Interest
	Spain	Interest	2010	Barbados	Satisfaction
	Turkey	Interest		Barbados	Interest
1994	Costa Rica	Interest		Plurinational State of Bolivia	Interest
	Venezuela	Interest			

Proactive role of the CEACR in assisting countries

77. The methods of work of the Committee have evolved to enhance the impact of ratified Conventions. For ten years, the Committee has followed a new proactive role in assisting governments in defining priorities by making the main principles of the surveyed instruments more visible. The Committee is now giving more structure to its comments and highlighting its conclusions, and has recently provided integrated comments for member States who have ratified several ILO social security instruments.⁴⁷

By integrating comments across Conventions**Identifying problems for technical cooperation**

78. The dialogue between the Committee and member States has further evolved to identify areas where technical cooperation would be useful. **To increase impact, it is important to establish efficient operational linkages between the comments of the supervisory bodies and the technical cooperation activities and, in the first place, to ensure a systematic follow-up of those comments made by the Committee of Experts, which expressly call for the provision of technical assistance to the country concerned.** The Committee is pleased to note in this respect the establishment of a position of the Coordinator on Technical Cooperation in the Department of International Labour Standards.

Highlighting good practices

79. The Committee has highlighted since 2008 cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions. **The Committee notes that cases of good practices⁴⁸ can be particularly useful in the field of social security, since new approaches, and innovative and creative ways to address difficulties are often used in social security systems worldwide.** Good practices can provide examples of countries extending the application of the Conventions and help realize the potential of built-in flexibility of ILO social security Conventions. **The Committee's comments would bring added value to the countries concerned by identifying effective solutions retained by other countries facing similar problems.**

new approaches and effective solutions**Preliminary assessment of reforms to pinpoint potential problems**

80. In a rapidly changing world, the importance of preventive action is vital in order to create maximum efficiency. The supervisory process can assist its constituents in providing such preventive services, in particular through encouraging initiatives of some governments to seek preliminary assessment of the compatibility of the planned reforms of the social security schemes with the provisions of ILO Conventions. In the face of long-term social security reforms, the Committee of Experts much more often finds itself in a situation where it has to warn a government of the possible problems of compliance which they might

⁴⁷ CEACR, observations, *Plurinational State of Bolivia*, and *Peru*, 2010.

⁴⁸ In accordance with the decision taken at its 78th Session (November–December 2007), the Committee highlights cases of good practice to express its appreciation of the special efforts in applying a Convention, and so that they might, where appropriate, serve as a model for other countries to assist in the implementation of ratified Conventions and the furtherance of social progress. At its 79th Session (November–December 2008), the Committee agreed on the general criteria that it would apply to identify cases of good practice. (CEACR, General Report, 2010, para. 64).

Preventive comments encounter in the future. This type of “preventive comments” is a new feature of supervision, which if need be, might well find a more generalized use. **The Committee considers that the practice of systematically gauging social security reforms at an early stage by the international standards provides an important guarantee of the progressive development of the national social security systems in full respect of international standards.**

5. Status, influence and prospects of ratification of Convention No. 102

A model followed throughout the world 81. Social security schemes exist in nearly all industrialized countries covering most branches to which the Convention applies. Many developing countries, inspired by the Convention, have embarked upon the road to social security, especially to set up old-age pensions, even though all of their systems are more modest in scope and, in general, do not yet encompass unemployment or family benefits. Most of the social security schemes in Latin America, which have their origins in the era of social insurance, were greatly influenced by international labour standards and, in particular, by Convention No. 102. Together with other social security instruments, it helped create a level playing field of social conditions in a globalized economy and served as a model for regional social security instruments. Convention No. 102 also remains the key reference for the definition of the content of the right to social security under the International Covenant on Economic, Social and Cultural Rights, the European Social Charter ⁴⁹ and other regional instruments in various parts of the world. ⁵⁰

Key reference instrument

Forty-seven ratifications 82. Convention No. 102 came into force on 27 April 1955. To date, 47 countries have ratified Convention No. 102 and incorporated its provisions into their internal legal systems and national practice. The most recent ratification was done by *Uruguay* and registered on 14 October 2010. The list of States, which have ratified Convention No. 102, and the list of Parts of the Convention accepted by them are provided in Appendix I. Seven countries have accepted all nine Parts/branches of the Convention: *Belgium, Brazil, Germany, Libyan Arab Jamahiriya, Luxembourg, Netherlands and Portugal*. The old-age benefit branch (Part V) has been the most widely accepted branch: 91 per cent of the ratifying States accepted this part. In comparison, Part VII (family benefit) and Part IV (unemployment benefit) have been accepted respectively by only 54 and 56 per cent of ratifying States.

Seven countries have accepted all nine Parts/branches

Part V (old-age benefit) is the most widely accepted

Steady rate of ratifications will continue 83. Table 3 shows that Convention No. 102 has actually had a steady rate of ratification, with eight to ten new ratifications each decade, except for the 1980s, which are grimly remembered as the years of structural adjustment policies. The prospects for ratification announced by member States when completing the article 19 questionnaire, confirm that this trend will be upheld.

⁴⁹ The European Social Charter provides in Article 12(2) that the Contracting Parties undertake to maintain a level of protection at least equal to that required by the ratification of Convention No. 102.

⁵⁰ Regional instruments on social security are listed in table 5 in para. 148.

Table 3. Dynamics of the ratification of Convention No. 102

	1953–59	1960–69	1970–79	1980–89	1990–99	2000–10
1	Belgium	Austria	Barbados	Democratic Republic of the Congo	Bosnia and Herzegovina	Albania
2	Denmark	Iceland	Plurinational State of Bolivia	Spain	Croatia	Brazil
3	Germany	Ireland	Costa Rica	Bolivarian Republic of Venezuela	Cyprus	Bulgaria
4	Greece	Luxembourg	Ecuador		Czech Republic	Montenegro
5	Israel	Mauritania	France		The former Yugoslav Republic of Macedonia	Poland
6	Italy	Mexico	Japan		Portugal	Romania
7	Norway	Netherlands	Libyan Arab Jamahiriya		Slovakia	Serbia
8	Sweden	Niger	Switzerland		Slovenia	Uruguay
9	United Kingdom	Peru	Turkey			Estonia (ECSS) ⁵¹
10		Senegal				

Feasibility studies are in progress in a number of countries

84. The ratification prospects of Convention No. 102 are currently being considered by more than 15 member States, ⁵² who are at different stages in the ratification process. The *Republic of Korea* is examining the Convention with a view to ratification in the future and *Mozambique* intends to ratify as soon as the conditions for such ratification are set. *Djibouti* intends to initiate proceedings leading to the ratification of the Convention, whereas *Lithuania* is already considering ratification. In the *Syrian Arab Republic* a competent committee has reached consensus on a proposal in principle to agree to ratify the Convention on the understanding that, as agreed during the workshop held in Damascus on 22–24 February 2010, a study shall be conducted, in which the Articles of the Convention will be analysed in relation to the legislation in force. *Benin* reports that the Government complies with the minimum conditions to ratify the Convention and states that the ratification procedure can soon be started after a thorough comparative analysis of the national legislation is carried out with the assistance of the ILO. *Sudan* and the *United Republic of Tanzania* are also in the process of analysing the national social security legislation with a view to examining the possibility of ratification. The *Republic of Moldova* reports that a feasibility study is necessary to take a decision as regards ratification. *China* has outlined the goal to “gradually set up a social security system covering all urban and rural residents and with a network interlinking social security, social assistance, social welfare and charitable causes”, and reports to implement to a large degree the

Comparative analyses of the national legislation are carried out with ILO assistance

⁵¹ *Estonia* has ratified the European Code of Social Security which contains provisions similar to that of Convention No. 102.

⁵² *Argentina, Benin, China, Djibouti, Republic of Korea, Lithuania, Republic of Moldova, Mongolia, Morocco, Mozambique, Nicaragua, Russian Federation, Sudan, Syrian Arab Republic, United Republic of Tanzania and Ukraine.*

provisions and spirit of Convention No. 102, although some specific requirements remain. Against this background, China vows to take active steps to study the feasibility of ratifying the Convention. *Kazakhstan* also reports that, in order to ratify Convention No. 102, it is necessary to examine the existing legislation and to harmonize it with the provisions of the Convention. The Committee would encourage countries undertaking the feasibility studies for possible ratification of the Convention to seek technical advice and support from the Social Security Department of the Office.

Several countries may be in a position to ratify Convention No. 102:

- **Mongolia**
- **Morocco**

- **Argentina**

- **Nicaragua**

- **Estonia**

- **Russian Federation**

- **Ukraine**

85. A feasibility study and compatibility of national legislation with the provisions of Convention No. 102 was carried out in *Mongolia* with the technical assistance of the ILO; Mongolia would now like to organize a national workshop on the findings of the assessment to identify future steps towards ratification. In *Morocco*, a study is under way on the calculation of benefits and whether they correspond to the provisions of Convention No. 102; in the light of the results of this study Morocco would consider ratifying the Convention. *Argentina* states in its report that, since 2009, the Government is working towards presenting the ratification of the Convention to the national congress. The General Confederation of Labour of the Argentine Republic (CGT-RA) actively supports the ratification of the Convention. The Committee notes with interest the detailed comparative analysis of the national legislation with Convention No. 102 provided by *Nicaragua*. The analysis concludes that Nicaragua is in a position to ratify Parts III, V, VI, VIII, IX and X, and that the instrument of ratification should be accompanied by a declaration in conformity with Article 3(1) to make use of the temporary exceptions. Having recently ratified the European Code of Social Security, the Committee considers that *Estonia* is able to do the same for Convention No. 102, taking into account the similarity of the provisions of the two instruments. The Government however stated that, having ratified the European Code of Social Security, *Estonia* does not consider it necessary at present to ratify Convention No. 102. Several technical meetings on the compatibility of the Russian legislation with the provisions of Convention No. 102 and the European Code of Social Security organized jointly by the ILO, Council of Europe and the Ministry of Health and Social Development of the *Russian Federation*, the last one in June 2010, have concluded that the national legislation complies with the requirements of Parts II, III, IV, VI and VIII of the Convention and recommended assessing the level of old-age, invalidity and survivors' pensions according to the methodology prescribed by the Convention to confirm the possibility to accept Parts V, IX and X as well. The necessary consultations with the Ministry are expected to take place in early 2011. After similar analysis of the national legislation carried out in 2007–08, the Ministry of Labour and Social Policy of *Ukraine* has started the procedure of ratification of Convention No. 102. The Committee expects the International Labour Standards Department to provide full legal and technical support necessary to initiate and complete the ratification process in the countries concerned.

Acceptance of additional Parts of Convention No. 102

86. As regards the prospects for the acceptance of additional Parts, *Croatia* reports that, after finishing the steps for accession to the European Union, the country is planning to prepare an analysis of the existing and new potential regulations related to the Parts of Convention No. 102 that have not yet been accepted. *Spain* states that a study on the level of family benefits in Spain demonstrated that the country is in compliance with the requirements of Part VII concerning the total value of the family benefits in the country and the acceptance of this Part could therefore be considered. The Committee notes that *Cyprus* has recently accepted the obligations under Part VII of the European Code of Social Security and is thus in a position to do the same under Convention No. 102. *Sweden* has ratified the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), which covers those parts of Convention No. 102, it has not accepted Parts V, IX and X.

Countries which stall the ratification but apply the Convention through other instruments

87. Other member States do not consider it necessary to ratify Convention No. 102, because they have already ratified international or regional instruments which provide a similar level of protection. *Finland* reports that it does not consider ratifying Convention No. 102, because it has already ratified all relevant third generation ILO social security instruments. The Government, as well as the Free Trade Union Confederation of *Latvia*, report that ratification of Convention No. 102 is not foreseen, taking into consideration that the European Code of Social Security, which the country plans to ratify, provides higher levels of protection compared to the minimum standards embodied in Convention No. 102.

Coordination of obligations under the European Code of Social Security and Convention No. 102

88. The Committee considers that, in Europe, as in no other region of the world, the road to progressive development of social security systems passes through wider and more effective coordination of the dense network of obligations assumed by member States under various legal instruments in the field of social security. With its double responsibility both in respect of the European Code of Social Security and with regard to international labour standards relating to social security, notably Convention No. 102, the Committee sought to develop a coherent analysis of the application of European and international instruments and to coordinate the obligations of the States parties to these instruments. The Committee drew attention to the considerable potential of the promotion of the acceptance of the non-ratified Parts of the Code and its Protocol, given the fact that the member States concerned have already assumed analogous obligations under Convention No. 102 and other social security-related ILO Conventions.

Five countries may accept additional Parts of Convention No. 102

89. The Committee wishes to emphasize, however, that coordination between European and international standards is a two-way street, and where the obligations of the contracting parties under the Code permit them to assume corresponding obligations under the ILO Conventions, they should be invited to do so. Five countries are particularly

concerned with the task of upgrading their international obligations to those accepted at the European level.⁵³

**Czech Republic –
Part IV**

**Denmark –
Parts VII and VIII**

**Spain –
Parts V, VIII and IX**

**Ireland –
Parts V and VII**

**Italy –
Part VI**

**Twenty-one
countries state that
they are giving effect
to some Parts of
Convention No. 102
in law and practice**

**Eight countries
highlight the
reference value of
Convention No. 102**

90. The *Czech Republic* ratified Convention No. 102 in 1993 excluding Part IV (Unemployment benefit), but has subsequently included this Part in its ratification of the Code in 2000 and could now consider taking the same obligations with respect to unemployment benefit under the Convention as well. *Denmark* could be invited to accept obligations of Parts VII (Family benefit) and VIII (Maternity benefit) of Convention No. 102, ratified in 1955, taking into account that these obligations form part of its ratification of the Code already since 1974 and do not give rise to any difficulties in their application. While in 1995 *Spain* accepted seven Parts of the Code, it is still bound by only four Parts of Convention No. 102, which it ratified in 1988. Consequently, the Government may consider adding Parts V, VIII and IX, the application of which has not given rise to any difficulties under the Code, to the Parts that it has already accepted under the Convention. *Ireland*, having accepted five Parts of the Code in 1972, is still bound by only three Parts of Convention No. 102, which it ratified in 1968. Ensuring full application of Parts V and VII of the Code for over 30 years, the Government may also consider accepting the obligations for the same Parts of the Convention. *Italy* accepted four Parts of the Code in 1978, but is still bound by only three Parts of Convention No. 102, which it ratified in 1956. Having a good record of application of Part VI (Employment injury benefit) under the Code, it should have no difficulty in accepting this Part of the Convention as well.

91. The Committee notes from the replies to the article 19 questionnaire that many non-ratifying member States take the provisions of Convention No. 102 into account. Twenty-one member States expressly report that, although they have not ratified the Convention, they are largely giving effect to a number of its contingencies: *Algeria, Azerbaijan, Bangladesh, China, Cuba, El Salvador, Estonia, Gabon, Ghana, Honduras, Indonesia, Mali, Republic of Moldova, Mongolia, Morocco, Myanmar, New Zealand, Philippines, Sudan, Viet Nam, and Zimbabwe*. In addition, *Guatemala* and *Panama* state that Convention No. 102 has functioned as a guide for the national social security system. The *Syrian Arab Republic* reports that the Convention is consulted before amendments are made to the Syrian Social Insurance Code. *Kuwait* states that its national constitutional and legal system are in conformity with the principles and framework of the Convention. *Gambia* reports that the intention exists to implement all the provisions of Convention No. 102 and *Mali* and *Cameroon* report on measures taken to improve the material and personal coverage of the system. *Fiji* is reforming the workmen's compensation legislation with a view to replacing the current system with a modern workers' compensation system that will significantly improve social security benefits in accordance with the relevant ILO instruments. These are constructive developments which underline the

⁵³ CEACR, Report on the ECSS, 2003, para. 38.

universal nature of the Convention's principles and their relevance to all countries.

D. Convention No. 168 – Combining unemployment protection with labour market policies

1. Provisions of the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

Convention No. 168 took 16 years to mature and absorb the lessons of the

economic shocks of the 1970s and the structural adjustment policies of the 1980s

to expose social security to the new development paradigm based on

economic growth

generating new employment and jobs through

active labour market policies using social security as a means for promoting employment in coordination with

92. Among all international labour standards, Convention No. 168 has the longest history of its preparatory work, covering the period from 1972, when the Office was first requested to initiate the process of revising the Unemployment Provision Convention, 1934 (No. 44), to 1988 when Convention No. 168 was actually adopted. In 1974, the International Labour Conference adopted the resolution concerning industrialization, the guarantee of employment and the protection of the income of workers, but the proposal regarding the new instrument setting higher standards for unemployment protection was put aside, most countries considering that the economic crisis caused by the oil shock of 1973 was not a suitable moment in view of the high level of unemployment and the preference given to economic solutions capable of promoting employment. During the structural adjustment era of the 1980s traditional social security and employment promotion policies revealed their limits and reopened the debate on what should be the future standards in social security. Convention No. 168 captured the new thinking in full, differing greatly from other social security Conventions adopted long before it. Indeed, no other social security Convention has such a lengthy and substantial Preamble explaining the major ideas around which the Convention was built:

- (1) the idea of economic growth as the best cure against unemployment and other social evils: the Preamble recognized that “policies leading to stable, sustained, non-inflationary economic growth and a flexible response to change ... offer the best protection against the adverse effects of involuntary unemployment”;
- (2) the idea that economic growth should lead “to creation and promotion of all forms of productive and freely chosen employment including small undertakings, cooperatives, self-employment and local initiatives for employment”, and that priority should therefore be given to employment promotion not only by the employment policy, as was already stated by the Employment Policy Convention No. 122, but by the social security policy as well;
- (3) the idea that social security should serve as a means, among others, for promoting employment and support active labour market policies “even through the redistribution of resources currently devoted to the financing of purely assistance-oriented activities towards activities which promote employment especially vocational guidance, training and rehabilitation”;

**the national
employment policy**

**through the system
of protection against
unemployment**

- (4) the consequent idea of an active coordination of social security benefits with other means of employment and social policies serving the goal of employment promotion within the framework of a larger concept of social protection; and
- (5) the resulting idea of the integration and consolidation of the different means of “employment assistance and economic support to those who are involuntary unemployed” by way of establishing a national “system of protection against unemployment”. It is not difficult to notice that ten years later the majority, if not all, of these ideas have nourished the concept of decent work and 20 years later were embodied in the integrated approach to economic and social policies put forward by the Social Justice Declaration.

**Advanced standards
of protection
established by
Convention No. 168,**

**notwithstanding the
generous flexibility
provisions,**

**proved to be too high
for the majority of
industrialized
countries susceptible
to ratify the
Convention**

93. Explaining the reasons for the adoption of Convention No. 168, its Preamble mentioned that the minimum standards on unemployment benefit established in Convention No. 102 have been surpassed by most of the existing compensation schemes in the industrialized countries but, unlike standards concerning other benefits, they have not been followed by higher standards. Convention No. 168 has thus been designed to set advanced standards of unemployment protection for industrialized countries, with the hope that “the standards in question can still constitute a target for developing countries that are in a position to set up an unemployment compensation scheme”. In an attempt to maintain its universal application, Convention No. 168 was endowed by the flexibility clauses and exceptions, the importance and scope of which surpassed those used in the previous social security Conventions. However, this has not helped. Two decades after its adoption the ratification record shows that not only developing countries have disregarded the Convention, but so did most of the industrialized countries, not least because the standards it has set proved to be too advanced even for the majority of developed countries.

**Convention No. 168
addressed the nexus
between social
security, economic
growth and
employment**

**but stayed at the
conceptual frontier
between the
“industrial society”
and the new era of
globalization**

94. The fact remains that of all up-to-date social security standards Convention No. 168 is the only one that looks beyond the internal organization and functioning of the traditional social security system into the external socio-economic environment where social security interacts with the labour market, human resources development and the economy at large. In addressing this nexus between social security, growth and employment Convention No. 168 may well be seen as an ideological precursor of the present integrated approach to economic and social objectives pursued by the ILO. One may be even tempted to say that Convention No. 168 would have been the first of the fourth, still missing, generation of ILO social security standards, had the standard-setting process continued in the 20 years that followed its adoption. But it stopped, leaving Convention No. 168 standing alone at the conceptual frontier between the “industrial society” with the social security system it has produced and the new globalized world in quest of integrated forms of universal social protection, such as the global social protection floor.

The classic unemployment benefit scheme

was redesigned to promote employment through a range of innovative provisions

making the Convention a particularly complex instrument,

seeking coordination between social security, employment policy and human resources development

both at the level of legislative measures and

at the level of national policies

by providing an enabling framework for integrating unemployment protection with

95. This conceptual duality has largely determined the structure of the Convention, which, on the one side, follows the generic structure of branch description established by Convention No. 102 – definition of the contingencies (Article 10), persons protected (Article 11), methods of provision and rates of benefits (Articles 12–16), qualifying period (Article 17), waiting period (Article 18), duration of payment (Article 19), suspension of benefit (Article 20) and, finally, the legal, administrative and financial guarantees provided by the system (Articles 27–30), but on the other side includes provisions new to traditional social security concerning in particular promotion of productive employment (Articles 7–9), coordination of unemployment protection systems with employment policy (Article 2), social benefits for new applicants for employment (Article 26), coordination with severance pay (Article 22). Such structure makes Convention No. 168 not only a voluminous instrument comprising 30 substantive Articles – indeed, there are virtually no short Conventions on social security – but also a particularly complex and innovative instrument, which even now – 20 years after adoption – has not lost any of these features.

96. This Convention deals with two different subject areas – employment policy and social security, which it tries to relate by reference, *inter alia*, to a third subject area of human resources development, including vocational training and vocational guidance (see Articles 2, 7 and 9). Leaving the third subject area aside to simplify things and taking only the legal point of view, the ratifying countries are confronted here with the problem of straightening up the interrelation between two separate branches of legislation – employment legislation and social security legislation, which are led to pursue a common goal of promoting full, productive and freely chosen employment and to face a common challenge to coordinate the different means they have to achieve it. To give but one example of the array of complex legal issues, which would arise the minute one tries to view these branches of law with an integrating eye, it would suffice to refer to Article 6 of Convention No. 168, which would require the ratifying State to apply the principle of equal treatment and non-discrimination of the persons protected in a uniform way throughout its employment and social security legislation, so as to prevent the spillover of the discriminatory practices from the labour market into social security and vice versa.

97. From the governance point of view, the ratifying States are confronted with the no less challenging task of integrating two separate branches of national policies – employment policy and social security, which presupposes that the ratifying State should at least have established a modicum of national policies in these areas. This requirement already greatly reduces the number of the potentially ratifying countries to at most 70, which have established some kind of unemployment protection scheme and have a declared employment policy. Regulating each one of these branches of national law and policy separately is already a complex matter, but bringing them together in one comprehensive instrument establishing a general framework for the coordination of their core elements – system of

**employment
promotion**

protection against unemployment with employment promotion measures, the regulation of which, as a rule, is legally and institutionally separated, makes the task of the ratifying State a daring one. Would one need more explanations for the reasons why Convention No. 168 has up to now received only seven ratifications?

**Convention No. 168
offers an innovative
mix of promotional
and technical
standards**

98. A singular feature of Convention No. 168 consists in that it belongs, by the very nature of the subjects it deals with, both to the so-called *promotional* instruments (a classic example being the Employment Policy Convention, 1964 (No. 122), and the Human Resources Development Convention, 1975 (No. 142)), as well as to the highly *technical* instruments characteristic of the social security field, establishing provisions as to the precise methods, criteria and levels of unemployment benefits to be provided. This mix of different regulatory approaches in one international instrument was tried out for the first time in Convention No. 168, particularly with the use of the promotional formula “each Member shall endeavour to extend the protection” to ensure progressive coverage of specific contingencies of partial unemployment and part-time work (see Article 10(2) and (3)). By integrating cash benefits with employment services, social benefits with job subsidies, etc., Convention No. 168 goes beyond the traditional concept of providing benefits for a defined contingency into a much wider concept of ensuring comprehensive social protection for all those who seek work. It is the first social security Convention to establish express mechanisms for linking means-tested social assistance benefits to social insurance benefits to provide continuous employment assistance and economic support for the long-term unemployed beyond the initial period of unemployment (Articles 16 and 19, paragraphs 2(b) and 5).

**as complementary
regulatory
approaches in a
comprehensive social
protection scheme**

**Convention No. 168
integrates income
support and
employment
assistance into a
system of protection
against
unemployment,**

99. Convention No. 168 differs from the previous social security standards in that it speaks not simply of unemployment benefit but of a “system of protection against unemployment”, defining the two main characteristics of a system – its internal structure and relations to the external environment. The internal structure of the system of protection against unemployment established by the Convention is much more complex than Part IV (Unemployment benefit) of Convention No. 102, which, as a minimum standard, covered the single contingency of full unemployment and offered only a benefit in cash. In Convention No. 168 the contingencies of unemployment are many and the benefits are diverse.

**which covers the
contingencies of**

- **full unemployment**
- **partial
unemployment**

100. With regard to the contingencies covered, the big innovation of the Convention consisted in that it offered protection not only to workers who lost their jobs, but also to those who did not or who never ever had any job before. Article 10(2) of the Convention recognized that for reasons of an economic, technological, structural or similar nature and without any break in their employment relationship workers may suffer: (a) either a temporary reduction in the normal or statutory hours of work, which is partial unemployment; or (b) a temporary suspension of work entailing a consequent loss of earnings.

- **temporary suspension of work** Article 10(3) further extended protection against unemployment to part-time workers who are actually seeking full-time work. While coverage of the contingency of full unemployment defined in Article 10(1) is obligatory, for the three additional contingencies mentioned above the ratifying State “shall endeavour” to extend the protection of the Convention. The fact that these contingencies are not yet covered by the national legislation at the moment of ratification does not constitute therefore an obstacle to the ratification, provided the Government would in good faith consider ways and means to progressively extend coverage to these contingencies in the future.
- **part-time workers seeking full-time work**
- **new applicants for employment** 101. The above contingencies covered by the Convention are detailed in Part III of the Convention. In addition, the Convention contains Part VII, which lays down “special provisions for new applicants for employment”, such as young persons who have completed their vocational training, studies, or compulsory military service; persons after a period devoted to bringing up a child or caring for someone who is sick, disabled or elderly; divorced or separated persons; released prisoners, etc. A member State is required to grant “social benefits” to at least three of the ten categories of such persons seeking work identified in Article 26 of the Convention and to endeavour to extend protection progressively to the greater number of categories.
- broadens the range of benefits and social services for unemployed persons, including special programmes for disadvantaged groups** 102. With regard to the means of protection against unemployment, Convention No. 168 broadens the range of benefits and employment and social services for the unemployment persons, including special programmes to promote additional job opportunities and employment assistance for identified categories of disadvantaged persons, such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers and workers affected by structural change (Article 8). The adoption of special measures to meet the specific needs of such disadvantaged groups and other categories of persons who have particular problems in the labour market, shall not be considered as unequal treatment or discrimination (Article 6(2)). Further means by which social security can contribute to protection against unemployment and its prevention through active employment policy measures are mentioned in Recommendation No. 176, which, by the way, is the only ILO instrument expressly foreseeing such measures to be taken in the situation of economic crisis.
- Recommendation No. 176 sets out measures to be taken in case of economic crisis**
- Convention No. 168 puts emphasis on activation measures ensuring quick return to work** 103. The important feature of the Convention, which should be constantly borne in mind in the implementation process, is the emphasis it places on the activation measures ensuring quick return to work, which are to be pursued on two levels: by increasing the efforts and responsibilities of the unemployed persons through more effective methods of providing unemployment benefit, and by using social security as a means to promote employment creation and employability of jobseekers. At the level of individuals, in comparison with the definition of the contingency of full unemployment in Convention No. 102 (Article 20) in the case of a person protected “who is capable of, and available for, work”, Article 10(1) of Convention No. 168

by obliging unemployed persons to actually seek work

by pitching the benefit so as to encourage employers to offer, and workers to take up, work

by using social security means to promote employment

includes an additional requirement for the person to be “actually seeking work”. In many national legislations this requirement is reflected in the obligation placed on unemployed persons to actively seek work and participate in active labour market measures. At the level of the unemployment benefit scheme, activation of the unemployed persons is achieved by designing the benefit as a “partial and transitional wage replacement” to meet the specific aim of avoiding “creating disincentives either to work or to employment creation” (Article 14). For example, in case of part-time workers who are actually seeking full-time work, the benefit taken together with their earnings should be such as to maintain incentives to take up full-time work (Article 10(3)). Methods of providing unemployment benefit should also be such as, from the one side, not to “discourage employers from offering and workers from seeking productive employment” and, from the other side, to contribute to the promotion of full, productive and freely chosen employment (Article 2). Finally, at the policy level, promotion of employment should be declared as a priority objective to be attained by all appropriate means, including social security. With this priority objective in mind, social security should be coordinated with such other means as employment services, vocational training and vocational guidance (Article 7). This concerns in particular the effective use of subsidies granted by the social security system in order to safeguard employment (Article 30). The need for effective coordination between social security and employment policy is examined in detail in Chapter 2 of Part IV of the present Survey.

2. Status, impact and ratification prospects

Poor ratification record due to high standards not suitable for developing countries

104. The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), was the first ILO instrument to integrate social security into the broader concept of employment and labour market policy, but stopping short of an attempt to turn social security into an instrument of economic policy. The Convention came into force on 17 October 1991. As of 1 November 2010, it has received seven ratifications: *Albania* (2006), *Brazil* (1993), *Finland* (1990), *Norway* (1990), *Romania* (1992), *Sweden* (1990), *Switzerland* (1990).⁵⁴ The most recent instrument of ratification was registered on 4 August 2006 (Albania). Poor ratification of the Convention may be explained by the fact that it lays down advanced standards of protection against unemployment, which are relevant only to countries with developed formal economy and labour market policies. Reading the preparatory work on the Convention one might come to the conclusion that Convention No. 168 was not elaborated with the interests of the developing countries in mind, but served the purpose of activating the labour market and adjusting unemployment benefits to the emergence of more flexible forms of employment.

The need for protection against

105. The need to set up and maintain unemployment protection schemes is great. Numerous States are working towards putting in place

⁵⁴ See Appendix II.

unemployment is amplified by the economic crisis

some sort of unemployment protection system. The importance of unemployment protection was widely acknowledged in the aftermath of the 1998 Asian financial crisis: “had unemployment insurance coverage been extensive in the countries affected by the crisis, then a majority of job losers would have been eligible for unemployment benefits. Again, compared to other countries, the Asian countries that adopted unemployment insurance are today better equipped to handle the impacts of the global crisis”.⁵⁵ Similarly, the consequences of the current financial and economic crisis demonstrate that countries with developed social protection schemes have suffered significantly less in terms of unemployment compared to countries with poor safety nets. Not only does an unemployment benefit provide security for the laid-off workers in terms of some sort of income replacement, but it also smoothes consumption and facilitates the adjustment of the labour market. The Committee therefore emphasizes the message of the ILO Global Jobs Pact adopted at the International Labour Conference in June 2009, which recommends member States, inter alia, to extend the duration and coverage of unemployment benefits (paragraph 12(1)(iii)) of the Global Jobs Pact).

Global Jobs Pact recommends extending protection against unemployment

Ratification prospects

Eleven States consider ratification

106. As regards the prospects for the ratification, 11 member States report that they are considering ratification of Convention No. 168.⁵⁶ *Belgium* states that almost all communities have by decree approved the ratification of Convention No. 168. Once the Walloon region has adopted this decree, Belgium will be able to submit the instrument of ratification. *Benin* and *Serbia* indicate that the ratification procedure may be initiated shortly, whereas the *Republic of Korea* reports that the Government is reviewing the Convention with a view to ratification in the long term. *Chile*, *Israel* and the *United Republic of Tanzania* are in the process of undertaking preliminary feasibility studies as regards the compatibility of national social security legislation to examine the possibility of ratifying the Convention.

Convention No. 168 sets higher standards than the Economic Code of Social Security

107. *Italy* considers that it meets the standards of the Convention as a result of the ratification of the European Code of Social Security, the unemployment part of which is similar to Convention No. 168. *Latvia* also reports that, due to the future ratification of the European Code of Social Security, the ratification of Convention No. 168 is not on the agenda. The Committee wishes both Governments to study the provisions of Convention No. 168 more attentively. Compared to Part IV of the Code and Part IV of Convention No. 102, which only provide for the right to unemployment benefit in case of full unemployment, Convention No. 168 covers additional contingencies of partial unemployment, temporary suspension of work and part-time work (Article 10, paragraphs 2 and 3) and provides additional social benefits

⁵⁵ ILO: *Learning from the 1997–98 Asian financial crisis: The ILO experience in Thailand and Indonesia*, Krishnamurty, Jayasankar, ILO International Programme on Crisis Response and Reconstruction, Geneva, 2009, p. 21.

⁵⁶ *Azerbaijan, Belgium, Benin, Chile, Greece, Israel, Republic of Korea, Lithuania, Portugal, Serbia and United Republic of Tanzania.*

to long-term unemployed and new entrants to the labour market (Articles 19(2) and 26).

Countries giving effect to provisions of Convention No. 168

108. Without stating any direct intention to ratify Convention No. 168, seven member States indicate that they are largely giving effect to its provisions.⁵⁷ *Peru* states that it has just given effect to Convention No. 168 through the social political economic guidelines for 2009–10, which promote decent and productive work. The *Bolivarian Republic of Venezuela* reports that the national legislation and policies cover the substance, objectives and guarantees of the Convention. *Bosnia and Herzegovina*, *Morocco* and *Suriname* are working towards giving effect to the objectives of the Convention. Moroccan law includes all social security benefits provided by ILO instruments on social protection, except for unemployment benefit, and a bill providing for compensation in case of loss of employment is in the process of being adopted. *Bosnia and Herzegovina* reports that the country is already complying with Convention No. 168 as regards health protection provided to unemployed persons. In *Suriname* discussions are taking place to establish a solidarity fund to cover temporarily unemployed workers victims of collective dismissals. *Croatia* reports that, after finishing the steps for accession to the European Union, the Government is planning to prepare an analysis of the existing and new potential regulations relating to Convention No. 168. Despite the fact that the Convention has received few ratifications, its message is particularly important for all countries: to set up systems to generate and sustain employment and other opportunities, in addition to preparing for contingencies, such as economic and financial downturns and crises.

* * *

109. In retrospect, 90 years of ILO standard setting in the field of social security have provided the world community with key standards, embodied in several Conventions and Recommendations which are of continuing relevance today. ILO standards have asserted the distinct identity of social security as the key social institution of the modern State, preventing reducing its role to being a mere extension either of economic policy as another labour market measure, or of fiscal policy as another income redistribution mechanism. The essence of social security in ILO standards remains the pooling of resources of all members of a community through contributions or taxes to help those who fall victims of the defined social risks on the basis of social solidarity. The main challenge is to invite more ratifications and ensure their effective implementation. Even in the absence of ratification, they guide countries universally to adopt social security measures responsive to changing needs in a spirit of international solidarity. Given that vast sums and large resources are at stake in this process, there is an inevitable link with the question of supervision to ensure accountability and good governance as part of the State's duties. It is to this imperative that the report now turns

⁵⁷ *El Salvador, Italy, Netherlands, New Zealand, Nicaragua, Peru and Bolivarian Republic of Venezuela.*

Table 4. Unemployment benefit standards throughout three generations of ILO instruments

ILO standards	Contingency covered	Persons protected	Type and rate of benefits	Duration of benefits	Conditions of benefits
First generation standards C44 (1934)	Total or partial involuntary unemployment (Arts 1 and 3)	All persons habitually employed for wages or salary (Art. 2)	<ul style="list-style-type: none"> – Cash benefit or – allowance (in cash or in kind) or – a combination of both (Arts 1 and 13) 	<p>At least 156 working days per year</p> <p>In no case less than 78 working days per year (Art. 11)</p>	<p>A qualifying period may be prescribed (Art. 6)</p> <p>A waiting period may be prescribed (Art. 7)</p>
Second generation standards R67 (1944)	<p>Loss of earnings</p> <ul style="list-style-type: none"> – due to the unemployment of an insured person who is ordinarily employed, capable of regular employment in some occupation, and seeking suitable employment, or - – due to part-time unemployment (para.14) 	All employed persons; self-employed persons where the collection of contributions does not incur in disproportionate administrative expenditure (para.17).	<p>Periodical payments of at least 40% of previous net earnings of unskilled workers (60% - if with dependents)</p> <ul style="list-style-type: none"> – additional 10 per cent per child (up to two children) (Annex para.24(1)) 	Until suitable employment is offered to the insured person (Annex para.14(2))	<p>A qualifying period such as at least a quarter of a prescribed period completed before the contingency occurs (Annex para.25(1))</p> <p>A waiting period may be prescribed (Annex para.14(1))</p>
C102 (1952)	Suspension of earnings, as defined by national laws or regulations, due to inability to obtain suitable employment in the case of a person protected who is capable of, and available for, work (Art. 20)	<ul style="list-style-type: none"> – at least 50% of all employees, or – all residents of small means (Art. 21) 	<p>Periodical payments of the amount (Art. 22):</p> <ul style="list-style-type: none"> (a) in earning-related schemes: at least 45% of previous earnings (Art. 65); (b) in flat rate schemes : at least 45% of the wage of the ordinary adult male labourer (Art. 66); (c) in means tested schemes : prescribed amount which together with other means should not be less than in b) (Art. 67) 	<p>Benefit paid throughout the contingency</p> <p>Possibility of limiting the duration to 13 weeks (if employees protected) or 26 weeks within a period of 12 months(if all residents are protected) (Art. 24(1))</p>	<p>A qualifying period may be prescribed to preclude abuse (Art. 23)</p> <p>A waiting period of 7 days may be prescribed (Art. 24(3))</p>

ILO standards	Contingency covered	Persons protected	Type and rate of benefits	Duration of benefits	Conditions of benefits
Third generation standards C168 (1988)	<ul style="list-style-type: none"> – Full unemployment (loss of earnings due to inability to obtain suitable employment) in the case of a person capable of working, available for work and actually seeking work. <p>Endeavour where possible, to cover:</p> <ul style="list-style-type: none"> – partial unemployment (defined as a temporary reduction in the normal or statutory hours of work); – suspension or reduction of earnings due to a temporary suspension of work, without any break in the employment relationship; – to pay benefits to part-time workers who are actually seeking full-time work (Art.10) 	<ul style="list-style-type: none"> – 85% of all employees including public employees and apprentices (Art. 11) 	<p>Periodical payments of the amount (Art. 14):</p> <ul style="list-style-type: none"> (a) in earnings-related schemes: at least 50% of previous earnings; or (b) in flat-rate schemes: 50% of the statutory minimum wage or of the wage of an ordinary labourer, or at a level which provides the minimum essential for basic living expenses, whichever is the highest (Art. 15) – Endeavour to ensure, under prescribed conditions, provision of medical care to persons in receipt of unemployment benefit and to their dependants (Art. 23) – Beyond the initial period, possibility of applying special rules of calculation (in the light of the resources of the beneficiary and his or her family). Nevertheless, the total of benefits to which the unemployed may be entitled must guarantee them healthy and reasonable living conditions in accordance with national standards (Art. 16) – Additional assistance in finding employment to long-term unemployed (Art. 19(5)) – Social benefits for new applicants for employment (Art. 26) 	<p>Benefit paid throughout the contingency (Art. 19(1))</p> <p>Possibility of limiting the initial duration of payment of the benefit to 26 weeks in each spell of unemployment, or to 39 weeks over any period of 24 months (Art.19(2)(a))</p> <p>In the event of unemployment continuing beyond this initial period, the duration of the payment of benefit may be limited to a prescribed period. (art. 19(2)(b))</p>	<p>A qualifying period may be prescribed to preclude abuse (Art. 17(1))</p> <p>A waiting period of 7 days may be prescribed (Art. 18(1))</p>

Chapter 2

Maintaining social security rights through effective supervision (1990–2005)

110. This chapter views the recent history of the development of social security through the eyes of the ILO's supervisory bodies. Since the entry into force in 1991 of Convention No. 168 establishing the principle of coordination of social security and employment policy, the Committee of Experts paid close attention to the interrelations between the development of social security and the (de)regulation of the labour market, observing synergies and discrepancies in the dynamics of economic and social policies. Thus, one eye of the Committee has been fixed on the evolution of employment policy in the light of the application of the Employment Policy Convention, 1964 (No. 122), while the other eye – on social security programmes in the light of Convention No. 102. This chapter comprises selected abridged extracts from the relevant Committee's statements in its General Report presented each year to the International Labour Conference, in the individual observations addressed to member States concerning application of ratified social security Conventions, as well as in the Committee's annual reports on the application of the European Code of Social Security (ECSS) submitted to the Council of Europe.⁵⁸ The Committee's statements are arranged as much as possible in chronological order to highlight the evolution of the main trends in social protection and employment policies in the world and problems of compliance with the principles of the ILO Conventions. Certain portions of the text have been highlighted to emphasize the conclusions, which the Committee deems particularly important.

A. 1990s – Containing the retreat of the welfare state

1. Flexibilization and deregulation of the labour market

1995

Precarious forms of employment become widespread

111. In the middle of the 1990s, the Committee drew attention to a trend towards greater precariousness in employment, which appeared to be becoming more widespread under various forms in different national situations. Adopted within the context of policies emphasizing the need to eliminate certain rigidities on the labour market which were held to be partly responsible for unemployment, employment promotion measures not infrequently had the effect of increasing the numbers of workers who were deprived of adequate protection against termination of employment as a result of their precarious status. The measures taken to stimulate recruitment were

⁵⁸ In some cases, references to the provisions of the ECSS have been replaced by references to the same provisions of Convention No. 102 to make the text easier to read.

As also the use of fixed-term contracts	leading to an increasing number of exceptions to the principle set out in the labour law of most countries that fixed-term contracts have to be justified by the temporary nature of the work; in contrast with their objective of promoting recruitment, these measures were therefore liable to lead to the exclusion from secure employment of an increasingly large proportion of the active population. ⁵⁹
Deregulation of the labour market threatens social cohesion	112. The position adopted by the Committee was supported by the ILO report, <i>World employment, 1995</i> , which emphasized that the deregulation of the labour market has not had the expected effect on the volume of employment and threatened social cohesion in a manner that was not conducive to economic growth. ⁶⁰ Whether it took the form of open unemployment, underemployment or “casualization” of employment, deterioration of the employment situation was not without cost and consequence, and the Committee had drawn attention to this, in particular as regards the safeguard of workers’ fundamental rights. The unchecked growth of unemployment contained within it the seeds of a yet greater risk: the collapse or destruction of mechanisms which ensured social protection and ultimately the protection of legality itself in the labour field. ⁶¹
1996 Growth of unemployment threatens destruction of legality in the labour field	
1997 Emphasis on competition hampers fair and human treatment of workers	113. In 1997, the Committee was forced to observe that the discharge of its responsibilities for supervision of the whole range of international labour standards would be, indeed was, being jeopardized as working conditions, employment stability and workers’ individual dignity and freedom of choice were severely limited by economic pressures. The Committee was particularly concerned that, in the search for “efficiency” and the emphasis on competition, the fair treatment of labour was increasingly likely to suffer. ⁶²
2. Rollback of social benefits	
1996 Reduction of social security spending	114. By the mid-1990s, the Committee had noted that, according to information supplied by governments, the principal concern was management and rationalization of social security resources. In many countries, various branches of social security have been gradually subjected to a reform process focused mainly on preserving the financial viability of the systems and improving the cost/effectiveness ratio. The most commonly observed reforms involved greater participation of beneficiaries in the cost of medical care, stricter conditions for access to benefits (including unemployment benefit), raising the age of retirement and new methods of calculating the
Decline of the level of benefits	

⁵⁹ CEACR, General Report, 1995, para. 63.

⁶⁰ CEACR, General Report, 1995, para. 64.

⁶¹ CEACR, General Report, 1996, para. 53.

⁶² CEACR, General Report, 1997, para. 55.

remuneration taken into account for the pension, spread over a longer period, or even over the entire career of the person concerned. These measures which often went along with a direct decline of the level of allowances, have enabled certain immediate reductions to be made in social security expenditure.⁶³

Lowering of the well-being has become a primary social and political issue

115. Countries were seeking solutions viable in the long term and some were continuing to experiment with new forms of social security system management, particularly privatization, which raised serious problems. This reform process demanded renewed attention to international standards on social security as demonstrated by the increasing number of observations received from employers' and workers' organizations. The Committee was fully aware that these reforms had an effect on the well-being of the greater part of the population and have become a social and political issue of the first order in many countries.⁶⁴

Reforms disregarded the interests of the people and the international standards

116. **The Committee considered it essential that the interests of the people protected, and especially the level of social protection, were taken fully into consideration and that the representatives of those protected continued to be involved as far as possible in the reform process. Substantial reforms should not have been undertaken hastily to respond to financial pressures and such changes should have, in any case, taken duly into account the international standards on the subject.**⁶⁵

**1997
Broadening of reforms**

Harsher conditions of entitlement

Stricter definition of contingencies

Replacement of defined-benefits by defined-contributions schemes

117. In 1997, the Committee has noted the generalization of the process of reform in social security, the scope and depth of which were undeniably leading to a fundamental change of the social security systems.⁶⁶ The Committee also recalled the serious consequences which may result from imposing harsher conditions of entitlement for the persons protected, especially for the unemployed who may, as certain occupational organizations have indicated, find they were deprived of any right to benefits or could benefit only from social assistance allowances. Measures were also taken in some countries to lay down a stricter definition of contingencies and, particularly in regard to unemployment, abandoning the concept of suitable employment, which has led the Committee to make comments to some of them. Among the other reforms which continued to be observed, there was the raising of the retirement age and the new methods of calculating the remuneration taken into account for the retirement pension which was based on a longer period or even on the entire career of the person concerned, the replacement of pension schemes defined by benefits by schemes defined by contributions.⁶⁷

⁶³ CEACR, General Report, 1996, para. 58.

⁶⁴ CEACR, General Report, 1996, para. 59.

⁶⁵ CEACR, General Report, 1996, para. 59.

⁶⁶ CEACR, General Report, 1997, paras 62–63.

⁶⁷ CEACR, ECSS, 1997, para. 23.

Social and political confrontations

Lack of a clear vision built on the broad social dialogue

118. The reforms of the 1990s have become, in many countries, the subject of intense political debates and even social confrontations, and their impact on the welfare of the population should not have been underestimated. **The Committee considered that changes of such magnitude in social security systems required a carefully balanced approach based on a clear long-term vision formulated after consultation with all the major social and political forces in the countries concerned.**⁶⁸

3. Reduction of the responsibility of the State

1997

Move to privatization and reduction of the public tier

119. Throughout the 1990s, economic considerations appeared to be the driving force which has led certain governments to seek to reduce their own responsibilities by simultaneously increasing the role of private institutions and transferring some benefit provision, in particular sickness benefit, to employers. This move to increase privatization has also occurred in relation to pension provision, as the importance of the public tier was gradually reduced.⁶⁹

Infringement of basic principles of ILO social security standards, namely

Participatory management

State responsibility

Collective financing and risk sharing by all members

120. The Committee observed in this respect that such changes in the structure of social security might in fact go beyond experimenting with new forms of management of social security schemes within the framework of accepted principles. It recalled that the most recent international labour standards concerning social security were drafted in a flexible manner so as to take into account various methods of ensuring protection; they nevertheless laid down certain general principles as regards the organization and management of social security systems. Representatives of the persons protected shall participate in the management of the schemes or be associated with them in all cases where the administration is not entrusted to an institution regulated by the public authorities or a government department. The State must accept general responsibility for the due provision of benefits and for the proper administration of the institutions and services concerned. In addition, the Social Security (Minimum Standards) Convention, 1952 (No. 102), states that social security systems shall be financed collectively by means of insurance contributions or taxation or both, in order that the risks are spread among the members of the community. **The Committee is bound to draw the governments' attention to the need to safeguard, in the process of reform, these basic principles of organization and management which should continue to underlie the structure of social security systems.**⁷⁰

⁶⁸ CEACR, General Report, 1997, para. 66.

⁶⁹ CEACR, General Report, 1997, para. 64.

⁷⁰ CEACR, General Report, 1997, paras 64–65.

Imbalance between general interests and the rights of individuals

121. Such extensive reforms were not made without a new distribution of risks and responsibilities. The trend to place an ever-increasing responsibility on the persons protected raised the question of whether the balance maintained by Convention No. 102 between the protection of the general interests of the community and the rights of individuals has not been excessively weakened or even broken.⁷¹

Shifting an increasingly heavy burden onto individuals

122. One of the fields of social security in which this feature was particularly flagrant was medical care. In many countries, beneficiaries have witnessed their contributions, as well as their personal share in the cost of medical attention, increase considerably to the extent that it must be asked whether this increased participation continues to fall within the framework of the provisions of Convention No. 102, which stipulates that the rules relating to the participation of beneficiaries in the cost of medical care must be established in such a way that they do not entail an excessive burden. While the Committee was aware of the need to sensitize the population in regard to increases in health expenditure, it found that these measures, overall, placed an increasingly heavy burden on the persons protected. States must, therefore, when they carry out a re-examination of their policy on the subject, keep in mind the objectives enshrined in Convention No. 102.⁷²

Need for a coherent long-term policy, stability and effectiveness

123. **In 1997, the Committee stressed that immediate financial considerations, however important, should not take precedence over the need to preserve the stability and effectiveness of the social security system, and that any reductions in social security expenditures should be carried out in the framework of a coherent policy aimed at achieving viable long-term solutions ensuring the required level of social protection. The Committee therefore considered it essential that, prior to introducing any new cost-saving measures, governments give due consideration to their international obligations arising from international labour standards concerning social security.**⁷³

4. Internationalization of employment and social problems

1991–92

Developing countries in a vicious circle of external debt, stagnation and poverty

124. In 1991, the Committee noted that in developing countries growth had slowed, inflation appeared to be increasing, and unemployment – which decreased in the upturn – had again started to increase, threatening to wipe out the gains. **Faced with internal problems such as structural adjustment, and external debt, developing countries (and most especially the “least developed countries”) seemed more than ever trapped in a vicious circle of stagnation, recession, inflation, unemployment and poverty.**⁷⁴

⁷¹ CEACR, ECSS, 1997, para. 22.

⁷² CEACR, ECSS, 1997, para. 22.

⁷³ CEACR, General Report, 1997, para. 67.

⁷⁴ CEACR, General Report, 1991, para. 47.

Internationalization of employment problems	125. The Committee's considerations in 1992 brought to light the increasing internationalization of employment problems . In varying ways and degrees, every country that has reported has had to face restructuring, involving adjustment and labour force adaptation. Developing countries and those undergoing transition to the market economy were acutely affected by the question of equitable distribution of the costs and benefits of adjustment; but so too it would appear were industrialized market economy countries where it was recognized that long-term unemployment and various insecure kinds of employment easily lead to more and more of the active population being marginalized. ⁷⁵
Marginalization of active population in industrialized countries	
1992–93	126. In countries of the Organisation for Economic Co-operation and Development (OECD), at the start of the 1990s, priority continued to be given to restrictive monetary and budgetary policies aimed at countering inflation and balancing public finances or to structural adjustment programmes as indispensable preconditions for a renewal of growth in production and employment. In these circumstances, unemployment tended to be regarded as the inevitable price to be paid for necessary adjustments, redeemable only by the implementation of active labour market policy measures, in particular placement and training, or to be dealt with by income guarantee measures. ⁷⁶ Yet the Committee noted that measures of labour market policy alone did not seem to achieve any lasting reduction in unemployment. Even active measures should not, moreover, be misused, for their function is to contribute effectively to long-term entry into employment. They need to be reinforced by, rather than take the place of, an overall policy that is conducive to the promotion of productive employment. ⁷⁷
Sacrificing jobs to market adjustment	
Low effectiveness of active labour market measures	
1996–98	127. In the countries of Eastern and Central Europe, the new problems of widespread unemployment have largely been responsible for bringing social questions to the fore of the process of what was an uneven and incomplete transition to a market economy. ⁷⁸
High social costs of transition	
Worsening of employment and income situation in Africa	128. In the countries of Africa, in the second half of the 1990s, rapid demographic increase, sluggish economic growth and the short-term effects of structural adjustment programmes combined to worsen an employment and income profile which was already weakened by the unacceptable trend towards the “marginalization of Africa” described in the ILO's <i>World employment, 1995</i> . ⁷⁹ In several developing countries the problems caused by structural adjustment and demographic growth were compounded by indebtedness. In Africa in particular, several

⁷⁵ CEACR, General Report, 1992, para. 54.

⁷⁶ CEACR, General Report, 1993, para. 55.

⁷⁷ CEACR, General Report, 1992, para. 52.

⁷⁸ CEACR, General Report, 1996, para. 51.

⁷⁹ CEACR, General Report, 1996, para. 52.

Disruption of employment policy

governments stated that the conditions created by structural adjustment were such that they were no longer able to apply a real employment policy, whereas such a situation in fact made the need for such a policy even more imperative, in order at the very least to attenuate the negative effects of adjustment on employment and living standards.⁸⁰

5. Improving the efficiency of social security schemes

1997

Improve management of the systems and methods of financing

The will to strengthen public social systems through comprehensive measures

129. The Committee recognized the need for social security systems to be financially viable. It considered, however, that this objective should not be directed only towards cuts in expenditure on social security to the detriment of the persons protected, but should also entail examining the efficiency of the management of the systems, including the methods of financing, which also involved reinforcing measures against the non-payment of contributions or undeclared work which was likely to deprive the social security system of an important source of income. Similarly, it wished to emphasize once again that any reductions in social security expenditures should be carried out in the framework of a coherent policy aimed at achieving solutions based on wide consultations and guaranteeing the required level of social protection. In this respect, the **Committee observed the will, according to information provided by certain countries in 1997, to strengthen their public social security system by a global policy designed to ensure its proper operation.** The measures mentioned in government reports take different forms, depending on the country, such as the adoption of laws on social security financing laying down the chief orientations and most immediate objectives of financial balance; the establishment of coordination between fiscal reforms and social security reforms; the extension of the base of social contributions to income from activity and capital alike; the enhancement of the link between social protection and employment policy; the improvement of the coordinated exercise of inspection activities designed to strengthen endeavours against evasion of contribution payments and fraud.⁸¹

1998

Active labour market policies to improve employability, training and professional orientation

130. In this connection, the Committee noted in particular that reforms of unemployment protection systems were focusing in an increasing number of countries on new approaches to helping and encouraging people of working age to find work and on minimizing the alleged disincentive effects of the benefits system. In the context of active labour market policies, the requirements of being immediately available and actively seeking employment, which have become the principal conditions of entitlement to unemployment benefit in many countries, were supplemented by the requirement for the persons concerned to constantly improve their employability through, inter alia, training and retraining, professional reorientation, self-employment or participation in special labour market programmes. The Committee considered that enhancing the employability of the unemployed was not necessarily

⁸⁰ CEACR, General Report, 1998, para. 83.

⁸¹ CEACR, ECSS, 1997, para. 25.

Return to work programmes should aim at suitable employment

incompatible with the requirements set out in Part IV (Unemployment benefit) of Convention No. 102. **In this respect the Committee emphasized that reforms, which shift the emphasis of unemployment benefit schemes from passive income maintenance to active measures to reinsert the unemployed into the labour market, should not lose sight of the objective of Convention No. 102 in this branch and of the concept of suitable employment, which aims to ensure that unemployed persons are directed initially towards employment in which their skills and qualifications are used in the most productive and effective way for the benefit of society as a whole.**⁸²

Improve quality of public social security services and cooperation between them

131. The Committee recognized that the contrast between budgetary constraints and the increasing expectations of the population for high-quality social services posed a challenge which required improvements in the efficiency and effectiveness of social security systems. The resulting structural and institutional changes have resulted in closer cooperation between social security institutions and other government departments and public services, including agencies responsible for employment. The quality and effectiveness of the services provided was being improved through such means as research and statistical surveys to assess the needs and views of beneficiaries and by setting up local independent review panels to handle individual complaints.⁸³

Strengthen social security inspection and enforcement measures

132. Towards the end of the 1990s, special enforcement agencies and social security inspection services have also been established with broad rights to conduct audits and investigations in order to minimize the risk of fraud and ensure the recovery of contributions. Some countries have introduced penal sanctions for certain types of social security offences, such as fraud or misrepresentation. The Committee considered that these measures were in line with the general responsibility of the State for the proper administration of the institutions and services concerned in the application of Convention No. 102. In this respect, **it emphasized the importance of reinforcing measures against the non-payment of contributions or undeclared work, which were likely to deprive the social security system of an important source of income.**⁸⁴

B. The 2000s – Meeting the challenges of the twenty-first century

1. The need for a vision of social security for the twenty-first century

**1999–2000
Deep structural changes bringing**

133. Rising from the industrial sector in the 1980s, the wave of deep structural change has swept over the social protection sector, bringing with it low economic growth, high unemployment and increased budget

⁸² CEACR, ECSS, 1998, para. 22.

⁸³ CEACR, ECSS, 1998, para. 23.

⁸⁴ CEACR, ECSS, 1998, para. 23.

high unemployment and budget deficit

deficits. Under these economic as well as demographic pressures caused by the progressive ageing of the population, the finances of the social security systems in some countries began to show signs of cracking. Criticism from all the major social actors thrust the debate on social security reform into the centre of national political life.⁸⁵

Rollback of acquired rights below the minimum level of Convention No. 102

134. By the middle of the decade, it became evident that the majority of countries had entered into a period of social security reform of unprecedented scope touching upon all branches of social security. The result was that in certain countries the general level of protection in particular benefit branches guaranteed by the Convention No. 102 was called into question, drawing heated reactions from the populations wanting to maintain acquired rights and social gains. Concerned that the welfare of an increasingly large part of the population was jeopardized, **the Committee has been very vigilant in calling attention to such cases once it was able to conclude that the level of protection prescribed by the Convention No. 102 was or might no longer be attained.**⁸⁶

2000–01

Emergence of coordinated policies of social reform

135. In 2000, it was apparent that the process of reforming social security systems will continue well into the new century and remain a social and political issue of first order in many countries. However, in contrast to the previous decade, future changes in social security systems will be guided more and more by a coherent, long-term and internationally coordinated policy of social reform. This policy has emerged from the wealth of experience gained in adjusting social security schemes to the conditions of economic depression at the beginning of the 1990s and to the economic growth of the end of the decade. **If ever a lesson has to be learned from this decade, it is that the way out of depression to a sustainable growth and development passes through multiplying investments in the social capital of a nation.**⁸⁷

Investing in the social capital

Need for a clear ILO vision of the future of social security

136. Many countries have indeed experimented with a wide variety of social security schemes managed by private, independent or communal authorities, and now have the most complex and diverse set of instruments to offer bodies responsible for taking political decisions as to the future development of social protection. What such bodies and those who await their decisions needed most in the 2000s was an inspired vision of a social security system for the twenty-first century. The Committee recalled that, in asking the International Labour Conference to hold in 2001 a general discussion on the future of social security, the Governing Body hoped that it “could be called upon to establish an ILO vision of social security that, while continuing to be rooted in the basic principles that constitute the foundation of the ILO, would be responsive to the new issues and challenges facing social security”. **The Committee considered the elaboration of such a**

⁸⁵ CEACR, ECSS, 1999, para. 19.

⁸⁶ CEACR, ECSS, 1999, para. 20.

⁸⁷ CEACR, General Report, 2001, para. 158.

Credible standards
and effective
supervision

vision to be the primary challenge for the Organization's future work in the area of social security, bearing in mind that its best guarantee of credibility lied in the effectiveness of the ILO's normative activities and the integrity of its supervisory and control machinery.⁸⁸

2. A new distribution of risks and responsibilities

1999–2000

Reduction and
transfer of the social
responsibilities of the
State to other
economic actors

137. Financial considerations have also been the driving force for certain governments to reduce their own responsibilities, ultimately to the provision of basic safety nets, by simultaneously increasing the role of private institutions and enterprises. The reverse side of these measures, however, was hiding the danger of excluding public authorities and the insured from participating in the administration or management of private insurance schemes and exposing their members to larger financial risks without any guarantee from the State for the due provision of benefits. In warning that such radical changes in the organization and management of some social security schemes went beyond the framework of the fundamental principles laid down by the Convention No. 102, the Committee simultaneously pointed out that the **Convention No. 102 was drafted in flexible terms taking into account various methods of protection and leaving sufficient room for some redistribution of risks and responsibilities, previously assumed exclusively by the State, among the principal economic actors in the society.** The part of responsibility relinquished by the State has alternatively been taken up by private insurers, enterprises or the insured themselves.⁸⁹

Increasing the
burden placed on
individuals

Employers' liability

Private insurers'
business

Move to minimize
welfare dependency
should not entail
negative
consequences to the
society

138. Individuals, for example, besides greater participation in the cost of medical care, have been made responsible for constantly improving their employability during their working life and accumulating additional savings for their old age in privately managed pension accounts. Employers in many cases have been given direct responsibility for the provision of sickness, invalidity and maternity benefits and have seen their liability for employment injuries increased, particularly where the employment injury benefit branch has passed from public to private insurance. Private insurers have been brought in to manage, in particular, pension funds and to provide complementary insurance corresponding to the reduction in the public tier of pension provision.⁹⁰ Clearly, **such a redistribution of responsibilities yields positive results both in terms of financial and human discipline, in particular, minimizing "welfare dependency" and the disincentive effects of passive income maintenance. However, in quest of these positive results, governments should not lose sight of the possible side effects for which society might later have to pay an unacceptable "social price".**⁹¹

⁸⁸ CEACR, General Report, 2001, para. 158.

⁸⁹ CEACR, ECSS, 1999, para. 21.

⁹⁰ CEACR, ECSS, 1999, para. 21.

⁹¹ CEACR, ECSS, 1999, para. 22.

Responsibilizing benefit claimants

Strengthening public systems and improving their performance

Making benefits accessible, transparent, user-oriented

Reinstate fundamental values of social cohesion, solidarity and care

139. There were basically two ways in which governments have been trying to redress the balance of responsibilities in the last few years by: (i) empowering individuals to fully avail themselves of their social security entitlements, particularly with regard to their employers and private insurers; and (ii) by strengthening public social security systems through a global policy designed to improve their performance. Responsibilizing benefit claimants went on a par with providing them with a special mediation service or a personal adviser to guide them through their options, ensure that they receive the benefits to which they were entitled, and help them to plan a route back to work and independence. In addition, claimants were offered speedier, simpler, more direct and independent channels of appeal and complaint as to the quantity and quality of the benefits. The Pension Mediation Service in Belgium, the Family Mediation Service in Ireland, or the New Deal for Lone Parents in the United Kingdom were the most recent examples of this trend. Making benefits more accessible, transparent and customer oriented became also an important way of strengthening the efficiency and effectiveness of public social security systems, which went in parallel with extending their personal and material coverage to new categories of workers (e.g. part-time workers, workers simultaneously employed in multiple occupations, self-employed, voluntary sector workers and members of religious communities) and new risks.⁹²

140. At the turn of the century, these developments gave clear signs that, while the social security reform process was still dominated by financial and structural issues, the values of solidarity and care, which lie at the heart of social security, have not been forgotten and were slowly returning to the fore. The diversity of technical approaches put aside, **it was in safeguarding these fundamental values of social cohesion, through turbulence of structural change, that the system of international obligations binding member States under the European Code of Social Security and the relevant ILO social security Conventions, of which this Committee forms an integral part, has proved its full worth.**⁹³

3. A new mix of enforcement and participatory measures

2000–01

Strengthening participatory management and user oversight of service delivery

141. The institutional network of social protection has also been given active and modern possibilities to ensure stricter compliance with the “rules of the game” by strengthening participatory management, complaint and appeal procedures, as well as direct enforcement and sanctions. On the one hand, as attested by the governments’ reports, an improvement in the quality and effectiveness of social security benefits has been sought through various civil remedies, such as a more client-oriented approach and measures to enable individuals to become “active players” themselves, fine-tuning the reform process on the basis of focused research and statistical surveys to assess the behaviour and

⁹² CEACR, ECSS, 1999, para. 23.

⁹³ CEACR, ECSS, 1999, para. 23.

views of beneficiaries, simplifying administrative procedures and decision-making, and setting up local participatory mechanisms and review panels to handle individual complaints.⁹⁴

Proactive measures of social security inspection and audit

142. On the other hand, special enforcement agencies and social security inspection services have been established with broad rights to conduct audits and investigations at any time of the day or night in order to combat fraud, undeclared work and the evasion of contributions. In line with the integrated public services approach, governments have been enhancing coordinated action by tax, financial, labour and social security inspectorates to stop abuses, enforce the rights to benefits and recover social security debts, unpaid contributions or benefits paid through error. Stricter inspection measures have been often accompanied by tougher sanctions: in addition to administrative and financial sanctions, some countries have introduced penal sanctions for the worst types of social security offences, such as fraud and the evasion of contributions.⁹⁵

Coordinated action by fiscal, labour and social security inspectorates

Introduction of tougher sanctions for social security offences

143. The Committee recalled in this respect that, apart from the possibility of the suspension of benefit, which is aimed at sanctioning the beneficiary and not the provider of the benefit, neither Convention No. 102 nor the ECSS contain any specific provisions calling for the establishment of appropriate sanctions. With the State assuming general responsibility for the proper administration and provision of benefits, the possibility of imposing sanctions on the beneficiary for clearly defined offences by suspending benefit to the extent prescribed was only maintaining the overall balance of responsibilities in the system, provided that the beneficiary conserves the right of appeal as regards the quantity and quality of the benefit. In this respect, **the Committee has always been vigilant to keep whatever discretionary power the State may have retained to judge the behaviour or even the intentions of the person protected, within the limits prescribed by Article 69 of Convention No. 102.**⁹⁶

Checking the discretionary power of the State and

Correcting the balance between individuals' rights and obligations

144. For as long as the abovementioned balance was preserved, the social security system designed by the Convention No. 102 could function well without sanctions; however, when the balance shifts, corrective measures become inevitable. In 1997, the Committee observed that this rather fragile balance between the rights of the individual and the general interests of the community has been increasingly undermined by the trend to place ever-greater responsibility on the person protected and to diminish the proportion of the responsibility assumed by the State. Consequently, to the extent that the social security reforms in some countries have resulted in the State relinquishing part of its responsibility to private providers of benefits, stricter enforcement measures, including the introduction of appropriate

⁹⁴ CEACR, ECSS, 2000, para. 24.

⁹⁵ CEACR, ECSS, 2000, para. 24.

⁹⁶ CEACR, ECSS, 2000, para. 25.

**By the use of civil or
penal remedies**

Restore the balance of responsibilities between the beneficiary and the provider

4. The need for good governance of the social sector

Consolidation of public social institutions and services into a national network

Coordinated reform policy aimed at full coverage, quality care and social cohesion

2005-

Centralizing resources and

⁹⁷ CEACR, ECSS, 2000, para. 26.

⁹⁸ CEACR, ECSS, 2001, para. 20.

⁹⁹ CEARC, ECSS, 2001, para. 20.

**decentralizing
delivery services**

much larger sector-wide scale. Efficient implementation of strategies, on the contrary, required decentralization of the delivery services to the grass-roots level. Both trends determined major innovations in the organization, administration and management of social security systems transforming them into broad, easily accessible, integrated networks of services developing the capacity of rapid adjustment to changes in policy and conditions.¹⁰⁰ Seeking to provide better services with fewer resources, social security institutions have engaged in closer cooperation and coordination with other government departments, including in some instances outright mergers between ministries responsible for social security and those dealing with labour, training and employment.¹⁰¹

**Integrated
management of
the social sector**

148. The Committee observed that country reports in 2005 confirmed the trend towards integrated management of the social sector as a whole, including the institutions and services comprising national systems of social security. In *Norway*, for example, the tasks of the previous Ministry of Social Affairs and those relating to employment and work of the previous Ministry of Labour and Government Administration were merged in the new single Ministry of Labour and Social Affairs, which assumed the overall responsibility for the governance of income security, employment services and welfare services cutting across administrative borderlines. In *Portugal*, a new Ministry of Labour and Social Solidarity became responsible not only for labour, employment and training matters, but also for social security and social action, formerly the domain of the Ministry of Social Security, Family and Children. In *Spain*, the structure of the Ministry of Labour and Social Affairs has been redesigned, integrating among others the responsibilities of the State Secretary for Social Security, the State Secretary for Social Services, Family and Disability, and the State Secretary for Immigration and Emigration.¹⁰²

Merger of ministries

**Centralization of
authority**

**Inter-agency
synergies**

149. At the lower managerial level, new synergies have been developed between social security administrations and agencies responsible for employment services, professional rehabilitation and training, taxation, communal and family affairs, etc., thereby broadening and strengthening the institutional network of social protection. The emerging integrated model of state service emphasizes convenience and ease of access for all to the full range of public services.¹⁰³ The unified Federal Public Social Security Service has been recently created in *Belgium*. The National Employment Service combining the State Public Employment Services and the Public Employment Services of the Autonomous Communities has been set up in *Spain*.¹⁰⁴ The trend towards integrated management of social security institutions confirmed

**Creation of unified
agencies at the
central and branch
levels**

¹⁰⁰ CEACR, ECSS, 2005, para. 37.

¹⁰¹ CEACR, ECSS, 2000, para. 21.

¹⁰² CEACR, ECSS, 2005, para. 38.

¹⁰³ CEACR, ECSS, 2000, para. 22.

¹⁰⁴ CEACR, ECSS, 2005, para. 38.

by new type of systemic laws

itself in *Sweden* where a unified government body – the Social Insurance Agency – replaced regional social insurance offices and the National Social Insurance Board. From 1 January 2010 the pension system, which has been divided between the Swedish Social Insurance Agency and the Premium Pension Authority, was merged within a single pension authority. In *Turkey*, by Law No. 5502 effective since 22 May 2006, social security agencies were unified into the single Social Security Institution, financially and administratively autonomous public body supervised by the Ministry of Labour and Social Security. This law regulates in a systemic manner the powers, competencies, functions and organization of the new Social Security Institution. Comprehensive laws which define the objectives of the social security system, the structure of its managing bodies, the collection of contributions and other matters were adopted in many European and Latin American countries.¹⁰⁵

Flexible operational model

150. A move towards a more flexible and decentralized operational model characterizes the development of the National Social Security Institute (INPS) of *Italy*, which seeks synergies with other public administrations and local bodies allowing better nationwide coverage and service delivery. In *Norway*, since 1 July 2006, the old labour market and national insurance administrations and services were closed down and a new integrated Labour and Welfare Administration was established, which has set up a joint front-line service with the municipal social welfare services providing more coordinated and user-oriented services. The Committee observed that the establishment of this municipal–central government office strengthened the move towards integrated management of the social sector in Norway at the service delivery level.

Integrated management of service delivery

Single entry point to social security and other benefits

151. At the service delivery level, some countries have been further experimenting with a single entry point for the social protection network, allowing persons who claim benefits to have access to information on work, benefits, tax credits, training, housing and other government services from one place and with the help of a personal adviser, if necessary. Such measures have increasingly been based on the new telecommunication and information technologies, which have established the platform for electronic transactions between citizens and the public service, setting new standards of efficiency in its administration and delivery. Finally, at the level of the beneficiaries, new organizational techniques and information technologies have allowed more appropriate segmentation of the customer base according to their needs, the individualization of services and a move towards a

New standards of efficiency

Individualization of services

¹⁰⁵ *Portugal*: Social Security System Framework Act No. 13/2002 of 23 December 2002, establishing the new social security structure; *Spain*: Act No. 52/2003 of 10 December 2003, regulating basic questions relating to the organization and management of the social security system; *Turkey*: Law No. 5510 determines the scope of personal coverage under social insurance programmes and the universal health insurance, benefits to be provided, conditions of eligibility, methods of financing, principles and procedures of their operation.

case management approach for those clients who may require more assistance in achieving self-sufficiency.¹⁰⁶

2005–

**Forward-looking
governance of social
security**

Model change

152. It was widely acknowledged that standards collectively elaborated by the international community serve as instruments of good governance. For the strategy of social cohesion to be successful, good governance was essential. Good governance was also one of the major problems confronting social security systems which, regrettably, had often to function in conditions of increasing budget deficit, accumulated debts and diminishing contributions. Forward-looking governance of social security as part of a country's social strategy called for new methods in its organization and management. It was no surprise therefore that reforms in social security, which over the last decade touched upon every issue of financing and design of benefits, have now put into question the basic organizational model of social security systems inherited from the past century.¹⁰⁷

153. Highlighting these trends, the Committee hoped that the resulting new structure of state responsibilities in the social sector will succeed in strengthening the basic principles of social solidarity and good governance reflected in the European and international standards.¹⁰⁸ These developments aptly lead to an examination of social security from the angle of human rights in response to changing socio-economic conditions in the next Part of the Survey.

¹⁰⁶ CEACR, ECSS, 2000, paras 22–23.

¹⁰⁷ CEARC, ECSS, 2005, para. 37.

¹⁰⁸ CEARC, ECSS, 2005, para. 38.

Part II. Towards a rights-based approach to social security

Chapter 1

Social security in the rights-based development framework

A. Social security as a human right and a duty of the State

154. The first international instrument envisaging social security in a human rights perspective, as a right stemming from the need for protection, was the Declaration of Philadelphia adopted in 1944. In 1948, the right to social security of every human being, as a member of society, was formally recognized by the Universal Declaration of Human Rights (UDHR) as an individual right of its own (Article 22). Later on, the right to social security was incorporated in numerous regional and international legally binding human rights treaties often subjected to international supervision with a view to securing their effective implementation. Their provisions varied from comprehensive regulations to general statements prohibiting discrimination in social security matters. The United Nations Covenant on Economic, Social and Cultural Rights guaranteed the right of everyone to social security, including social insurance (Article 9). Other instruments guarantee adjacent rights such as the right to enjoy the best attainable state of physical and mental health or the right of the aged and the disabled to special measures of protection in keeping with their physical and moral needs (African Charter on Human and Peoples' Rights of 1981).

155. The movement towards greater recognition of the essential role of social rights had gathered speed on all continents close to the turn of the century. In Europe, the year 2000 was marked by the adoption of the Charter of Fundamental Rights of the European Union, which established, since the entry into force of the Treaty of Lisbon in 2009, obligations addressed to the European Union Member States, as well as to all European institutions. In Africa, the year 2000 saw the creation of the African Union, which has placed human rights, democracy and the rule of law, social justice and good governance among its objectives.¹⁰⁹ The Charter of Fundamental Social Rights developed by the Southern African Development Community, signed by its 14 Member States in 2003, contains a specific provision on the role of ILO Conventions in attaining the objectives of the Charter. Under Article 5 of this Charter, Member States shall take appropriate action to ratify and implement relevant ILO Conventions and shall establish regional mechanisms to assist Member States in complying with the ILO reporting system. In

¹⁰⁹ Article 4 of the African Union Constitution.

Eastern Europe, the Members of the Community of Independent States signed the Convention on Human Rights and Fundamental Freedoms in 1995. Article 15 of the Convention guarantees the right to health protection, and Article 16 provides for the right to social security. In Latin America, the Multilateral Agreement on Social Security of MERCOSUR was signed in December 1997 and, as of 1 June 2005, it replaced the bilateral agreements regulating social security among countries in the region.

156. In recent years, the consolidation and effective implementation of social security rights has been put on the political and social agenda in most continents. **The ratification of ILO Conventions offers countries an effective way of consolidating social security rights in their internal legal systems through the systemic guarantees offered by international law.** ILO Conventions build bridges between ratifying States, whether in Africa, Europe or elsewhere, and help them speak a common language in the field of social and labour rights. ILO Conventions bring a common understanding of the content of social rights in the multilateral system, which in turn also serves as a basis for international development assistance. The ratification and implementation of ILO Conventions could also provide important benchmarks for the effective functioning of regional coordination initiatives, such as the African mechanism of peer evaluation, elaborated in the framework of the New Partnership for Africa's Development (NEPAD). In this perspective, the central role played by the CEACR in ensuring coherence between international and regional obligations stemming from ILO social security instruments and the European Code on Social Security (ECSS) might also be inspiring for other regional endeavours aiming at the development of social security systems in the perspective of internationally recognized standards.

157. As with other economic, social and cultural rights, the right to social security is achieved progressively in step with the level of economic and social development of the State and the available financial resources. The United Nations Covenant on Economic, Social and Cultural Rights provides in this respect that States parties are required to take steps to ensure the progressive realization of the rights recognized by the Covenant by developing medium- and long-term policies and programmes, to the maximum of their available resources, including through international assistance and cooperation (Article 2(1)). Although the concept of "progressive realization" affords the State some latitude in achieving the full realization of the right, the United Nations Committee on Economic, Social and Cultural Rights (ESCR) in practice requests States parties to demonstrate that they are moving as expeditiously and effectively as possible towards that goal.¹¹⁰ Progressive realization also implies that the States should generally avoid "any deliberate retrogressive measures" which reduce the coverage or level of benefits provided under the social security system.

158. In 2007, the UN Committee on ESCR specified the above obligations of the States parties as the obligations to respect, protect and fulfil the right to social security. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to social security. The duty to protect requires States to prevent third parties from interfering with this right, and the obligation to fulfil – that they adopt the necessary measures for the full realization of the right to social security.¹¹¹

¹¹⁰ With a view to monitoring progress, States are to put in place a plan of action for realizing the right. This plan of action should include goals and benchmarks (concrete standards of achievement) that are tied to specific time frames.

¹¹¹ UN Committee on Economic, Social and Cultural Rights, general comment No. 19: The right to social security (Article 9 of the Covenant), 4 Feb. 2008, E/C.12/GC/19, paras 43–51. The obligation to fulfil can be subdivided into three obligations: the obligation to facilitate by taking positive measures to assist individuals and communities to enjoy the right to social security; the obligation to promote access to and enjoyment of social

States parties therefore have the duty to adopt legislative measures in conjunction with financial, administrative, educational and social measures with a view to achieving progressively the full realization of the right to social security. Referring to Convention No. 102, the UN Committee considered that legislative measures should cover the nine contingencies included in the international definition of social security.¹¹² Through the adoption of specific statutory provisions the State must demonstrate its commitment to implement in more detail the obligations to protect, respect and fulfil. Social rights proclaimed by other international and regional instruments also require positive action of the State for their application.

159. In determining the above obligations of the State, the UN Committee on ESCR used as a source of international law the ILO's social security standards which attributed to the State the general responsibility to establish and administer the social security system. **Unlike human rights instruments, ILO standards view social security not as an individual right but rather as a social institution regulated by its own legislative framework, in most cases distinct from that of labour law. Over the years, this normative corpus grew into a separate branch of international law codified on the principles established by Convention No. 102. The interaction between the international social security law and the human rights law provided the engine for the progressive development of social security worldwide, substantiating human rights by the minimum standards of protection.**

160. Whereas human rights instruments primarily establish individual rights, which, in order to be made effective, must be guaranteed by the State, ILO instruments directly focus on the obligation of the State to secure social security benefits to those having the right to them. In 2001, the International Labour Conference recognized social security as a basic human right and a fundamental means for creating social cohesion. It appears therefore that, while the UN Committee on ESCR is moving towards the state social responsibility approach pursued by the ILO, the ILO is moving towards the human rights approach to social security pursued by the UN Committee on ESCR. The complementarity of these approaches is, in certain cases, expressly recognized by international instruments envisaging social security both as a human right and a duty of the State. The European Social Charter, for example, addresses social security twice: while Part I of the Charter establishes the right of all workers and their dependants to social security, Part II provides for the obligation of the State to establish and maintain a system of social security. The need for both approaches and their complementarity is evident and well established. The challenge that needs to be addressed is to turn this complementarity into an effective instrument of governance for the State, and into a decent level of social protection for the individual.

security; and the obligation to provide the right to social security for those who are unable to realize this right themselves for reasons beyond their control.

¹¹² *ibid*, para. 12.

Table 5. Social security as a human right: International and regional standards

International instruments	
Universal Declaration of Human Rights (UDHR), 1948	<p>Article 22 guarantees the right to social security.</p> <p>Article 25 recognizes the right of everyone to a standard of living adequate for the health and well-being of himself and of his family, including ... medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.</p>
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	<p>Motherhood and childhood are entitled to special care and assistance.</p> <p>Article 9 recognizes the right of everyone to social security.</p> <p>Article 10(2) recognizes the right of working mothers "to adequate social security benefits".</p> <p>Article 10(3) requires States parties to undertake special measures of protection and assistance for children and young persons.</p>
Convention on the Elimination of All Forms of Discrimination against Women, 1979	<p>Article 11(1)(e) obligates States parties to eliminate discrimination against women in the field of employment, and to ensure equal rights between men and women, in particular ... the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.</p> <p>Article 11(2)(b) requires States parties to adopt appropriate measures to introduce social benefits during maternity leave.</p> <p>Article 14(2) recognizes the duty of States parties to eliminate discrimination against women in rural areas and, in particular, to ensure to such women ... the right to benefit directly from social security programmes.</p>
Convention on the Rights of the Child, 1989	<p>Article 26 recognizes for every child the right to benefit from social security, including social insurance.</p> <p>In addition, Article 27(1) recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.</p> <p>Under Article 27(2) and (3), States parties must, in accordance with national conditions and within their means, take appropriate measures to assist parents to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.</p>
Convention on the Elimination of All Forms of Racial Discrimination, 1965	<p>Article 5(e)(iv) recognizes the duty of States parties to prohibit and eliminate racial discrimination in the enjoyment, among others, of the right to social security and social services.</p>
The International Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990	<p>Article 27 provides that with respect to social security, all migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm. Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances.</p> <p>Article 54 provides that migrant workers who are documented or in a regular situation shall enjoy equality of treatment with nationals of the State of employment in respect of, inter alia, unemployment benefits.</p>
Convention on Rights of Persons with Disabilities, 2006	<p>Article 28 provides that the States parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right.</p>

Convention relating to the Status of Refugees, 1951 and Convention relating to the status of stateless persons, 1954

Article 24 of both instruments stipulates:

1. The Contracting States shall accord to refugees [stateless persons] lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
 - ...
 - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a refugee [stateless person] resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
3. The Contracting States shall extend to refugees [stateless persons] the benefit of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

Regional instruments

The African Charter on Human and Peoples' Rights, 1981

The Charter has no express provision recognizing the right to social security. Certain aspects of the right may, however, be derived from Article 16, the right to health, and Article 18(4), the right of the aged and disabled to special measures of protection.

The Arab Charter on Human Rights, 2004

Article 36 provides that the States parties shall ensure the right of every citizen to social security, including social insurance.

The American Declaration of the Rights and Duties of Persons, 1948

Article 16 recognizes the right of every person to social security "which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control and make it physically or mentally impossible for him to earn a living".

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988

Article 9 of the Right to Social Security, reads as follows:

- "(1) Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependants.
- (2) In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth."

Article 10 of the Right to Health, reads as follows:

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.
2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:
 - (a) primary health care, that is, essential health care made available to all individuals and families in the community;
 - (b) extension of the benefits of health services to all individuals subject to the State's jurisdiction;
 - (c) universal immunization against the principal infectious diseases;
 - (d) prevention and treatment of endemic, occupational and other diseases;
 - (e) education of the population on the prevention and treatment of health problems; and
 - (f) satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

The European Social Charter, 1961

Article 12 requires contracting parties to establish or maintain a system of social security at a satisfactory level at least equal to that required for ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

In addition, they must endeavour to raise progressively the system of social security to a higher level. This Article also contains provisions regarding the taking of steps by contracting parties to ensure equal treatment with their own nationals of the nationals of other contracting parties in respect of social security rights, as well as the granting, maintenance and resumption of social security rights

Article 13 of the Charter recognizes a right to social and medical assistance. Article 13(2) prohibits discrimination against persons who receive such assistance, and Article 13(3) provides for such advice and help as may be required to prevent, remove or alleviate personal or family want. Special provision is made for maternity benefits with a view to ensuring the effective exercise of the right of employed women to maternity protection (Article 8). Family benefits are provided for in Article 16. Social security rights are also protected in the revised European Social Charter which opened for signature on 3 May 1996.

Charter of Fundamental Rights of the European Union, 2000

Article 34 provides that the European Union recognizes and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by European Community law and national laws and practices. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with European Community law and national laws and practices. In order to combat social exclusion and poverty, the European Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by European Community law and national laws and practices. Article 35 provides that everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all European Union policies and activities.

Commonwealth of Independent States – Convention on Human Rights and Fundamental Freedoms, 1995

Article 15

For the purpose of ensuring that the right to health protection may be effectively exercised, the Contracting Parties shall, either directly or in conjunction with public or private bodies, take the appropriate measures, aimed *inter alia* at:

- (a) eliminating the causes of health deterioration as far as possible;
- (b) providing advisory services and an instructional scheme for the fortification of health and the encouragement of personal responsibility in health care;
- (c) creating sanitary and hygienic conditions calculated to prevent, as far as possible, outbreaks of epidemic, endemic and other diseases.

Article 16

1. Everyone shall have the right to social security, including social insurance, according to his age, in cases of illness, invalidity loss of bread-winner and upbringing of children as well as in other cases provided for in national legislation.
 2. For the purpose of ensuring that the right to social and medical assistance may be effectively exercised, the Contracting Parties shall ensure that any person lacking sufficient means and unable to obtain such means through his own efforts or from other sources, particularly in the form of benefits under a social security system, receives the necessary assistance and in the case of illness, such care as is required by his condition.
 3. For the purpose of ensuring that the right of mothers and children to social and economic protection may be effectively exercised, the Contracting Parties shall take all appropriate and necessary measures to that end, including the establishment and maintenance of suitable institutions or services.
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B. The rights-based approach: Blending social security, democracy and the rule of law

161. The link between universal social security and the concepts of human rights, democracy and the rule of law might best be understood by reference to the notions of human dignity and social cohesion. Human rights establish goals for the development of societies by recognizing the value and dignity of each person. Democracy is based on the idea that the realization of these goals requires a political system where every individual

has equal freedom to govern or to choose by whom to be governed and has a moral duty to responsibly take choices concerning the government of the public thing. The regime of the rule of law turns the moral duty into legal rights and obligations and makes the democratic system sustainable in terms of the observance of the rules of the game and due process. The post-Second World War history showed that this political and legal architecture flourished in the societies characterized by high social cohesion and equity striving to eliminate want and deprivation of the working classes by establishing universal social security systems. In 2001, the International Labour Conference recognized the effectiveness of this combination for growth and development of modern societies.

162. It concluded that social security is an indispensable part of government social policy as an important tool to ensure social cohesion and social peace and prevention of poverty. Through national solidarity and fair burden sharing, social security can contribute to human dignity, equity and social justice. It is also important for political inclusion, empowerment and the development of democracy. Social security strengthens social cohesion by promoting solidarity between active and inactive members of society, between rich and poor and between present and future generations. It also reduces the risk of social and political upheavals and allows a more stable development of democratic institutions and the rule of law.

163. Historically, democratic forms of governance were developed through mutual societies and voluntary insurance schemes, all grounded in free and responsible participation of individuals in the protection of their welfare and dignity. Freedom of association and the right to organize had much to do in this process. It is not by chance that the recognition of the importance of social security and the extension of its coverage took place in many countries during the transition from a dictatorship to a democratic system. This was the case, for instance, in Italy after the Second World War and in South Africa after the fall of the apartheid regime. On the other hand, when a person is ensured a basic living and level of health, it increases the possibility that he or she can participate in the democratic system and fully enjoy the human rights. Social security for all is necessary in order to guarantee every individual a dignified standard of living when certain contingencies make him or her incapable of earning an income. This is also the reason why social security has experienced significant developments in the legal systems attributing high value to human dignity and where basic human rights were receiving increasing recognition.

164. Social security systems are one of the most powerful institutional expressions of social solidarity. Promoting social security as a human right, giving care and social protection, turns out to be a very efficient instrument for the extension of social security coverage through activating the role of civil society and the social partners. This is more likely to happen in societies based on the rule of law where legal culture and services, enforcement measures and litigation procedures greatly enhance the bargaining power of non-governmental organizations and local communities vis-à-vis national bureaucracies and other centres of power. A rights-based approach to social security also empowers individuals to protect themselves against social risks. The diffusion of “rights consciousness” within communities can foster citizens’ mobilization against various forms of discrimination and division and help create a kind of “social consensus” on the goal of social security for all. Enhancing the capacities of beneficiaries is one of the basic principles of good practice in promoting access to social rights. An enabling approach implies, for example, developing entrepreneurship when threatened by unemployment or strengthening of social capital by enabling networks to emerge. Individual and collective empowerment, that is human and social capital, are mutually

supportive. Bringing various actors together permits to create links between micro-level initiatives and macro-level commitments in order to ensure sustainability. In order to secure sustainability over time, it is important that empowerment measures involve a wide variety of actors and be continuously financed. In addition, enabling people to become less vulnerable by providing adequate training, education and health care also has the consequence of reducing the needs for expenditures on social and other assistance in the future.

165. Effective access to social rights, including the right to social security, is part of the vision of what “development” means in the global era and what the basic metric should be to measure its human and social dimensions. The absence of recognition of social rights implies long-term and possibly larger liabilities in economic, social and developmental terms as opposed to the immediate short-term savings related to the lack of recognition of social rights. In the global era, it is necessary to view costs as having a national as well as a regional and an international dimension. Neglecting social rights generates a productive loss to the economy, a loss in social and human capital, which is borne by entire societies at all levels: the State, communities, voluntary sector, families, enterprises and individual citizens. It also increases inequalities by turning to private interests the resources that could be created through public expenditure and intended as public goods. Denying access to social rights also endangers social sustainability by neglecting social cohesion. Effective access to social rights therefore is an investment in social justice, with a high rate of return, not only in social, but also in economic terms, and constitutes an indispensable and solid foundation for sustainable and peaceful development for all. The need to strengthen basic social rights through policies consistent with the ILO’s fundamental principles and rights at work was also affirmed in the context of the G20 to assure that global growth is broadly beneficial. International labour and social security rights contribute to building a culture of social dialogue particularly useful in periods of crisis.¹¹³

166. Whereas human rights and development issues were initially seen as separate domains, the focus was progressively placed on the principle of indivisibility of human rights recognized by the 1993 World Conference on Human Rights held in Vienna and on the collective obligation of all States to create a just and equitable international environment for the realization of the right to development. The rights-based approach to development puts values at the heart of the normative framework to orient national and international action and bring an ethical and moral dimension to securing enjoyment of these rights. An internationally agreed set of norms provides a stronger basis for citizens to make claims to their States, since under international law the State is the principal duty bearer with respect to the rights of the people living within its jurisdiction. The essential idea underlying the adoption of a rights-based approach to social security is that social security policies and institutions should be based explicitly on the norms and values set out in international human rights treaties that have been ratified by virtually all countries of the world. Underpinned by universally recognized moral values and reinforced by legal obligations, human rights provide a normative framework for the formulation of national and international policies, including strategies for the development of social security. One reason why the human rights framework is compelling in giving effect to the right to social security is that it has the potential to empower persons to seek the effective guarantee of social security.

¹¹³ See *Accelerating a job-rich recovery in G20 countries: Building on experience*, an ILO report, with substantive contributions from the OECD, to the Meeting of G20 Labour and Employment Ministers, 20–21 April 2010, Washington, DC.

167. Rights are based on legal and sometimes ethical obligations and are a “vehicle for increasing the accountability of government organizations to their citizens and consequently increasing the likelihood that policy measures will be implemented in practice”.¹¹⁴ Legislative instruments guaranteeing the right to social security based on international standards provide a potentially more effective and powerful approach to implementing this right in the developmental context. Support of internationally agreed legislation changes the way in which the right to social security comes to be viewed by development agencies and national governments, thereby also legitimizing a more progressive and humanistic approach to development.

168. “The most important source of added value in the human rights approach is the emphasis it places on the accountability of policy-makers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability.”¹¹⁵ **The existence of effective accountability mechanisms marks the shift between charity and claims. The effectiveness of the access to social rights is ultimately related to an explicit, clearly interpretable and inclusive framing of social rights, as well as to the justiciability of these rights. Enforceability aims at guaranteeing that every individual effectively obtains the benefits of his or her rights. In this respect, one particular feature of social rights is their undeniable collective scope alongside their obvious individual scope. Collective action by beneficiaries might therefore help in obtaining their effective implementation, if the enforceability of social rights is to be increased.**

¹¹⁴ C. Ferguson: “Global social policy principles: Human rights and social justice”, London, DFID, 1999, p. 23.

¹¹⁵ See Office of the United Nations High Commission for Human Rights; Draft Guidelines for a Human Rights approach to poverty reduction strategies.

Chapter 2

Taking the fundamental principles and rights at work beyond work

169. Human rights apply both in and outside work, linking the two worlds together. As both a human right and a social institution, social security has the mission to protect those who are outside work and establish security for those who are in employment in case of loss of their earning capacity. Social security interrelates with fundamental principles and rights at work in many ways. The recognition of freedom of association, to take but one **example**, opened the way for worker mutual solidarity to become embodied in modern social security **institutions**. Collective bargaining contributed to the emergence of many occupational social insurance schemes. Conversely, worker solidarity was the driving force behind the recognition of freedom of association and continues to power collective bargaining. The existing links between social security and fundamental principles and rights at work should be reinforced. Recognizing this need, in 2008, the ILO Declaration on Social Justice for a Fair Globalization confirmed the “inseparable, interrelated and mutually supportive nature” of the four strategic objectives of the ILO dealing with fundamental principles and rights at work, social protection, social dialogue and employment policy. The report form for the General Survey therefore contained specific questions on the manner in which social security, as one of the strategic objectives, related to the other objectives. The analysis of the reports received reveals a rich and intensive interaction between social security and fundamental principles and rights at work.

A. Freedom of association and social security are mutually reinforcing

170. The emergence of the right to organize and the right to be protected against the risks of life are intrinsically linked and have always been mutually reinforcing. The ancestor of industrial unions, the mediaeval trade guilds, already supported members and their families in times of adversity. In the late eighteenth and early nineteenth centuries, with the development of intensive industrialization, workers started establishing voluntary associations taking the form of mutual aid societies (*sociétés de secours mutuels*) with a view to collectively sharing the risks related to the protection of their health or the loss of income occurring in case of sickness, invalidity, death or unemployment.¹¹⁶ The proliferation of such mechanisms made the new class of factory workers, whose livelihood depended on the regular payment of wages, conscious of the need to organize to defend it collectively. The trade union movement became the driving force behind the social security movement defending the workers’ right to organize

¹¹⁶ The members paid weekly or monthly premiums, which went into a reserve fund for redistribution to needy members in the form of benefits.

mutual societies and provident funds, supplying workers' representatives to the management bodies of the social insurance schemes created jointly with their employers, as well as regulating the conditions and the rates of benefits and contributions through collective agreements with the employers and dialogue with the public authorities. The trade union movement also shared with social security the principles of social and professional solidarity, collective financing and democratic participation of social partners in the management of the newly created bodies. The social insurance schemes that developed in the beginning of the twentieth century were mainly operated by the employers' and workers' organizations under the supervision of the State. The social partners continued to play a strong role in the comprehensive social security systems directed to entire societies representing the interests of the larger categories of protected persons.

171. The majority of responding governments recognize freedom of association and collective bargaining as indispensable for setting up supplementary social security benefits for workers, created and managed by the social partners themselves. Numerous countries report that the labour law provides for the possibility to create supplementary social insurance,¹¹⁷ other countries emphasize the role of employers to make available additional social security benefits, indicating that national law encourages employers to set up supplementary insurance schemes for employees.¹¹⁸ Many countries underline the importance of collective labour agreements for this purpose.¹¹⁹ Social security Conventions were designed to integrate schemes established solely by the workers or jointly with their employers into comprehensive social security systems. For this purpose, they provided for the possibility to invite the representatives, respectively, of employers and of public authorities to participate in the administration of such schemes. The role of the social partners in advancing social security through social dialogue is examined in further detail in Chapter 3 of Part IV of this Survey.

172. Several governments refer to provident funds, also known as employee welfare schemes or trust funds, which are a common means to ensure additional social security benefits for workers. For example in the *Republic of Korea*, in accordance with the Employee Welfare Fund Act, an employer may set up an employee welfare fund with a portion of his/her business profits and use the fund to provide financial support for workers' wealth creation, such as the purchasing of housing and company stocks under an employee stock ownership plan, to support their livelihood through the provision of scholarships and disaster relief, and to subsidize other costs required for maternity protection and the reconciliation of work and family life. The established fund shall have its own council, directors and auditor, responsible for the management and operation of the fund. The fund shall disclose its balance sheet, profit and loss statement, audit and operation reports and always make them available for workers' inspection. In *Ghana*, the establishment of provident fund schemes has been driven by workers' organizations. Under the existing arrangement, many of the public establishments through negotiation with their employers have been able to set up provident fund schemes for their members, e.g. the Teachers Fund and the Judicial Service Staff Fund.

¹¹⁷ *Angola, Argentina, Benin, Bulgaria, Brazil, Chile, Côte d'Ivoire, Djibouti, Guatemala, Morocco, Mozambique, Peru, Saint Lucia and Senegal.* In the *Plurinational State of Bolivia*, however, complementary insurances are disappearing, the Government reports.

¹¹⁸ *China, Costa Rica, El Salvador, Ethiopia, Finland, France, India, Kuwait, Mali, Mauritius, Panama, Philippines, Republic of Korea, Sudan, Uruguay and Zimbabwe.*

¹¹⁹ *Algeria, Antigua and Barbuda, Austria, Costa Rica, Dominica, Fiji, Germany, Honduras, Hungary, Indonesia, Italy, New Zealand, Netherlands, Sweden, Switzerland, United States and Bolivarian Republic of Venezuela.*

1. Collective bargaining as a means to regulate and extend social security

173. In many countries, the principles of freedom of association and the right to bargain collectively were and continue to be used by the social partners to establish and regulate social security schemes at the corporate, industry-wide or even national level. Collective agreements have also been used as a means to guarantee more favourable social security benefits than those provided by the national legislation and to extend occupational pension schemes to cover all enterprises in a given industry or even entire sectors of the economy. The resulting system combines the advantages of broad coverage and pooling of risk with autonomy from the State and flexibility of being jointly managed by employers' and workers' representatives. Experiences of *Finland, France, Netherlands* and others suggests that such arrangements greatly facilitate the regulatory function of the State. By contrast, in countries which rely widely on individual company schemes, vast regulatory systems have developed, accompanied in some cases by the establishment of additional pension guarantee mechanisms.

174. Collective agreements may also be used as a means to extend social security coverage to the informal sector of the economy. *Argentina*, for example, introduced the possibility to conclude agreements on social security issues between professional associations of workers with trade union status and sufficiently representative employers in areas characterized by an important informality. Once approved by the competent authority, such agreements simplify the collection of social security contributions, for example by permitting that contributions are paid following the sale of the harvest, instead of monthly, by operating a deduction from the price of sold products. Nonetheless, the State conserves the general responsibility for the proper administration of social security systems even in cases where the social partners assume the responsibility of managing the system.

175. In one case where the government indicated that it could not directly implement the recommendation of the Committee addressed to the National Employment Office because it was subject to joint management by the social partners, the Committee expressed the hope that the government would not fail to follow developments in this respect closely in view of its general responsibility for the proper administration of the institutions responsible for the application of the European Code of Social Security.¹²⁰ In another case where the Committee asked the government to draw the attention of the social partners jointly managing the National Health Fund to the need to extend the maximum duration of the sickness benefit, the government introduced a flexible procedure, under which the social partners who are members of the Administrative Board of the Fund may react to cases of necessity through an appropriate provision in the statutes defining specific situations in which the duration of the benefit shall be adapted. The resulting amendment of the statutes of the Fund by the social partners to that effect was noted by the Committee with satisfaction.¹²¹

2. Restrictions on collective bargaining in social security matters

176. Some countries have chosen to strictly regulate the nature and scope of negotiable issues either by prescribing the social partners to discuss certain matters or by prohibiting discussion of certain matters for reasons of general interest or public policy,

¹²⁰ CEACR, ECSS, *Belgium*, 2009.

¹²¹ CEACR, ECSS, *Luxembourg*, 2009.

and leaving these topics for the legislative authority to regulate (for example by excluding from bargaining certain aspects of conditions of employment, including social security). The ILO Committee on Freedom of Association has considered in this respect that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The general prohibition on the establishment of a pension scheme differing from that established by law, for example, was not considered in conformity with the principles of collective bargaining since it does not allow the social partners to improve statutory pension benefits or pension schemes by mutual agreement.¹²² Supplementary pension schemes can also be legitimately considered as benefits that may be the subject of collective bargaining, and governments should ensure that such schemes are not excluded from collective bargaining.¹²³ The Committee of Experts has also underlined in this respect that if, under an economic stabilization or structural adjustment policy, for imperative reasons of national economic interest, employment conditions cannot be fixed freely by means of collective bargaining, these restrictions should be applied as an exceptional measure and only to the extent necessary, should not exceed a reasonable period and should be accompanied by adequate safeguards to protect effectively the standard of living of the workers concerned, in particular those who are likely to be most affected, such as persons with low income, or workers subject to systemic discrimination.¹²⁴

3. Legislative involvement in collective agreements

177. Both the Committee of Experts and the Committee on Freedom of Association have considered that the State should generally refrain from intervening to alter the content of freely concluded collective agreements. The unilateral modification by way of a legislative enactment of the content of collective agreements that are still in force has been considered as being in breach of the principle of collective bargaining and the principle of maintenance of acquired rights. Agreements concluded prior to legislative reforms should therefore continue to produce effect until their date of expiry. The Committee on Freedom of Association has stressed in this respect that, while it is not competent to comment on social security-related governmental decisions, it could examine whether these decisions respected the principles of freedom of association. Legislatively imposed measures, which amount to reversing unilaterally a system accepted by the social partners, would only be justified as a temporary measure in situations of acute crisis, if the non-adoption of urgent measures, for example, had endangered the very existence of the social security system.¹²⁵ In such cases, a particularly appropriate method suggested to resolve the difficulties encountered has been the holding of tripartite discussions with a view to preparing jointly agreed guidelines for collective bargaining.¹²⁶ The recent case of the auto industry crisis in the *United States* is a good example of how constructive collective bargaining – between the United Autoworkers and General Motors, with participation by the Presidential Administration – can preserve jobs and the viability of business enterprises, as well as a range of benefits for current and retired workers.

¹²² See Committee on Freedom of Association, Colombia, Case No. 2434.

¹²³ See Committee on Freedom of Association, Greece, Case No. 2502.

¹²⁴ See General Survey of 1994 on freedom of association and collective bargaining, Report III(4B), ILC, 81st Session, 1994, para. 260.

¹²⁵ For example, Committee on Freedom of Association, Sweden, Case No. 2171.

¹²⁶ See General Survey of 1994 on freedom of association and collective bargaining, para. 250.

178. The Committee on Freedom of Association has also observed that public authorities should refrain from giving by law a special incentive encouraging one of the parties to these agreements to denounce or cancel collective agreements by which pension funds were set up, because this constitutes interference with the free and voluntary nature of collective bargaining. “Nothing in Convention No. 98 enables the government to step in and unilaterally determine these issues, much less to unilaterally determine that the assets of a private pension fund, established by collective agreement, can be automatically transferred to a public pension scheme. The establishment of the funds through collective bargaining as well as trade union participation in the administration of these funds, constituted a trade union activity with which the government unduly interfered.”¹²⁷

179. As regards collective agreements that may be concluded following the adoption of a legislative reform and not taking into account the new legislative framework, both Committees have considered that, in order to ensure harmonious industrial relations, the governments concerned and the social partners should hold in-depth consultations in order to find a negotiated solution acceptable to all. In accordance with the principle of good faith, the governments should also not threaten to take legislative action in the event that concluded agreements deviate from the terms of legislative reforms, but may take measures with a view to persuading the social partners to take into account voluntarily major economic and social policy considerations.¹²⁸ Finally, in the event of modifications in national legislation having an impact on issues negotiated by way of collective agreements, the Committee has also considered that the burden of establishing the manner in which the newly adopted rules are applied and whether they might invalidate, even indirectly, any gains made through negotiation, falls on governments.

4. Social security and the right to strike

180. History contains numerous examples when trade-union movement has used its force and industrial action to defend the social security of workers and safeguard their acquired rights. International labour law does not permit restricting trade union activities solely to occupational matters, since governments’ choices of general policies are bound also to have an impact on social security-related matters. On numerous occasions, the CEACR stressed that the right of social partners to actively take part in the development of social security, including through industrial action, is supported by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87): “organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living”.¹²⁹

181. As regards social security rights in general, the CEACR has considered that industrial action should not unduly penalize workers by entailing a suspension of the rights of employees, including lawfully acquired social security rights.¹³⁰ Recently, the Committee on Freedom of Association recalled that the issue of pensions is linked to freedom of association to the extent that workers were denied by their employer lawfully

¹²⁷ See Committee on Freedom of Association, Greece, Case No. 2502.

¹²⁸ CEACR, Convention No. 98, observation, *Sweden*, 1996.

¹²⁹ See General Survey of 1994 on freedom of association and collective bargaining, op. cit. para. 165.

¹³⁰ CEACR, Convention No. 87, observation, *Serbia*, 2003.

acquired retirement benefits accrued over years of working for an enterprise as a result of their dismissal pursuant to a strike.¹³¹

182. As regards unemployment benefit, Convention No. 102 authorizes the right to benefits to be suspended in case of loss of employment as a direct result of a stoppage of work due to a trade dispute (Article 69(i)). Convention No. 168 also provides in this respect that the right to benefits may be refused, withdrawn, suspended or reduced during the period of a labour dispute, when the person concerned has stopped work to take part in a labour dispute or is prevented from working as a direct result of a stoppage of work due to this labour dispute (Article 20). Suspension of unemployment benefits in case of industrial disputes was reported by several countries under Convention No. 102.¹³² In practice, such provisions often stipulate that persons who have lost their employment because of a stoppage of work due to a trade dispute at their place of employment are disqualified from receiving unemployment benefit for the duration of the strike. In one case it has been found that unemployment benefits should not however be suspended where the persons concerned can prove that they are not directly interested in the trade dispute which caused the stoppage.¹³³

B. Family and child benefits are effective means for the abolition of child labour

183. Article 1 of the Minimum Age Convention, 1973 (No. 138), requires ratifying States to pursue a national policy designed to ensure the effective abolition of child labour. Article 6 of the Worst Forms of Child Labour Convention, 1999 (No. 182), requires ratifying States to implement programmes of action to eliminate as a priority the worst forms of child labour. These national policies often apply a holistic approach to the phenomenon of child labour, including significant measures focused on family welfare and access to education. It should be recalled in this respect that Part VII of Convention No. 102 also addresses the provision of family benefits, which shall be either a periodical cash benefit or benefits in kind (food, clothing, housing, holidays or domestic help) or else a combination of both (Article 46). Using family benefits as a means for meeting the needs of children and youth in national development policies and programmes was foreseen by the Minimum Age Recommendation, 1973 (No. 146), which placed specific emphasis on:

...

- (b) the progressive extension of other economic and social measures to alleviate poverty wherever it exists and to ensure family living standards and income which are such as to make it unnecessary to have recourse to the economic activity of children;
- (c) the development and progressive extension, without any discrimination, of social security and family welfare measures aimed at ensuring child maintenance, including children's allowances (Part I, Paragraph 2).

¹³¹ Committee on Freedom of Association, Philippines, Case No. 1914, Report No. 356.

¹³² CEACR, Convention No. 102, observation, *United Kingdom*, 1993; CEACR, Convention No. 102, observation, *Germany*, 1996.

¹³³ CEACR, Convention No. 102, observation, *Germany*, 1996. The Committee recalled that, in its 1965 observation addressed to Germany, it had discussed at length the meaning of "as a direct result of a work stoppage" contained in Article 69(i). This wording is intended to distinguish between workers who have little or no interest in the outcome of a trade dispute and therefore should not have to bear the risk of such an action, and those who have a substantial interest in the outcome of the trade dispute and therefore may more reasonably be expected to shoulder the burden along with the workers on strike. As the Committee has stated in previous comments, the key issue is whether the trade dispute is likely to influence the claimants' conditions of work.

1. Guiding principles for the granting of family benefits¹³⁴

184. The fundamental objective of family benefits should be to ensure the welfare of children and the economic stability of their families. In case there is no provision for family benefits in the country, a government should create a family benefit scheme, comprising, during an initial period, at least the granting of family allowances. Subsequently, family allowance in the form of periodical cash payments should form the core of the family benefit scheme, which may include various benefits in kind or in cash, as well as tax relief measures and social services for families with children.

185. Family allowances should be granted in respect of each child in the family and to all children residing in the territory of the country concerned. They should be set at a level which relates directly to the actual cost of providing for a child and should represent a substantial contribution to this cost. Family allowances at the minimum rate should be granted regardless of means. Benefits above the minimum rate may be subject to a means test. All benefits should be adjusted in order to take into account changes in the cost of providing for children or in the general cost of living.

186. Family benefits need to be constantly adapted to the new patterns of family life and to the changing structure of households. Particular attention should be paid to the specific needs of certain categories (e.g. large and single parent families) by increasing the benefits awarded to them or by setting up special services. The recipient of family benefits should be the person actually responsible for the child, or the child itself. Family benefits should be granted for so long as the child is receiving education or vocational training on a full-time basis and is not in receipt of an adequate income determined by national legislation. The progressive extension of the scope, duration and rate of family benefits should be facilitated by endowing the appropriate institutions with sufficient financial resources.

187. It is the responsibility of the State through its social legislation to promote the welfare of families with dependent children and to ensure that they enjoy a decent standard of living. State policies should aim to progressively make all existing family benefits generally available, so as to contribute to guaranteeing an average minimum subsistence level for children. For this purpose, States should ensure sufficient financing of the family benefit scheme on the basis of optimum solidarity, which favours the lowest income groups. Family benefit should be integrated, as one of the means, into the consistent national policy for the promotion of the economic, legal and social protection of family life. Family benefit should thus be coordinated as much as possible with fiscal arrangements, the provision of family housing and other social benefits.

188. The following section highlights the need for better and more systematic use of family and child benefits as effective tools for the abolition of child labour. Many initiatives for the elimination of child labour focus on remedying the factors that compel children to work, such as inadequate schooling and child poverty. As child poverty is often indistinguishable from household poverty, social security benefits to the parents of children at risk of engaging in child labour may play an important role in addressing this phenomenon.

¹³⁴ See Part VII (Family benefit) of Convention No. 102; see also the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Workers with Family Responsibilities Recommendation, 1981 (No. 165).

2. Family benefit and child poverty

189. One of the main objectives of family benefit consists in providing additional income necessary for the sustainable development of a child. Another notable objective of the family benefit is to preclude families of limited means from sliding into poverty because of having to maintain a child. From the microeconomic point of view, the orientation of the family benefit to the maintenance of children themselves is made obvious in the definition of the contingency given in Article 40 of Convention No. 102. From the macroeconomic point of view, the need for the country to allocate a certain minimum amount of national capital for sustaining children of its residents in order to ensure proper development of its human resources is recognized by Article 44 of the Convention. According to Article 41 of Convention No. 102, the scheme shall first of all ensure protection of prescribed classes of employees or of the economically active population, which means that it is directed at preventing the emergence of the “working poor” – where two working spouses cannot provide for one or two children.

190. The analysis of poverty risks for different age population groups indicates that as a rule children have the highest risk of falling into poverty. Those facing the highest risk of poverty and of remaining chronically poor are one parent families and households with several children. Family allowance could become an effective instrument for poverty alleviation. However, judging by the persistence of child poverty even in the high-income countries and the emergence of the new category of the working poor, one has to conclude that family benefit often fails to fulfil this objective. Many economies have been quickly growing in the past decade and overall poverty rates have decreased, but not among families with children, proving that children have drawn little benefit from improvements that have occurred. The paradox of the situation is that, today, the principal threats to children arise from preventable illnesses and social ills, which could be effectively dealt with by an efficient social protection system. However, notwithstanding a number of measures taken to this end, there are countries where the negative trends have not been reversed and the available mix of family benefits appeared to be ineffective in supporting the healthy development of children.

191. The Committee is particularly concerned that low-income population groups, which include many children, find themselves in a vicious circle of declining health where unhealthy mothers give birth to unhealthy children, and they – upon reaching the age of fertility – reproduce an unhealthy generation. The question therefore arises as to why is it that the international community tolerates the failure of so many countries to cope with this situation and what global policy measures need to be put in place to arrest and reverse these negative trends. The Committee hopes that the ILO’s constituents will provide an answer to this question through supporting the construction of the global social security floor, which comprises family and child benefits at least at the poverty level.

3. Family benefits for preventing child labour

192. In reply to the question whether member States provide universal or targeted (means tested) benefits to families with children under school-leaving age with a view to, inter alia, preventing child labour, governments referred to the following main elements influencing their policies: the domestic law in force on a minimum age for employment; legislation on compulsory education; and national programmes for universal or targeted assistance to families with children. The majority of replies reported that benefits are provided to families with children with a view to assisting

families in meeting the cost of raising and educating children.¹³⁵ The majority of the European countries, as well as *Algeria, Australia, Bangladesh, Lesotho, Sri Lanka, Syrian Arab Republic* and the *Bolivarian Republic of Venezuela* emphasized the role of compulsory education legislation. The following countries reported that primary education is free for children: *Cuba, Cameroon, Fiji, Ghana, Lesotho, Sri Lanka, Syrian Arab Republic, Uganda* and the *Bolivarian Republic of Venezuela*. *Fiji, Ghana*, as well as *Lithuania* informed that their Governments ensure that children have access to free textbooks, school supplies, uniforms and transport to and from school. Other countries emphasize the importance of helping families to finance education.

193. Governments often underline the centrality of social security mechanisms in their approach to the prevention and elimination of child labour. Many governments have developed national action plans to prevent and eliminate child labour. The national action plans of *Austria* and *South Africa*, as noted by the Committee, include social security measures.¹³⁶ Other recent examples noted by the Committee include the following. The *Seychelles* indicated that the social security system, by providing a safety net for children and their families (especially where household income is below the established subsistence level), prevents children from having to look for other income to support themselves and their families.¹³⁷ The Government of *Tunisia* provides subsidies to needy families with dependent children of school age, in addition to the assistance already provided to thousands of families in terms of, inter alia, free care and social security, in accordance with a Presidential Decision of 15 January 2007.

194. In most industrialized countries family benefits consist of non-contributory universal family benefits and additional means tested benefits. In *Canada*, the Canada Child Tax Benefit (CCTB) provides an income-tested benefit to almost 90 per cent of families with children, while the National Child Benefit (NCB) supplement provides additional income support to low-income families with children. In *Sweden*, the financial support to families with children consists of child allowance, child-raising allowance, housing allowance, maintenance support, parental insurance, gender equality bonus, care allowance for disabled children, survivors' benefits and child's pension and grants for expenses in connection with inter-country adoptions.

195. The Committee has also noted that, in several countries, free or subsidized day care has been provided to children of working parents. Recent examples noted by the Committee include the *Programa Amor* in *Nicaragua* (implemented by a variety of governmental ministries and institutes, including the Nicaragua Social Security Institute), which established child development centres and community day care for the children of working mothers.¹³⁸ In *Lithuania*, the Government implemented a national programme on day care, which targeted children from families on social assistance, in addition to providing other services. Between 2002 and 2008, 5,500 children (and 2,700 family members) had benefited from these programmes.¹³⁹

196. Children who have lost one or both parents to the HIV/AIDS pandemic are particularly vulnerable to becoming involved in child labour, as these children are often

¹³⁵ *Algeria, Angola, Argentina, Australia, Azerbaijan, Bangladesh, Chile, Djibouti, Fiji, Gabon, Mauritius, Mexico, Morocco, New Zealand* and all European countries.

¹³⁶ CEACR, Convention No. 182, direct request, *Austria*, 2008; CEACR, Convention No. 138, direct request, *South Africa*, 2004.

¹³⁷ CEACR, Convention No. 182, direct request, *Seychelles*, 2009.

¹³⁸ CEACR, Convention No. 138, observation, *Nicaragua*, 2009.

¹³⁹ CEACR, Convention No. 182, direct request, *Lithuania*, 2009.

forced to enter the workforce to support themselves or their families. The situation of orphans and other vulnerable children (OVCs) is often examined by the Committee in the context of Article 7(2)(d) of Convention No. 182 (reaching out to children at risk) in countries particularly affected by the HIV/AIDS pandemic. Social pensions have or could become an increasingly important instrument for mitigating the life circumstances of OVCs. The Committee has noted various programmes aimed at this population to reduce their vulnerability, including social assistance to families who care for these children. For example, considering the approximately 120,000 HIV/AIDS orphans in *Burkina Faso*, the Government has provided assistance to households which accommodate OVCs and has set up structures to create income-generating activities for these households.¹⁴⁰ In *Kenya*, the Government provides approximately US\$15 per month to OVC households for health, school enrolment/retention and food security. By 2007, this programme benefited approximately 12,500 families in 37 districts.¹⁴¹

197. The Committee notes in particular the reply by *India*, which demonstrates a comprehensive policy to preventing child labour by means of integrating legislation, education and family benefits. The *Sarva Shiksha Abhiyaan* is being implemented as a countrywide campaign for ensuring education to every child below the age of 14 years. This programme is supplemented by the National Child Labour Project under which children are withdrawn from work and put in special schools to mainstream them into the regular education system. The Ministry of Labour and Employment is following the convergence approach to secure benefits to families of vulnerable children under various employment-generating and social welfare schemes administered by other ministries/departments to ensure economic rehabilitation of the families so that they are not compelled to send their children to work.

198. Measures related to the provision of social security benefits are often a feature in ILO–IPEC time-bound programmes (TBPs), as part of a holistic approach to the elimination of child labour and they have been repeatedly noted as such by the Committee. **In light of the above, the Committee strongly recommends that technical cooperation activities should consider social security, and family benefits in particular, as the means to combat child labour and promote school attendance.** The Committee notes in this respect that conditional and unconditional cash transfer programmes (CCT) constitute at present the two most widely used means of intervention.

4. Cash transfer programmes

199. *Belarus, Bosnia and Herzegovina, Ecuador, El Salvador, Guatemala, Mozambique, Senegal, South Africa, Suriname, Uganda, United States, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe* state that their Governments provides means-tested family benefits targeted at families in need. Such benefits are mostly conditional upon compliance with certain predefined requisites. For example, in *Ecuador*, the *Programa de Bono de Desarrollo Humano*, provides cash benefits for families below the poverty line conditional upon school attendance and use of medical care.

200. *Conditional* cash transfers (CCTs) usually consist of the regular payment of a sum of money to poorer households, with the condition of their compliance with a previously specified set of requisites. These conditions generally comprise investment in human

¹⁴⁰ CEACR, Convention No. 182, direct request, *Burkina Faso*, 2009.

¹⁴¹ CEACR, Convention No. 182, direct request, *Kenya*, 2009.

capital, such as ensuring children's school attendance. The objective is that the cash benefit provides some form of social insurance for the family household, replacing the income from child labour and instead ensuring investment in education. CCT programmes have been operating mostly in South America, and well-known examples included the *Bolsa Família* programme in *Brazil*, *Oportunidades* in *Mexico* and *Plan Jefas y Jefes de Hogar* in *Argentina*. They have significantly increased school attendance levels and led to a reduction of child labour.¹⁴²

201. Although *conditionality* is not explicitly foreseen by Convention No. 102, reference could be made in this respect to Article 69(g), which provides that:

A benefit to which a person protected would otherwise be entitled in compliance with any of Parts II–X of this Convention may be suspended to such extent as may be prescribed:

...

- (g) in appropriate cases, where the person concerned neglects to make use of the medical or rehabilitation services placed at his disposal *or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries* (emphasis added).

202. In observing the application of Conventions Nos 138 and 182, the Committee has frequently noted instances of CCT programmes and emphasized their importance in contributing to breaking the cycle of poverty, which is essential for the elimination of the worst forms of child labour, increasing access of children to education and reducing child labour. In *Lebanon*, the Government formulated a Social Action Plan (SAP) to target the promotion of sustainable and equitable development while combating poverty and setting up *social* safety nets. The SAP addresses working children and their households as one of the main social groups characterized by acute poverty and aims to “target poor households and large families with children either not enrolled in school or under the legal age to work” and includes cash assistance support and follow-up services to households that comply with a number of conditions, including ensuring that their children stay in school until the end of compulsory education.¹⁴³ *Bulgaria* recently adopted amendments to the Family Benefits for Children Act (FACA) with the aim of enhancing access to education for all children, including those from families with low incomes, according to which a new type of allowance depending on the school attendance of children was introduced.¹⁴⁴ While there are sound arguments favouring conditionality, there are also important considerations on the other side.

203. In contrast with the CCTs, society-wide universal unconditional cash transfers, also referred to as “basic income support”, do not condition the access to the benefit on the compliance with certain predefined requisites. While building on the positive evidence from CCTs, some have argued that basic income support can address household poverty and perhaps empower families to overcome the need/temptation to put their children in child labour as a way to boost income during times of economic difficulty, or as a de facto form of social insurance to offset and prepare for future economic hardship and insecurity. Although not designed to target the reduction of child labour as an explicit outcome, basic income support could function as a general poverty reduction device and may be effective as a preventive measure by reducing the entry of children into the labour market. While using the logic of universality and unconditionality, instead of

¹⁴² See, for example: *Bolsa Família in Brazil: Context, concept and impacts*, ILO, Geneva, March 2009, pp. 15–16.

¹⁴³ CEACR, Convention No. 182, direct request, *Lebanon*, 2009.

¹⁴⁴ CEACR, Convention No. 182, observation, *Bulgaria*, 2008.

targeting and means testing, basic income support, in contrast with CCTs, would involve less administrative costs, reduce the need to build exit strategies, since it is a lifelong income, and involve less moral hazards and potential for corruption. However, since basic income support does not include any direct conditions connected with child labour, it is important that it be introduced along with other integrative and complementary measures linked with eliminating child labour, such as awareness raising.

204. The idea of providing basic income support is not new and at the basis of the Income Security Recommendation, 1944 (No. 67). This idea has been invigorated by the Global Campaign on Social Security for All, launched by the International Labour Conference of 2003. In its efforts to establish a social protection floor, the ILO has promoted a basic set of income guarantees to ensure that “all children enjoy income security at least at the poverty level through family/child benefits aimed at facilitating access to nutrition, education and care”.

5. Social security benefits to legally working children

205. The provision of social security benefits to children who are working legally as they have either reached the minimum age, or are working as an exception to it, is another important theme highlighted by the Committee when examining the application of Conventions Nos 138 and 182. While the provision of social security benefits to the parents of children is often a mechanism to prevent children from working, this section examines specifically the provision of social security benefits to children who do engage legally in work, to ensure their protection (and reduce their exploitation) in the economic activities permitted under the Conventions. To extend social security benefits to children under 18 engaged in work permitted pursuant to Convention No. 138, the Minimum Age Recommendation, 1973 (No. 146), calls for “special attention to be given to, inter alia, coverage by social security schemes, including employment injury, medical care and sickness benefit schemes, whatever the conditions of employment or work may be” (Part IV, paragraph 13).

206. Convention No. 138 allows for work to be performed in enterprises in the context of vocational training (by apprenticeship) from the age of 14. As outlined in Recommendation No. 146, the provision of social protection to working children in these categories is important. For example, in a direct request addressed to *Brazil* (2004), the Committee noted that, pursuant to Act No. 6.494 of 7 December 1977 and Decree No. 87.497 of 18 August 1982, children may engage in work in enterprises to complement vocational training. The absence of regulations covering these work situations left a legal vacuum as a result of which certain distortions of educational work were emerging, so-called social programmes run by non-profit agencies which, on the pretext that they are training the young person, only take on young persons in situations of social risk and direct them to enterprises and public bodies where they carry out work of low, or almost non-existent, value as vocational training and without guaranteeing their labour and social security rights. However, the Government was making efforts to regularize inappropriate programmes and equate them with the institution of apprenticeships and the Committee is following up on these measures.

207. According to the latest global estimates on child labour, among the 215 million children who are found in child labour situation (too young to work or in worst forms of child labour), the overwhelming majority are unpaid family workers, and paid

employment counts only for one in five of child labourers.¹⁴⁵ This indicates that the majority of child labourers are working in informal family undertakings, and therefore their family is also unlikely to be covered by social security based on employment relationships. There is no specific information on the employment status of young workers under 18 who are legally at work, but it is perhaps unrealistic to expect that all those child labourers will find themselves in formal employment with social security coverage when they reach the minimum working age. **This is a problem closely linked to the exclusion of certain groups of the population from social security protection which needs to be addressed in a wider context – relating also to discrimination or other forms of social exclusion, and rendering children at higher risk for involvement in child labour, including its worst forms.**

C. Elimination of discrimination in respect of employment, occupation and social security¹⁴⁶

208. The Committee notes with satisfaction that most countries specifically report that under the article 19 questionnaire the principle of equality of treatment and non-discrimination is one of the general principles underpinning the social security system and ensured in their national legislations.¹⁴⁷ Member States have highlighted in particular three dimensions of the application of this principle in social security law and practice, ensuring equality of treatment: (1) between protected and unprotected members of society by extending social security coverage to the latter; (2) between men and women, in particular by equalizing their retirement age; and (3) between national and foreign workers through extending the network of bilateral and multilateral social security agreements.

209. Besides the legal guarantees of non-discrimination in social security systems, several member States draw attention to the gap in law and practice with respect to social security coverage. El Salvador stresses that there is no equality of treatment in social security, as parts of the population are excluded from social security coverage, and the Government recognizes the necessity to universalize coverage and achieve equality in opportunities between men and women. Ghana also states that the principal challenge in relation to equality of treatment and non-discrimination is the low coverage of social security, since almost 9 million workers out of the estimated 11 million total working population are engaged in informal economic activities. It is estimated that less than 1 per cent of workers in the informal economy is covered by the Social Security and National Insurance Trust (SSNIT).

¹⁴⁵ ILO: Report of the Director-General, *Accelerating action against child labour*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), ILC, 99th Session, Geneva, 2010, p. 5.

¹⁴⁶ This section addresses the main points of interlinkage between the fundamental non-discrimination Conventions (Nos 100 and 111) and matters of social security. Issues relating to maternity protection arising particularly as regards the application of Convention No. 111 have not been included.

¹⁴⁷ Algeria, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belize, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Djibouti, Ecuador, Ethiopia, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, India, Italy, Republic of Korea, Kuwait, Lebanon, Lithuania, Malaysia, Mauritius, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, New Zealand, Nicaragua, Norway, Oman, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saint Lucia, Senegal, Serbia, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, United Kingdom, United States, Uruguay, Bolivarian Republic of Venezuela and Zimbabwe.

210. Few countries report on the differences in the retirement age between men and women. *Belize*, for example, reports that the qualifying age for the non-contributory pension is 65 for women and 67 for men. *Jamaica* also responds that there is some degree of discrimination as the retirement age under the National Insurance Scheme is 60 years for women and 65 years for men. In *Albania*, the same difference in retirement age is applied between men and women. *Switzerland* states that the Government is working towards an equal retirement age for men and women.

211. The intersection between the fundamental Conventions on non-discrimination and social security touches mostly on the application of the principle of equal opportunity and treatment for men and women in matters of social security and in particular in relation to family allowances, pensions and the access of workers in atypical forms of dependent work to social security benefits. The Committee notes in this respect that the question of equality of treatment for men and women in social security has arisen in international law since the adoption of Conventions Nos 100 and 111, which have played an important role in extending the equality principle in the design and functioning of today's social security systems. However, no ILO standards exist that specifically deal with the principle of equal treatment for men and women in matters of social security and it would be opportune to study this question further.¹⁴⁸

212. Article 6 of Convention No. 168 constitutes a bridge between the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and social security. With a view to harmonizing the Article with Convention No. 111, Article 6, paragraph 1, of Convention No. 168 was drafted to provide that each Member shall ensure equality of treatment for all persons protected on the same grounds as those enumerated in Article 1 of Convention No. 111. However, due to the specificity of Convention No. 168 and the linkage between the labour market and employment policy, on the one hand, and social security benefits, on the other hand, three additional grounds were added: nationality, disability and age.¹⁴⁹ It should be noted in this respect that paragraph 1(1)(b) of Recommendation No. 111 already provides for extending the grounds of discrimination to nationality, age and disability and that Article 5 of Convention No. 111 provides that special measures of protection for reasons such as disability or age should not be judged discriminatory. The logic of the development of international labour standards was that, while Convention No. 111 prohibited discrimination in the sphere of "employment and occupation" and Recommendation No. 111 recommended extending prohibition to the sphere of social security, Convention No. 168 implanted these obligations in the body of the social security standards and enlarged the list of the prohibited grounds for discrimination.

213. In order to prevent non-discrimination from being understood as incompatible with measures in favour of particularly disadvantaged groups, or with the conclusion of bilateral or multilateral agreements between States for the protection of persons subject successively to the legislation of several States, paragraph 2 of Article 6 was introduced

¹⁴⁸ ILO: Report of the Committee on the Application of Conventions and Recommendations, General Report, Report III (Part 4A), International Labour Conference, 71st Session, 1985, para. 71.

¹⁴⁹ During the first discussion at the International Labour Conference, 1987, the *United States* called for the inclusion of age among the reasons for non-discrimination, which was accepted (Committee on Employment and Social Security, *Record of Proceedings*, International Labour Conference, 73rd Session, 1987, Geneva, para. 32). At the adoption of the text, at the International Labour Conference, 1988, the Employer members proposed in addition to mention health in paragraph 1. Following a proposal by the United States Government, "state of health" was replaced by "disability" in the final version of paragraph 1 of Article 6 (Committee on Employment and Social Security, *Record of Proceedings*, International Labour Conference, 74th Session, 1988, Geneva, para. 42).

during the first discussion of the instrument at the International Labour Conference in 1987. This paragraph adds the idea of permitting disadvantaged groups to receive special assistance which can include affirmative action. The Committee has not disregarded this point and, for example, made reference to the measures taken in favour of young persons seeking employment in *Romania*.¹⁵⁰

1. Remuneration includes social security contributions and benefits paid by the employer (Convention No. 100)

214. The Equal Remuneration Convention, 1951 (No. 100), establishes the principle of equal remuneration for men and women workers for work of equal value. According to Article 1(a) of Convention No. 100, “*remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”. Social security contributions and benefits are considered under the Convention to form part of the emoluments arising out of workers’ employment. The General Survey of 1986 on equal remuneration recalled that “during the preparation of the 1951 instruments, the competent Conference Committee noted that allowances paid under social security schemes financed by the undertaking or industry concerned were part of the system of remuneration in the undertaking and were one of the elements making up wages in respect of which there should be no discrimination based on sex. On the other hand, allowances made under a public system of social security were not to be considered as part of remuneration and an amendment to add all social security benefits to the items included in remuneration was withdrawn after having been opposed on the ground that in certain countries social security benefits did not form part of remuneration. It thus appears that a distinction was made between social security schemes financed by the employer or industry concerned – which were meant to be covered by the Convention – and benefits under purely public social security schemes which were considered outside its scope”.¹⁵¹

215. In order to bring national legislation and practice into conformity with Article 1(a) of the Convention, the Committee has repeatedly pointed out cases in which the national definition of remuneration does not include allowances paid under occupational social security schemes financed by the undertaking or industry concerned, contrary to Convention No. 100. For example, section 345 of the Labour Act of *Bangladesh* only applies to “wages” which, under the terms of section 2(xlv), does not include contributions by the employer to any pension fund or provident fund.¹⁵² In the *Democratic Republic of the Congo* section 86 of the Labour Code provides for equality with respect to “salary”, which is one of the elements of “remuneration” as defined in section 7(h) of the Labour Code. However, contrary to Article 1(a) of the Convention, family allowances and health care are not considered part of the remuneration.¹⁵³ In the case of *Burundi*, the Committee noted that the Government intends to bring the definition of remuneration contained in section 15(f) of the Labour Code, which currently excludes family benefits as well as advantages in kind and reimbursement of costs, into line with the Convention.¹⁵⁴

¹⁵⁰ CEACR, Convention No. 168, direct request, *Romania*, 1998.

¹⁵¹ ILO General Survey on equal remuneration, Report III(4B), ILC, 72nd Session, 1986, para. 17.

¹⁵² CEACR, Convention No. 100, observation, *Bangladesh*, 2008.

¹⁵³ CEACR, Convention No. 100, observation, *Democratic Republic of the Congo*, 2009.

¹⁵⁴ CEACR, Convention No. 100, direct request, *Burundi*, 2009.

2. Entitlement to family allowances (Conventions Nos 100 and 111)

216. A number of cases have concerned social security legislation based on a stereotyped model of society in which the man is the head of the family and the woman benefits from protection derived only from her husband's entitlements. The payment of allowances to the "head of the household", particularly where the head of the household is presumed to be male, either in law or practice, is therefore, according to Conventions Nos 100 and 111, discriminatory to women. The Committee expressed concern for example over the possible discriminatory impact in practice of section 31(3) of the Marriage Act (No. 1/1974) of *Indonesia* (which identifies the husband as the head of the family) on women's employment-related benefits and allowances.¹⁵⁵ The Committee has pointed out that family benefits in *Lebanon* under the National Fund for Social Security continue to be paid primarily to fathers even when the mother and father meet the same conditions. The Committee asked the Government to continue to examine the existing law and practice so as to ensure that women enjoy family allowances on an equal footing with men.¹⁵⁶ In *Niger*, Decree No. 60-S/MFP/T regulating the remuneration and benefits of government officials provides that, unless they are heads of household, women must file an appeal with the courts to obtain family allowances. Section 180(2) of new Decree No. 2008 244/PRN/MFP/T of 31 July 2008, issuing implementing regulations for Act No. 2007-26 of 23 July 2007, establishing regulations governing the civil service, partly rectifies this situation by providing that any female public servant on temporary leave of absence shall receive the full amount of family allowances. Although this new provision indicated a degree of progress with regard to the application of the Convention, the Committee considered that it does not resolve completely the unequal legal treatment of men and women in public service with regard to family allowances.¹⁵⁷

217. In order to bring such family allowance provisions into conformity with Conventions Nos 100 and 111, the Committee has considered that the terms of the provisions should apply equally to men and women. To avoid discrimination in the payment by the employer of benefits based on the marital status or the children of a worker, such payments must be made without applying conditions based on sex and should systematically use neutral language, not prejudging the worker concerned on the ground of sex.¹⁵⁸ Another suggestion to ensure compliance with the Convention as regards the payment of family allowances, is to ensure that legislation gives workers the opportunity to choose who should receive the benefit, when a man and a woman are both potential recipients.¹⁵⁹

3. Equal remuneration with respect to pension schemes (Convention No. 100)

218. With regard to the practical application of equal remuneration, the Committee has regularly identified cases in which the implementation of the principle of equality of treatment between men and women in occupational social security schemes was not

¹⁵⁵ CEACR, Convention No. 100, direct request, *Indonesia*, 2006.

¹⁵⁶ CEACR, Convention No. 100, direct requests, *Lebanon*, 2005 and 2009; Convention No. 111, direct requests, *Lebanon*, 2002 and 2005.

¹⁵⁷ CEACR, Convention No. 100, direct request, *Niger*, 2009.

¹⁵⁸ ILO General Survey of 1986 on equal remuneration, op. cit. para. 240.

¹⁵⁹ CEACR, Convention No. 100, observation, *Democratic Republic of the Congo*, 2009.

respected or has highlighted cases of progress in this area. In a direct request addressed to *Ireland* in 2006, the Committee noted that the Pensions Act had been amended in order to provide for the principle of equal treatment and to open the redress and enforcement mechanisms available under the Equal Employment Act to cases relating to equal pension treatment in occupational benefit schemes. For several years, the Committee has addressed the issue of the limited participation of women in supplementary pension schemes in the *Netherlands* due to the exclusion of certain job categories (mostly administrative, temporary and part-time work), so called “white spots”. In cooperation with the Netherlands Trade Union Federation (FNV), the Government is currently researching the number of employees, as well as the number of “white spots” in occupational pensions in order to take corrective action to compensate women previously excluded from participation in certain pension schemes.¹⁶⁰

4. Affiliation of part-time, domestic and informal sector workers to social security schemes (Convention No. 111)

219. The issue of part-time and domestic workers and their exclusion from social security schemes has also been taken up under the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). This fundamental Convention requires ratifying States to pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating discrimination in employment and occupation. In Article 1, paragraph 3, of the Convention the terms “employment” and “occupation” are defined as including “terms and conditions of employment”. The meaning of “terms and conditions of employment” is further spelt out in the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) (Paragraph 2(b)), and consists of, inter alia, “conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment (vi)”.

220. Under the Convention, all workers, including domestic workers, should enjoy equality of opportunity and treatment in all aspects of employment, including with regard to social security. The Committee noted, for example, that, in 1997, the *Algerian* Government adopted two Decrees: the first on part-time work (No. 97-473 of 8 December 1997), and the other on homeworkers (No. 97-474 of 8 December 1997). The principal aim of these texts was to allow such workers, primarily women, to contribute to the social security scheme and thus be entitled to social insurance.¹⁶¹ The Central of Argentine Workers (CTA) indicated that 92.7 per cent of domestic workers were undocumented and that, if documented, the law treats them in a less favourable manner than other workers. The Government of *Argentina* indicated that it had implemented new measures to promote the registration of domestic workers and that, although the statutory schemes for domestic employees were different from those for other employees, section 21 of Act No. 25.239 established a special compulsory social security scheme for domestic workers under which the contributions were payable by the employer.¹⁶²

221. In a recent direct request addressed to *Honduras*, the Committee noted that one of the principal achievements of the Gender Equality and Equity Plan I was the reform of

¹⁶⁰ CEACR, Convention No. 100, direct request, *Netherlands*, 2008.

¹⁶¹ CEACR, Convention No. 111, observation, *Algeria*, 2002.

¹⁶² CEACR, Convention No. 111, observation, *Argentina*, 2008.

the Social Security Act to include women workers in paid domestic service in the Scheme for the Progressive Affiliation of Women Domestic Workers.¹⁶³ The strategic objective (6.1) of the Gender Equality and Equity Plan II 2008–15 includes influencing legal reforms to guarantee the entitlement of all women to social security and its benefits, thereby ensuring the access to social security of those who work in the formal and informal economies and who perform paid and unpaid domestic work. *India* has recently adopted the Unorganized Sector Workers Social Security Act, 2008, which will facilitate the formulation of policies and programmes for women who have so far been deprived of social security coverage.¹⁶⁴

5. Differences in statutory pensionable age between men and women (Convention No. 111)

222. There are other practices relating to age that lead to discrimination based on grounds prohibited by Convention No. 111. One major consequence of equality of treatment relating to age-based discrimination concerns entitlement to social security benefits and unjustified distinctions between men and women in this regard. Most countries, however, have set the same age for both sexes for a retirement pension. Following a decision of the Austrian Constitutional Court in 1990, which declared any difference of age for pension entitlements between men and women to be unconstitutional, *Austria* gradually increased the legal age for early retirement and old-age pension entitlements for women to harmonize it with that of men (65 years).¹⁶⁵ For countries where the retirements age differs between men and women (e.g. *Chile* – 60 years for women, 65 years for men), the Committee has repeatedly pointed out that such legislation is against the principle of equality of opportunity and treatment in employment and occupation. Differences in pensionable age between men and women exert a negative impact on women because women generally have lower paid jobs and contribute a shorter period of time due to maternity and family responsibilities. This leads to two significant negative consequences for women. First, they have less capital in their account to finance retirement and a longer non-working period, each of which contributes to lower level of benefits.¹⁶⁶ Second, obligatory early retirement can have a detrimental impact on career paths as access to higher level posts is impeded.¹⁶⁷

223. To mitigate the negative consequences on income levels of differences in pensionable age between men and women, *Viet Nam*, for example, introduced amendments to the Labour Code (Law No. 35-2002-QH10 of 2 April 2002), including section 145(1a) providing that female employees who are 55 years of age and who have paid social insurance contributions for 25 years, and male employees who are 60 years of age and who have paid social insurance contributions for 30 years, shall be entitled to the same maximum rate of monthly pension as stipulated by the Government.¹⁶⁸ Although a further step towards achieving equality between men and women, this measure does not address the impact on career paths of women. In this context, it is therefore important to either provide an equal retirement age for men and women, or to

¹⁶³ CEACR, Convention No. 111, direct request, *Honduras*, 2009.

¹⁶⁴ CEACR, Convention No. 111, observation, *India*, 2009.

¹⁶⁵ CEACR, Convention No. 111, direct request, *Austria*, 1995.

¹⁶⁶ CEACR, Convention No. 111, direct requests, *Chile*, 2000 and 2005.

¹⁶⁷ CEACR, Convention No. 111, direct request, *Lithuania*, 2001.

¹⁶⁸ CEACR, Convention No. 111, direct request, *Viet Nam*, 2004.

make earlier retirement for women optional, not compulsory, in view of the principle of equality and in order to enable women to access higher level positions.

D. Accepting employment as a condition for receiving social security benefits

1. Negation of compulsory work by the concepts of suitable and freely chosen employment

224. The Committee observes that in the last decade the move towards the active labour market policies was accompanied by the introduction into the legislation of several countries regulating unemployment insurance of the rule, according to which unemployment benefit shall not be paid to persons who without adequate reasons refuse to take up “reasonable employment” offered to them.¹⁶⁹ The overall purpose of the changes has been to “motivate” the unemployed into having the necessary will and readiness to match, at any time, the requirements of the labour market. This “motivation” was achieved, inter alia, by replacing the previously applicable rule by which a person could be disqualified from receiving unemployment benefit for having refused “suitable employment”, by the more restrictive concept of withdrawing the benefit for refusing employment offered “without reasonable grounds”. The concept of “suitable employment”, referred to in Article 20 of Convention No. 102 and defined in Article 21(2) of Convention No. 168, was abandoned to the effect that unemployed persons were placed under the duty to apply for and take up immediately any ordinary work a person is able to perform. Failure to do so implied loss of unemployment benefit for several weeks. Moreover, a person who, without valid reason, refused to take up or left an ordinary job or an offer for activation made by the public employment service, was considered to be self-induced unemployed and was condemned to bear the same sanction.

225. The Committee considered that such legal provisions might have the effect of compelling unemployed persons, under the threat of the withdrawal of entitlement to the benefit, to take up any ordinary job for which they are physically and mentally fit, notwithstanding their professional skills, qualifications, acquired experience and length of service in former occupation – criteria specified by Article 21(2) of Convention No. 168. The Committee observed that “motivation” of unemployed persons subordinating their will and professional aspirations to the dictate of the labour market goes against the very objectives of social security enshrined in the ILO standards based on the concept of “suitable employment”.¹⁷⁰ In the context of Article 20(f) of Convention No. 168 referring to the use of the employment services for placing the unemployed person in “suitable employment”, **the concept of suitable employment fulfils, besides the economic goal of preserving the overall quality of a workforce that takes maximum advantage of available skills and talents, the no less important social goal of preserving workers against compulsion and affront to their human dignity occurring when they are forced to perform work below their level of education and skills. The term “suitable” guarantees, in fact, that any employment offered by the employment service will be considered in respect of its quality, having regard to the qualifications and skills of the individual jobseeker. Similarly,**

¹⁶⁹ For example, *Denmark*: section 63 of the Unemployment Insurance Act, as amended by Act No. 1035 of 17 Dec. 2002; *Germany*: sections 119 and 121 of Book III of the Social Code and Employment Promotion Act of 1997; *Norway*, sections 4-5, 4-20 and 4-21 of the National Insurance Act of 28 Feb. 1997.

¹⁷⁰ CEACR, ECSS, *Denmark*, 2005.

unemployed persons themselves will be treated with due regard for their professional and social status and not as ordinary labourers physically and mentally fit for any job.¹⁷¹

226. With these considerations in mind, the Committee pointed out in the individual observations to the governments concerned that, according to the definition of the contingency contained in Article 20 of Convention No. 102 and Article 10, paragraph 1, of Convention No. 168, the aim of these instruments consists precisely in offering unemployed persons protection during the initial period of unemployment¹⁷² from the obligation to take up any job which is not suitable, so as to leave open the possibility to provide them with suitable employment ensuring the most effective utilization of their training, experience and overall human resources potential for the benefit of the workers concerned and society as a whole. In line with this aim, Article 21, paragraph 1, of Convention No. 168 specifies that the entitlement to the benefit in the case of full unemployment may be withdrawn or suspended only when the person concerned refuses to accept suitable employment, taking into account, under prescribed conditions and to an appropriate extent, the criteria of the suitability of employment laid down in paragraph 2 of this Article and, in particular, of the length of service in the former occupation and the acquired experience.¹⁷³

227. The Committee recalls that policies that impose compulsory work requirements as a condition for receiving unemployment insurance benefits have been also examined by it under the provisions of Article 1(1) and Article 2(1) of the Forced Labour Convention, 1930 (No. 29). The Committee addressed this issue in its General Survey of 2007 on eradication of forced labour,¹⁷⁴ where it recalled that Convention No. 29 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty”, and that such a penalty might take the form of a loss of rights or privileges. **Noting that availability for work is generally a precondition for receiving unemployment benefits, the Committee considered that, if the work required to be performed is not “suitable employment”, it could constitute a form of forced labour.**¹⁷⁵

228. In this context, the Committee also wishes to emphasize the close relationship between the concept of suitable employment and the fundamental principle of the freedom of choice of employment, which also underpins the model of social security embodied in international labour standards. Article 7 of Convention No. 168 stipulates that social security should be used as a means to promote full, productive and freely chosen employment. It is for this primary objective that unemployment benefit should be

¹⁷¹ CEACR, ECSS, *Norway*, 2001.

¹⁷² Under Article 24 of Convention No. 102, the minimum period of protection is 13 weeks, extended by Article 19, paragraph 2(a), of Convention No. 168 to 26 weeks in each spell of unemployment or to 39 weeks over any period of 24 months.

¹⁷³ CEACR, Convention No. 168, direct request, *Norway*, 1999.

¹⁷⁴ ILO: General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), ILC, 96th Session, 2007, Report III (Part 1B), paras 129–131.

¹⁷⁵ The Committee drew a line between an entitlement based on previous work or contributions and a non-contributory allowance granted as a purely social measure. In the latter case, a requirement to perform some work in exchange for the allowance would not in itself constitute forced or compulsory labour within the meaning of the Convention. On the contrary, under schemes where benefits are contingent upon the recipient having worked or contributed to an unemployment insurance scheme for a minimum period, and the length of time during which benefits are paid, is linked to the length of time the person concerned worked, the subsequent imposition of an additional requirement of having to perform work to receive these benefits would constitute compulsory labour under the menace of losing benefits to which the person was entitled.

coordinated with employment policy under Article 2. Furthermore, under Article 19, paragraphs 1 and 5, of Convention No. 168, the right to freely chosen employment of unemployed persons is to be safeguarded throughout the contingency, even when their unemployment continues beyond the initial period of benefit and the persons concerned become the subject of special employment assistance programmes for the long-term unemployed. From this point of view, **the presence in the social security legislation of the elements of coercion to labour under the menace of the withdrawal of unemployment benefit in case of refusal to accept unsuitable work, or to participate in an unsuitable labour market programme, or else to earn income from self-employment, instead of from suitable employment, can be hardly reconciled with the basic freedom of an individual to choose her or his employment without any form of economic coercion.**¹⁷⁶

229. The Committee understands that, in applying the rules on availability and job offers to concrete cases of unemployment, the employment service has to often strike a difficult balance between taking into account previous experience and qualifications of the unemployed person on the one hand and the actual state of the labour market on the other, where the demand for such qualifications may be an uncertain variable. In this respect, the Committee has always been vigilant to ensure that, whatever the discretionary power of assessments the State has to judge the employability and the behaviour of the unemployed persons in the current labour market situation, such persons were treated with all due respect for their acquired professional and social status and any sanctions imposed on them were kept inside the limits prescribed by Article 69 of Convention No. 102 and Articles 20 and 21 of Convention No. 168.¹⁷⁷ The Committee has repeatedly been requesting the governments in this respect to consider issuing instructions to the employment service and the unemployment benefit administration concerning the suitability of the job offers and the decisions to withdraw the benefit in case of refusal of unsuitable offers, drawing their attention to the country's obligation under the international social security Conventions. The Committee further examines the economic and social rationale behind the concept of suitable employment in Chapter 2D of Part IV of the Survey.

2. Compulsory activation of persons with disabilities

230. In the 1980s, sickness and disability programmes in advanced societies came under financial and administrative stress brought about by the steadily rising number of benefit recipients. The proportion of the disabled in such countries as *Finland, Hungary, Netherlands, Norway* and *Sweden*, fluctuated between 8 and 12 per cent of the working-age population, producing a process of "invalidization" of the society. The policy responses adopted in *Australia, Denmark, Finland, Netherlands, Norway, Poland, Sweden, Switzerland* and the *United Kingdom*, among other countries, to cope with the invalidity flood were remarkably similar, all pointing to a concerted movement away from traditional social security functions of passive income maintenance in case of sickness or invalidity and towards a new set of interlinked functions of prevention, activation, rehabilitation and reintegration of the sick and disabled into work. If passive income maintenance was traditionally regarded as an obligation of the State, the new objectives of prevention, activation, rehabilitation and reintegration were first and foremost conceived in terms of the individual obligations of the persons concerned and their employers, with the role of the State being reduced to that of assisting them in

¹⁷⁶ CEACR, Convention No. 168, direct request, *Norway*, 1999; CEACR, ECSS, *Norway*, 2003.

¹⁷⁷ CEACR, Convention No. 102, direct request, *Denmark*, 2006.

fulfilling their respective obligations. Reintegration measures were borrowed from the requirements applied by the public employment service to unemployed persons, thus pushing for integration of the sickness and invalidity benefits with the unemployment benefit branch. Under the new combined regulations, persons with partially reduced work capacity were treated like the regular unemployed, with corresponding obligations of job search, participation in labour market measures, taking up part-time work, etc.

231. The coercive aspects of the regime of sanctions in the unemployment insurance described in the preceding section became fully applicable to the long-term sick and disabled, transforming heretofore welfare programmes into workfare schemes. In social security, workfare characterizes coercive and enforcing elements linking benefits to mandatory labour market participation, which are produced by such measures as tightening of eligibility criteria, reducing the level and duration of benefits, subjecting benefits to work and activity tests, and an increase in sanctions, surveillance and control. The resulting new welfare–workfare mix in the European countries differs by the level of compulsion applied to the beneficiaries and the options in respect of labour market activation, which range from the soft and enabling version to the hard and directing regime.

232. The Committee had the occasion to note the move towards workfare regimes in the social security systems of some European countries. Thus, with respect to the sickness benefit branch (Part III of Convention No. 102 and the ECSS), it noted that the Employment and Sickness Allowance (ESA), which since 27 October 2008 has replaced the incapacity benefit in the *United Kingdom*, has been designed to incorporate a work-focused support regime to help those with a limited capacity for work move into paid employment. Claimants of the ESA are viewed as persons with a remaining capability for work to be utilized, rather than sick persons in need to recover from their morbid condition. The Committee observed that this regime included some conditions, obligations and sanctions proper to the unemployment benefit branch and ill adapted, in terms of Convention No. 102, to sickness benefit. By mandating the claimants to engage with the work-focused services in return for benefit, the United Kingdom system was moving away from the traditional concept of welfare benefits to what may be seen as a softer version of “workfare” regime. In view of these innovative trends in the development of the United Kingdom’s social security legislation, the Committee asked the Government to explain for what reasons it still deems the ESA to be a sickness benefit and to what extent the mandatory requirements and sanctions imposed by the work-focused support regime of the ESA may come in conflict with the conditions of entitlement to the sickness benefit admitted by the ECSS and Convention No. 102.¹⁷⁸

233. With respect to the invalidity benefit branch (Part IX of Convention No. 102 and the ECSS), the Committee has examined a harder version of the workfare regime introduced into the disability insurance in the *Netherlands* by the Work and Income (Employment Capacity) Act of 10 November 2005 (WIA).¹⁷⁹ The WIA has reformed the previous Dutch disability benefit (WAO) pursuing the aims of reducing the number of new applications for benefit by tightening the conditions of entitlement and obliging those receiving benefits to make use of their remaining earning capacity under the threat of sanctions. Any recipient of the WIA benefit is considered to be unemployed to the extent that the recipient’s remaining working capacity is not utilized and is therefore placed under the same obligations to seek work as other jobseekers. In addition to the obligation to seek work, the WIA recipients are also obliged to prevent the occurrence of

¹⁷⁸ CEACR, ECSS, *United Kingdom*, 2008.

¹⁷⁹ CEACR, ECSS, *Netherlands*, 2008, 2009, 2010.

incapacity, to limit the existence of such incapacity, to acquire the potential to perform suitable work and to make sufficient reintegration efforts (sections 4.1.2 and 4.1.3 of the WIA). Non-fulfilment of these obligations is sanctioned by the benefit being refused wholly or partially, permanently or temporarily, or by applying fines (Chapter 10 of the WIA). The Committee observed that the regime of obligations and sanctions imposed by the WIA is construed in such a way as to effectively deprive an insured person of the WIA benefit in case of non-compliance. The Committee noted that these changes in thinking about disability in the *Netherlands* take its invalidity benefit branch further down the road to the workfare type system and thus into direct conceptual and legal contradiction with the ECSS and Convention No. 102.¹⁸⁰

¹⁸⁰ CEACR, ECSS, *Netherlands*, 2008.

Chapter 3

Making social security a constitutional right

A. Emergence of social security rights in national constitutions

234. Constitutions are not the only source for social security rights. Many countries provide meaningful social protection through national legislation. Nonetheless, social security has been taking on greater importance in national constitutions since the end of the First World War, when social rights were first set out in the Constitutions of *Russia*, *Mexico* and the German *Weimar Republic*, and when the International Labour Organization was created. Social rights were integrated into the world order instituted after the Second World War. Their inclusion in the Atlantic Charter of 1941, the Declaration of Philadelphia of 1944, the Universal Declaration of Human Rights of 1948 and the International Covenant on Economic, Social and Cultural Rights of 1966 had such an impact that certain provisions on social security and social protection are to be found in practically all national constitutions adopted subsequently.

235. Constitutional guarantees play a very important proactive role in introducing social rights into national legislation and in fostering their implementation. They can control the generation of norms (inter alia, through a standstill effect, as indicated by the Constitutional Court of *Belgium*).¹⁸¹ They provide a justification for rules, mechanisms and institutions that already exist, provide guidance in the interpretation of other rules, and influence the organization of public services. Most importantly, they provide a basis for the protection of rights through institutional mechanisms, and primarily through constitutional and supreme courts, thereby enabling or holding out the promise of the fulfilment of such rights in the near or more distant future.¹⁸² Where there is an individual right of action before the supreme or constitutional court, individuals are able to participate actively in the realization of their social rights. Finally, the Constitution as a legal embodiment of human values attaches to social security rights a strong moral dimension – that of preventing the unjust denial of human dignity.

236. Constitutions embody the right to social security in different ways: some include social security as a constitutional object of state policy; some impose duty on the State to

¹⁸¹ The standstill effect in respect of the right to social assistance was recognized in 2002 and implies that the legislator may not significantly reduce the level of protection offered by legislation that was in place in 1994, when article 23 of the Constitution was adopted. See Constitutional Court, No. 169/2002, 27 Nov. 2002, B.6.5; see also Constitutional Court, No. 5/2004, 5 Jan. 2004, B.25.3.; and Constitutional Court, No. 123/2006, 28 July 2006, B.14.3.

¹⁸² A. Lyon-Caen: “The legal efficacy and significance of fundamental social rights: Lessons from the European experience”, in B. Hepple (2002): *Social and labour rights in a global context: International and comparative perspectives* (Cambridge University Press: Cambridge), pp. 184–189.

realize social rights (without a corresponding individual right to claim social security); while others confer an individual right to social security (and in so doing impose a duty on the state to fulfil the right). In this continuum from soft to hard constitutional obligations to provide social security, there are States that both grant individual rights and impose duties but qualify the fulfilment of those rights or the imposition of those duties by only requiring the State to progressively realise the right or fulfil the duty. In the countries that grant individual rights, the constitution becomes not only a source, but also a firm foundation of national law on social security, implying a new distribution of responsibilities between the executive, the legislative and the judicial authorities. While the variety of constitutional provisions ensuring social protection continues to increase, there is a noticeable pattern of their convergence around three main approaches: affirming social security as an individual right of a human being; defining the social responsibility of the State in social security provisions; and placing social security among the guiding principles of state policy.

237. This process has been particularly evident in the majority of the constitutions that marked the transition to a multiparty, democratic system from a dictatorial regime. For instance, the Constitutions of *Portugal* (1976), *Spain* (1978), *Italy* (1947), and *Greece* (1975), were intended to found a democratic society and a comprehensive welfare state, and all share the progressive approach to social rights. Indeed, each of these constitutions regulates social welfare extensively, includes a provision recognizing an individual right to social security¹⁸³ and health¹⁸⁴ and establishes state obligations with respect to specific social risks. A similar trend towards a human rights approach to social security is observed in the Constitutions of the Balkan Eastern and South Eastern European countries adopted in the 1990s, which marked the beginning of the transition towards a democratic social order and a market economy.

238. The constitutions of nearly all Central and South American countries have extensive social security provisions. While most of them were adopted in the eighties and the nineties, the Constitutions of *Ecuador* and *Plurinational State of Bolivia* were adopted respectively in 2008 and 2009. Like those of Eastern European and Central Asian countries, these constitutions are among the most advanced and detailed in matters of social security. More than half of them protect children, disabled, elderly and mothers or, more specifically, women before and after childbirth. An analysis of these texts shows a trend towards increasing social responsibility of the State and a broader inclusiveness of the social security system with respect to domestic and rural workers, who were subject to limited protection. In a number of constitutions, provisions on social security now apply also to domestic and rural workers.¹⁸⁵ Furthermore, the Constitutions of *Brazil* (1988), *Bolivarian Republic of Venezuela* (1999), *Ecuador* (2008) and *Plurinational State of Bolivia* (2009) introduced provisions detailing how health and social security benefits shall be granted to different categories of beneficiaries and the principles that must inform the social security and health-care systems.

¹⁸³ Constitutions of *Greece*, 1975 [art. 22: “The State shall care for the social security of the working people, as specified by law”]; *Portugal*, 1976 [art. 63: “Everyone is entitled to social security”]; *Italy*, 1947 [art. 38: “All citizens unable to work and lacking the resources necessary for their existence are entitled to private and social assistance. (2) Workers are entitled to adequate insurance for their needs in case of accident, illness, disability, old age, and involuntary unemployment.”]; *Spain*, 1978 [art. 41: “The public authorities shall maintain a public social security system for all citizens guaranteeing adequate social assistance and benefits in situations of hardship, especially in case of unemployment. Supplementary assistance and benefits shall be optional.”]

¹⁸⁴ Constitutions of *Portugal*, 1976 (art. 64), *Spain*, 1978 (art. 43), *Italy*, 1947 (art. 32) and *Greece*, 1975 (arts 5 and 21).

¹⁸⁵ Constitutions of *Brazil*, 1988 (arts 7 and 201); *Ecuador*, 2008 (arts 369 and 373); *El Salvador*, 1983 (art. 45).

The Constitution of Ecuador of 2008

The Constitution of Ecuador adopted in 2008 is one of the most advanced among Latin American countries in matters of social security. It makes explicit reference to all branches of social security. The right to social security in Ecuador is governed by the principles of solidarity, compulsory membership, comprehensiveness, universality, equity, efficiency, subsidiarity, adequacy, transparency and participation, and is aimed at meeting the individual and collective needs. Social security benefits are financed through contributions by employees and their employers, contributions of self-employed persons, through the voluntary contributions of Ecuadorians abroad as well as through contributions of the State. Ecuador has a mixed social security system: some years ago, a system based upon redistribution was complemented by one based upon private initiative and individual capitalization. However, complete privatization is excluded by the Constitution (art. 367).

In this Constitution:

- Social security is an individual right (art. 34).
- Health is conceived as an individual right guaranteed by the State and regulated by law. Medical care is provided through an integrated public health network that the Constitution defines into detail (arts 32, 44 and 369).
- Old-age, disability, employment injuries, sickness, maternity, unemployment and survivors' benefits are guaranteed through universal compulsory insurance. The same provision protects in similar terms persons performing unpaid work in households, activities for self-sustenance in rural areas or any form of self-employment (art. 369).
- Special regimes: the national police and armed forces benefit from a special regime (art. 370). Rural social security is provided by the Rural Social Security Institute, which offers medical care, disability, old-age and death benefits (art. 373). Domestic workers are entitled to benefits paid out entirely from public funds (art. 369).
- Vulnerable groups: the Constitution establishes that the elderly, children and adolescents, pregnant women, people with disabilities, persons deprived of freedom and those who suffer catastrophic or complex illness will receive specialized and priority attention in the public and private sectors (Chapter III, arts 35–55).

239. In Africa, the constitutions adopted shortly after independence in the 1960s (like the Constitutions of *Kenya*, *Cameroon* and *Morocco*) contain hardly any reference to social security or to other forms of social protection. Some constitutions adopted during the 1970s (like the Constitutions of *Algeria* and *Egypt*) affirm the social nature of the State and stress the importance of social justice and social solidarity. The constitutions adopted during the 1990s reflect the change of international influences after the end of the cold war and are based on the liberal model. They rarely stress a need for social justice, but at the same time affirm a State's duty to implement some form of social protection. This can include social security measures related to a working activity, or be restricted to the protection of the elderly, children and the family. The Constitutions of *South Africa*, *Namibia*, *Ghana* and *Uganda*, adopted between 1990 and 1996, mark an important step in transforming these countries into democratic societies after long periods of apartheid, foreign domination or autocratic dictatorship. Section 7(2) of the 1996 Constitution of *South Africa* enjoins the State to "respect, protect, promote and fulfil the rights in the Bill of Rights" which, in the field of social protection, recognizes the right of everyone to social security, health, social assistance in case of indigence, and the right of public service employees to a fair pension.

240. The Constitutions of *Bangladesh*, *India*, *Pakistan* and *Sri Lanka* illustrate a trend towards increased constitutional commitment to social security in Asian countries. The Indian Constitution of 1950 attributes competence to the Parliament in matters of social security and makes public assistance in cases of unemployment, sickness, old age and

disability a directive of state policy. The Preamble of the Constitution of *Bangladesh* of 1972 emphasizes the principles of social justice. Article 27 of the Constitution of *Sri Lanka* of 1978 includes social security and family protection among the principles of state policy. Articles 35 and 38 of the Constitution of *Pakistan* of 1999 affirm a State's duty to protect the mother and the child and to ensure social security to employees.

241. Globally the latest decades have seen a trend towards the gradual constitutional recognition of the right to social security: many constitutions address only certain social risks, or regulate social security through declaratory provisions, mention social rights among the principles of state policy, or call for their progressive achievement in accordance with the State's resources. Expressions such as "it shall be incumbent upon the public institutions to secure the right to health, employment, housing and education, and to promote social care and social security"¹⁸⁶ or the "State shall care for the social security of the working people"¹⁸⁷ have the effect of implicitly introducing the notion of the obligation of the government, which becomes explicit when the constitutional law espouses a human rights approach to social security.

B. Main types of constitutional provisions concerning social security

242. Although several national constitutions do not refer specifically to "social security", the great majority contain provisions that recognize the need for one or more forms of social protection. The means of social protection most commonly referred to in national constitutions throughout the world include social security, social insurance, social assistance and support, and social services. These means are often provided for in the context of protection against specific social risks or life situations, such as motherhood, fatherhood, childhood or old age, and with respect to specific categories of the population, such as children and young persons, families with children, the elderly and persons with disabilities. Health insurance and the provision of health care are often dealt with separately from protection against other social risks. Other means of protection may include the concepts of income security, minimum income, social pensions and the minimum subsistence level. The blend of these provisions and the level of detail vary greatly. The Constitution of *Switzerland*, for example, contains separate chapters with very detailed provisions on social security and related rights. Some constitutions may only contain a general statement on the need for social protection. The level of the constitutional commitment to social security and the binding force of constitutional provisions differ considerably from one country to another.

1. Binding or promotional provisions

243. Provisions creating state obligations in respect of social security are of two main types. Some affirm an individual right to social security, social protection, social assistance, social insurance or health. For instance, article 34 of the Constitution of *Turkmenistan* provides that: "Citizens shall have the right to social security in their old age, in the case of illness, disability, loss of work capacity, loss of the breadwinner and unemployment". This type of provision is increasingly common in national constitutions, and particularly in those adopted to mark the transition or return to a democratic system. Examples include the Constitution of *Italy* adopted in 1947, that of *Indonesia* in 1987

¹⁸⁶ Constitution of *Sweden*, 1975, art. 2(2).

¹⁸⁷ Constitution of *Greece*, 1975, art. 22.

and those of Eastern European and Central Asian countries adopted following the dissolution of the USSR.

244. Other provisions affirm a duty of the State to take action, for example to ensure the social security or health of citizens, organize the social security system or protect families or vulnerable groups. One example of this approach is found in article 34 of the Constitution of *Saudi Arabia*: “The State guarantees the rights of the citizen and his family in cases of emergency, illness and disability, and in old age; it supports the system of social security and encourages institutions and individuals to contribute in acts of charity.”

245. Obviously, these two types of provisions – affirming individual rights or governmental duties – are likely to result in meaningful enforceable protections. Some constitutional provisions qualify the individual rights and governmental duties. For instance, the Constitution of South Africa confers an individual right to social security and imposes a duty on the State to fulfil the rights, it nevertheless qualifies the duty by only requiring the State to progressively realize the right within its available resources. Article 27 of the Constitution of *South Africa* provides that: “The State must take reasonable legislative and other measures, within its available resources, to achieve the *progressive* realization of each of these rights.” (emphasis added). Other countries’ provisions furnish less binding authority by defining the guiding principles of state action, without creating individual rights or obligations of the State. For instance, the Constitution of *Japan* only refers to social security in article 25(2), which provides that: “In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health.” Several national constitutions contain detailed provisions on social security of a programmatic nature to be realized progressively. For example, the Constitution of *Namibia* includes provisions on social security in the chapter on “Principles of state policy”. Such programmatic provisions may be developed by courts into giving individual rights, as is the case in *Japan*.

2. General statements or specific obligations

246. Constitutional guarantees in respect of social security take the form of either very specific provisions on the functioning of social security schemes or, at the other extreme, general statements defining the approach to be adopted by the State to social welfare. About a quarter of national constitutions include the achievement of social justice among the objectives of the State. For example, article 14 of the *Algerian* Constitution establishes that: “The State is based on the principles of democratic organization and of social justice ...”. Similar provisions are to be found in the constitutions of almost all Eastern European and Central Asian countries, as well as many African, Arab and southern and South-East Asian countries.¹⁸⁸

247. The constitutions of 28 countries, mainly in French-speaking Africa, Europe and Central Asia, irrespective of whether or not they recognize specific social rights,

¹⁸⁸ Constitutions of *Afghanistan*, 2004 [Preamble and Chapter 1 (art. 6)]; *Algeria*, 1996 (art. 14); *Argentina*, 1994 (art. 14bis); *Armenia*, 1995 (art. 1); *Bangladesh*, 1972 (Preamble); *Brazil*, 1988 (arts 6 and 193); *Chile*, 1980 (art. 18); *Croatia*, 1990 (art. 3); *Dominican Republic*, 2002 (art. 8); *Egypt*, 1980 (arts 4 and 73); *Eritrea*, 1997 (art. 1); *Fiji*, 1997 (Preamble); *Gabon*, 1991 (Preamble); *Indonesia*, 1945 (Preamble); *Kuwait*, 1962 (Preamble); *Lebanon*, 1926 (Preamble); *Liberia*, 1986 (art. 7); *Libyan Arab Jamahiriya*, 1969 (art. 6); *Mexico*, 1917 (art. 29); *Nepal*, 2008 (arts 21, 33 and 35); *Nigeria*, 1999 (arts 14 and 16); *Pakistan*, 1999 (Preamble); *Paraguay*, 1992 (art. 95); *Peru*, 1993 (art. 10); *Philippines*, 1987 (art. II, section 10); *Poland*, 1997 (art. 2); *Rwanda*, 2003 (art. 9); *Serbia*, 2006 (art. 1); *Sierra Leone*, 1991 (art. 7); *South Africa*, 1996 (Preamble); *Sri Lanka*, 1978 (art. 27); *The former Yugoslav Republic of Macedonia*, 1991 (art. 8); *Timor-Leste*, 2002 (art. 6); *Turkey*, 1992 (Preamble); *Uganda*, 1995 (Preamble); *United Arab Emirates*, 1971 (art. 14); *Uzbekistan*, 1992 (art. 14); *Bolivarian Republic of Venezuela*, 1999 (art. 86); *Viet Nam*, 1992 (art. 3); *Yemen*, 1991 (art. 6).

embrace the principle of the “social State”.¹⁸⁹ For example, article 1 of the Constitution of *Tajikistan* provides that: “Tajikistan is a social State whose policies are directed towards creating conditions to ensure a worthwhile life and the free development of the person”. In the *German* legal system, the principle of the social State affirmed in article 20 has provided the basis for the extensive case law on social security and social rights of the Federal Constitutional Court.¹⁹⁰

248. Several constitutions specifically regulate social security, although few of them cover all branches and affirm a right to social security,¹⁹¹ social protection,¹⁹² social assistance¹⁹³ or social insurance,¹⁹⁴ or a state duty to secure those rights.¹⁹⁵ This is partly due to the fact that such all-embracing concepts as social protection and social security only began to emerge after the Second World War. This type of provision is now increasingly common in constitutions in almost all regions. Many constitutional texts recognize individual rights or affirm the duty of the State with regard to specific aspects or branches of social security.

249. *Medical care.* Many constitutions contain provisions on medical care. Thirty-three constitutions, many in European countries, recognize a separate *right to health* or *to receive medical care*. This is the social right most commonly enshrined in fundamental laws.¹⁹⁶ For example, the Constitutions of the *Republic of Moldova* and of *Iraq* establish a right to “health security”. Some texts go further and detail how the right to health is to be implemented, for instance by calling for a public health-care system to be created,

¹⁸⁹ Constitutions of *Albania*, 1998 (Preamble); *Andorra*, 1993 (art. 1); *Belarus*, 1996 (art. 1); *Croatia*, 1990 (art. 1); *Democratic Republic of the Congo*, 2005 (art. 1); *France*, 1958 (art. 1); *Gabon*, 1991 (art. 2); *Georgia*, 1995 (Preamble); *Germany*, 1949 (art. 6); *Guinea*, 1990 (art. 1); *Italy*, 1947 (art. 1); *Kazakhstan*, 1995 (art. 1); *Kyrgyzstan*, 2006 (art. 1); *Mali*, 1992 (art. 25); *Montenegro*, 2007 (art. 1); *Morocco*, 1972 (art. 1); *Niger*, 1999 (art. 4); *Portugal*, 1976 (Preamble); *Romania*, 1991 (art. 1); *Russian Federation*, 1993 (art. 7); *Rwanda*, 2003 (art. 1); *Slovenia*, 1991 (art. 2); *Spain*, 1978 (art. 1); *Sweden*, 1975 (art. 2(2)); *Tajikistan*, 1994 (art. 1); The former *Yugoslav Republic of Macedonia*, 1991 (art. 1); *Turkey*, 1990 (art. 2); *Turkey*, 1992 (art. 2); *Ukraine*, 1996 (arts 1 and 95).

¹⁹⁰ See below, para. 289.

¹⁹¹ Constitutions of *Armenia*, 1995 (art. 34.); *Belgium*, 1831 (art. 23); *Burkina Faso*, 1991 (art. 18); *Cambodia*, 1993 (art. 36); *Cape Verde*, 1992 (arts 62 and 69); *Chile*, 1980 (art. 18); *Colombia*, 1991 (art. 44); *Cyprus*, 1960 (art. 9); *Hungary*, 1949 (art. 70B); *Indonesia*, 1945 (art. 28H); *Kazakhstan*, 1995 (art. 28); *Kuwait*, 1962 (art. 11); *Kyrgyzstan*, 2006 (art. 34); *Nepal*, 2008 (art. 18); *Poland*, 1997 (art. 67); *Romania*, 1991 (art. 47); *Saudi Arabia*, 1992 (art. 36); *Slovenia*, 1991 (art. 50); *South Africa*, 1996 (art. 27); *Sri Lanka*, 1978 (art. 27); The former *Yugoslav Republic of Macedonia*, 1991 (art. 34); *Timor-Leste*, 2002 (art. 56); *Turkey*, 1992 (art. 55); *Turkey*, 1992 (art. 60); *Uzbekistan*, 1992 (art. 39); *Bolivarian Republic of Venezuela*, 1999 (art. 86).

¹⁹² Constitutions of *Albania*, 1998 (art. 49); *Azerbaijan*, 1978 (art. 38); *Serbia*, 2006 (art. 69); *Ukraine*, 1996 (art. 46).

¹⁹³ Constitutions of *Bulgaria* (art. 51); *Denmark*, 1953 (art. 75); *Malta* (art. 17); *Monaco*, 1962 (art. 26); *Romania*, 1991 (art. 47); *Republic of Moldova* (art. 47); The former *Yugoslav Republic of Macedonia* (art. 35); *Ukraine* (art. 46).

¹⁹⁴ Constitutions of *Bulgaria*, 1991 (art. 51); The former *Yugoslav Republic of Macedonia*, 1991 (art. 34).

¹⁹⁵ Constitutions of *Argentina*, 1994 (art. 14bis); *Bahrain*, 2002 (art. 5); *El Salvador*, 1983 (art. 44); *Gabon*, 1991 (art. 1); *Pakistan*, 1999 (art. 38); *Thailand*, 2007 (arts 84 and 27).

¹⁹⁶ Constitutions of *Albania*, 1998 (art. 55); *Andorra*, 1933 (art. 30); *Armenia*, 1995 (art. 34); *Azerbaijan*, 1978 (art. 41); *Bahrain*, 2002 (art. 8); *Belgium*, 1831 (art. 23); *Bulgaria*, 1991 (art. 52); *Cape Verde*, 1992 (art. 70); *Croatia*, 1990 (art. 58); *Czech Republic*, Charter of Fundamental Rights and Freedoms, 1992 (art. 31); *Estonia*, 1992 (art. 28); *Greece*, 1975 (art. 5); *Honduras*, 1982 (art. 145); *Hungary*, 1949 (art. 70D); *Italy*, 1947 (art. 32); *Kyrgyzstan*, 2006 (art. 34); *Libyan Arab Jamahiriya*, 1969 (art. 15); *Marshall Islands*, 1979 (section 15); *Montenegro*, 2007 (art. 69); *Nicaragua*, 1987 (art. 59); *Poland*, 1997 (art. 68); *Portugal*, 1976 (art. 64); *Romania*, 1991 (art. 34); *San Marino*, 1974 (art. 12); *Serbia*, 2006 (art. 68); *Slovakia*, 1992 (art. 40); *Slovenia*, 1991 (art. 51); *Spain*, 1978 (art. 43); *Suriname*, 1987 (art. 36); *Sweden*, 1975 (art. 2); The former *Yugoslav Republic of Macedonia*, 1991 (art. 39); *Tunisia*, 1959 (Preamble); *Ukraine*, 1996 (art. 49).

managed by the State and based on health insurance, or financed through public funds. For example, article 68 of the Constitution of *Poland* provides that: “Equal access to health-care services, financed from public funds, shall be ensured by public authorities.”

250. *Certain* constitutions, including those of *Montenegro*, *Serbia* and some Eastern European countries, restrict the provision of publicly funded health care supplied free-of-charge to certain vulnerable categories of the population, such as children, pregnant women, mothers or the elderly.

251. Medical care stands out, as in most constitutions it is addressed separately from the other branches of social security, including sickness causing incapacity for work, and in some cases a different approach is adopted to medical care than to other branches. In the constitutions of countries in the Arab region, for instance, medical care is the only branch of social security regulated in accordance with a human rights approach. For example, the Constitutions of *Bahrain* (article 8) and *Iraq* (article 31) establish the right of all citizens to health care. In contrast, other provisions on social security either establish an obligation for the State, or for the community as a whole, or are confined to attributing competence in respect of social security. Another example is found in the Constitution of *Italy*, which in article 32 recognizes the right of every individual to health care, while other provisions on social protection are contained in article 38 under the heading of “Welfare”.¹⁹⁷

252. *Sickness*. Certain constitutions contain provisions on sickness among other grounds of inability to work which give entitlement to social security benefits. For example, article 34 of the Constitution of *Turkmenistan* provides that: “Citizens shall have the right to social security in their old age, in the case of illness, disability, loss of work capacity, loss of the breadwinner and unemployment.”

253. *Unemployment*. The need to protect the unemployed is recognized in around one third of national constitutions, particularly of Eastern and southern European countries, most of which either affirm the right of the unemployed to protection or the duty of the State to protect the unemployed.¹⁹⁸ The unemployed also enjoy protection under the constitutions of some Latin American countries.¹⁹⁹ While protection of the unemployed is mostly included in the provisions on social security, it is considered separately in certain constitutions. For instance, article 114 of the Constitution of *Switzerland* is entirely devoted to unemployment insurance. In the Constitutions of *Turkey*, *Belarus* and *Georgia*, protection of the unemployed is included in the provisions on economic development and employment promotion.²⁰⁰ Article 49 of the 1992 Constitution of

¹⁹⁷ Article 32 – Health: (1) The Republic protects individual health as a basic right and in the public interest; it provides free medical care to the poor. Article 38 – Welfare: (1) All citizens unable to work and lacking the resources necessary for their existence are entitled to private and social assistance. (2) Workers are entitled to adequate insurance for their needs in case of accident, illness, disability, old age, and involuntary unemployment.

¹⁹⁸ Constitutions of *Armenia*, 1995 (art. 34); *Bahrain*, 2002 (art. 5); *Plurinational State of Bolivia*, 2009 (art. 45(III)); *Brazil*, 1988 (art. 7, 201 and 203); *Bulgaria*, 1991 (art. 51); *Cape Verde*, 1992 (art. 69); *Costa Rica*, 1949 (art. 72); *Croatia*, 1990 (art. 57); *Democratic Republic of the Congo*, 2005 (art. 1); *Ecuador*, 2008 (art. 369); *Egypt*, 1980 (art. 17); *El Salvador*, 1983 (art. 37); *Eritrea*, 1997 (art. 41); *Finland*, 1999 (art. 19); *Hungary*, 1949 (art. 70E); *Iceland*, 1944 (art. 76); *Iraq*, 2006 (art. 30); *Italy*, 1947 (art. 38); *Kazakhstan*, 1995 (art. 24); *Malta*, 1964 (art. 17); *Republic of Moldova*, 1994 (art. 47); *Monaco*, 1962 (art. 26); *Namibia*, 1990 (art. 95); *Portugal*, 1976 (art. 63); *Romania*, 1991 (art. 47); *Serbia*, 2006 (art. 69); *Spain*, 1978 (art. 41); *Switzerland*, 1999 (art. 41, 59 and 114); *Tajikistan*, 1994 (art. 38); *Turkey*, 1992 (art. 49); *Ukraine*, 1996 (art. 46); *Uruguay*, 1967 (art. 67); *Bolivarian Republic of Venezuela*, 1999 (art. 86); *Zambia*, 1991 (Preamble).

¹⁹⁹ Constitutions of the *Plurinational State of Bolivia*, 2009 (art. 45(III)); *Brazil*, 1988 (art. 7); *Costa Rica*, 1949 (art. 72); *Ecuador*, 2008 (art. 368).

²⁰⁰ Constitutions of *Belarus*, 1996 (art. 41); *Georgia*, 1995 (art. 32); *Turkey*, 1992 (art. 49).

Turkey provides that: “Everyone has the right and duty to work. The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for the prevention of unemployment and to secure labour peace.”

254. *Disability, old age, survivors.* A large number of constitutions, and nearly all those in European and Latin American countries, contain provisions on disability and old age. Most affirm the duty of the State to ensure the protection of the elderly and the disabled, who are considered to be vulnerable categories of the population, regardless of their ability to work. Other constitutions include disability and old age in the provisions on social security. For example, article 69(1) of the Constitution of *Cape Verde* provides that: “Everyone shall have the right to social security, for his or her protection in unemployment, illness, disability, old age, or as an orphan and in all situations of lack or diminution of the means of subsistence or of the capacity to work.” A limited number of constitutions, mainly from Eastern and Southern European countries and a few Latin American countries (*Uruguay* and *Mexico*), set out protection for survivors.²⁰¹ Several constitutions of Central American and Caribbean countries attribute competence and establish the applicable law in respect of pensions for the survivors of all or some categories of public officials.²⁰²

255. *Employment injury.* Although employment injury was historically the first social risk to be regulated, provisions on this issue are only contained in eight constitutions of Latin American countries and four of European countries.²⁰³ It may be argued that this branch enjoys such broad recognition in national laws that it is implicitly included in the concept of social security in many constitutions. While some constitutions, such as those of *Italy*, *Romania* and *Switzerland*, include employment injury in their provisions on social security, others deal with employment injury in the context of employment promotion and economic development. This is the case of the Constitution of *Liechtenstein*, article 30 of which provides that: “(1) To increase employment and to advance its economic interests, the State shall promote and assist agriculture, alpine farming, trade and industry. In particular, it shall promote insurance against damage and injuries to which workers and goods are exposed, and shall take measures to prevent such injuries and damage.”

256. *The family.* Approximately half of national constitutions, in all regions, establish the duty of the State to protect the family. The constitutions of countries in the Arab region place particular emphasis on the protection of the family. Constitutional provisions on family protection tend to be very similar, establishing the general duty of the State to protect the family or providing that the family “shall enjoy special protection”

²⁰¹ Constitutions of *Belarus*, 1996 (art. 47); *Czech Republic*, 1992 (art. 30); *Estonia*, 1992 (art. 28); *Finland* 1999, (art. 19); *Greece*, 1975 (art. 21); *Hungary*, 1949 (art. 70/E); *Lithuania*, 1992 (art. 52); *Macedonia*, 1991 (art. 36); *Mexico*, 1917 (art. 123 (XI)(B)); *Republic of Moldova*, 1994 (arts 47 and 49); *Portugal*, 1976 (art. 63); *Russian Federation*, 1993 (art. 39); *Slovakia*, 1992 (art. 39); *Switzerland*, 1999 (arts 41 and 112); *Ukraine*, 1996 (art. 46); *Uruguay*, 1967 (art. 67).

²⁰² Constitutions of *Antigua and Barbuda*, 1981 (art. 109); *Bahamas*, 1973 (art. 122); *Barbados*, 1966 (art. 103); *Belize*, 1981 (art. 112); *Cuba*, 1976 (art. 47); *Dominica*, 1978 (art. 95); *Granada*, 1973 (art. 92); *Guyana*, 1980 (art. 213); *Jamaica*, 1962 (art. 132); *Panama*, 1972 (art. 113); *Saint Kitts and Nevis*, 1983 (art. 88); *Saint Lucia*, 1978 (art. 97); *Saint Vincent and the Grenadines*, 1979 (art. 88); *Trinidad and Tobago*, 1976 (art. 133).

²⁰³ Constitutions of the *Plurinational State of Bolivia*, 2009 (art. 45 (III)); *Brazil*, 1988 (art. 7); *Cuba*, 1976 (art. 49); *Ecuador*, 2008 (art. 368); *El Salvador*, 1983 (art. 43); *Italy*, 1947 (art. 38); *Liechtenstein*, 1921 (art. 20); *Panama*, 1972 (art. 113); *Romania*, 1991 (art. 38); *Switzerland*, 1999 (art. 41); *Uruguay*, 1967 (art. 67); *Bolivarian Republic of Venezuela*, 1999 (art. 86).

(*Costa Rica*, article 51), or “shall be under the protection of the State” (*Central African Republic*, article 6). Constitution of the *Republic of Moldova* sets out the *right* of the family to be “protected by the State and by society”, while the Constitutions of *Switzerland* and *Portugal* refer specifically to family *benefits*. Article 67(2) of the Constitution of *Portugal* provides that: “The State has the duty of protecting the family, in particular by ... adjusting taxes and social security benefits in line with family responsibilities.”

257. *Motherhood and fatherhood*. The great majority of constitutions protect parenthood, although there is considerable variation in the approaches adopted. Certain constitutions recognize an individual right of women to social security upon the birth of a child, but only the Constitutions of *Finland* (1999) and *Monaco* (1962, as revised in 2003) include maternity among the risks covered by social security. Paid leave prior to or after childbirth is accorded to mothers by two African,²⁰⁴ three Latin American²⁰⁵ and three Eastern European constitutions.²⁰⁶

258. The Constitution of *Switzerland* stipulates that the law shall provide for maternity insurance and may “require persons who cannot benefit from that insurance” to contribute to it (Article 116(3)). Other constitutions affirm a general duty of the State to protect either only motherhood, or both motherhood and fatherhood, in combination with the duty to protect the family and other vulnerable groups, such as children, the elderly and the disabled. A special approach is adopted by the *Italian* and *Ukrainian*²⁰⁷ Constitutions, which include the protection of motherhood in the provisions on equality between men and women.

3. Scope of application of the constitutional guarantees

259. The scope of application of constitutional guarantees relating to social security may vary considerably. Some guarantees apply to “everyone”, while others only cover citizens, and in other cases no scope of application is specified. Many constitutions recognize the right to health for all persons, while the right to social security, social protection and social assistance is often reserved for citizens. Under certain constitutions, non-nationals may be entitled to medical care paid out of public funds, but not to social security benefits. One example is the Constitution of *Slovenia*:

Article 50 – Right to social security

Citizens have the right to social security, including the right to a pension, under conditions provided by law.

Article 51 – Right to health care

Everyone has the right to health care under conditions provided by law ...

260. The Committee observes that a key principle on which the right to social security is premised is non-discrimination. It pertains to all persons, irrespective of

²⁰⁴ Constitutions of *Eritrea*, 1997 (art. 35); *Ghana*, 1992 (art. 27).

²⁰⁵ Constitutions of *Brazil*, 1988 (art. 7); *Cuba*, 1976 (art. 44); *Suriname*, 1987 (art. 35).

²⁰⁶ Constitutions of *Lithuania*, 1992 (art. 39); *Serbia*, 2006 (art. 68); *Ukraine*, 1996 (art. 24).

²⁰⁷ Article 24 of the Constitution of *Ukraine* provides that: Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers.

status and origin. The Committee recognizes that extending the right to social security, including the right to medical care, to non-citizens is a key challenge for many societies today. With regard to the non-citizens, even where they are in an irregular status on the territory of another State, such as undocumented workers, they should have access to basic benefits and particularly to emergency medical care.

4. Provisions attributing competence in respect of social security

261. Provisions attributing competence for social security are very common in national constitutions in all the regions. Many constitutions call for social security to be regulated in whole or in part by law, thereby attributing competence to the legislative authority. This is particularly common in the constitutions of European and French-speaking African countries.²⁰⁸ It is also common, especially in the constitutions of African and Caribbean countries that were formerly under British domination (such as *Bahamas*, *Botswana*, *Dominica*, *Swaziland* and the *United Republic of Tanzania*), to find very long provisions defining the law applicable to the social security benefits of public servants.²⁰⁹ These provisions are often followed by others attributing competence to withhold, reduce or suspend a pension to a public service commission,²¹⁰ or attributing exclusive competence in that regard to the Governor-General.²¹¹

262. The constitutions of most Eastern European countries also emphasize the role of the government in implementing laws and programmes respecting social security.²¹² For instance, article 35 of the Constitution of *Hungary* provides that: “The Government shall ... define the state system of social welfare and health-care services, and ensure sufficient funds for such services.”

263. Some constitutional texts attribute competence to decentralized authorities.²¹³ For example, under article 134 of the Constitution of *Croatia* of 1990 units of local self-government are entrusted with responsibility for childcare, social welfare and primary health care, while units of regional self-government are responsible for the health service.

²⁰⁸ Constitutions of *Austria*, 1929 (art. 10(1)); *Benin*, 1990 (art. 98); *Burundi*, 2005 (art. 159); *Canada*, 1867 (arts 34 and 94A); *Cape Verde*, 1992 (art. 176); *Democratic Republic of the Congo*, 2005 (art. 122); *Djibouti*, 1992 (art. 57); *Eritrea*, 1997 (art. 97); *France*, 1958 (art. 34); *Gabon*, 1991 (art. 47); *Germany*, 1949 (art. 74); *Iceland*, 1944 (art. 76); *India*, 1950 (art. 243 and Eleventh Schedule); *Luxembourg*, 1868 (arts 11, 23 and 94); *Madagascar*, 1992 (art. 89); *Mali*, 1992 (art. 70); *Monaco*, 1962 (art. 26); *Netherlands*, 2002 (art. 20); *Niger*, 1992 (art. 82); *Nigeria*, 1999 (art. 34); *Senegal*, 2001 (art. 67); *Switzerland*, 1999 (art. 40); *Tunisia*, 1959 (art. 34).

²⁰⁹ Constitutions of *Antigua and Barbuda*, 1981 (art. 109); *Bahamas*, 1973 (art. 122); *Barbados*, 1966 (art. 103); *Belize*, 1981 (art. 112); *Botswana*, 1965 (art. 115); *Dominica*, 1978 (art. 95); *Grenada*, 1973 (art. 92); *Jamaica*, 1962 (Part III, 1); *Kiribati*, 1979 (art. 103); *Nigeria*, 1999 (art. 173); *Saint Kitts and Nevis*, 1983 (art. 88); *Saint Lucia*, 1978 (art. 97); *Saint Vincent and the Grenadines*, 1979 (art. 88); *Sierra Leone*, 1991 (art. 161); *Singapore*, 1958 (art. 113); *Solomon Islands*, 1978 (art. 130); *Swaziland*, 2005 (art. 195); *United Republic of Tanzania*, 1977 (art. 43); *Trinidad and Tobago*, 1976 (art. 133); *Zambia*, 1991 (art. 110); *Zimbabwe*, 1979 (art. 112, Schedule 6).

²¹⁰ Constitutions of *Antigua and Barbuda*, 1981 (art. 110); *Botswana*, 1965 (art. 116); *Dominica*, 1978 (art. 96); *Grenada*, 1973 (art. 93); *Kiribati*, 1979 (art. 105); *Saint Kitts and Nevis*, 1983 (art. 89); *Saint Lucia*, 1978 (art. 98); *Saint Vincent and the Grenadines*, 1979 (art. 89); *Trinidad and Tobago*, 1976 (art. 134).

²¹¹ Constitutions of *Bahamas*, 1973 (art. 123); *Barbados*, 1966 (art. 104); *Belize*, 1981 (art. 113); *Jamaica*, 1962 (Part III(1)); *Singapore*, 1958 (art. 114); *Solomon Islands*, 1978 (art. 132).

²¹² Constitutions of *Armenia*, 1995 (art. 89); *Azerbaijan*, 1978 (art. 140); *Belarus*, 1996 (art. 107); *Hungary*, 1949 (art. 35); *Italy*, 1947 (art. 120); *Mozambique*, 1990 (art. 204); *Russian Federation*, 1993 (art. 114); *Ukraine*, 1996 (art. 116).

²¹³ Constitutions of *Austria*, 1929 (art. 12); *Azerbaijan*, 1978 (art. 144); *Canada*, 1867 (art. 94A); *Croatia*, 1990 (art. 134); *India*, 1950 (Sixth Schedule, para. III); *Liechtenstein*, 1921 (art. 2); *Switzerland*, 1999 (art. 115).

264. Finally, several constitutions entrust certain functions in relation to social security to defined public institutions, such as a social insurance institution, a body entrusted with the financial control of the social security system or an economic and social council with advisory functions.²¹⁴ Under article 126(c) of the Constitution of *Austria* of 1929, the Public Audit Office is competent to examine the financial administration of social insurance institutions. It may be noted that in certain constitutions the provisions attributing competence for social security are in addition to other guarantees in relation to social security, while in others, such as those of certain French-speaking African countries, the provisions on competence may be the only ones relating to social security.

5. Provisions defining how social security should be implemented

265. Several constitutions define the means through which social security, or the protection against specific risks, is to be implemented. These means range from social insurance, health services and pensions (the means of protection mentioned most frequently) to the provision of basic subsistence, material security and social services. Certain constitutions explicitly establish the duty of the State to create a social security system and some define how the system should function, be financed or managed. For example, article 70E of the Constitution of *Hungary* provides that: “The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions.”²¹⁵

266. Provisions on the means of implementation are particularly common in the field of health care and establish the duty of the State to provide health services,²¹⁶ or define aspects of the structure and functioning of the system.²¹⁷ Certain South American constitutions (such as those of *Argentina* and *Brazil*) contain long and precise provisions defining systems and their funding principles. Finally, some constitutions provide details of the financing of social security, such as whether it is to be based on public funding or insurance contributions.²¹⁸ Constitutions which provide for the pensions of public officers often lay down that they are to be funded through a consolidated fund.²¹⁹

²¹⁴ Constitutions of *Austria*, 1929 (arts 23(c) and 126(c)); *Azerbaijan*, 1978 (art. 144); *Finland*, 1999 (art. 6); *Georgia*, 1995 (art. 3); *Germany*, 1949 (arts 87, 95 and 120); *Italy*, 1947 (art. 38); *Montenegro*, 2007 (art. 65); *Portugal*, 1976 (art. 95); *Switzerland*, 1999 (art. 113).

²¹⁵ Constitutions of *Austria*, 1929 (art. 121); *Hungary*, 1949 (art. 70E); *Malta*, 1964 (art. 113); *Portugal*, 1976 (art. 63); *Russian Federation* (art. 7); *Spain*, 1978 (art. 41); *Switzerland*, 1999 (arts 112, 113 and 114); *Timor-Leste*, 2002 (art. 56); *Turkey*, 1992 (art. 60).

²¹⁶ Constitutions of *Afghanistan*, 2004 (art. 52 (Ch. 2) (art. 30)); *Azerbaijan*, 1978 (art. 41); *Burundi*, 2005 (art. 47); *Cape Verde*, 1992 (art. 70); *China*, 1982 (art. 45); *Libyan Arab Jamahiriya*, 1969 (art. 15); *Republic of Moldova*, 1994 (art. 36); *Nepal*, 2008 (art. 16); *Paraguay*, 1999 (art. 369); *Poland*, 1997 (art. 68); *Portugal*, 1976 (art. 64); *Romania*, 1991 (arts 34 and 47); *Serbia*, 2006 (art. 68); *Sierra Leone*, 1991 (art. 8); *South Africa*, 1996 (art. 28); *Syrian Arab Republic*, 1973 (art. 47); *Timor-Leste*, 2002 (art. 56); *Turkey*, 1992 (art. 56).

²¹⁷ Constitutions of *Bahrain*, 2002 (art. 5); *Bulgaria*, 1991 (art. 52); *Cape Verde*, 1992 (art. 70); *Ecuador*, 2008 (art. 35); *Haiti*, 1987 (arts 19 and 23); *Iraq*, 2006 (art. 31); *Republic of Korea*, 1948 (art. 72); *Mozambique*, 1990 (art. 116); *Paraguay*, 1992 (art. 69); *Tajikistan*, 1994 (art. 38); *Thailand*, 2007 (art. 80).

²¹⁸ Constitutions of *Bulgaria*, 1991 (art. 51); *Republic of Moldova*, 1994 (arts 131 and 132); *Ukraine*, 1996 (art. 46).

²¹⁹ Constitutions of *Botswana*, 1965 (art. 115); *Kiribati*, 1979 (art. 104); *Sierra Leone*, 1991 (art. 161); *Singapore*, 1959 (art. 115); *Solomon Islands*, 1978 (art. 131); *Swaziland*, 2005 (art. 195); *United Republic of Tanzania*, 1977 (art. 142).

6. Provisions attributing international treaties authority equal or superior to national law

267. State obligations in relation to social security may be derived indirectly from constitutional provisions attributing the force of law to international treaties,²²⁰ or an authority higher than national law,²²¹ upon their publication or ratification. One example is contained in article 215 of the Constitution of the *Democratic Republic of the Congo*: “Lawfully concluded treaties and agreements have, when published, an authority superior to that of the law, subject for each treaty and agreement to the application by the other party.” Such provisions are characteristic of a monist system, – a legal system in which the transformation of international treaties into national law is not necessary. These provisions are particularly common in the constitutions of European and French-speaking African countries. Constitutional provisions automatically introducing international treaties into the national legal system have the effect of creating duties for the State in relation to social security where such international treaties contain social security provisions. As a result of such provisions, national laws denying social security can also be declared unconstitutional on the grounds of inconsistency with an international treaty, such as an international social security Convention or the International Covenant on Economic, Social and Cultural Rights.²²²

268. For instance, *Dutch* courts have recognized the direct application of several international conventions on the basis of article 93 of the Constitution: “Provisions of treaties and of resolutions by international institutions, which may be binding on all persons by virtue of their contents, shall become binding after they have been published.”²²³ When applying article 93, the only condition to be fulfilled is that a provision in a convention has direct effect. According to case law, this condition is generally fulfilled when the wording of a provision creates a subjective entitlement for a citizen which is unconditional and sufficiently concrete. For example, the Central Court of Appeals recognized the direct application of Article 10(1)(b) of Convention No. 102 establishing the minimum medical care to be provided to women in the event of pregnancy free of charge.²²⁴ In another case, the Court recognized the direct effect of

²²⁰ Constitutions of *Burundi*, 2005 (art. 19); *Cape Verde*, 1992 (art. 17); *Republic of Korea*, 1948 (art. 6); *Kyrgyzstan*, 2006 (art. 1); *Madagascar*, 1992 (Preamble); *Mongolia*, 1992 (art. 10); *Mozambique*, 1990 (art. 18); *Namibia*, 1990 (art. 144); *Peru*, 1993 (art. 55); *Portugal*, 1976 (art. 8); *Spain*, 1978 (art. 96); *Ukraine*, 1996 (art. 9).

²²¹ Constitutions of *Armenia*, 1995 (art. 6); *Azerbaijan*, 1978 (art. 151); *Benin*, 1990 (art. 147); *Bulgaria*, 1991 (art. 5); *Burkina Faso*, 1991 (art. 151); *Burundi*, 2005 (art. 45); *Cape Verde*, 1992 (art. 17); *Central African Republic*, 2004 (art. 72); *Chad*, 1996 (art. 222); *Congo*, 2001 (art. 185); *Côte d’Ivoire*, 2000 (art. 87); *Croatia*, 1990 (art. 140); *Czech Republic*, 1992 (art. 10); *Democratic Republic of the Congo*, 2005 (art. 216); *Djibouti*, 1992 (art. 37); *France*, 1958 (art. 55); *Georgia*, 1995 (art. 6); *Greece*, 1978 (art. 28); *Guinea*, 1990 (art. 79); *Madagascar*, 1992 (art. 132); *Mali*, 1992 (art. 132); *Mauritania*, 1991 (art. 79); *Republic of Moldova*, 1994 (art. 4); *Montenegro*, 2007 (art. 9); *Niger*, 1999 (art. 131); *Romania*, 1991 (art. 20); *Rwanda*, 2003 (art. 190); *San Marino*, 1974 (art. 9); *Senegal*, 2001 (art. 97); *Serbia*, 2006 (art. 194); *Slovenia*, 1991 (art. 153); *Tajikistan*, 1994 (art. 10); *Togo*, 1992 (art. 140); *Tunisia*, 1959 (art. 32); *Turkey*, 1992 (art. 90).

²²² In certain countries, in *France* in particular, the constitutional jurisdiction has no competence to review the conformity of national legislation with ratified international treaties. This review (*contrôle de conventionnalité*) is of the competence of national jurisdictions, which may discard any legislative act as contrary to international treaties and apply directly the latter subject to the condition that the provisions are sufficiently clear and precise.

²²³ Article 94 also provides that “Statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties that are binding on all persons or of resolutions by international institutions”.

²²⁴ CRvB 29 May 1996, RSV 1999/9.

Article 5 of Convention No. 118, which places a concrete obligation on member States to export certain social security benefits to the beneficiaries residing abroad.²²⁵

269. The Constitutional Court of *Peru* has recognized the right to social security on the basis of article 55 of the Constitution, which provides that international treaties are part of national law. Nevertheless, the Committee of Experts noted that the Court does not seem to include the principles and the minima guaranteed by Convention No. 102, ratified by Peru, in the “essential core” of the right to social security. Accordingly, while upholding the right to social security as such, the ruling appears to void it of the concrete contents of Convention No. 102.²²⁶

270. The Committee of Experts welcomes the fact that the Government of the *Plurinational State of Bolivia* emphasizes that the new Constitution adopted in 2009 introduces a provision attributing to international treaties authority higher than that of national law. The Government adds in this regard that, contrary to the situation under the previous Constitution, international labour Conventions are now placed above national laws. For this reason, the Government is envisaging the drafting of new laws and regulations to give effect to the international labour Conventions ratified by the Plurinational State of Bolivia.²²⁷

271. The Constitutional Court of *Azerbaijan* ruled that a law restricting the pensions of convicts serving prison sentences was in violation of article 9 of the International Covenant on Economic, Social and Cultural Rights, which establishes the right to social security. The Court therefore held that the law was inconsistent with the provisions of the Constitution establishing that international treaties prevail over national law.²²⁸

272. The Committee observes that constitutional provisions that attribute to international treaties authority that is equal to or higher than national law should operate automatically, so that the provisions on social security contained in international treaties override social security laws that are in conflict with them. Nevertheless, as the Committee of Experts emphasized for example in an individual observation to *Turkey* in 1998, in order to dissipate any ambiguity in law, it is important for national legislation to be brought into conformity with the provisions of international treaties.²²⁹

C. The role of constitutional and supreme courts in defining the right to social security

273. The Committee of Experts has recognized on several occasions the important role of constitutional and supreme courts in defining and making effective the right to social security. Two regions in the world in which constitutional courts have been very active in recent times in protecting the right to social security and other social rights are Latin America and the “new democracies” of Eastern Europe.

²²⁵ CRvB 14 March 2003, RSV 2003/114, also in AB 2003/189.

²²⁶ Decision No. 1417-2005 PATC of 8 July 2005; CEACR, Convention No. 102, observation, *Peru*, 2010.

²²⁷ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2010.

²²⁸ Constitutional Court of the Azerbaijan Republic, *On Conformity of Article 109 of the Law on Pension Maintenance of Citizens with articles 25, 38 and 71 of the Constitution of the Azerbaijan Republic*, 29 Dec. 1999.

²²⁹ CEACR, Convention No. 118, observation, *Turkey*, 1998.

1. Development of the constitutional right to social security in Latin America

274. The constitutional courts of Latin American countries have ruled on various occasions on the right to social security, defining its content or declaring unconstitutional national laws that are in conflict with this right. Some of the cases demonstrate the conflicts which may arise when, as has happened in Latin American countries, recognition of the right to social security has developed much more rapidly at the constitutional level than in the legislation.

275. The Constitutional Chamber of *Costa Rica* has considered on several occasions the need to protect people not covered by the social security system. In some cases, it has recognized their right to social security protection on the basis of the urgency of the case, for example for the homeless or victims of serious accidents who require immediate hospital care. The Court based its decisions, on the one hand, on the constitutional right to social security, which is founded on the principle of social solidarity, supplemented by the right to equality and the principle of human dignity, and, on the other, on the principles of universality, compulsory affiliation and tripartite contributions, on which the social security system is based in accordance with the Constitution.²³⁰

276. In 2008, the Constitutional Court of *Colombia* recognized the right to health as a fundamental right. If articles 49 and 50 of the Constitution of Colombia affirm a duty of the State to guarantee health protection to all, the Court held that the right to health has evolved and is now a fundamental human right in Colombian law. According to the Court, everyone has a right to access the health services he or she needs and such access must be timely, efficient and of good quality.²³¹ The Colombian *Central Unitaria de Trabajadores* underlined the importance of this ruling in its answer to the questionnaire.

277. In 2009, the same Court ruled in favour of a pensioner and her fundamental right to social security, equality and a minimum subsistence income. The Social Security Institute had denied the plaintiff her old-age pension for lack of adequate contributions, but had previously issued certification stating that she had paid sufficient contributions to receive a pension. The Court held that the Social Security Institute had induced her into error and acted in violation of the principle of legitimate expectations. The Court ordered the Social Security Institute to grant the plaintiff an old-age pension in view of the period for which the plaintiff had worked, which had not been included in the second calculation, and considered that she had been misled regarding her contributions and induced to apply for a pension replacement.²³²

278. In 2005, the *Bolivian* Constitutional Court ruled that “the concept of social security refers to all means of institutional protection against the risks that threaten the ability and opportunity of people and their families to generate sufficient income to have a decent human existence”.²³³ In the same year, the Venezuelan Constitutional Court ruled on the independence of the right to social security from labour rights. In particular, in one case regarding the right to retirement, the Court determined that the constitutional right to

²³⁰ Constitutional Court of *Costa Rica*, Ruling 06970, *Recurso de amparo*, Case No. 04-004874-0007-CO, 29 June 2004. However, in this case, the Constitutional Chamber rejected for lack of urgency an *amparo* action (an appeal for the protection of constitutional rights) against the social security fund filed by a Costa Rican citizen who had not received medical care as he was not covered by the social security system and had not paid the corresponding contributions.

²³¹ Constitutional Court of *Colombia*, Ruling T-760/08.

²³² Constitutional Court of *Colombia*, Ruling T-268/09.

²³³ Constitutional Court of *Plurinational State of Bolivia*, Ruling 0051/2005, Sucre, 18 Aug. 2005.

social security, granted under article 86 of the Bolivarian Constitution of Venezuela, and developed in the form of a retirement pension, benefits people who, because of their age and years of service, need such a guarantee to maintain their quality of life. The Court held that although retirement benefits are derived from labour relations, they are a social right provided for by the supreme law and developed by lower level laws to ensure the protection of individuals.²³⁴

279. The National Chamber of Appeals of the Federal Administrative Court of Argentina found in a ruling in 1991 that “social security has as its own responsibility the integral coverage of the negative consequences produced by social contingencies” and that “the integral and indispensable character of social security benefits should not be impaired by provisions whose practical application reduces substantially the entitlement of the beneficiary to a retirement or pension, since rules of this nature conflict with the right established by the Constitution and are not based on adequate grounds”.²³⁵

280. The Constitutional Court of *Peru*, in a ruling in 2005, recognized the importance of the right to social security,²³⁶ and found that its condition of an “institutionalized system, essential to the defence and development of various principles and fundamental rights, permits the recognition of social security as an institutional guarantee”. It also held that the Constitution guarantees every person the universal and progressive right to social security, which has the dual purpose “first, to protect the individual against certain contingencies and secondly, to improve their quality of life, which is manifested through the different pension regimes that may be established, as well as the pension, that in this case, happens to be the primary means to achieve these ends”. The Court also found that “social security is a fundamental human right, which implies that society provides institutions and mechanisms through which he or she may obtain funds for life and solutions to pre-established problems, to achieve a harmonious existence with dignity, considering that the person is the supreme end of society and the State”.²³⁷

281. As a whole, the case law reported above defines the right to social security through seven main concepts:

- **the right to social security is a fundamental right;**
- **the right to social security has the dual purpose to protect individuals and improve their quality of life;**
- **the right to social security permits the recognition of social security as an institutional guarantee;**
- **the concept of social security refers to all means of institutional protection against the risks that threaten the ability and opportunity of people and their families to generate sufficient income to have a decent human existence;**
- **social security has as its own responsibility the integral coverage of the negative consequences produced by social contingencies;**
- **national social security institutions have the duty to calculate benefits correctly and to grant benefits in full, respecting the principle of legitimate expectations of a beneficiary;**

²³⁴ Constitutional Court of *Venezuela* Ruling No. 165, Case No. 05-0243, 2 Mar. 2005.

²³⁵ *López, Guillermo c/ E.N. -Armada Arg. s/ personal militar y civil de las FFAA. y de Seg.*, Case No. 8517/91, 19 Aug. 1998, <http://ar.vlex.com/vid/lopez-guillermo-armada-arg-ffaa-seg-34917665#ixzz0vohYzEf8>.

²³⁶ Constitutional Court of *Peru*, Ruling No. 1417-2005 PATC, 8 July 2005.

²³⁷ Constitutional Court of *Peru*, Ruling No. 1396-2004-AA/TC, 25 Jan. 2005 (FJ 6).

- **on the basis of the urgency of the case and social solidarity, individuals who are not covered by the social security system may be entitled to social security benefits.**

2. Protection of the constitutional right to social security in Eastern Europe

282. The constitutions of the “new democracies” of Eastern Europe offer another example of a human rights approach to social security, supplemented by a certain activism of constitutional courts in defining and protecting social security rights in transition to the market economy and against the austerity measures provoked by the economic crisis. The case law in Eastern European countries presents a rather controversial picture, reflecting the abandonment of the socialist law doctrine. It is worth noting that the majority of cases brought before the constitutional courts in transition countries with respect to social security rights of citizens concerned legislation attempting to directly reduce the amount of benefits due to them or to curtail their acquired rights.

283. In 2002, the Committee of Experts noted with satisfaction the adoption by *Croatia* on 29 January 1999 of a law amending the Health Insurance Act to repeal the provisions of section 59(2) and (3) of the Act, pursuant to the decision of the Constitutional Court on 9 November 1998 on the unconstitutionality of the provisions reducing medical care of the workers to the right to emergency medical aid only, in cases in which contributions have not been paid by their employers.²³⁸ Protection of the right to pension as a social security right was the subject of the decisions of the Constitutional Courts of *Belarus* and *the former Yugoslav Republic of Macedonia*, dated 1996 and 2008, respectively. These rulings considered the constitutionality of a national law creating less favourable conditions for the granting of a pension in relation to the constitutional provisions affirming the right to social security.²³⁹ In a decision of 2009, the Constitutional Court of *Ukraine* ruled that a law of 2000, restricting the right to unemployment benefits in case of termination of labour agreement by consent of the parties, was unconstitutional because it violated the principle of non-retrogression enshrined in article 22 of the Constitution, which provides that “the content and scope of existing rights and freedoms shall not be diminished by the adoption of new laws or by the amendment of laws that are in force.”²⁴⁰

284. The Polish Government has provided a notable example of decision of the Constitutional Court, which led in 2009 to the introduction of statutory provisions on guaranteed benefits in *Poland*. Until 2009, the Act of 23 January 2003 on health insurance imposed an obligation on the National Health Fund to finance all health care provided to the insured by contracted providers. The fulfilment of such an obligation resulted in practice in a situation in which each public institution, by contracting out benefits, determined those that will be available to the insured. The Constitutional Court ruled on 7 January 2004 (K14/03) that, such a situation was not in compliance with article 68(2) of the Constitution, which provides that citizens should have “equal access to health-care services and that the conditions for, and scope of, the provision of services

²³⁸ CEACR, Convention No. 102, observation, *Croatia*, 2002.

²³⁹ Judgment of the Constitutional Court of the Republic of *Belarus*, 27 Nov. 1997, Minsk No. J-60/97; Judgment of the Constitutional Court of *The former Yugoslav Republic of Macedonia*, 13 Feb. 2008, No. U.No.216/2007.

²⁴⁰ Constitutional Court of *Ukraine*, decision of 7 October 2009, case no. 25-rp/2009. The Court underlined that social benefits, compensations and guarantees are an essential component of the constitutional right to a sufficient standard of living; diminishing the content and scope of this right by the adoption of subsequent legislation was contrary to article 22 of the Constitution.

shall be established by statute”. The Court held that, the wording of the Constitution was categorical and that the law therefore should at least introduce sufficiently clear and explicit formal criteria to establish the scope of benefits due to the patient. The law cannot leave any doubt as to what is the scope of medical services available to beneficiaries of the public health-care system, and, most of all, cannot introduce a system in which the available services may vary according to the decisions of authorities other than the legislative power.²⁴¹ The findings of the Constitutional Court were given effect through the adoption of the Act of 27 August 2004 on publicly funded health-care benefits²⁴² by the specification of the so-called “negative list” of guaranteed benefits.

285. In two recent rulings, the Constitutional Courts of *Romania* and *Latvia* held that government plans to reduce pensions as part of austerity measures caused by the crisis were unconstitutional. On 25 June 2010, the *Romanian* Constitutional Court ruled that the provision of the Law on measures necessary to restore budget balance, which reduced pensions by 15 per cent until 31 December 2011 was in breach of article 47 of the Constitution, which provides that “citizens have the right to pensions ...”.²⁴³ The planned reduction was part of a package of benefit reforms aimed at limiting the budget deficit of Romania in order to qualify for a loan from the International Monetary Fund. The Court reached different conclusions depending on the category of social benefits considered. Benefits that were explicitly covered by the Constitution could only be restricted under tight conditions, while those that are not covered by the Constitution could be reduced depending on budgetary possibilities existing at any given time.²⁴⁴ The Court made also a distinction based on the contributory or non-contributory nature of social benefits. The reduction of non-contributory benefits was justified in the concrete case because it fulfilled all the conditions set by article 53 of the Constitution on the “Restriction of the exercise of certain rights and freedoms”. In contrast, with regard to contributory benefits, the Court held that article 53 was not applicable and a reduction was therefore not admissible. The Court stated that contributory benefits are acquired rights because they are the counterbalance for contributions paid during working life and therefore cannot be reduced, regardless of the amount of the reduction and of its extension in time. The Court added that a bad management of the social security system cannot justify the restriction of contributory benefits.

286. In three decisions issued between 2009 and 2010, the Constitutional Court of *Latvia* ruled that the provisions of the legislation introduced in 2009 and prescribing reduction of old-age and long-service pensions of certain categories of persons by 70 per cent for the period from 1 July 2009 to 31 December 2012 did not comply with the principles of proportionality and legal certainty and therefore were unconstitutional.²⁴⁵ The Court stated that while the amount of social security benefits granted by the State may vary depending on the funds at its disposal, the fundamental rights of persons established by the Constitution are binding on the legislator irrespective of the economic

²⁴¹ Constitutional Court of *Poland*, decision of 7 January 2004, K14/03, Motivation, III.

²⁴² Dz.U. of 2008, No. 164, item 1027, as amended.

²⁴³ Constitutional Court of *Romania*, Ruling No. 872, 25 June 2010.

²⁴⁴ See *ibidem*, para. VI.

²⁴⁵ Constitutional Court of *Latvia*, 21 December 2009, case No. 2009-43-01 concerning the Law on State Pension and State Allowance Disbursement in the Period from 2009 to 2012; Constitutional Court of *Latvia*, 31 March 2010, Case No. 2009-76-01 concerning the Transitional Provisions of the Law on Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks; Constitutional Court of *Latvia*, 21 April 2010, Case No. 2009-86-01 concerning the Transitional Provisions of the Law on Long Service Pensions for Public Prosecutors.

situation and may be restricted only within strict limits: the restriction must be established by law, be justified by a legitimate end, and conform to the principle of proportionality. Liabilities towards international creditors assumed by the Cabinet of Ministers and its decisions with respect to the receipt of an international loan and terms and conditions thereof cannot by themselves serve as an argument for the restriction of fundamental rights.²⁴⁶ The Court admitted that during harsh economic times a situation might arise when the State could provide, within the limits of its possibilities, only minimum existence support. However, such circumstances should equally affect all inhabitants of the State and should not place a disproportionate burden on any specific category of employees.

287. Although progressive decisions are generally to be welcomed, the financial consequences of decisions also have to be taken into account by constitutional or supreme courts. In 1995, the Constitutional Court of *Hungary* found that the Government has discretion in relation to achieving the constitutional right to social security; the right to social security does not mean a guaranteed income or that living standards cannot decline as a result of economic conditions. The Constitutional Court of *Bulgaria* decided that the more restrictive rules on health insurance introduced by the National Health Insurance Fund Act were not in breach of the Constitution.²⁴⁷ According to the Court, unlike basic civil rights, social rights are neither universal nor directly justiciable and can therefore be restricted by the Government. “Far-reaching decisions on constitutional entitlements to social rights that are not implemented can easily damage the authority of the courts. A good example of a very diplomatic approach is shown by the decision of the Constitutional Court of the Russian Federation 15 February 2005 on a constitutional complaint by a pensioner whose pension was below the minimum existence level fixed for the relevant part of the Russian Federation. The Court confirmed that in theory such calculation of a pension can violate constitutional values. However, in the specific case, the Court explained that all the relevant benefits in cash and in kind had to be added so that the concrete pension could be considered as appropriate.”²⁴⁸

3. Examples of constitutional and supreme courts’ rulings from other regions

288. Constitutional courts in other regions have also issued rulings defining and/or protecting the right to social security. For example, the Constitutional Court of Belgium reinforced the social rights recognized in the Constitution by affirming the “standstill effect” of the provisions establishing such rights. The Constitution of Belgium, originally adopted in 1831, was revised in 1994 and some “second generation rights” were included in article 23, which established the duty of the State authorities to secure economic, social and cultural rights, including a right to social security, health care and social aid. Prior to its revision, the Belgian Constitution only recognized civil and political rights. The standstill effect of the right to social assistance was recognized in 2002 and implies that the legislator may not significantly reduce the level of protection offered by the legislation that was in place in 1994.

²⁴⁶ Constitutional Court of *Latvia*, 21 December 2009, case No. 2009-43-01, para. 25.

²⁴⁷ Constitutional Court of *Bulgaria*, Decision No. 2 of 22 February 2007 on CC No. 12/2006. The Court considered, in particular, the constitutionality of the Act with respect to Art. 52 of the Constitution on the right to health.

²⁴⁸ SZ RF 2005, No. 16.pos. 1479. See A. Nussberger: “Right to social security”, in *Max Plank Encyclopedia of Public International Law*, www.mpepil.com.

289. For a constitutional court to be active in protecting the right to social security, it is not always necessary for this right to be expressly mentioned in the Constitution. For example, the *German* Constitutional Court has developed abundant case law on the right to social security on the basis of the principle of the “social State” set out in article 20 and the principle of equality affirmed in article 31, despite the fact that the right to social security is not directly recognized in the Constitution. For example, the Court found the reform law on long-term care to be unconstitutional because it was incompatible with the principle of the “social State”. The Constitutional Courts of other European countries, like the Constitutional Courts of *Portugal* and *Italy*, have dealt with social security rights, but focused mostly on the access to those rights. For instance, in a case in 2010, the Constitutional Court of *Portugal* decided on the constitutionality of the conditions set by a law of 2006 for the allocation of unemployment benefits to employees.²⁴⁹ The Court did not question the imposition of a time limit for filing an application for unemployment benefits, but found that the understanding that any delay in complying with this peremptory deadline precluded the overall right to any benefit payment was unconstitutional, because it was disproportionate.²⁵⁰ In a decision of 2010, the Constitutional Court of *Italy* held that a law of 1976 was unconstitutional because it did not require that the insurer, at the death of the insured, inform the survivors with regard to their right to file a demand for social benefits and to the term within which such demand should be presented.²⁵¹

290. The courts of *South Africa* have been active in protecting social rights since the adoption of the new Constitution in 1995. The framework within which the judicial enforcement of these rights can be evaluated, is mainly provided by a few rulings of the Constitutional Court.²⁵² In the *Treatment Action Campaign Case*, an NGO called for nevirapine to be distributed freely to women infected with HIV, as it can reduce by half HIV transmission from mothers to babies. The Court held that the Government’s policy and measures to prevent mother-to-child transmission of HIV at birth fell short of compliance with article 27(1) and (2) of the Constitution and ordered the State to provide the required medication and to remedy its programme.²⁵³ In the *Khosa* case, legislation that excluded permanent residents and their children from access to social assistance was successfully challenged and was found to be inconsistent with article 27(1) of the Constitution, which affirms the right of all persons to have access to social security and assistance, and with article 9(3), which prohibits unfair discrimination by the State.²⁵⁴

²⁴⁹ Executive Law no. 220/2006 of 3 November 2006.

²⁵⁰ Constitutional Court of *Portugal*, Ruling No. 49/2010; 3 of February of 2010.

²⁵¹ Constitutional Court of *Italy*, ruling 284 of 2010.

²⁵² J.C. Mubangizi (2006): *The constitutional protection of socio-economic rights in selected African countries: A comparative evaluation*, 2 *Afr. J. Legal Stud.* 1, 1–19. p. 6.

²⁵³ *Minister of Health and others v. Treatment Action Campaign and others*, 2002 (5) SA 703 (CC).

²⁵⁴ *Khosa and others v. Minister of Social Development and others, Mahlaule and another v. Minister of Social Development*, 2004 (6) SA 505 (CC).

291. The Supreme Court of *India* recognized in various judgments the right to social security and health, as indirect rights derived from the right to life established in article 21 of the Constitution.²⁵⁵ For instance, in *Regional Director, ESI Corporation v. Francis De Costa* in 1993, the Court held that the Employees' State Insurance Act (ESIA) should be interpreted so as to give effect to the right to medical benefit, which is a fundamental right of workers on the basis of article 7(b) of the UN Covenant on Economic, Social and Cultural Rights and articles 39(e), 38 and 21 of the Constitution of India.²⁵⁶ In *Consumer Education & Research Centre v. Union of India*, it was held that the right of a worker to health is an integral facet of a meaningful right to life, in the sense of not only having a meaningful existence, but also robust health and vigour, without which a worker would lead a life of misery.²⁵⁷ In *L.I.C. of India & ANR v. Consumer Education & Research Center & ORS etc.*, the Supreme Court, after referring to the above case law, held that "It would thus be well settled law that the Preamble Chapter of Fundamental Rights and Directive Principles accord right to livelihood as a meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people, in particular to the middle class and lower middle class and all offendable people." The Court held that providing an appropriate life insurance policy within the paying capacity of the insured is a social security measure to make the right to life meaningful. The Court further stated that "We make it clear at this juncture that the insurer is free to evolve a policy based on business principles and conditions ... but ... as seen earlier, the insurance being a social security measure, it should be consistent with the constitutional animation and conscience of socio-economic justice adumbrated in the Constitution as elucidated hereinbefore."

292. The Supreme Court of the *Philippines* has also ruled on social security issues on a few occasions. In *Roman Catholic Archbishop of Manila v. Social Security Commission*, the Supreme Court, with respect to the inclusion of religious organizations within the coverage of the Social Security Law, emphasized the importance of the constitutional mandate to promote social justice in ensuring the well-being and economic security of all people.²⁵⁸ In *Sta. Rita v. Court of Appeals*, the Supreme Court emphasized the role of the DOLE-SSS Memorandum of Agreement in extending the benefits of the Social Security Act to Filipino seafarers on board foreign vessels, thus giving effect to the constitutional mandate of the State to afford protection to labour whether "local or overseas". As a consequence, the Supreme Court found that the nullification of the Memorandum of Agreement by the trial court constituted a serious reversible error, was a "cause for dismay" and was to be deplored.²⁵⁹

²⁵⁵ In 1991, in a dissenting opinion in the case *C.E.S.C. Ltd. etc. v. Subhash Chandra Bose and Others*, Justice K. Ramaswamy affirmed that the right to life set out in art. 21 of the Constitution also implied the right of everyone to social security and health [1991 SCR Supl. (2) 267 (dissenting opinion of Justice Ramaswamy)]: "Article 39(2) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under art. 21. The health and strength of a worker is an integral facet of right to life ... Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are 'mere cosmetic' rights. Socio-economic and cultural rights are their means and relevant to them to realize the basic aspirations of meaningful right to life".

²⁵⁶ *The Regional Director, E.S.I. Corporation & ANR v. Francis De Costa & ANR*, 1996(6) SCC1.

²⁵⁷ *Consumer Education & Research Centre v. Union of India*, 1995(1) SC 637.

²⁵⁸ *Roman Catholic Archbishop of Manila v. Social Security Commission*, 1 SCRA 10.

²⁵⁹ *Sta. Rita v. Court of Appeals*, 247 SCRA 484.

293. Some international bodies have also given increased recognition to the right to social security over the past decades. Although the European Convention on Human Rights does not specifically recognize the right to social security, the European Court of Human Rights has nevertheless protected the right to social security on various occasions through its protection of other rights, such as the right to a fair trial, the right to property, the prohibition of discrimination, the right to life, the prohibition of torture, inhuman and degrading treatment, and the right to respect for private and family life.²⁶⁰

²⁶⁰ See, for example, *Zednik v. the Czech Republic*, 28 June 2008 (art. 6(1) of the European Convention on Human Rights – ECHR); *Wessel-Bergervoet v. The Netherlands*, 4 June 2004 (Protocol 1 to the ECHR, art. 1); *Koua Poirrez v. France*, 30 Sep. 2003 (art. 14 of the ECHR); *Calvelli and Ciglio v. Italy*, 17 Jan. 2002 (art. 2 of the ECHR); *Z and others v. the United Kingdom*, 10 May 2001 (art. 3 of the ECHR); *Jitka Zehnalová and Otto Zehnal v. the Czech Republic*, Ruling of 14 May 2002 (art. 8 of the ECHR). For a detailed analysis of this case law, see A. Gomez (2007): *Social security as a human right: The protection afforded by the European Convention on Human Rights*, Human Rights Files No. 23 (Strasbourg: Council of Europe Publishing).

Part III. Three dimensions of strengthening legality in social security: Extension, enforcement and due process

Chapter 1

Legal measures to extend social security coverage

294. One of the principles of Recommendations Nos 67 and 69 is that of universal coverage: protection should be extended to the national community as a whole. Social security is not the aspiration of just one social class, certain professional categories or underprivileged groups; it meets the needs of all workers and their families and, as a human right, those of the entire population. The extension of social protection is also a first line of defence in the context of the current economic crisis. The stabilizing impact of providing basic social protection to workers and their families affected by job losses and at the risk of poverty should be emphasized. It has been demonstrated that social protection is effective in cushioning incomes and supporting demand in times of major economic downturns.²⁶¹ Social transfers have proved to be an effective means to combat poverty and reduce social security coverage gap. **The Committee is greatly concerned by the fact that, while the means to extend social security globally exist, the coverage gap is not narrowing and the great majority of the world population has no hope of getting some measure of social protection in the foreseeable future. Bearing in mind the urgency of reversing the situation, the Committee would like to invite member States to take all necessary steps, within States' maximum available resources, to move towards the provision of the minimum core content of the right to comprehensive social security for all, thus giving effect to Recommendations Nos 67 and 69 and to the human rights treaties.**

²⁶¹ *Accelerating a job-rich recovery in G20 countries: Building on experience*, an ILO report, with substantive contributions from OECD, to the meeting of G20 Labour and Employment Ministers, 20–21 April 2010, Washington, DC, ILO, Geneva, Apr. 2010, paras 61–68.

A. The move to establish a social protection floor²⁶²

295. The ILO Declaration on Social Justice for a Fair Globalization, 2008, recognized as one of the ILO objectives “the extension of social security to all, including measures to provide basic income to all in need of such protection, and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological, societal, demographic and economic changes”. The Global Jobs Pact, 2009,²⁶³ requests countries that do not yet have extensive social security to build “adequate social protection for all, drawing on a basic social protection floor” and urges “the international community ... to provide development assistance, including budgetary support, to build up a basic social protection floor on a national basis”. In the context of the Global Campaign on Social Security and Coverage for All, launched by the International Labour Conference of 2003, the ILO is already promoting the social transfer component of the social protection floor, and identified a basic set of non-contributory social security benefits, offering a minimum level of income security and access to health care for all.

296. In support of the Global Campaign, the ILO developed a two-dimensional strategy in moving towards comprehensive social security coverage.²⁶⁴ The horizontal dimension seeks to extend a set of four essential social security guarantees to as many people and as fast as possible. It helps countries to establish a social protection floor as part of their “core obligations” to provide the minimum essential level of the rights embodied in the human rights treaties, including the right to social security.²⁶⁵ Not only do such guarantees act as economic and social stabilizers, but they also serve as crucial tools for poverty alleviation and improved health, thereby contributing significantly to the attainment of the Millennium Development Goals.

²⁶² The United Nations System Chief Executives Board for Coordination (CEB) suggests that a social protection floor should consist of two main elements that help to realize respective human rights: (1) services: geographical and financial access to essential services (such as water and sanitation, health, and education); and (2) transfers: a basic set of essential social transfers, in cash and in kind, paid to the poor and vulnerable to provide a minimum income security and access to essential services, including health care (CEB Issue Paper: The global financial crisis and its impact on the work of the UN system, 2009, p. 20; (available at www.un.org/ga/econcrisissummit/docs/CEB_Paper_final_web.pdf)).

²⁶³ ILO: *Recovering from the crisis: A Global Jobs Pact*, ILC, 98th Session, Geneva, 2009, paras 12(1)(ii) and 22(9).

²⁶⁴ The Global Campaign over the past years, through publications, expert meetings and tripartite consultations, extensively addressed the role of social security standards in the extension of social security coverage (ILO, *Setting social security standards in a global society. Social security policy briefings*, Paper 2, 2008, p. 1, 19–20).

²⁶⁵ See UN Doc. E/C.12/1993/11, para. 5. The General Comment on the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (1966) includes in this minimum core content, on an indicative basis, the requirement for State parties “to ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee (on Economic, Social and Cultural Rights) recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies” (UN Doc. E/C.12/GC/19, 4 Feb. 2008, para. 59(a)).

The horizontal dimension of the ILO strategy for extension of social security coverage: A set of essential non-contributory social security guarantees

- All residents have the necessary financial protection to afford and have access to a nationally defined set of essential health-care services, in relation to which the State accepts the general responsibility for ensuring the adequacy of the (usually) pluralistic financing and delivery systems.
- All children have income security, at least at the level of the nationally defined poverty line level, through family/child benefits aimed at facilitating access to nutrition, education and care.
- All those in active age groups who are unable to earn sufficient income on the labour markets should enjoy a minimum income security through social assistance or social transfer schemes or through employment guarantee schemes.
- All residents of old age and those with disabilities have income security at least at the level of the nationally defined poverty line through pensions.

The vertical dimension of the ILO extension strategy seeks the provision of a wider range of benefits covering additional social risks and categories of persons, and the increase of benefit rates to at least the level prescribed by Convention No. 102 and other up-to-date social security Conventions. Together, these two dimensions help countries in realizing progressively the human right to social security, first by establishing the bases of their social security system and, afterwards, by guiding them, when it becomes possible, up the social security “staircase” to higher standards of protection. Support for this strategy has been endorsed by tripartite ILO constituents at the “Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage” (Geneva, September 2009) and more recently at the “Second African Decent Work Symposium” (Yaoundé, October 2010).

297. The Committee notes that countries, which are considering the establishment of a basic set of essential social security guarantees for income security and access to medical care for all, take inspiration in the successful experience acquired by those countries which have already put in place some elements of the essential social security guarantees. One of these is *Brazil*, which launched in 2003 the *Bolsa Família* programme with the objectives of reducing poverty and inequality, by providing a minimum level of income for extremely poor families, and to break the inter-generational transmission of poverty by making these transfers conditional on the compliance by beneficiaries with “human development” requirements (e.g. children school attendance). It is one of the largest non-contributory social transfer schemes in the world, and covered 46 million people in 2009, at a cost of about 0.4 per cent of GDP. Another country is *South Africa*, which extended its social pension scheme gradually over the 1980s and 1990s and reached around 2.2 million beneficiaries in 2008. With the aim of obviating poverty in old age, the scheme provides a tax-financed monthly benefit to those beyond the pensionable age, on a means-tested basis. A new law was adopted in 2008, to facilitate and equalize access to the social pension for men and women. Furthermore, the Child Support Grant (CSG), a major publicly funded cash transfer programme, was introduced in *South Africa* in 1998, to reduce poverty among children in poor households. Originally paid on a means-tested basis, it was converted to an unconditional basis in 2000, which has resulted in improving its operational effectiveness and greatly extending its coverage to more than 4 million recipients over the last decade.

298. The article 19 questionnaire on social security instruments asked Governments to report on the measures they have taken, or plan to take, to establish a set of basic guarantees for income security and access to medical care. A summary of the measures reported can be found in the table below.

Table 6. List of countries considering the establishment of a set of basic guarantees for income security and access to medical care for all

State	Policies/plans	Measures/actions taken
Antigua and Barbuda	Government plans to establish basic income security and universal health care.	
Austria		Implementation of nationwide uniform minimum standards for social assistance based on an income-related minimum income security.
Argentina	Project to strengthen the Federal Network for Social Policy based on a management model of social justice and equal opportunities.	
Belize		A social security scheme for self-employed workers is in the process of being implemented.
Benin	Progressive extension of social security to include the entire population based on Articles 1 and 3 of the Social Security Code, including employees, independent workers, agricultural workers and workers of the informal sector.	
Plurinational State of Bolivia	Constitution sets a series of rights and guarantees on the access to health care and maternity, sickness, invalidity, old-age and death benefits for all Bolivians. Amendments of the rules of social security are required in this new constitutional framework.	
Bosnia and Herzegovina	Strategy to ensuring minimum social security rights. Introduction of social (public) pension.	
Cameroon		Social security framework bill to include sickness insurance as the sixth branch of social insurance.
China	Schemes to be adjusted to the specific needs of the urban and rural population to obtain universal social security coverage. In three years, coverage of basic health insurance for urban employees, basic health insurance for urban residents, and a new scheme on rural health-care cooperatives should reach at least 90 per cent of the population.	Actively studying possible policies and methods to provide old-age income security for urban residents without any income.
Côte d'Ivoire	Studying possibilities to extend coverage to self-employed workers.	
Djibouti	Social security reform plan to extend coverage to workers in the informal sector and their families and sickness insurance for all nationals.	Actuarial studies to extend social security to the informal sector.

State	Policies/plans	Measures/actions taken
Dominica		Introduction of free health-care services at government health facilities for citizens under 18 years of age and older than 65.
El Salvador	<p>Creation of a universal pension, based on solidarity, equity and social justice.</p> <p>Health-care system: implementation of a comprehensive health-care reform, strengthening community organization and social participation in health, to support the setting-up of cross-sectoral management committees at community, municipal, departmental and national levels, and the development of a national social partnership underpinned by a legal framework.</p> <p>Comprehensive reform of a health system favouring the public health system.</p> <p>Democratization of the access to health care for the entire population: elimination of voluntary quotas and other mechanisms involving direct payments from patients for laboratory services, inpatient, outpatient and other services provided by the system.</p> <p>Priority to health care in rural areas and the poor in urban areas.</p> <p>Studies have been carried out to incorporate domestic and independent workers in the social security system, by exploring different forms of financing. A project on the reform of the social security law is being considered to include domestic workers.</p>	<p>Creation of a Solidarity Fund for Senior Citizens (FOSAMOR), to ensure health-care services for persons that are not incorporated in the pension system.</p> <p>Creation of the Pension Assistance (PAS), for older people in urban and rural areas who do not have a pension and do not receive a regular income.</p>
Ethiopia	Plan to extend coverage to private sector employees' pensions and establishment of a health insurance scheme.	
Bosnia and Herzegovina	Strategy to ensuring minimum social security rights. Introduction of social (public) pension.	
Fiji		Revision of the Fiji National Provident Fund will extend social security benefits to workers in rural farming and livestock and will allow voluntary contributions from domestic workers.
Guatemala	Government considers increasing taxes and identifying other revenues to ensure universal access to health care. Priority to mothers and children and the elderly.	<p>Health Framework Bill, for universal and free access to health services.</p> <p>A pilot programme was initiated for domestic workers, offering maternity and work injury benefits.</p>

State	Policies/plans	Measures/actions taken
India	Basic social security package with a modest set of social security guarantees can be an effective starting point to fulfil the objectives of social security for all. National strategy should be linked to employment strategy and other social policies. Better supervision through an efficient enforcement machinery and suitability of the social assistance schemes proposed for informal sector workers. Targeted social assistance programmes could be one means to start introduction of social security for excluded groups.	
Indonesia		Minister of Manpower and Transmigration Regulation No. PER.24/MEN/W2006 concerning the implementation of a social security programme for workers outside the employment relationship.
Lao People's Democratic Republic		Bill on National health insurance targeting universal coverage. Implementation is planned in 2012.
Lesotho	Universal health care under consideration	National health insurance bill for universal coverage. Implementation planned in 2012.
Madagascar	Project to extend social security coverage to non protected categories of workers and their families in the informal sector, agriculture and fisheries through improving of services and coverage for all social risks such as unemployment and sickness.	
Malaysia		Research is being conducted to extend social security to the self-employed and to introduce old-age pension.
Mali		Ongoing implementation of compulsory sickness insurance scheme for public and private sector workers and social assistance for persons without resources.
Mexico		<p>Programme to ensure access of casual agricultural workers to social protection: employers and workers are exempted from paying a part of the social security contributions, which is determined on the basis of a formula which takes into account the minimum base salary in the geographical area concerned.</p> <p>Popular Social Security System, which guarantees that families that have no access to social security because they belong to economic sectors that are not covered by the Mexican Social Security Institute (IMSS) or the Institute for Social Security and Services for State Workers (ISSSTE), or belong to the informal economy, have access to an integrated package of health benefits, through Seguro Popular pension system through the Retirement Savings Opportunities, and housing through the National Fund for Economic Housing Contributions (FONAEVI).</p>

State	Policies/plans	Measures/actions taken
Mongolia	Introduction of a non-contributory basic old-age pension scheme, as part of the proposed pension reform.	
Morocco	Project on unemployment benefits is currently being considered for adoption.	
	Plans to extend social security coverage to independent workers, the liberal professions and students.	
Namibia	Establishment of a set of basic guarantees for income security and access to medical care for all is being considered. Once the National Pension Fund (NPF) will be instituted, it will provide for contingencies, such as old-age, invalidity, and survivors' benefits. Once the national medical benefit is instituted, it shall offer coverage for members in active gainful employment and their dependants. The contingencies to be covered are not specified as yet, since the field study to operate the Fund still has to be carried out.	
Oman	Studying possibilities to extend coverage to self-employed workers.	
Philippines		Multi-sector dialogue on introduction of unemployment benefit.
Senegal	<p>National strategy is being elaborated in order to guarantee social security for all nationals.</p> <p>Plan to set up a platform for shared management of health insurance in the informal sector with the support of the ILO STEP programme to manage the budgets of contributions and benefits related to health insurance to assist the mutual health funds, particularly in the field of contracting with health-care providers and pharmacies.</p> <p>Old age: Project to study the establishment of a minimum pension for all Senegalese older than 60.</p> <p>Project of setting up private pension funds for various professional associations or groups of the informal sector.</p> <p>Unemployment: The terms of reference for a study on the feasibility of establishing a system of unemployment benefits is under preparation.</p>	Bill amending Decree No. 75-895 of 14 August 1975 for atypical workers (seasonal, temporary, daily, etc.) through the institution of sickness insurance companies.
Saint Vincent and the Grenadines	Old-age pension, survivors' benefits, invalidity benefits through the national insurance services contribution programmes under consideration.	

State	Policies/plans	Measures/actions taken
Sudan	Plan for universal health insurance for all citizens. The Ministry of Social Welfare has a three-phase plan, which includes developing the benefits under the social security funds, those provided under the Zakat Chamber and assistance under the social solidarity project.	
Suriname	Universal sickness insurance scheme under consideration.	Bill to improve social security benefits in the field of occupational safety and health and child care support.
Switzerland		Approval in August 2009 of a proposal to include the self-employed in the Federal Law on family allowances based on the principle of "one allowance for each child".
Syrian Arab Republic		Health-care scheme for workers introduced in 2010. Unemployment: The State is carrying out studies in cooperation with international organizations concerned with a view to establishing an unemployment fund. Order No. 1461, which includes temporary workers, the liberal professions, employers and members of their families in social security coverage.
United Republic of Tanzania	Introduction of a universal old-age pension and access to medical care for all on a means-tested basis is under consideration.	
Tunisia	Progressive extension to cover the whole population to reach 98 per cent in 2014.	New regime for persons with low revenues and new scheme for artists and intellectuals.
Uganda	Plan to introduce health insurance scheme but some stakeholders objected. More time is required to consider the modalities of putting in place a social security scheme that is contributory.	
Zimbabwe	Plan to introduce a universal health insurance scheme providing basic health care is at an advanced stage.	

299. To draw up a general inventory of the extension measures taken in the world or even making a general assessment of existing social security coverage would have required much more consistent efforts on the part of the Governments to provide reliable and comparable data. Regrettably, poor countries simply do not collect such data. Many low-income countries face difficulties to operate an efficient statistical system and lack important information on the way in which their social security schemes function in practice. The Committee is fully aware of this problem, as well as of the fact that it cannot be solved in the near future. The Committee nevertheless regrets the low response rate from Asian and Arab countries to this question.²⁶⁶ On the basis of the information

²⁶⁶ See Appendix V: Governments' replies to article 19 questionnaire on social security, Part I, C.7.

received, the Committee observes that the extension of social security coverage is still far from being a priority area of national policy in the majority of developing countries, especially in Asia and the Arab States. Several low-income countries, especially African countries, made general comments on extension from which it was difficult to assess progress. In some instances though, the information provided by the low-income countries has enabled the Committee to highlight the most significant measures in terms of social security coverage. In contrast, the majority of high-income and many Latin American countries provided very detailed reports on the actual status of social security protection and certain trends could be identified.

300. The Committee notes that the need for extending social security coverage is perceived differently in developed and developing countries. For low-income countries, where the majority of the population is not covered by social protection schemes, the need for extension of social security coverage is largely a matter of making social security happen. These countries account for the fact that only one in five people in the world has social security coverage and 80 per cent of the population lack adequate social security protection. The inadequate coverage of rural populations and urban informal sector workers remains a major problem in a number of countries.

301. In industrialized countries, the nature and magnitude of the problems are different. A steady growth of self-employment makes the inclusion of the self-employed an important issue for the development of social security schemes. There are specific categories of workers who lack sufficient coverage by the existing schemes, such as temporary workers, seasonal workers, part-time workers, short-time workers, homeworkers and domestic workers. The progressive incorporation of different categories into the social security schemes, even in countries where social security covers all employees and evolves towards universality, is acute. *Spain* provides vivid examples of numerous pieces of legislation enacted since 1977 to incorporate into a social security system such categories as clergymen of the different religious communities; professional and high-level athletes; domestic workers; members of parliament and senators; members of local corporations; employees of notaries; researchers and fellows.

302. A number of countries have taken measures to establish new social security branches covering new contingencies and providing additional benefits, following the vertical dimension of ILO social security extension strategy. Others are considering or examining such possibilities. Health insurance and unemployment benefit schemes have been predominant among those measures. With regard to unemployment insurance schemes, it appears that the recent economic and financial crisis has acted as a catalyst in the development of such schemes, a phenomenon that has also been observed in the aftermath of the Asian financial crisis more than a decade ago. *Bahrain* was the first country in the Middle East where an unemployment insurance scheme for public and private sector workers was introduced in 2006. This scheme covers, beside all employees, also first-time jobseekers and is closely linked to active return to work employment policies. In *Viet Nam*, in order to cope with the greater flexibility in the labour market resulting from the transition from a centrally planned to a social market economy, an unemployment insurance scheme for all workers with labour contracts has been established by legislation which came into force in 2009, and paid the first benefits in 2010.

303. Some countries are implementing alternative methods to provide income security through the creation of employment guarantee schemes. The use of public employment or public works programmes as a means to provide protection have proliferated. Such programmes combine basic income support with infrastructure development. In *India*,

the Mahatma Gandhi National Rural Employment Guarantee Act of 2005 (MGNREGA) is a job guarantee scheme, which provides a legal guarantee for 100 days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage of 60 rupees per day. Around one third of the stipulated workforce is women. The scheme started on 2 February 2006 in 200 districts and was expanded to cover another 130 districts in 2007–08, and covered 619 rural districts in 2009.

304. The creation of health insurance schemes also figures prominently on the agenda of many countries. In *Thailand*, a universal health-care scheme (UC Scheme or earlier known as the “30 Baht” scheme), was introduced in 2001, provides for any Thai citizen, who is not covered under the contributory health insurance scheme, access to health services. As a result, overall legal coverage for health care in Thailand reached almost 98 per cent of the population in 2006–07, 75 per cent of which was guaranteed by the universal health-care scheme. In *Ghana*, the national health insurance scheme was recently implemented to ensure equitable universal access for all residents of Ghana to an acceptable quality of essential health services without the need for out of pocket payments. *Cameroon* adopted a social security framework bill to include sickness insurance as the sixth branch of the national social insurance system. The Government of *Mali* indicated that it is in the process of implementing a compulsory sickness insurance scheme for public and private sector workers. In *Jordan*, a maternity insurance scheme as a new social security branch has been created in 2010 within the framework of the social security law reform. This new scheme covers all private sector employees and provides cash benefits in case of maternity at the level of a woman’s previous earnings for a period of 12 weeks. The Government of the *Syrian Arab Republic* reported the introduction of a health-care scheme for workers in 2010. The *United States* recently adopted legislation establishing a mandate for most legal residents to obtain health insurance.

305. The Committee observed that, in general, the high number of actors and the lack of coordination constitute additional factors to keeping the coverage at a very low level and perpetuating the lack of a comprehensive strategy in this regard. In the *Plurinational State of Bolivia*, for example, a rational restructuring of the fragmented health system would increase membership of the system and produce major economies of scale with regard to both management costs and the financing of care facilities.²⁶⁷ In *Peru*, the establishment of centralized management with regard to the coverage of benefits and supervision of compliance with the obligation to join the social security scheme would allow significant results to be achieved in extending coverage and improving coordination and planning of the entire system.²⁶⁸

306. Among highly developed countries there are some that have already established universal social security schemes covering all residents, such as *Australia*, *Netherlands*, *New Zealand*, *Norway* and *Sweden*. For example, all persons living or working in *Sweden* are covered by the national social insurance system, which makes no difference between the different sectors of the economy and categories of workers.

²⁶⁷ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2010.

²⁶⁸ CEACR, Convention No. 102, observation, *Peru*, 2010.

B. Coverage of specific categories of workers

307. Numerous ILO instruments refer to the extension of social security to specific categories of workers, such as agricultural workers, homeworkers, migrant workers and part-time *workers*, for example. For a complete overview of the ILO instruments on specific categories of workers and the provisions relevant to social security see the table in Appendix IV. The coverage of specific categories of workers should also be considered in light of the non-discrimination of these categories and conditions that might be construed to preclude their coverage. The Committee has, for example, taken up the affiliation of part-time, domestic and informal workers to social security schemes in examining the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).²⁶⁹

308. The Committee notes that some countries reported that they do not distinguish specific categories of persons in terms of social security. Such a distinction would, according to the Government of *Estonia*, be contrary to the equality of treatment principle and, therefore, there are no separate schemes or benefits for persons employed in different sectors of the economy in this country. The Government of the *United States* stated that there are no specific sectors where workers are unprotected. Individuals who lack health coverage, for example, come from a wide spectrum of the society, and the Government has adopted a number of programmes that address gaps in social security coverage for such individuals.

309. The Government of *Australia* indicated that social security is linked to age, means and residence and not based on categories. In the *United Kingdom*, all persons working pay national insurance contributions, which give them access to the contributory benefits. The Government of *Poland* observed that the social security system covers all employees with mandatory insurance, regardless of the social or professional group they represent and that there are no preferential regulations for a particular group.

310. The Committee would like to emphasize that, while some countries do not distinguish specific categories of workers in relation to social security, in other countries specific schemes for certain categories of workers may be necessary to provide protection for these particular groups who would otherwise be excluded. Alternatively, qualifying conditions of the existing schemes may be adjusted to take account of the specific needs and circumstances of particular categories of workers. Countries have adopted a variety of measures to attract unprotected persons into the existing compulsory or voluntary schemes through the introduction of new, sometimes more favourable conditions allowing them to join the schemes. The most common include the relaxing of certain qualifying conditions: the reduction of the required number of years of service or contribution periods; the reduction of the amount of contributions to be paid into the scheme; waiving of outstanding payments; the possibility to buy back missing contribution periods; and the reduction of the number of employees required for a company to fall within the scope of the social security scheme.²⁷⁰

²⁶⁹ Part II, Chapter 2, section C.4 of the Survey.

²⁷⁰ In *Namibia*, for example, the definition of “employee” in social security has been broadened and aligned to the definition of employee in the new Labour Act, Act 11 of 2007. Previously, only persons working for more than two days in any week were covered under the social security scheme. The effect of the definition of “employee” in the new Labour Act is that persons who worked for one or two days and who were previously excluded, are now also covered.

1. Private sector employees and employees in small enterprises

311. The Committee observes that in most countries private sector employees are, at least to a certain extent, covered under the statutory national social security scheme. However, there still remain countries which have not yet extended social security protection to private sector employees. In this regard, the Government of *Ethiopia* indicated that it is planning to extend coverage of the national pension scheme, which covers at the moment only public sector employees, to private sector employees. In *Cambodia*, the first national social security law was adopted in 2002, establishing a mandatory social security system for private sector employees consisting of three branches: employment injury insurance scheme set up in 2008, health insurance scheme and a pension scheme, the implementation of which is planned to follow.

312. Some countries which do cover private sector employees under their national social security system, have nevertheless excluded small enterprises with a view to progressively extend social security coverage to all enterprises at a later stage, an approach which is foreseen by Convention No. 102. Following this approach, *Thailand* for example has extended in 2002 coverage under the national health insurance scheme from enterprises with 20 and more employees to all private sector enterprises, thereby including all employees under the scheme. In *Jordan*, until 2010, the social security system covered only private sector enterprises of five employees and more. The new Social Security Law, adopted in 2010, extended social security coverage to small enterprises of less than five employees, thus covering all private sector employees. Under the new Labour Law of the *Lao People's Democratic Republic*, employers with one or more employees are mandated to join the social security scheme, which was applied previously only to employers with ten or more workers. In addition, some countries have extended social security coverage in practice by way of improving administration of their social security system and introducing special services for small enterprises. In *Bulgaria*, Contribution Payment Centres (CPC) have been set up to support small and medium enterprises in administering registration procedures, wage calculation, contribution payments and consultations on labour and social security legislation. Regulated under the social insurance law, this measure aims at reducing the size of the informal economy in the country.

2. Informal economy workers

313. Probably the biggest challenge facing the extension of social protection worldwide is the increasing informality of national economies, especially in middle- and low-income countries, which leaves a major part of the population without any social security protection. Some countries address this coverage gap by progressively moving towards universal social security coverage giving priority to achieving universal access to health care and establishing universal pension schemes. In *Nepal*, a tax-financed universal basic old-age pension system, unique in Asia, was established in 1995 for older people aged 75 and above and to poor widows aged 60 and above. It has been successfully implemented since then and steps have been taken in the last years to extend its reach by means of reducing the benefit age from 75 to 70 years (in 2008–09), and eventually, 65 years; the amount of the pension was also increased.

314. The approach of other countries consists in adopting broad schemes targeting workers and families with low revenues, outside of formal employment, who have no other access to social security benefits. Some of them emphasize the need to strengthen administration of social security and coordination of the different schemes – measures which play an important role in the formalization of workers and improving their access

to social security benefits. In *India* a comprehensive Unorganized Workers' Social Security Act, 2008 (No. 33 of 2008) was adopted in December 2008 to provide health benefits, life and disability insurance, old-age pension and a work injury scheme for workers in the informal economy, including agricultural workers and migrant labourers. For the purpose of the Act, an unorganized worker is defined as a "home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act" (article 2(m)). The Government of *Bangladesh* reports that self-employment, individual fishermen, individual agricultural workers etc. belong to the informal sector where the extension of social security depends largely on the socio-economic condition of the country. To bring the informal sector workers under the financial assistance scheme, the Government has enacted "The Labour Welfare Foundation Act, 2006" and has constituted a fund under it. In *Mexico*, the "Peoples' Security" (*Seguro Popular*) system was created, the purpose of which is to ensure that families that have no access to social security because they belong to economic sectors that are not covered by the Mexican Social Security Institute (IMSS) or the Institute for Social Security and Services for State Workers (ISSSTE), or belong to the informal economy, have access to an integrated package of health benefits through *Seguro Popular*; a pension system through the retirement savings opportunities, and housing through the National Fund for Economic Support of Housing (FONAEVI).

3. Agricultural workers

315. Agricultural workers are often excluded from social security protection. Since many rural workers are in fact informal economy workers, many of the efforts to extend social protection to informal economy workers are also relevant for rural workers. In this context, the Committee notes with interest the new basic pension scheme for rural workers introduced in 2009 by the Government of *China*. It differs from the previous pension programme, where funding was supplied only by the farmers themselves. The new scheme will be subsidized by the central and local governments. Anyone who is above the age of 16 who does not take part in the existing urban pension scheme is eligible to pay into the programme. The scheme will cover farmers above the age of 60. In *China*, the number of people aged 60 and above exceeds 153 million and amounts to 11 per cent of the total population. The pension amount will vary regionally and be based on the average local income. Pilot versions are on trial in the different provinces and it was expected to embrace 10 per cent of the provinces by the end of 2009, and expand to cover the whole country by 2020. A successful rural pension scheme (Prêvidencia Rural) has been operating in *Brazil* since 1991, under the Social Security Act, with the aim of reducing poverty and vulnerability among older people (men and women) engaged in rural employment and excluded from social insurance schemes. It provides a non-contributory old-age pension, as well as survivors', disability, maternity, sickness and employment injury benefits, all largely financed by general taxation. In *Azerbaijan*, farmers participate in the social security system and the State Social Protection Fund undertakes measures to ensure these categories pay social security contributions.

316. *Albania* and *Hungary* reported measures to attract farmers in the social insurance scheme. *Albania* increased the rural pension, which in time should be comparable with urban pensions, and systematically waived outstanding contributions. The Government attributes a substantial subsidy to compensate for losses incurred. Farmers may pay for uninsured past years and are eligible to a full pension, when having not less than the length of time required (17 years, six months) as self-employed in the agricultural sector. In *Hungary*, under section 30/A of Act LXXX of 1997, small-scale agricultural

producers pay contributions based on the minimum wage. However, any small-scale agricultural producer whose income from these activities during the previous year did not exceed the prescribed limit shall pay contributions based on the 20 per cent of his actual income. In *Mexico*, in order to ensure the access of casual agricultural workers to social security benefits and to facilitate their registration in the social security system, employers and workers are exempt from paying a part of the social security contributions, which is determined on the basis of a formula which takes into account the minimum base salary in the geographical area concerned.

317. It is important to note that extension of coverage does not necessarily need to go through a legislative process. A potent method of extending coverage is the use of collective agreements. The Government of *Argentina* reported that in 2008 in order to seek registration of rural workers in an area where informality is a big problem, Law 25.994 introduced the possibility to conclude agreements on social security issues between professional associations of workers with trade union status and employers sufficiently representative within the territory and the activity concerned, as well as the associations of rural workers and companies which are both registered with the National Registry of Rural Workers and Employers (RENATRE). These agreements must be approved by the Social Security Secretariat and the Ministry of Labour, Employment and Social Security and simplify the payment of the social security contributions: contributions are paid when the agricultural product is sold and not monthly, which is the rule for a traditionally registered dependent worker. The parties for each activity have to negotiate a “replacement fee”, which is either a nominal value or based on a percentage of the value of the goods sold. The fee is deducted from the sale of the product. The replacement fee must be reviewed every year. In 2009, two conventions were signed – one in the tobacco industry and another one in forestry, both in the Province of Chaco.

4. Seasonal workers

318. Many agricultural workers are also seasonal workers. With regard to seasonal workers, it should be recalled that Convention No. 102, Part IV (unemployment benefit), Article 24(4) provides that in the case of seasonal workers the duration of the unemployment benefit and the waiting period may be adapted to their conditions of employment. Also, Convention No. 168 ensures for special adjustments to be made for seasonal workers in terms of adapting the qualifying period (Article 17(2)), the waiting period (Article 18(3)) and the duration of payment of benefit (Article 19(6)) to the occupational circumstances of seasonal workers. Although none of the reporting member States provided information on unemployment benefits for seasonal workers, the Government of *Panama* did report that persons who worked exclusively as seasonal workers in agriculture and in the construction industry are now eligible for an old-age pension when they contributed a minimum of 120 months (ten years) to the scheme. Contributions are calculated on the basis of the total wage paid during the year, divided by 12, up to a maximum yearly wage of 3,500 balboas.

5. Homeworkers

319. According to Article 4(2) of the Home Work Convention, 1996 (No. 177), “national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise”. Paragraph 2 further reads that “Equality of treatment shall be promoted, in particular, in relation to: (e) statutory social

security protection”. In the replies, two governments referred explicitly to homeworkers. The Government of *Poland* indicated that homeworkers are included in the voluntary sickness insurance and *Thailand* reported that measures are taken to extend social security to homeworkers.

6. Part-time workers

320. Concerning part-time workers, Article 6 of the Part-Time Work Convention, 1994 (No. 175), states that “Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers”. Article 6 further provides that “these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice”. The *AFL–CIO* reports that the Unemployment Insurance Modernization Act of 2009 in the *United States* provides financial incentives for States to extend unemployment insurance to more workers, especially low-wage workers and workers only available to work part time.

7. Domestic workers

321. The conclusions elaborated during the first discussion by the International Labour Conference in 2010 with a view to the adoption of a normative instrument on domestic workers state that, in respect of social security protection, including with respect to maternity, each Member should take appropriate measures to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally. The conclusions with a view to the adoption of a Recommendation further provide that Members should consider means to facilitate the payment of social security contributions by employers, including in respect of domestic workers working for multiple employers, for instance through a system of simplified payment. Also, Members should cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning social security.²⁷¹

322. A number of countries have specifically reported on legislative measures for domestic workers. In *South Africa*, for example, all domestic workers, including housekeepers, gardeners, domestic drivers, and persons taking care of any person in the home are, since 2003, under the unemployment insurance fund, which provides unemployment, maternity and adoption benefits as well as benefits in case of illness and death. Between 2003 and 2008, 633,000 domestic workers were registered and more than half had received benefits, most of whom were women. In *India*, domestic workers are covered by the Unorganized Workers’ Social Security Act of 2008. In a number of countries, including *Belgium*, *Brazil* and *France*, fiscal incentives are offered to employers to formalize employment relationships involving domestic work, usually in connection with systems for the simplified payment of social security contributions. In *Uruguay*, Decree No. 224/007 implementing Law No. 18.065 of 2006 concerning social security for domestic workers has been crucial in substantially reducing the share of undeclared domestic workers, thus enabling them to benefit from social security coverage. *Honduras* has also adopted special regulation to incorporate domestic workers under social security coverage. In *El Salvador*, the Government has launched a plan in 2010 to integrate domestic workers in the country’s social security system on a voluntary basis. Benefits include health-care services and maternity benefits as well as access to

²⁷¹ *Provisional Record* No. 12, International Labour Conference, 99th Session, Conclusions, paras 16(b), 41 and 45(1).

specific health-care services for children. A project on the reform of the social security law is being considered to include domestic workers. In August 2009, a pilot programme was initiated for domestic workers in *Guatemala*, offering maternity and work injury benefits. The current revision of the *Fiji* National Provident Fund will allow voluntary contributions by domestic workers.

8. Seafarers and sea fishers

323. As far as seafarers and sea fishers are concerned, Article 77 of Convention No. 102 stipulates that the Convention does not apply to them.²⁷² Social security for seafarers is regulated in the Maritime Labour Convention, 2006 (MLC, 2006), in Regulation 4.5, Standard A4.5 and Guideline B4.5. Social protection for sea fishers is regulated in the Work in Fishing Convention, 2007 (No. 188). According to Article 35, “each Member State shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory”. In *Brazil*, Law No. 10.779 of 25 November 2003 introduced “special temporary allowance” for artisanal fishers, when the fishing season is closed to allow for conservation and rejuvenation of stocks.²⁷³ The new law introduced some lesser stringent qualifying conditions. Only one year of registration is necessary, while it was three years before. In *Bangladesh*, for the fishing communities of the country the Government has introduced a cash transfer programme to assist them during the lean season.

9. Other categories of workers

324. Some countries referred to the extension to other categories. The Government of *Portugal* reported that new legislation was introduced to insure apprentices against the risk of work accidents and occupational diseases, according to Law No. 98/2009 of 4 September. In *Uruguay*, the decree of 24 August 2009 established mechanisms to facilitate access to social security by professional sportspersons.

C. Extension of coverage to self-employed persons

325. It is encouraging to note that one of the most important developments over the last years is the progressive inclusion of the self-employed²⁷⁴ in the social security schemes. According to Paragraph 21 of the Income Security Recommendation, 1944 (No. 67), self-employed persons and members of their family living in the house, other than their dependants, should be insured under the same conditions as employed persons. Consideration should be given to the possibility of insuring them also against sickness and maternity necessitating hospitalisation, sickness which has lasted for several months, and extraordinary expenses incurred in cases of sickness, maternity, invalidity and death.

²⁷² A Member may exclude seafarers and sea fishers from the number of employees, of the economically active population or of residents, when calculating the percentage of employees or residents protected in compliance with any parts of Parts III–X.

²⁷³ An artisanal fisher is defined as one who, individually or in a family economy regime, has fishing as his/her main occupation or source of livelihood. His boat should not be more than ten tonnes. A family economy regime is defined as “the work of the members of the same family, necessary for their subsistence, and exercised in mutual dependence, without employees”. The use of workers from outside the family does not disqualify from the status of a family economy regime, as long as it is temporary and does not lead to permanent employees.

²⁷⁴ For the distinction between employed and self-employed workers, see the Employment Relationship Recommendation, 2006 (No. 198).

326. A number of countries reported that they actually consider extending social security to the self-employed and are carrying out the necessary studies in this respect to evaluate the feasibility of extension. In *Malaysia*, research is being conducted to extend the social security net to the self-employed. In *El Salvador*, actuarial studies have been carried out to incorporate independent workers. The Government of *Morocco* plans to extend social security coverage to independent workers, the liberal professions and students. Other member States, such as *Côte d'Ivoire* and *Oman* report that they are currently conducting studies in order to extend coverage to self-employed workers.

327. Many countries have recently taken legislative measures to include the self-employed. In *Dominica*, coverage has been extended to self-employed persons in respect of old-age, invalidity, funeral and survivors' benefits over the last 20 years and in respect of sickness and maternity benefits over the last years. In *Colombia*, Decrees Nos 3615 of 2005 and 2313 of 2006, regulate the collective membership of independent workers in the comprehensive social security system (health, pension and occupational hazards) through guilds and associations, which would help the self-employed to join the system. *Belize* reported that a self-employment scheme is in the process of being implemented. In *Indonesia*, the Minister of Manpower and Transmigration issued Regulation No. PER.24/MEN/W2006 concerning the implementation of a social security programme for workers outside the employment relationship. In *Switzerland*, the Government approved, in August 2009, a proposal to include the self-employed in the Federal law on family allowances based on the principle of "one allowance for each child". In the *Syrian Arab Republic*, the Ministry of Social Affairs and Labour has issued Order No. 1461, which includes the liberal professions, employers and members of their families in social security coverage; the law requires the inclusion of temporary workers as well. In *Latvia*, self-employed persons working in the leather and textiles trade, photography, clothing and footwear repairing, clock and lock repairing, floristry and domestic work will be covered as of 2010 by the social security system, even if their income does not achieve the level of minimum contributions for self-employed persons based on the minimum wage. In *Lithuania*, persons who receive income from authorship agreements arising from a performer's or sportsperson's activities, as well as persons who receive income under authorship agreements, have been included as of 1 January 2009 in the State social insurance. According to the law on the State social insurance budget for 2010, No. 129-XVIII, of 23 December 2009, of the *Republic of Moldova*, self-employed persons (individual entrepreneurs, notaries and private lawyers) are contributing to social security.

328. Inclusion of the self-employed is often organized through their progressive affiliation on a voluntary basis. In *Honduras*, a new law was adopted in 2008 providing for a special regime for the progressive affiliation for independent workers, which entered into force in April 2009. In *Chile*, new legislation has been enacted which provides all independent workers with the possibility to be voluntarily insured as of October 2008, which will become compulsory as of 2012. The Governments of *Jamaica* and *Suriname* reported that affiliation of the self-employed to the social security schemes is strictly voluntary. In *Germany*, the employment accident insurance provides comprehensive protection for some categories of the self-employed. The self-employed and their spouses working in the same company can take up voluntary insurance (see Book VII, Social Code). The Government of *Canada* reports that the Fairness for the Self-Employed Act, which came into force on 15 December 2009, provides maternity, parental/adoption, sickness and care benefits to self-employed Canadians on a voluntary basis. The self-employed are able to opt into the programme as of 31 January 2010, with benefits beginning to be paid in January 2011. In the *Republic of Korea*, self-employed

persons who have less than five employees and have their business registered, may participate in employment security and vocational skills-development programmes under the unemployment insurance. The *Czech Republic* and *Finland* reported that although social security is voluntary for the self-employed, it is, in principle, identical for employees and the self-employed since the latter are entitled to the same benefits if they join the system.²⁷⁵ In *Viet Nam*, all citizens aged from 15 to 60 (male) or 55 (female), who are not covered by the compulsory social insurance scheme, can participate in the voluntary social insurance, the contribution rate for which however is steadily rising.²⁷⁶

The Committee recommends that gradual compulsory membership of self-employed workers is a possible means of ensuring coverage of a large proportion of the population not yet benefiting from any social security coverage. State support in the form of social contribution subsidies would be an important component to ensure the success of such initiatives.²⁷⁷

329. In the context of the current economic crisis, a number of industrialized countries have taken measures to protect the self-employed by including them into the unemployment benefit schemes. In November 2009, the Government of the *Republic of Korea* introduced the bill to amend the unemployment insurance which will allow the self-employed to join voluntarily the unemployment benefit scheme. In *Austria*, unemployment benefits (as well as sickness, maternity cash benefits, emergency support and the insolvency allowance) has been extended as of 1 January 2008 to independent contractors, who are now treated like workers on the basis of the equality of treatment principle. The Government of *Israel* reported that under a new amendment to the National Insurance Law, a self-employed person who was previously a salaried employee, and who opened a business on 1 August 2009 or thereafter, may retain his eligibility for unemployment benefits if his business closes within 24 months. In *Germany*, the Third Act for Modern Services in the Labour Market (called Hartz III Act), which came into force on 1 February 2006, provides that people who were unemployed and who decided to become self-employed and, as a consequence, would lose their rights under the unemployment insurance, can continue to be insured on a voluntary basis. This option, which, for the moment, is limited in time, exists for people who were compulsorily insured before a period of at least 12 months with the Federal Employment Agency and, as a consequence, were entitled to unemployment benefits.

²⁷⁵ In *Finland*, self-employed persons and entrepreneurs can obtain equal coverage as employed persons for work injury by taking out a voluntary insurance policy (Employment Accidents Insurance Act Sections 1, 9 and 57, Farmers' Accidents Insurance Act).

²⁷⁶ While in 2009, the contribution rate was 16 per cent of the income level that the self-employed workers choose (up to a ceiling of 20 times of the general minimum wage), in 2010 and 2011 it is set at 18 per cent and shall progressively attain 22 per cent by January 2015.

²⁷⁷ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2010.

Chapter 2

Enforcement of social security legislation

A. Compulsory affiliation and payment of social security contributions

330. As a rule, registration of employers and their employees with social security institutions is reported to be a legal obligation and the responsibility of employers. This is the case, for example, in the *Czech Republic, Germany, Ghana, Guatemala, India, Namibia, New Zealand, Portugal, Saudi Arabia*, and the *Bolivarian Republic of Venezuela*. In *Austria*, since 1 January 2008, the employer is obliged to report each new employee to social security before beginning employment. Registration of new employees in *Belgium* and *Germany* also should be done immediately at the beginning of the employment relationship, and within three days in *Bulgaria* and ten days in *Kuwait*. According to the Government of *Germany*, registration has three objectives: to inform the social insurance about the beginning and the course of the employment of the insured persons; to document their claims with the insurance institutions; and to identify more easily persons who were not correctly reported.

331. Several countries indicated that they built in safeguards in their national legislations to make sure that employers do not avoid affiliation with the compulsory social security schemes. In *Finland*, when the employer does not affiliate with a pension fund, despite the reminders of the supervisory body of pensions, the Finnish Centre for Pensions, the latter will take out an enforced pension insurance at the employer's expense with the pension provider of its choice. In *Switzerland*, the law provides that an employer shall be affiliated to a special public institution (article 60(2) of the law on provident funds). In other countries, additional safeguards have been built in to ensure that employers are registered. The Government of *Gambia* refers to a "clearance certificate", which is delivered when the authorization to run a business is renewed, certifying that the business operates in conformity with the rules relating to the registration of workers and the payment of contributions.

1. Collection of contributions

332. According to Paragraph 18 of Recommendation No. 67, the employer "should be made responsible for collecting contributions in respect of all employees employed by him, and should be entitled to deduct the sums due by them from their remuneration at the time when it is paid". A similar provision is found in Paragraph 80 of Recommendation No. 69 that "contributions in respect of employed persons may appropriately be collected by their employers". The collection of social security contributions is fundamental to the effective operation of the social security schemes and therefore falls under the general responsibility of the State for the proper management of the system. The Committee wishes to emphasize that in some countries, payment of

contributions has a priority over other liabilities of the employer, apart from wages, although this is not a systematic practice.²⁷⁸

333. The Governments of *Albania*, *Bulgaria*, *Ethiopia*, *Finland*, *Germany*, *Republic of Korea*,²⁷⁹ *Mongolia*, *Namibia*, *Norway*, *Panama*, *Philippines*,²⁸⁰ *Poland*, *Portugal*, *Suriname* and *Uganda* report that it is the employer's responsibility to deduct social insurance contributions from the wages paid. The obligation to deduct the contributions is usually linked with the responsibility to calculate the amount of the contributions due and pay it to the social security institutions. In *Mongolia*, article 17 of the Law on Social Insurance establishes "the duty of the employers and insurers to honestly and correctly calculate the payroll and similar income and the premium levied on them and to pay it by the due date". In *Finland*, section 152 of the Employees Pension Act provides that "the employer withholds the employee's pension contribution from the wage paid to the employee (earnings from work) in connection with the payment of the wages and pays the pension contribution in its entirety to the pension provider with whom the employer has arranged pension provision pursuant to this Act for its employees. The employer's obligations towards the pension provider also include the employee's share of the pension contribution".

334. Deduction of contributions from the employees' wages is generally done on a monthly basis.²⁸¹ Employers are often required to pay contributions on the same day wages are paid²⁸² or soon afterwards. Article 6(b) of the Government Service Insurance System Act of 1997 of the *Philippines*, stipulates that contributions should be paid within the first ten days of the calendar month following the month the contributions are due. In certain countries, employers do not only have the responsibility to calculate contributions but also to actually pay out sickness and maternity benefits in place of social security institutions concerned (for example in the *Russian Federation* and *Ukraine*). Usually, employers are not compensated for registration, calculation and payment of contributions on behalf of their workers. In the *United States*, however, paying contributions within time is encouraged through a federal tax credit for employers, which offsets most of the federal tax they have to pay when they pay promptly their state unemployment taxes under the federally approved state unemployment insurance programme. The Government of *Germany* observes that procedures in the country provide an almost complete security of payment of

²⁷⁸ The Government of *Albania* draws attention to Law No. 7703 of 11 May 1993 on Social Insurance, stipulating that payment of contributions has a priority over the payment of debts and taxes. In the *Philippines*, the payment of wages should have a priority over social security contributions (section 6(b) of the Government Service Insurance System Act of 1997).

²⁷⁹ The *Republic of Korea* (National Health Insurance Act).

²⁸⁰ The *Philippines* (section 6(a) of the Government Service Insurance System Act of 1997).

²⁸¹ For certain schemes, contributions may be paid on a yearly basis on the total wages paid, as in the *Republic of Korea* with regard to the work injury benefits branch where employers shall report every year the total wages paid to workers to the Workers' Compensation and Welfare Service and pay the contributions calculated based on the reported wages to this service. In *Bulgaria*, agricultural producers and tobacco farmers insured for disability, old-age and survivor's benefits and who are exclusively carrying out agricultural activities can pay contributions by 31 March of the year following the calendar year to which they relate. The Government of *Albania* refers to Law No. 7703 of 11 May 1993 on Social Insurance, as amended, according to which the self-employed, members of family businesses, owners of private companies as well as the self-employed in agriculture pay contributions on a quarterly basis.

²⁸² *Belarus*: The payment of contributions to the pension insurance schemes and other payments to the Social Welfare Fund of the Ministry of Labour and Social Security, approved by Presidential Decree of 16 January 2009 (No. 40); *Bulgaria*: articles 4 and 7 of the Social Security Code, stipulate that contributions for employees and civil servants should be paid on the same day wages are paid.

contributions due. Collection of contributions should not be a major problem because it can be arranged through direct debit of the employers' accounts. Contributions risk not to be paid only when companies went bankrupt and social security institutions will only receive little or no further payments or have to give up existing claims.

2. Obligation of keeping records of contributions

335. According to Paragraph 19 of Recommendation No. 67, "in order to facilitate the efficient administration of benefits, arrangements should be made for the keeping of records of contributions" and "for ready means of verifying the presence of the contingencies which give rise to benefits". Many countries reported on the obligation of both employers and social security institutions to have registers containing the employment and social security data of employees. Data are often centralized for the branches of social security forming separate systems, such as the pension system and the health system.²⁸³ In some countries, the central keeping of records is the responsibility of the tax authorities. In *Bulgaria*, employers register employees with the territorial directorate of the National Revenue Agency.

3. Provision of benefits in case of non-payment of contributions by the employer

336. Paragraph 25 of Recommendation No. 67 states that "a person shall not be disqualified for benefits by reason of the failure of his employer duly to collect the contributions payable in respect of him". On several occasions, **the Committee pointed out that it is the responsibility of the State to adopt all the necessary measures to ensure that such benefits are provided in practice even in a situation of failure of the employer to collect the contributions. Article 69 of Convention No. 102, which enumerates the cases in which benefits provided under the Convention may be suspended, does not refer to the situation of non-payment of contributions on behalf of the insured person. The Committee therefore stressed that workers should not be compelled to have recourse to the courts or the labour inspectorate to receive benefits even in case of failure of the employers to comply with the obligations.**²⁸⁴

337. Information contained in the reports reveals that there is no uniform practice in this respect. Legislation on work injury in the *Philippines* does not prejudice the right of employees or their dependents to the benefits in the event of failure or refusal of the employer to pay or remit the contributions. In *Myanmar*, according to article 58 of the Social Security Act, insured persons or their survivors shall be entitled to the benefits provided in the Social Security Act, even if contributions have not been deducted from their wages or salaries. By contrast, in *Bulgaria* state social insurance payments shall only be made when the two following conditions are fulfilled: the employer submits a payment order certifying the transfer of the insurance contributions and the insurer confirms that the contributions for the state social insurance, the health insurance and the supplementary mandatory pension insurance have been paid. In comparison with employees, self-employed and independent workers generally receive benefits only if they are up to date with their contributions.

²⁸³ The Employer and Pension Insurance Register of the *Finnish* Centre for Pensions collects data on persons who have insured their employees through a pension insurance policy under the Employees Pensions Act. The register also includes data on public sector employers and the Seamen's Pension Fund. The data are obtained from the various Finnish pension providers.

²⁸⁴ CEACR, Convention No. 102, observation, *Croatia*, 2002; CEACR, Convention No. 102, observation, *Mexico*, 2007; CEACR, Convention No. 102, observation, *Spain*, 2001.

338. In countries where there is no guarantee of payment of benefits in case of failure of payment of contributions by the employer, persons may initiate summary proceedings before the courts for civil debt to recover the sums due.²⁸⁵ A particular case is bankruptcy of the employer. *Switzerland* reports that, in case of bankruptcy and the non-payment of contributions, a guarantee fund provided in the federal Law on old-age, survivors' and disability benefits will pay the minimum legal benefits. Similarly, section 7 of the Council Directive of 20 October 1980, on the approximation of the European Union Laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (80/987/EEC) provides that Member States shall take the measures necessary to ensure that non-payment of compulsory contributions due from the employer, before the onset of his insolvency, to insurance institutions under national statutory social security schemes does not adversely affect employees' benefit entitlement in respect of these insurance institutions inasmuch as the employees' contribution were deducted at source from the remuneration paid.

4. Recovering outstanding contributions

339. The Committee observes that failure of payment of contributions by employers does not necessarily automatically trigger enforcement procedures to collect the outstanding payments. It is not uncommon that first there will be steps taken to try to find a settlement with the employer to facilitate payment of the arrears in full. In the *Republic of Korea*, the National Health Insurance Corporation has procedures to provide a new deadline urging payment.²⁸⁶ The Government of *Saint Lucia* reported that agreements to facilitate payment to settle arrears can be arranged. In *Cameroon*, a settlement agreement and annual regularizations of contributions can be agreed upon. In *Gambia*, non-payment of contributions shall first be settled through mediation channels and, if these do not bear fruit, the matter shall be referred to the courts for legal redress.

340. Administrative procedures initiated by social security institutions to collect outstanding contributions usually have an executive title and do not require a court order to be enforced. In *Albania*, the obligation to pay contributions constitutes an executive title and is executed by the bailiff's office. In *Namibia*, a statement of social security debt shall have the effect of a civil judgment. In the *Philippines* and *Madagascar*, the initial administrative procedure consists in sending formal reminder letters to invite employers to pay the outstanding contributions without penalty within a fixed time limit. If payment is not made within the deadline, penalties shall be imposed. In *Madagascar*, recovery procedures for collecting outstanding payments include a statement that contributions shall automatically be increased by a certain percentage and a fine if the payment is not made within 15 days. In the *Czech Republic*, a District Social Security Administration (OSSZ) shall issue a decision to pay contributions within 15 days, otherwise a penalty shall be imposed.

²⁸⁵ For example: *Antigua and Barbuda*: Section 42, Social Security Act, 11 July 1972, as amended.

²⁸⁶ The National Health Insurance Act stipulates that the insurance premium of a person covered by workplace-provided health insurance shall be paid by his/her employer, while the insurance premium of a person covered by locally provided health insurance shall be paid jointly by all of his/her household members who have taken out locally provided health insurance.

B. State supervision and inspection of social security legislation

1. Inspection mechanisms

341. In general, social security institutions are monitored in various degrees by government departments. It is also not uncommon that supervision is carried out by more than one government department. For example, in *Sri Lanka*, the administrative aspect of the Employees Provident Fund is supervised by the Labour Department, while the management of the fund is controlled by the Central Bank. In *Chile*, old-age, disability, survivors and unemployment branches are administered by the Superintendent of Pensions; work injury, family allowances – by the Superintendent of Social Security (SUSESO), and sickness and maternity – by the Superintendent of Health. Supervision may also be carried out by a specific institution which is not part of a ministry but responsible to it. In the *United Republic of Tanzania*, for example, the Social Security Regulatory Authority has been set up with the responsibility of supervising social security operational schemes in the country.

342. **In countries where branches of social security are administered by independent institutions of semi-private or private nature, the State still conserves the general responsibility for their proper administration and has the right and the duty to supervise them.** The management of social security schemes in such countries is often based on the functional separation between the body responsible for the administration of the schemes and the control body that supervises the social security system. For such countries, the creation of an independent specialized body responsible solely for supervising and controlling the social security system, without participating in the management of the system's programmes, is the necessary component for the proper operation and viability of social security systems.²⁸⁷ The move to centralized management with regard to the collection of contributions and compulsory affiliation ensures better coordination, planning and linking of strategic activities from the point of view of the entire system.

343. In federal States, general supervision and control are usually carried out by a central federal institution to ensure uniform application of the schemes. In the *United States*, for example, the enforcement of the national unemployment insurance legislation is assured through a process under which the Secretary of Labour certifies each State's conformity with federal law as a condition for the State's receipt of federal funds for the administration of its unemployment insurance benefit programme. States are encouraged to operate their unemployment insurance in fiscally responsible ways through, for example, the threat to withdraw or reduce the federal tax credits, if the State fails to promptly repay loans that the federal Government has extended it for financing benefit payments.

344. Controlling compliance with social security is done by on-site inspection visits and auditing documents of employers, which remain an important tool to detect undeclared work and social security fraud. With regard to inspection functions, the Committee identified two main mechanisms to control compliance with social security legislation: labour inspection and social security system itself. In a number of countries such as *Argentina*, *El Salvador*, *Fiji*, *Hungary*, *Lao People's Republic*, *Lesotho*, *Montenegro*, *Mozambique*, *Spain* and *Sri Lanka*, it is the responsibility of the labour inspectorate. The labour inspectorate is entrusted with this task since the social security institutions do not

²⁸⁷ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2010.

have their own inspectors. In a number of Central and Eastern European countries, legislative measures have been taken to widen the powers of the labour inspectorate to include controlling powers with regard to compliance with social security laws. In *Hungary*, section 6(4) of Act LXXV on Labour Inspection, which was implemented on 1 January 2010, empowers labour inspectors to investigate whether the employer employs persons who receive a social insurance pension or a disability or accident benefit. Labour inspectors shall notify the pension insurance administration body. In *Montenegro*, by virtue of the new Law on Labour Inspection of 2008, the labour inspectorate has the power to denounce employers who have not paid social security contributions. In *Lithuania*,²⁸⁸ the state labour inspectorate has been given the authority to coordinate an inter-ministerial action to combat undeclared work by the state social insurance fund board, the state tax inspectorate (Ministry of Finance), the financial crime investigation service and the police department (Ministry of the Interior), and the local offices of the state labour inspectorate. The state labour inspectorate is responsible for preparing methods and recommendations for controlling undeclared work and organizing joint inspections with officials of the other institutions.

345. In another group of countries, such as *Angola, France, Finland, Germany, Greece, India, Malaysia, Morocco, Namibia, Nicaragua, Philippines, Poland, United Republic of Tanzania, Tunisia* and *United States*²⁸⁹ inspection is within the realm of the social security system itself. In *Sweden*, where the collection of social insurance contributions is the responsibility of the tax agency, a new government agency has been set up in July 2009, called the Social Insurance Surveillance Authority. This new organization provides an independent supervisory function for the Swedish social insurance administration. The objectives of the agency are to strengthen compliance with legislation and other statutes and to improve the efficiency of social insurance administration through system supervision and efficiency control.

346. Particular cases are *Benin*,²⁹⁰ *Madagascar* and *Senegal*, where inspections are carried out by both social security inspectors and labour inspectors. A specific system operates in *Spain*, where no difference is made between social security and labour inspectors since the control over the enforcement of legislation on social security has been integrated into one single independent institution responsible for all employment-related issues: the Inspectorate of Labour and Social Security, regulated by Law 42 of 14 November 1997. This law defines the inspection system as a set of legal principles, rules, bodies, officials and material resources that contribute to the proper enforcement of labour standards, occupational risk prevention, social security and social protection. It also deals with job placement, employment and unemployment protection, trade unions, immigration and foreign labour, and any other matters assigned to it. The law regulates the functions of the Inspectorate, determining the responsibilities of the officials of the senior corps of inspectors of labour and social security and the sub-inspectors.

347. In countries with private schemes, control of compliance may be carried out by the social security institution concerned. For example, in *Finland*, according to sections 187

²⁸⁸ Law No. 1407 on the coordination of the control of cases of illegal work of 26 Nov. 2001 (*Official Gazette, Valstybės žinios*, 2001, No. 99-3558).

²⁸⁹ *Angola*: Article 56, Act N07/2004 of 15 Oct. 2004 on the basis of social protection. *India*: the Corporation; *Malaysia*: SOCSO; *Morocco*: CNSS; *Namibia*: article 38, Social Security Act; *Philippines*: SSS Account Officers; *Tanzania*: Inspectors of each scheme; *Tunisia*: Agents of the Caisse Nationale de Sécurité Sociale, *United States*: SSA's Office of the Inspector General (OIG) is charged with combating waste, fraud, abuse, and mismanagement related to SSA's programmes and operations.

²⁹⁰ *Benin*: Article 137, Social Security Code, Act No. 98-019 of 21 Mar. 2003, as amended; *Senegal*: Code de la sécurité sociale, articles 144–157, 158 and 159; Law 75-50, article 17.

and 188 of the Finnish Employees Pension Act of 2006, each private pension provider oversees whether the employer, who has concluded a pension scheme with the pension provider consisting of pension insurance companies, company pension funds and industry-wide pension funds, and has the right to inspect the employers' premises, and the right to take other inspection measures in order to determine whether employers have fulfilled their obligations under the Act. The employer subject to the inspection shall, during the course of the inspection, present the wage bookkeeping, working time records and all other documentation which may affect the insurance obligation. The Finnish Centre for Pensions, the central body of all pension providers in Finland, has the same rights. The same procedure applies for employment injuries. Each insurance institution and the Federation of Accident Insurance Institutions have the right to verify the correctness of information falling within the scope of the employer's duty to inform under the Employment Accidents Insurance Act (section 64 (b)).

348. The Committee noted in the General Survey on labour inspection that the respective objectives of social security and labour inspection services are complementary and that it is no longer a matter of debate. The benefits of bringing them together under the authority of a single government authority are becoming increasingly evident in certain countries. Although it is often a legal obligation for the employer, worker or responsible medical practitioner to report accidents at work or cases of occupational disease to the labour inspectorate, it is often, in practice, the social security services that are the first, and sometimes the only, recipients of such notifications. It is therefore desirable that provisions be put in place to ensure that any relevant information on cases and conditions defined by legislation be communicated as systematically as possible to the labour inspectorate. This would give the labour inspectorate the data it requires to identify high-risk establishments and activities and determine means of prevention with a view to eliminating risk factors. By the same token, inspection services should be required to inform the social security and social insurance services of situations that pose a threat to workers' safety and health which they encounter during inspection visits. Raising insurance premiums for employers who are particularly negligent or persistent in disregarding inspectors' injunctions could reinforce the safety and health role of the labour inspectorate. The economic advantages of such cooperation, for both the enterprise and the insurance institutions, have been more than amply demonstrated in all the countries where relevant measures have been implemented.²⁹¹

2. Rights of inspectors

349. In general, inspectors have a wide arsenal of competencies which are specific to each country and each system. In a number of countries, in addition to the right to inspect the premises of the enterprises and audit the accounts, the national reports refer to the right to impose administrative sanctions, the right to initiate legal proceedings and the right to register undeclared employees with social security institutions.²⁹² These rights are often subject to judicial review in most legal systems. In the event inspections and audits are carried out by social security officials, although they have their own status, their mandate is comparable to the status of other authorities having the rights to carry out investigations, such as labour inspectors and criminal investigation officials. The Committee understands that all these measures should be subject to judicial review and the rule of law.

²⁹¹ CEACR, General Survey on labour inspection, Report III (Part 1B), 95th Session, 2006, para. 156.

²⁹² The rights of labour inspectors are defined in the Labour Inspection Convention, 1947 (No. 81), ratified by 141 member States.

350. In *Nicaragua*, the inspectors of the Nicaraguan National Social Security Institute have the same powers as the labour inspectors under the Labour Code in addition to the specific powers foreseen in the specific regulations. They are entitled to check compliance by employers and workers with the Social Security Act and its regulations by examining accounts, payrolls, employment contracts, proof of expenses, income tax, capital financial statements, collective agreements and all other documents related to the verification of data.²⁹³ The Government of *Namibia* refers to article 38 of the Social Security Act, according to which inspectors of the Social Security Commission have the same powers of police officials conducting investigations under the Criminal Procedure Act, on the basis of a certificate of authorization issued by the Commission. They can enter, without prior notice, the premises of an employer, verify and seize documents, conduct interviews of the employers, employees and any other persons who are present on issues of the registration with the Commission, payment of benefits and contributions and any other related matter. In *Poland*, audits include the control of the notification of registration, calculation of the correctness of social security contributions and the amounts withheld from salaries and payment of social insurance contributions and other contributions and payments which the social insurance institution is obliged to collect.

C. Legal proceedings and penalties

351. The Committee notes that the majority of the States have given a comprehensive description of the legal instruments at their disposal to enforce social security legislation. On the other hand, the Committee would have also welcomed an assessment of the actual enforcement of the existing provisions in practice and the measures taken to support effective implementation. The Committee notes that the responses received from African countries strongly recall that ILO advice, assistance and technical cooperation is crucial for many member States when it comes to taking implementation measures.

352. **In order to be effective, penalties for the violation of social security law should be sufficiently dissuasive to make offenders aware of the consequences of non-compliance.** In this respect, the union organizations, *CGTP*, *CATP* and *CUT*, of *Peru* deplore that evasion by the employers is linked to the fact that penalties are weak. **The Committee recalls its observation that organs responsible for collecting contributions in Peru and elsewhere should have the means to carry out their mission and provide for penalties that are sufficiently deterrent for offenders.**²⁹⁴

353. Legal proceedings shall be initiated when administrative procedures have not resulted in compliance with the law in the case of payment of arrears or when, pursuant to an audit or on-site inspection of enterprises, irregularities have been identified. In the event where enforcement of social security is the responsibility of the social security institutions, the latter may initiate civil proceedings. Proceedings may be initiated with civil courts or with specific social security courts. Quite a number of countries reported that non-compliance with social security law, under the specific circumstances which are proper to each national situation, is considered a criminal offence.²⁹⁵ For example, in Central American countries such as *El Salvador* (El Salvador, article 245 of the Penal Code), *Nicaragua* and *Panama*, as well as in *Germany* (Undeclared Labour Act)

²⁹³ *Nicaragua*: Article 124, Law on Social Security, (Decree No. 974 of 1 March 1982); and article 100, General Regulations of the Law on Social Security, (Decree No. 975, of 1 March 1982).

²⁹⁴ CEACR, Convention No. 102, observation, *Peru*, 2010.

²⁹⁵ *Albania, Australia, Azerbaijan, El Salvador, Finland, Germany, Hungary, Italy, Nicaragua, Panama, Tunisia and United Kingdom.*

withholding or evasion of contributions is a penal offence. In some countries, administrative and criminal proceedings can be initiated simultaneously for the same offence. The only common feature of all systems is that they all impose sanctions in the form of fines, terms of imprisonment, or both.

354. In countries where collection of contributions and enforcement is the responsibility of the tax authorities, proceedings that are initiated are assimilated to tax recovery proceedings. The Government of the *United States* reports that an employer who fails to pay its federal unemployment payroll tax shall be subject like any other taxpayer, to a variety of federal enforcement actions, the most common being the assessment of interest and penalties.²⁹⁶

355. The Committee notes that some countries do not have recourse to the courts but have invested social security officials with extended rights which allow them to rule on fines and terms of imprisonment. In *Thailand*, penalties, including terms of imprisonment, may be imposed by officials of social security who are given the status of officials under the Penal Code. When the employer does not register the employees on time, does not declare modifications on the personal status of the employee or provides false information, they shall be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding 20,000 baht (approximately US\$620) or to both.²⁹⁷ In order to devote more efforts to serious offences against social security, the *United Kingdom* reorganized penalties concentrating on pursuing criminal prosecution on serious cases of fraud while providing alternatives to prosecution for lower-level offences.

1. Penalties applied to employers

356. The Committee notes that in some countries the sanctions imposed on the employers are inadequate and make it more profitable for them to pay fines instead of complying with the laws. The Committee cannot but insist that in such cases the efficiency and the authority of the law are undermined. States have adopted different solutions, the common feature of which is the importance of the fine. In some countries, a deterrent effect is sought by imposing high fines. For example, in *Germany*, if there is wilful misconduct of the employer, fines up to €50,000 may be charged. Other countries have instituted fines that are commensurate to the contributions due. In *Lithuania*, employers who have not paid contributions in full are liable to pay a penalty equal to twice the amount due (article 36, Law on State Social Insurance). In *Poland*, failure to pay contributions or when the contributions paid are too low, calls for a fine up to maximum of 100 per cent of non-paid contributions. In *Latvia*, the fine is threefold (article 16(1), Law on State Social Insurance). The amount of the fines may also be linked and adjusted to the evolution of the minimum wage. In *Montenegro*, article 10 of the Law on Labour Inspection of 2008, sets fines at 50 to 200 times the minimum wage for employers who have not registered employees and failed to pay social security contributions. The law can also prescribe the minimum and maximum amounts which could be fixed. In *Albania*, fines amount from 10,000 to 60,000 leke (\$95 to \$575). In *Namibia*, fines shall not exceed 8,000 Namibia dollars (\$1,100) or a term of imprisonment not exceeding two years (section 23(2), Social Security Act).

357. Some countries reported that in case of non-payment of contributions within the fixed time-limits, they charge interest on the overdue payments that is based on the

²⁹⁶ 26 U.S.C. paras 6601 and 6656.

²⁹⁷ *Thailand*: Social Security Act of 1990, sections 83, 96 and 97.

current bank interest rates. *Albania, Bulgaria, Ethiopia, Republic of Korea, Lithuania, Namibia, Saudi Arabia and Thailand* report that they impose a fixed interest rate, which is laid down in the law for the delayed payment after the deadline. In *Lithuania* 0.5 per cent daily interest is charged until the contributions are paid (article 38, Law on State Social Insurance). In *Albania, Ethiopia, Saudi Arabia and Thailand*, the amount of the interest is 2 per cent, in the *Republic of Korea*, 3 per cent, and in *Namibia*, 20 per cent. In *Bulgaria* and the *Republic of Korea*, the percentages are increased respectively by 1.3 per cent and 1 per cent for every additional month after the deadline. In *Honduras*, for example, interest is 2 per cent for military pensions and no fines are levied for arrears in the public sector.

358. Other countries levy additional fines for delayed payments. The Governments of *Ghana* and *Madagascar* report that delays in payment are sanctioned with a penalty. Sometimes, the amount of the penalty is fixed in the law. In *Belize*, overdue payment is subject to a fine not less than 500 Belize dollars (BZD) (section 52, Social Security Act) and in *Antigua and Barbuda*, not more than EC\$1000 (section 38, Social Security Act). In some countries, the law sets forth more elaborate conditions for the calculation of the penalty. In the *Bolivarian Republic of Venezuela*, a penalty is imposed by virtue of articles 86 and 88 of the Social Security Act on delayed payment, which is considered to be a serious offence, and is expressed in 100 tax units, the value of which being adjusted at the moment the offence has been committed. Private pension insurance companies in *Finland* are entitled to charge fines, which may amount to a maximum of double the contributions (section 186, Employees Pensions Act). In some other countries, two penalties can be imposed simultaneously. The Code of the *Republic of Belarus* on administrative offences of 21 April 2003 imposes a fine for each day of overdue payment amounting to 1/360 of the national bank refinancing rate on the date contributions were due. In addition, non-payment or partial payment of contributions shall be punishable by a fine of 20 per cent of the amount due.

359. In countries where the collection of social contributions is the responsibility of the tax authorities, such as *Bosnia and Herzegovina (Republik of Srpska), Bulgaria, Croatia, Hungary, Republic of Moldova, Norway*, and the *United States*, proceedings for the recovery of outstanding payments are carried out according to the local tax laws. The tax authorities are in a position to pursue a forced collection of outstanding payments through, for example, seizure of bank accounts and the property of the company and to proceed to auction sales of the assets.²⁹⁸ Such measures have also been reported by countries where the collection of contributions is the prerogative of the social security institutions. The Government of the *Philippines* refers to article 47 of the Workmen's Compensation Act according to which written warrants can be issued to confiscate, and sell by auction the properties of the employer who fails to pay contributions. Cash obtained from the auction shall be deducted for expenses of confiscation and auction and for the payment of outstanding contributions and additional payments. Any remaining cash shall be immediately returned to the employer and, if the employer does not claim this remaining money within five years, it shall become the property of the Fund. In *Thailand*, article 80(4) of the Social Security Act of 1990, as amended, states that the property of an employer may be seized according to an order of the Secretary General of the Social Security Office when employers do not pay contributions or fail to pay the full amount. In *Hungary*, one of the measures at the disposal of the Tax and Finance Control

²⁹⁸ *Bulgaria*: article 110(10) of the Social Insurance Code of 1999, as amended; *Estonia*: article 235 of the Contributions Act (OG Nos 84/2008, 152/2008 and 94/2009; *Moldova*: article 194 of the Fiscal Code.

Administration to collect outstanding payments is the temporary closure of the enterprise (Act XCII of 2003 on the order of taxation).

2. Penalties applied to beneficiaries

360. According to the principle established in national legislation, unduly received benefits shall be reimbursed, even when they have been paid because of an error committed by the social security institutions. In the latter case, facilities for repayment may be granted. In *New Zealand*, overpayments of benefits are repaid, usually through weekly repayments until the debt is cleared. Where unduly received benefits result from a misrepresentation of the beneficiary, their reimbursement is accompanied by a wide range of sanctions, in terms of fines and terms of imprisonment. In *Thailand*, unduly received benefits are punishable by a term of imprisonment for not more than three years, or a fine. In *Syrian Arab Republic*, article 109(1) of the Social Insurance Act punishes with a term of one month of imprisonment and a fine of not less than £15,000 (\$320) when false statements are made to obtain compensation or pension from the social insurance institution. In the *Philippines*, fraud, collusion, falsification, misrepresentation of facts or any other kind of anomaly shall be punished with a fine of not less than 500 Philippine pesos (PHP) and not more than PHP5,000 (between \$10 and \$110) and imprisonment for not less than six months or more than one year, at the discretion of the court.

361. In some countries, undue receipt of benefits under certain conditions, mostly related to the gravity of the offence, is considered a criminal offence. In the Netherlands, in addition to the recovery of the unduly paid benefit, an administrative fine is imposed. If the unduly paid benefit amounts to more than €10,000, the matter is referred to the public prosecutor who will decide if criminal proceedings will be initiated.

362. In other countries,²⁹⁹ receipt of unduly received benefits is considered, a criminal offence and is not linked to any condition. In *Benin*, section 140 of the Social Security Code states that the unduly receipt of benefits is qualified as fraud under the Penal Code. In *Canada*, under subsection 44(1) of the Old Age Security Act (OAS), misappropriation of funds is an offence under the Criminal Code. Discussions are being held to strengthen repression against fraud. Administrative penalties may be imposed against individuals who have been found to have knowingly made a misrepresentation; it is anticipated that these provisions will be brought into force in the near future. The Government of *Canada* states that penalty provisions are a deterrent measure intended to protect the integrity of the programmes and will ultimately ensure that pensioners receive the benefits to which they are entitled.

3. Penalties applied to social security officials and other professionals

363. Fraud by social security officials is usually covered by the provisions of the Criminal Code and administrative laws. More specifically, the Government of the *Philippines* refers to article 207 of Presidential Decree No. 626, whereby fraud committed by an employee of the social security scheme shall be punished by a term of imprisonment of not less than one year. Fraud committed by lawyers, physicians or other professionals result in their disqualification from the practice of their profession. In the

²⁹⁹ *Australia, Benin, Canada*. In *Australia*, the Criminal Code (section 135.2(1)) provides that “a person is guilty of an offence if: (a) the person engages in conduct; and (aa) as a result of that conduct, the person obtains a financial advantage for himself or herself from another person; and (ab) the person knows or believes that he or she is not eligible to receive that financial advantage; and (b) the other person is a Commonwealth entity”.

event it is committed by an official of the social security system or any government agency, the official concerned shall, in addition to the penalty, be dismissed without having the possibility of re-employment in the government service.

D. Undeclared work, social security evasion and fraud

364. The reports received from the majority of countries look at enforcement as an issue of the effective implementation of the existing social security schemes, ensuring affiliation of employers and workers. Many of these reports refer to the poor functioning of social security institutions, which are under-resourced, understaffed and suffer from a chronic shortage of qualified personnel and funds.

365. Industrialized countries reported on the extension of the phenomenon of economic activities carried out beyond any state control, qualified as undeclared work. It concerns the activities of registered businesses which do not declare part of their employees as well as of unregistered businesses which operate completely outside the control of social security, do not pay taxes and employ unregistered workers. Undeclared work is often characterized by the complexity of the methods used to escape enforcement of social security mechanisms, through, for example, having recourse to subcontractors employing undeclared immigrant workers working below the minimum wages and without paying social security contributions.

366. In many countries, undeclared work has reached important proportions and continues to increase. In *France*, for example, undeclared work brings in a loss of tax revenue ranging from an estimated €28 billion to €40 billion.³⁰⁰ The Committee notes that greater determination is required to reinforce measures against undeclared work, which is likely to deprive the social security system of an important source of income. *France, Germany, Italy, Switzerland* and *Turkey* reported on measures to combat undeclared work. In *Switzerland*, a campaign on undeclared work to encourage employers and workers to register with social security has been launched. Other countries have taken measures to combat undeclared work by encouraging business and workers to enter the formal economy.

Fight against undeclared work and the informal economy in Turkey

The Confederation of Turkish Employers' Associations (TİSK) reported that fight against undeclared work is a priority in *Turkey* and refers to the Social Insurance and General Health Insurance Act No. 5510 of 31 May 2006, as amended in 2008, which introduced measures to improve registration of companies and collection of contributions.

According to TİSK, "these measures are implemented in a way that companies will not be put in a difficult situation". According to the Act, incentives have been taken to reduce undeclared work, such as the payment of half of the optional insurance contributions of women working at home by the Government and the opportunity for part-time workers to pay missing contributions voluntarily. The Act provides for reinforced cooperation with the Ministry of Finance, the broadening of the rights of the officers of the Social Security Institution and collaboration with labour inspectors, the extension of administrative fines and the increase of the amounts (article 102). Other arrangements concern the payment of wages through bank accounts and the right of access by the Social Security Institution to information from banks, public administrations and other entities and institutions established by law (article 100). Public administrations and banks are obliged to control whether persons are registered or not in terms of insurance and notify the Social Security Institution about persons who are not insured (article 8).

³⁰⁰ "La fraude aux prélèvements obligatoires et son contrôle", Report of the Compulsory Levies Council, March 2007, La Documentation française.

TISK also reports on a *Turkish Action Plan to Fight the Informal Economy*, published by the Ministry of Finance on 5 February 2009, which is articulated along three axes: (1) promoting employment in the formal economy through the creation of employment and increasing voluntary compliance with social security laws; (2) strengthening the audit capacity, the sharing of databases and dissuasive sanctions; and (3) promotion of the awareness of the negative effects of staying in a dual economy.

367. Many developing countries reported on employers who do not comply with their obligations to register with social security institutions. Apart from the employers in the informal sector, there are others who, although formally registered, do not comply fully with their obligations to pay social security contributions. These employers may withhold contributions or contribute less than the amounts due,³⁰¹ keep or use the contributions paid by their employees for other purposes or deduct from the employees' wages contributions which should in fact be paid by the employer.

368. In *Argentina*, a National Plan for the Regularization of Labour was launched in 2003 by the Ministry of Labour, Employment and Social Security to ensure the effective coverage of all workers entitled to social security. The Plan introduced control measures by the regional branches of the Ministry in collaboration with the National Social Security Agency (ANSES) and the superintendent of labour risks. The trade union, *CGT-RA*, reports nonetheless that the country suffers from evasion of contributions since there is a lack of coordination and cross-checking of data between the various social security institutions, which are each independent. *CGT-RA* acknowledges nevertheless that some progress has been made in recent years in the coordination of their actions and participation in provincial controls, improving their efficiency.

369. In *Guatemala*, Decision No. 1221 of 2008 of the Board of Directors of the Guatemalan Social Security Institute set up a special division specializing in the timely and effective monitoring of compliance with the employers' obligations in order to reduce arrears of employers. The trade unions of *Peru*, the *CGTP*, *CATP* and *CUT*, report that two bills are being discussed aimed at attributing to the National Superintendency of the Contributions Administration (*Superintendencia Nacional de Administración Tributaria* – SUNAT) also with the collection of contributions and auditing functions for pensions, in order to establish a unified social security register with reliable data available to all agencies involved.

370. Although a number of countries have introduced new legislation or implemented specific policies and programmes to combat social security evasion, several countries and trade unions expressed their concern about the effect of the measures taken. The Government of *Uruguay*, referring to the reform of 1995 to encourage the formalization of employment and payment of contributions, states that these measures were not always satisfactory. The labour law reform promoting the deregulation in some respects of the labour market did not reduce the informal sector but, on the contrary, encouraged its expansion primarily through the phenomenon of outsourcing and decentralization. The Italian trade union *CGIL* reports that, despite the control mechanisms, the phenomenon of the evasion of contributions and the use of illegal workers is still widespread. The Government of *Italy*, reports on a pilot programme on the introduction of a voucher scheme to combat undeclared work in the agricultural sector. Despite the normative

³⁰¹ *Argentina, Australia, Belize, Cameroon, Canada, Chile, Colombia, Djibouti, Ethiopia, Ghana, Guatemala, Hungary, Republic of Korea, Lithuania, Mali, Mauritius, Morocco, Mozambique, Namibia, Panama, Philippines, Portugal, Swaziland and Uganda.*

instruments in force, the Italian agricultural sector remains susceptible to widespread exploitation of labour and illegality of undeclared work.

Italy

Voucher scheme for seasonal and occasional work

A voucher scheme, called *Sistema dei voucher nel settore agricolo*, was introduced by a Ministerial Decree of 12 March 2008 for supplementary work in the agricultural sector as an attempt to regulate work by students and pensioners who supply their services on an occasional basis during the grape harvest season. The voucher scheme applies to all seasonal work carried out by students younger than 25 and pensioners in agricultural activities with an annual turnover of less than €7,000.

Workers are paid using vouchers, which are credited to the workers on a magnetic card and then used to make cash withdrawals at bank machines. The magnetic card also carries information on the worker, which is relevant for social security records and those of the National Institute for Industrial Accident Insurance (INAIL). The scheme is now in the process of being further extended to other types of supplementary work including domestic work, gardening, the cleaning and maintenance of buildings, roads, parks and monuments, personal coaching, work for sporting, cultural or charitable events, emergency or social work, holiday work by young people aged under 25 years attending school or university, door-to-door deliveries and street sales of daily and periodical press. Occasional work also applies to work by family helpers in the economic activities of retail, tourism and services. (Act No. 133 of 6 August 2008, *Gazzetta Ufficiale* 21 August 2008.)

371. Reports received from a number of countries demonstrate that governments and social partners are fully aware of the weak coverage of social security due to the evasion of paying contributions. The Government of *Honduras* reports that there is a high rate of social security evasion of both enterprises and workers. Social security coverage is close to 20 per cent of the total population and 38 per cent of the working population. The trade unions of *Peru*, *CGTP*, *CATP* and *CUT*, report that in their view no effective measures have been taken to combat evasions of contributions due to the SUNAT, the organization which collects contributions for the old-age, disability, survivors', health and maternity schemes. The trade unions reported figures from the Central Bank indicating that collection of sales taxes increased by 187 per cent, income tax by 376 per cent and contributions to the SUNAT by only 106 per cent between 1999 and 2008. This leads trade unions to conclude that the state institutions tolerate evasion and are not able to prevent it, the administration of SUNAT is unsatisfactory and the Peruvian legal framework is weak in terms of the punishment of evasion by employers, who in some cases intentionally evade payment. As regards the private pension system administered by the AFP, the reports of the *CGTP*, *CATP* and *CUT* stated that, every month, 8,000 files are opened on companies that failed to register the pension contributions, resulting to date in 300,000 pending lawsuits, brought by the AFP only against companies that withhold contributions due for their employees. According to an ILO study, only 35 per cent of the economically active employed population in *Peru* benefited from coverage for old age, invalidity and survivors, which demonstrates a significant level of evasion from the obligation to affiliate to the social security system in the formal economy.³⁰² In *the Plurinational State of Bolivia*, the weak coverage is largely due to the structure of the labour market and social security is essentially focused on covering the employed population in formal employment accounting for 25 per cent of the workforce. This situation is compounded by considerable evasion of contributions, even in the formal economy.³⁰³ In order to find solutions to the evasion of social security, the Committee

³⁰² CEACR, Convention No. 102, observation, *Peru*, 2010.

³⁰³ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2010.

pointed out the need for improving the structure and organization of social security in *the Plurinational State of Bolivia* and *Peru*, which is characterized by a high number of organizations, a lack of coordination, no central supervision of compliance with social security, as well as to the need to adapt the system to the reality of predominantly self-employed informal employment.

372. On the other hand, some employees in the formal sector may also occasionally abuse social security through what is considered fraudulent means to obtain benefits through misrepresentation by, for example, the submission of forged documents or making false declarations and by abusing the system by not informing a change in status. Such practices were reported by *Australia, Benin, Jamaica, Republic of Korea, Mozambique, Netherlands, New Zealand, Portugal, Thailand* and the *United Kingdom*. Social security fraud can also be the result of an arrangement between the employer and the worker. The information also reveals that there may be collusion between the employer and the employee in benefit frauds.

373. A few countries reported on legislative measures against fraud committed by social security officials and medical doctors in the determination of benefits in favour of employers and beneficiaries. Errors might be committed which are not necessarily caused *intentionally* by either employers, employees or both and it is difficult in these cases to assess whether indeed there was fraud. The Government of *Guatemala*, for example, points out that it has adopted legislation which addresses the case where benefits have been awarded to an employee because of an error committed by both employer and employee. In this case, benefits are suspended and the employer is held responsible for the error. In the case of fraud or error, the social security administration may always initiate a claim for overpayment against the beneficiary who has mistakenly received social benefits.

E. New measures to combat social security fraud

374. Many countries referred to innovative programmes and policies to find solutions on how to promote compliance with the social security legislation, by both employers and workers, and to extend social protection in a context where the majority of economic activities are in the informal sector. The *Canadian Labour Congress* points out that many measures have been taken to implement legislation in the country (administrative controls, inspections, recourse to legal proceedings), but they are mainly repressive measures and not proactive measures. The Committee notes, however, that States have reported a number of policies and programmes, which include preventive measures as well, such as inspections and audits, training, awareness campaigns, reporting fraud and publicity. In the *United Kingdom*, the Department of Work and Pensions invested in the training of fraud investigators. The Government of the *Philippines* reports that, among the measures taken to enforce social security legislation, the Social Security System Anti-Fraud Department conducts training of its personnel to detect fraud and falsified documents. Furthermore, training is dispensed for human resources professionals on Philippine social security law and on employer obligations and responsibilities in this field.

375. Three African countries, *Gambia, Lesotho* and *Mali* and one Asian country, *Lao People's Democratic Republic*, report on public campaigns conducted by the social security institutions. The Government of *Gambia* observes that the aim of these campaigns is to support compliance with the social security schemes. In *Mali* there is a specific service of the National Social Security Institute (INPS), which dedicates its

activity exclusively to information and awareness raising of employers and employees. In *Chile*, a public register called “Boletín de Infractores Laborales y Previsionales” is published by the labour directorate, listing companies which have committed infringements against social security.

376. In *Italy*, INAIL, the institute managing the employment injury insurance scheme, reports that in 2009–10 the fight against tax and contribution evasion has been carried out as a crucial part of the wider surveillance and inspection activity of the institute, in particular by reinforcing the instruments of business intelligence, such as databases, creation of risk maps, and allocation of specific management resources to the fight against undeclared work. These instruments permitted, in 2009, the establishment of 12,000 new insurance subscriptions for companies which were completely unknown to INAIL, and to recover unpaid premiums of approximately €27 million. Being one of the most innovative European organisms in the fight against contribution evasion, INAIL has been awarded a certificate of merit for the effectiveness of its new intelligence techniques – “Supporting the surveillance to prevent fraudulent cases in contribution regularity”, at the regional forum of the ISSA in Warsaw (5 March 2010) within the framework of the “Good Practice Award” for the most efficient and innovative European Social Security Institution. This achievement of the INAIL attests to the effectiveness of the proactive approach to the fight against undeclared work, evasion of social security contributions and fraud.³⁰⁴

377. Combating social security fraud has taken a new and potentially unsettling dimension in countries where people are encouraged to report suspected abuse of social security, as in the *United Kingdom* and the *United States* for example. In the *United Kingdom*, there is a free hotline, where anyone can call anonymously to denounce persons who are suspected to abuse benefits, called the Fraud Benefit Hotline. A similar system exists in the *United States*, where anyone can fill out an online document with the details of persons suspected of fraud.³⁰⁵ However, the system may be misused for private purposes, lead to abuses and generate accusations of false wrongdoings. In this context, the US Social Security has issued warnings that there are reports about people receiving phone calls from so-called social security agents, trying to obtain information on individuals.

378. The magnitude of the losses sustained by public finance from social fraud and undeclared work has led many countries to look for new solutions in the form of a global approach. **The approach consists in establishing a close collaboration between social security institutions and other public services entrusted with supervision and enforcement powers, such as the tax authorities, the labour inspectorate, the police, customs and immigration services. The Committee considers that these measures are in line with the general responsibility of the State for the proper administration of the institutions and services under Article 72 of Convention No. 102.**

³⁰⁴ CEACR, ECSS, *Italy*, 2010.

³⁰⁵ See web page of the Office of the Inspector General of the US Social Security.

France
Measures to combat social fraud

Decree No. 2008-371 of 18 April 2008 created new structures to combat both social security and fiscal fraud. The National Committee to Combat Fraud, chaired by the prime minister, is the political body which defines the policy objectives to combat fraud. The National Delegation to Combat Fraud, an administrative body, under the responsibility of the ministry in charge of the budget, coordinates the action taken between the competent state services, on the one hand, and between these services and social security institutions, on the other. The delegation's task includes, further, the improvement of awareness of fraud and the promotion of the exchange of information, interoperability and interconnection of files. It guides the work of operational committees to combat undeclared work and of the local committees which coordinate all joint action at the local level undertaken by the administrative services responsible for combating fraud.

At the level of social security institutions, a coherent administrative network has been established with the creation of a fraud department for each branch of social security and the appointment of local focal points to share good practices and knowledge.

Social security officials and officials of the tax authorities are already entitled to share information, to carry out cross-checks, but these practices faced difficulties in implementation. An agreement of 3 April 2008 between the State (i.e. the Directorate General of Public Finance, the Directorate of Tax Legislation and the Directorate of Social Security) and the main social security institutions aims at organizing and optimizing partnership and exchange of information between all agencies responsible for combating fraud.

The agreement has three main objectives:

Pooling information available in order to detect fraud

- Each institution shall inform the other stakeholders when fraud is detected. Similarly, when judicial action is initiated and that the fraud involves several agencies, information and documentation shall be exchanged.

Facilitating data exchange between the different agencies

- Each party to the agreement will define the level of exchange and sharing of data (national, regional or departmental) and methods of exchange (types of support, authorized agents). Each party also undertakes to promote the direct consultation of its national databases by the other parties.

Developing information programmes and training of officers from each agency

- Each party makes its documentation available to the other parties and provides information within its field of competence.

In 2009, nearly two-thirds of the checked companies had to repay arrears of social security contributions for a total of €570 million, against just over €200 million in 2008. The attention of inspectors focused on thoroughly investigating selected suspicious cases mainly found in large enterprises. The non-payment of contributions in respect of premiums, fringe benefits and benefits in kind came as the first cause of social security arrears, representing almost half of the total amount. The fight against undeclared work lagged behind in terms of amounts, although growing rapidly. Inspections give rise to more than 10,000 criminal convictions each year.

Décret n° 2008-371 du 18 avril 2008 relatif à la coordination de la lutte contre les fraudes et créant une délégation nationale à la lutte contre la fraude, JORF n° 0093 du 19 avril 2008.

1. **Centralizing records and collection of contributions**

379. The Committee notes that there is an evolution towards establishing centralized systems of employment and social security related data. The Government of *Belgium* reported that a central register exists since 1990, called the Crossroads Bank on Social Security. In its reply, the Government of *Australia* refers to “Centrelink”. A number of

countries reported on projects that are under way or have just been completed recently to set up central registers. *Albania* reported that a draft bill is being prepared on the principal central register. In *Montenegro*, a tax administration reform project was implemented on 1 March 2010, called “Unified registration and collection of taxes and contributions”. This project enabled the integration of all existing registers into one and created conditions for the implementation of the general registration and reporting system for billing and collection of taxes and contributions.³⁰⁶

380. The information available in the reports shows that there are two basic models for collecting contributions: a centralized and a decentralized system. In the centralized system, the collection of contributions is entrusted to one central authority. Collection may be the task of one specific social security institution or the tax authorities. The collected contributions are redistributed to the different social security branches, which focus on the administration and payment of benefits.

381. The Committee notes that there is a clear trend in many European countries and in North America towards integrating social security contributions with tax collection. Examples are *Albania, Argentina, Australia, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Estonia, Finland, Hungary, Ireland, Italy, Latvia, Republic of Moldova, Montenegro, Netherlands, New Zealand, Norway, Romania, Slovakia, Slovenia, Sweden, United Kingdom* and the *United States*.³⁰⁷ This model has the advantage of achieving economies of scale, i.e. contributions are collected with less costs, and achieves better results in the collection of contributions. The Government of the *Netherlands* reports that auditing of payment of tax and social security contributions has become more efficient since 2005, when tax authorities took over the responsibility to collect contributions for social security institutions.

382. In other countries, such as *Algeria, Azerbaijan, Belarus, Brazil, China, Czech Republic, Egypt, France, Ghana, Israel, Japan, Kuwait, Lithuania, Madagascar, Mexico, Namibia, Poland, Saudi Arabia, Spain, Thailand, Tunisia, Uganda* and *Zimbabwe*³⁰⁸ collection of benefits has been centralized in a specific social security institution, which has been set up to collect and administer contributions. Since one social security institution collects and pays the benefits, it is called a full service social insurance institution.

³⁰⁶ According to the implementation plan, the registration of the insured in the Pension and Disability Insurance Fund and the Health Fund began on 1 March 2010. It started by submission of the unified return for the registration of taxpayers, payers of contributions and the insured at competent branch offices of the tax administration. The principle “one return – one counter” is promoted by the application of the unified return upon the registration of taxpayers. Previously, separate registrations of taxpayers and the insured for pension and disability and health insurance were required with four authorities (tax administration, pension and disability insurance fund, health fund and employment fund), by filling in 16 forms. These are now integrated into one central registry with the tax administration.

³⁰⁷ *Albania*: General Directorate of Taxes and Duties. Law No. 7703, dated 11 May 1993, “On Social Securities in the Republic of Albania” (amended); *Argentina*: Federal Public Revenue Administration; *Bulgaria*: The National Revenue Agency; *Canada*: The Canada Customs and Revenue Agency (CRA); *Croatia*: Tax office; *Hungary*: Tax and Finance Control Administration (APEH), Act XCII of 2003 on the order of taxation; *Netherlands*: Tax office; *Romania*: National Agency for Fiscal Administration, Government Decision 109 of 18 February 2009 on organization and functioning of the National Agency for Fiscal Administration; *Sweden*: National Tax Board; *United Kingdom*: Her Majesty’s Revenue and Customs.

³⁰⁸ *Algeria*: creation of single Fund to recover social security contributions of salaried employees. Décret exécutif No. 06-370 of 19 October 2006; *Poland*: Social Insurance Institution; *Spain*: Tesorería General de la Seguridad Social; *Ghana*: Social Security and National Insurance Trust (SSNIT); *Zimbabwe*: National Social Security Authority (NSSA).

383. There are different models of decentralized systems, mainly in federal States. In *Austria* and Germany all social security contributions are collected by decentralized health insurance funds. The amounts are redistributed to the pension and unemployment insurance scheme. The collection costs are reimbursed to the health insurance funds. Each social insurance fund can also collect its own contributions. Such was the case in *Romania* until 2003, when collection for employment injuries and occupational diseases, other contributions related to unemployment, health, as well as other risks, have been transferred to the national agency for fiscal administration.

2. Cooperation between social security and tax authorities

384. The Committee notes that, in addition to setting up central data banks, a number of countries have taken further measures to facilitate the exchange of data between different institutions that are involved in the administration of social security in order to combat fraud more effectively. In general, it involves collaboration between the social security institutions and tax authorities. In *Bulgaria*, the National Revenue Agency (NRA), the labour inspection directorate and the national social security institute collaborate closely together. The labour inspectorate has real-time electronic access to the “register of employment contracts” that each employer is compelled to notify to the NRA at the beginning and at the end of each employment contract and also when the contract is amended. In addition, the NRA, which collects social security contributions, provides the national social security institute with the data on the employment contracts and the data it receives from the insurance funds, employers and the self-employed on the contributions paid for the social security schemes. In the *Netherlands*, the social security institutions (old-age, disability, unemployment and social assistance) receive data from the tax authorities regarding the income of the beneficiaries and, if relevant, the composition of their household, possible assets or even the property of a car. Social security officials are able to check in their computerized system all the relevant data of their clients. In the *United Kingdom*, the Department of Work and Pensions has the power to check its data against those held by other government departments – for example, Her Majesty’s Revenue and Customs (HMRC) – to detect fraud committed by people working while claiming means-tested benefits.

385. In *Italy*, to fight tax and contribution evasion, a procedure (POSEIDONE) has been created allowing cross-checking of the data of the National Social Security Institute (INPS) with tax returns lodged with the Revenue Office and with Infocamere lists in order to verify the social security status of self-employed professionals and partners of companies having no social security registration. During 2009 the Revenue Office provided INPS with lists of more than 424,000 individuals, correlated with information present at the Tax Office, permitting identification of subjects residing in the country for less than five years or non-residents (mainly from non-EU countries or foreigners from EU countries) and to activate INPS inspections and checks on the proper fulfilment of their social security obligations. The elaborate data mining process of the large amounts of data available to INPS and cross-checking with external databases aims to discover previously unknown links and patterns of illegal conduct leading to evasion and/or failure to pay contributions. For example, the combination of internal databases permits assessment of potential gains for companies resulting from using particular types of contracts (e.g. part-time) in terms of balancing the performance anticipated by the employer against the social security contributions he has to pay for such workers (for sickness benefit, family allowance, etc.). By analysing business performance, indices of

the risk of evasion and/or failure to pay contributions can be created related to certain business types and local situations.³⁰⁹

386. In *Luxembourg*, the Act of 19 December 2008 on cooperation between administrative and judicial services and the strengthening of means for the administration of direct contributions, the administration of registration and public property and the administration of customs and excise established the legal framework for the exchange of data between fiscal administrative services, on the one hand, and the General Social Security Inspectorate, the Common Social Security Centre, the National Family Allowance Fund and the National Solidarity Fund, on the other. The Act envisages close cooperation between the Common Social Security Centre, the service administering direct contributions and the service administering registration and public property through the mutual and better targeted communication of information relating to the debts of enterprises to administrative services, allowing these services to assess, with full knowledge of all the necessary circumstances, whether it is appropriate to initiate bankruptcy proceedings. **The Committee considers that a unified system for the exchange of data between public institutions offers considerable potential for the improvement of governance and the formulation of more effective public policies in all the fields concerned. The exchange of data between the fiscal services and social security institutions should serve to improve the administration of the social security system and to develop a policy to combat social fraud, undeclared work and the evasion of social security contributions.**³¹⁰

387. Some countries indicated that they have instituted legal reforms to merge inspection and audit functions by the respective social security institutions into either one or a reduced number of institutions, which will act on behalf of the others. This evolution is parallel to the trend of centralizing the collection of contributions. In addition, collaboration with tax authorities is foreseen to reinforce fighting evasion. The purpose of these measures is to achieve greater efficiency with regard to enforcement and at the same time reduce the administrative burden for employers and rationalizing costs of the controlling bodies. In *Bulgaria*, social security contributions are collected by the tax authority but control is carried out by the national social security institute. According to article 107, Chapter VII of the Social Security Code, control is entrusted to the national social security institute, which covers disability, survivors', old-age, maternity and unemployment. Its mandate was extended in 2002 to include health and the supplementary compulsory pension insurance. Control can be performed together with officials of the NRA on the basis of an agreement between the Governor of the national social security institute and the General Director of taxes (article 108 of SSC).

388. In *Austria*, a joint audit of all wage-related taxes (GPLA – *Gemeinsame Prüfung aller Lohnabhängigen Abgaben*) has been implemented since 2003.³¹¹ The essence of GPLA is the examination of all wage-related charges (i.e. taxes on wages; municipal tax; health, pension, accident, unemployment insurance; insurance in case of insolvency, etc.), which had been carried out previously by three different institutions (tax administration, health insurance organizations and municipalities). Audits are carried out by either an inspector of the tax administration or an inspector of the Federation of Austrian Social Security. Each inspector audits the data which fall within its competence and the data of the other. The auditors remain subject to their respective hierarchy.

³⁰⁹ CEACR, ECSS, *Italy*, 2010.

³¹⁰ CEACR, ECSS, *Luxembourg*, 2009.

³¹¹ Second Tax Amendment Act of 2002.

GPLA prevents, in the interest of employers, unfair competitive advantages, resulting from withholding and/or reduction of fees and charges and aims at achieving uniformity of taxation for the purposes of “tax justice”.

389. In *Germany*, the social security contributions are collected by the health funds but it is the enterprise control service (Betriebsprüfdienst) of the German pension insurance institution that reviews collectively for all branches of social security (pension, sickness, unemployment, care and, since 1 January 2010, disability) and at least every four years, on the premises of the enterprises, whether employers have correctly reported and paid the contributions.

3. Exclusion from public tenders

390. The Committee notes with interest the introduction of new methods consisting in the adoption of deterrent measures, which impose sanctions that affect the economic interests of the company. Public investment via public contracts represents a high proportion of formal economic activity in both developed and developing countries. There is a concern that international competition pushes bidding enterprises to compress labour costs and working conditions by having recourse to informal workers who are not covered by any legal or social protection.

391. The Committee in its General Survey on Public Procurement of 2008 already referred to several member States whose legislation required the obligation of contracting enterprises to comply with social security obligations.³¹² The 27 Member States of the European Union and *Switzerland*, have enacted legislation to incorporate into their national legislation European Directive of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts. This Directive provides in its article 45(2)(e) that “any economic operator *may* be excluded from participation in a contract where that economic operator has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority”. On the basis of this Directive, States have thus the discretionary power to apply this ground for exclusion in their national laws, according to local legal, economic or social considerations.

392. In *Brazil*, companies applying for public tenders should submit proof of having fulfilled their tax and social security obligations.³¹³ In *Belgium*, the Law for the award of public works contracts and certain public supply and service contracts of 15 June 2006 states that a company who has been selected for public procurement has to comply with social security and tax laws (articles 41 and 42(2)). In the *United Kingdom*, article 23(4)(f) of the Public Contract Regulations of 2006 stipulates that authorities have a discretionary power to consider a company ineligible for a public tender if it has not fulfilled obligations relating to the payment of social security contributions. In *Austria*, the Public Procurement Act of 31 January 2006 states that the authorities exclude companies from public tenders when they have committed a serious fault against labour law, social security law and environmental law and when they have not fulfilled their obligations in terms of social security contributions and taxes (article 68(5) and (6)).

³¹² General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation No. 84, Third item on the agenda: Information and reports on the application of Conventions and Recommendations; Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution); 97th Session of the International Labour Conference, 2008, paras 105, 152, 170, 185 and 245.

³¹³ Article 29, Act No. 8.666 of 21 June 1993 on general bidding, as amended.

393. The duration of the exclusion of public tenders may be imposed for a certain period of time. For example, in *Hungary*, article 60(1)(e) of Act CXXIX of 2003 on Public Procurement, stipulates that companies and subcontractors are excluded from participation in a public tender procedure when they have not fulfilled their tax, customs duty or social security contribution payment obligations for more than one year. In *Portugal*, to participate in public tenders companies should not have been convicted during the last two years for the use of labour which was not declared in terms of tax and social security.³¹⁴ Article 449 of the Social Security Code of *Luxembourg* states that, in addition to a penalty, companies may be excluded from public tenders for a period of three months up to a maximum of five years when they acted intentionally when withholding contributions or levying unauthorized contributions.

4. Consolidation of offences

394. The Committee notes from the reports that in many countries legal proceedings to enforce social security legislation are scattered in the social security laws as well as in other laws, such as fiscal laws and the Penal Code. This makes the laws difficult to grasp for law practitioners and not easily understandable for citizens. As a consequence, similar offences are often punished by different types of sanctions and, more importantly, certain sanctions risk not to be enforced due to a lack of transparency of the law. In the *Netherlands*, offences against social security are punished according to the six laws establishing the social security system, whilst the Penal Code deals only with the punishment of forged documents in general, which could be produced by employers to reduce contributions and by employees to obtain the undue payment of benefits.

395. The Committee notes with interest the legislative measures reported by three countries, *Belgium*, *Spain* and the *Bolivarian Republic of Venezuela*, which have consolidated offences against social security in one single legal instrument, organizing them in categories. In *Spain*, the consolidated Act on Offences and Sanctions in the Social Order, Royal Decree No. 5/2000, of 4 August 2000, has consolidated in its Chapter III, three categories of offences of social security. The law establishes sanctions for offences committed by employers, workers, the self-employed and other social security beneficiaries for each category of offences, which can either be of a minor, serious or very serious nature (articles 21 to 23). According to article 39, in each category, there are three levels ranging from minimum, medium to maximum. Qualification of the levels depends on the negligence and intent of the offender, failure to comply with previous warnings, turnover of the company, the number of employees or beneficiaries affected and other circumstances that may aggravate or mitigate the level to apply to the infringement. In the *Bolivarian Republic of Venezuela*, Title VII of the Social Security Act sets out the existing penalties, expressed in “tax units”: being minor, with a fine of 25 tax units; serious, with a fine of 50 tax units; and very serious, with a fine of 100 tax units.

396. The Committee notes the measures taken by *Belgium* in order to combat more effectively social fraud. All offences against labour law and social security have been revamped in one single document, a bill on a penal social code, which has been adopted by the Parliament on 3 December 2009. The respect for fundamental rights is improved (rights of the defence, proportionality of penalties). Less serious offences are decriminalized and become exclusively administrative offences (with administrative fines), allowing courts to focus on the more serious forms of social security fraud. Rule of surcharges and the principle of multiplying the penalty by the number of workers

³¹⁴ Article 55(h) of Decree-Law 18/2008 of 29 Jan. 2008 (Code of Public Procurement).

involved in the offence is introduced and there is harmonization of administrative and criminal fines; uniform procedures for prosecutions for violations are introduced, at both criminal and administrative levels. Offences are grouped by subject and into the following four levels of sanctions:

Sanctions	Imprisonment	Penalty (penal) (€)	Admission fine (€)
Level 1			55–5 500
Level 2		275–2 750	137.50–1 375
Level 3		550–5 550	275–2 750
Level 4	6 months–3 years	3 300–33 000	1 650–16 500

F. The duty of social security institutions to inform and advise the persons protected

397. When industrialized countries report on enforcement of social security legislation, they refer not only to sanctions but also to mechanisms which guarantee how beneficiaries efficiently benefit from their rights under social security legislation. For the Government of *Belgium*, for example, enforcement means ensuring effective rights to the beneficiaries while, at the same time, not imposing on them the burden of the collection of documents that the institution can easily obtain itself. In this respect, the “Charter of the insured”, promulgated by an Act of 11 April 1987, established the duty of social security institutions to inform and advise the beneficiaries automatically, acknowledge receipt of any request and record information on employees via the Crossroads Bank (see box below).

398. In *Italy*, Act No. 243 of 2004 on the reform of the retirement system requires the INPS to set up a central database of members of all social security schemes, which will serve as a civil register showing in full the insurance status of all persons entered. The INPS will thus have all the data pertaining to every worker engaged in economic activity in Italy, and will be able to issue certificates and provide benefits in real time. To improve performance and efficiency, the INPS is committed to abandoning paper operations and conducting its business entirely online. Communications and internal and external operations are entirely computerized. Individuals, enterprises and organizations are able to access all services directly by Internet or by telephone. A key objective of the INPS in this respect is to enhance “transparency”, inter alia, by means of a Services Charter, which should allow the purposes and procedures for access to the services and the deadlines for their provision to be clearly conveyed and understood by the users.³¹⁵ At the same time, the development of computerized operations with their multiple applications give rise to significant confidentiality and security problems, which are particularly delicate for an Institute that compiles sensitive data. In this context, Legislative Decree No. 196 of 30 June 2003 issuing the Code for the Protection of Personal Data contains systematic regulations covering all issues relating to the protection of personal data. These texts represent a first model for the codification of provisions relating to the protection of data in Europe at the level of the European Community (Directives Nos 95/46/EC and 2002/58/EC) and international regulations. In accordance with these provisions, the INPS adopted a new organizational system for data privacy, which envisages the establishment of a body responsible for the

³¹⁵ CEACR, ECSS, *Italy*, 2005.

coordination of data privacy and the appointment of members of staff responsible for the processing of such data.³¹⁶

399. The Committee observes that the issues relating to the governance and administration of social security raised in the reports of the Italian Government are common to all States which have introduced computerized management of their social security systems. Strengthening the effectiveness of the government's administration in the field of social security and its very capacity to manage the legislative system that has become over-complex are conditional upon the optimal use of the potential offered by new information and communication technologies, including the Internet. **In view of these developments, the general responsibility of the State for the proper administration of social security institutions and services, while increasing in breadth, is also growing through the addition of a new dimension. Among the new responsibilities facing the managers of social security schemes are the need to ensure the institutional and operational integration of social security with other state systems, online operation, the security of information networks and the confidentiality of data. In these circumstances, the reliability, precision and safeguarding of the data used by the system are becoming key factors, as well as the appeal procedures available to challenge the electronic data used by the system, conduct an investigation in cases of information errors and, where appropriate, compensate the insured person concerned.**³¹⁷

400. The Committee observes that in high-income countries, the relations between the State and the individual, between the social security institution and the persons protected are increasingly taking place not in the traditional office space but in the electronic space, where the "rules of the game" are different. This electronic space however, should not escape the sphere of the general responsibility of the State for the proper administration of the institutions and services concerned, which the State has to accept by virtue of Article 71(2) of the Code. It is for the State then to ensure that electronic transactions are subjected to the rule of law and that the law in turn is adapted to the needs of regulating the electronic environment. The administrative and procedural branches of law should therefore establish, where necessary, specific standards for the electronic forms of interaction between the parties to social security relations. Being in the front line of the electronic government services to their citizens, public social security institutions should be the first to adjust their rules and procedures, setting example of what the "e-government" may look like in the near future. In this context, the Committee sees the need for the advanced development of the social security procedural law guaranteeing the right of the persons protected to obtain full information, electronically or otherwise, on the status of their relations with the social security institutions concerned and the concurrent obligation of these institutions to supply such information periodically and on request.³¹⁸ The Committee hopes that the establishment of an administration that operates entirely by computer with no paper documents and with direct online access would allow improvement of the quality and speed of the services provided to protected persons, greater operational autonomy and efficiency in the decentralized agencies throughout the country, and lower public administration management costs.

401. In 2009, the Committee praised the *Turkish* Government for having designed and carried out a profound restructuring and reform of the national social security system,

³¹⁶ CEACR, ECSS, *Italy*, 2008.

³¹⁷ CEACR, ECSS, *Italy*, 2008.

³¹⁸ CEACR, ECSS, *Italy*, 2010.

ushering it into the realm of modern management, information processing, financial auditing and communication techniques.³¹⁹ Though modernization of the Turkish social security system was long overdue, the speed with which these changes were taking place in recent years remains particularly impressive. **In the periods of rapid and profound reforms, the Committee considers it important to ensure that the pace and magnitude of change does not exceed the capacity of the insured population to adapt to them. Special concern should be paid to the situation of those categories of persons protected who, by being illiterate, weak, poor or living in remote areas, may experience particular difficulties in abiding by the new rules of conduct and communication procedures. A Government's general responsibility for the proper administration of the social security institutions and services under Article 72(2) of Convention No. 102 implies that equal access to protection should be guaranteed to all, but that the services themselves should be people centred, user oriented and easily attainable.** By associating the representatives of the persons protected, as well as the representatives of the employers, with the management of these institutions and services, Article 72(1) of Convention No. 102 establishes an extra guarantee against the possible emergence of administrative and technological barriers preventing easy access to benefits.

402. The requirement that a person who qualifies for certain benefits should submit evidence to the concerned social security institution could be felt as an obstacle by the persons concerned, but could be also used by the authorities to prevent people from applying. In *South Africa*, the South African Social Security Association (SASSA), the organization in charge of implementing the Social Security Act, has introduced some conveniences to support people to apply for the social old-age or disability grant. In rural areas, people often do not have identity documents proving their identity and in this case, SASSA invites persons to contact the nearest office which will inform applicants on alternative documents that will be accepted. Other facilities are being provided, such as the assistance of a SASSA officer to complete the application forms, the possibility that a member of the family or friend can apply on behalf of the applicant when they are old or too sick to travel to the office.³²⁰

³¹⁹ CEACR, ECSS, *Turkey*, 2009.

³²⁰ SASSA: You and Your Grants 2009/10, www.sassa.gov.za.

Belgium
Crossroads Bank for Social Security

About 3,000 institutions are responsible for the execution of the Belgian social security legislation. More than 10 million socially insured persons and 230,000 employers have very regular contacts with those institutions in order to assert their rights, to provide requested information, or to pay contributions. The business process re-engineering coordinated by the Crossroads Bank for Social Security (CBSS), has resulted in granting benefits and subsidiary rights automatically without citizens or their employers having to make declarations anymore and *the administrative burden for citizens and companies has been drastically reduced*.

In 1990, the administrative procedures were not customer oriented and not harmonized between the different social security institutions. Each institution had its own set of paper forms with accompanying instructions, on the basis of which, when a social risk occurred, it would ask for information that was specifically necessary to grant the rights as a result of that concrete risk. The institutions very often asked the insured persons and their employers for information that was available in another social security institution, rather than directly collect this information between themselves. The insured persons and their employers had to inform different social security institutions of the same facts, every time according to a different legal concept and administrative instructions. They had themselves to look for their rights throughout the social security system and could not count on the automatic granting of their rights on the basis of one declaration.

Today only one declaration has to be made by persons and their employers to the social security system in the following cases: at the beginning and the end of employment, which have to be made electronically, on the social security portal, or via a voice server. Every quarter of a year, the employer has to declare electronically which income each of his workers has earned, divided in income components that have uniformly been defined throughout the social security branches for workers and civil servants, and how many workdays and assimilated days each of his workers has worked. When a social risk occurs, persons or their employers have to declare the information about that social risk. Information about the historical income or the historical work performances or assimilated performances does not have to be reported anymore because it is obtained from the quarterly declaration of wages and working time data.

Each employer has access, via the social security portal, to the list of his workers, so that he does not have to keep his own personnel register anymore. All the social security institutions are connected to a network for the electronic data traffic managed by the CBSS and have the legal obligation to electronically ask one another for all information available in the network.

Chapter 3

The right of the beneficiary to complain and appeal in social security

A. Provisions of the surveyed instruments

403. The right to lodge a complaint and the right of appeal in social security matters ensure compliance with and the effective implementation of the rights of insured persons and of due process. The first generation ILO social security instruments on workers' compensation in the event of employment injury, as well as those on sickness, old-age, invalidity, survivors' and unemployment insurance, already recognized this procedural principle. However, their provisions remained very general, leaving considerable leeway to ILO member States with regard to their implementation.

404. A decisive step forward was made with the adoption of the second generation social security instruments. The Medical Care Recommendation, 1944 (No. 69), indicated that provisions should be made for the submission of complaints by beneficiaries concerning the care received to appropriate arbitration bodies under conditions affording adequate guarantees to all parties concerned (Paragraph 63). Beneficiaries who have submitted complaints to the competent arbitration body should have a right to appeal their decisions to an independent tribunal (Paragraph 112).³²¹ The Income Security Recommendation, 1944 (No. 67), also recognized a right of appeal for claimants in case of dispute with the administrative authority concerning such questions as the right to benefit and the rate thereof. It indicated that appeals should preferably be referred to special tribunals, which should include referees who are experts in social insurance law, assisted by assessors, representative of the group to which the claimant belongs, and, where employed persons are concerned, by representatives of employers also (Annex, Paragraph 27(8)). Recommendation No. 67 recognized a right of appeal not only for insured persons, but also for employers in any dispute concerning liability to insurance or the rate of contribution (Annex, Paragraph 27(9)). In addition, provisions for uniformity of interpretation should be assured by a superior appeal tribunal (Annex, Paragraph 27(10)).

405. Convention No. 102 in its turn provided that every claimant shall have a right of *appeal* in case of refusal of the benefit or *complaint* as to its quality or quantity (Article 70, paragraph 1). Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required (Article 70, paragraph 3). Where the medical service

³²¹ With regard to members of the medical or allied professions working for medical care services, Recommendation No. 69 indicates that their professional supervision, including disciplinary measures, should be entrusted to bodies predominantly composed of representatives of the professions participating in the provision of such services (Paragraph 64). As in the case of beneficiaries, the Recommendation envisages a right of complaint concerning their relations with the administration of the service (Para. 63), as well as a right of appeal to an independent tribunal against disciplinary measures decided upon by such bodies (Para. 113).

is administered by a government department responsible to a legislature, the right of appeal may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority (Article 70, paragraph 2). These provisions reflected the sequential and complementary character of the rights to complain and to appeal. In case of complaint, as to the quality and quantity of the benefit, the review of the decision taken by the local social security body is first carried out by a higher level administrative authority within the social security system itself. The procedure of appeal against the decision of this administrative authority could be engaged later in order to settle the dispute through the intervention of an external, normally judicial body, once the internal complaint procedure has been exhausted.

406. In accordance with Convention No. 102, the right of appeal should be guaranteed against decisions of a social security administration either to a court of a general jurisdiction or to a special tribunal. **The concept of appeal further implies the settlement of the dispute by an authority that is independent of the administration that reviewed the initial complaint. Merely guaranteeing the right to seek review of the decision by the same administrative authority would not therefore be sufficient to constitute an appeal procedure under Convention No. 102. In addition, in the absence of special appeal procedures against the decisions of an administrative authority responsible to the government which rules in the first and last resort, the Committee has previously observed that the safeguards provided for in the Convention could nonetheless be ensured by the application of the general rules governing the right of appeal to the ordinary courts in so far as these rules permit the review or annulment of any administrative ruling in the cases covered by Article 70.**³²²

407. Convention No. 168, which was adopted 36 years after Convention No. 102, reaffirms the complementary nature of the right of complaint and of appeal and systematizes their exercise as two successive stages in the treatment of claims. In accordance with Article 27 of Convention No. 168, in the event of refusal, withdrawal, suspension or reduction of benefit or dispute as to its amount, claimants shall, in the first instance, have the right to present a complaint to the body administering the benefit scheme and, in the second instance, to appeal its decision to an independent body. The distinction between complaint and appeal procedures is also relevant with respect to the bodies with which claims are to be lodged: while complaints should be addressed to the body administering the benefit scheme, appeals should be lodged with an independent body, such as a court or tribunal.

408. Neither Convention No. 102 nor Convention No. 168 determine the form to be taken by the complaint or appeal procedure. In many countries, the practice is to grant claimants the right to appeal to an administrative authority superior to that which decided in the first instance, as well as to special social security or labour tribunals or the ordinary courts. The complaint or appeal authority is usually an independent body (*Australia, Belize*). Some countries also indicate that appeals have to be made in writing (*Angola, Canada, Poland*). Analysis of government reports is nevertheless complicated by the fact that, in many of the cases, the reports have not made a distinction between the right to complain and the right to appeal and view the two concepts as synonymous.

³²² ILC, 45th Session, Report III (Part IV), *Information and Reports on the Application of Conventions and Recommendations: Report of the Committee of Experts on the Application of Conventions and Recommendations*, Part Three, "Minimum Standards of Social Security: Conclusions Regarding Reports Received Under Articles 19 and 22 of the Constitution of the International Labour Organisation concerning the Social Security (Minimum Standards) Convention, 1952 (No. 102)", Geneva, 1961.

B. Main types of mechanisms settling individual claims

409. One *hundred* countries provided information concerning the right of complaint and appeal in respect of social security. The majority of the social security schemes in these countries guarantee the right to appeal to a body independent of that which initially awards and pays benefits. There are also countries (*Swaziland, United Republic of Tanzania and Uganda*) which still do not have any national legislation in this field. Some countries indicated that, the introduction of such legislation is being considered (*Antigua and Barbuda, Swaziland and the United Republic of Tanzania*).

410. Some *countries* indicated that the right of appeal is guaranteed by their national Constitution (*Belarus, Bosnia and Herzegovina, Brazil, Chile, Guatemala, Italy and Uruguay*). In accordance with the Constitution of *Brazil*, a beneficiary who does not agree with the administrative decision made in the first instance is guaranteed a right of appeal. In *Chile*, the Constitution provides that if an individual's constitutional guarantees are violated by an administrative act, the person concerned has the right to lodge a complaint with a Court of Appeal in a rapid and expeditious procedure. In *Belarus*, the right of all persons to lodge personal or collective appeals with State bodies is also set out in the Constitution. State bodies and officials have to consider the appeal and respond on the merits in due time. In *Bosnia and Herzegovina*, the Constitution provides that all persons are guaranteed the right to appeal or other remedies against a decision determining their rights or legal interests, including social security rights. In *Uruguay*, article 30 of the Constitution provides that all citizens have the right of complaint to any and all State authorities. Furthermore, under article 317, a petition to revoke administrative acts may be submitted to the authority responsible for their enforcement within a period of ten days.

411. Several countries have established tripartite social security dispute settlement mechanisms. In *Algeria*, in the context of litigation in social security, special tripartite committees exist composed of representatives of workers, employers and credit unions, which are empowered to rule on disputes arising between social security institutions and the insured or other actors involved in the application of social security law. Complaints are examined by mandatory pre-review boards before they can be appealed to the courts. In *Djibouti*, both employers and workers have the right to lodge complaints before a tripartite board appointed by the Administrative Board of the National Social Security Fund (NSSF). The insured may refer the case to the labour courts if the complaint is rejected by the Board. In the *United States*, there is a second level of administrative appeal in most states, often consisting of a three member board composed of representatives of workers, employers and the public.

412. The information provided by governments has allowed the Committee to draw a distinction among four main types of legal procedures established by member States to review benefit decisions taken by the competent social security institutions: (i) internal administrative procedures; (ii) special judicial procedures; (iii) judicial procedures before general courts; and (iv) mixed procedures.

413. In *Mongolia, Saint Lucia and Thailand*, the right to seek a formal change of an official decision relating to a social security claim is only envisaged at the administrative level. Complaints against decisions made by lower administrative bodies may be brought to higher authorities or appealed to a special body set up within the social security administration. In *Thailand*, the Social Insurance Act establishes the right to complain through a hotline service or a letter of complaint to the Social Security Office over the Internet. The employer, the insured person or any other person who is dissatisfied with a

decision of the Secretary-General of the Office or the competent official is entitled to submit an appeal in writing to the Appeal Committee within 30 days of the date of receiving notification of the decision.³²³

414. In some cases, national legislation only provides for the right to complain or appeal to the tribunals and courts of the national judicial system (*Austria, Ghana, Namibia* and the *United Kingdom*). There may be a special judicial procedure for social security matters, although in most countries complaints or appeals have to be lodged with the general courts. In the *United Kingdom*, prior to the adoption of the Tribunals, Courts and Enforcement Act 2007, most tribunals had been created by specific pieces of primary legislation without any overarching framework. Many had been administrated by the government departments responsible for the policy area in which the tribunals had jurisdiction and appeals against the decisions taken laid with the tribunal in question. Following the adoption of the 2007 Act, tribunals were separated from their sponsoring departments and are henceforth administrated by a single Tribunals Service. The single tribunal system is not yet fully developed, but will ultimately consist of two tiers: the First-tier Tribunal and the Upper Tribunal, to which existing tribunal jurisdictions can be transferred. In most cases, a decision by the First-tier Tribunal may be appealed to the Upper Tribunal, and decisions of the Upper Tribunal are subject to appeal to a court. However, the right of appeal may only be exercised with the authorization of the tribunal which handed down the initial decision or the tribunal or court with which the appeal is lodged. It will also be possible for the Upper Tribunal to deal with some judicial review cases that would otherwise have to be dealt with by the High Court or the Court of Session.

415. In *Austria*, social security claims give rise to legal proceedings. The right to make a complaint against a decision by a social insurance institution is provided for in the Labour and Social Security Act.³²⁴ In the proceedings of first instance, the competent body is composed of a professional judge and two experts who are not judges. An appeal may be made against their decision to the High Court of the Land in labour and social matters. In *Namibia*, under the terms of the Social Security Act and the Employees Compensation Act, any person aggrieved by any decision in social security matters may, within a specified period of time following notification of the decision, lodge an appeal with the Labour Court.³²⁵ In *Turkey*, unless otherwise specified by law, all conflicts that may arise due to the execution of the provisions of social security laws are to be settled by labour courts. Labour law and social security cases are heard in specialized labour courts, the rulings of which may be appealed to the Court of Appeals, which has two chambers specialized in social security and labour law.

416. In a significant number of countries, the rights of complaint and appeal can be exercised through both administrative and judicial procedures by lodging the claim with the competent administrative bodies in the first instance (the right to complain) and the corresponding tribunal in the second (the right to appeal). In *Japan*, in matters relating to health insurance and employee's pension insurance, claims concerning insurance benefits have to be made to a social insurance review officer. If the claimant is not satisfied with the decision made by the latter, administrative appeals may be lodged with the Social Insurance Review Panel before claims can be submitted to courts of law for judicial review. In *Poland*, the decision of the social insurance institution may be

³²³ Social Insurance Act (No. 3), 22 March 1999.

³²⁴ Act amending the Labour and Social Law, 1997 (ASRÄG 1997) (No. 139).

³²⁵ Employees Compensation Amendment Act, 1995 (No. 5 of 1995).

appealed in the relevant court within a period and according to rules set out in the Polish Code of Civil Procedure.³²⁶ Jurisdiction for general social security matters is attributed to regional courts. However, in the matters related to sickness benefit, maternity benefit, family allowances, invalidity and work injury benefit, competence is attributed to district courts in the first instance. Appeals have to be made through the administrative body that took the decision under appeal. An appeal is first addressed in writing to the administrative body, which either: (i) admits the appeal and revokes (reverses) the decision or changes it; or (ii) upholds the decision and immediately forwards the appeal to the courts.³²⁷ In the second instance, claimants may lodge an appeal with the Court of Appeal and may ultimately appeal to the Supreme Court against sentences or decisions by courts of second instance.

417. Appeals may be lodged with different types of courts. While in most cases competence is attributed to administrative courts (*Bulgaria, Croatia, Germany, Netherlands, Sweden, Uruguay*), it may also sometimes lie with labour courts (*Austria, Cuba, Israel, Namibia, Syrian Arab Republic, Turkey*) or social security jurisdictions (courts and tribunals) (*Ethiopia, Gabon*). Certain countries have not specified the court with which appeals may be lodged, which implies that competence may lie with general courts (*Belize, Brazil, India, Latvia, Lithuania, Mozambique*).

418. In the *Plurinational State of Bolivia*, in cases where beneficiaries are not satisfied with the decisions of the *Comisión Calificadora de Rentas*, they may complain to the body that made the decision within five days of the date on which they received notification of the decision.³²⁸ If they are not satisfied with the decision, they may appeal to the High Court. **Though ILO standards do not prescribe the length of the period which should be available to the claimant to lodge a complaint, the Committee of Experts considers that such period should be of a reasonable duration and in that context the period of five days accorded to the claimant in the Plurinational State of Bolivia appear to be too short.** In the *Netherlands*, for example, the beneficiary has to complain within six weeks of notification of the decision made by the body responsible for paying the benefit. The administrative body (which may be the Social Security Bank, SVB or the Institute for Employee Benefit Schemes) is obliged by law to take a decision on the complaint. In case of disagreement with the decision, an appeal may be made to the administrative court at the local level. In the second instance, appeals may be lodged with the Central Appeals Court. In some cases, the legislation also provides for the possibility of appealing to the Supreme Court of the *Netherlands*. In *Lithuania*, insured persons have the right of appeal against the decisions and acts (omissions) of the local offices of the State Social Insurance Fund Board and other agencies of the Fund. The Fund Board has mandatory competence with regard to the extrajudicial settlement of disputes. The decisions and acts (or omissions) of the Fund Board may be appealed to the Chief Administrative Disputes Commission or to the courts.³²⁹ Appeals concerning the award and payment of pensions have to be examined by the Fund Board, and the decisions of the Board and its local offices may be appealed to the courts.³³⁰

³²⁶ Article 82, section 2, of the Social Insurance System Act, 13 Oct. 1998.

³²⁷ Section 477, Code of Civil Procedure.

³²⁸ Resolución Secretarial No. 10.0.0.0.087 of 21 July 1997, articles 9 and 11.

³²⁹ Sections 37(1) and (5) and 45 of the Law on State Social Insurance.

³³⁰ Section 45 of the Law on State Social Insurance Pensions.

C. Legal procedures in specific branches

419. In some countries, the body to which complaints and appeals are to be made varies depending on the type of benefit. The various branches of social security therefore have separate procedures. These are found most frequently in pension and health insurance systems, as well as unemployment benefit schemes.

420. With regard to pension insurance, in the *Republic of Korea*, the National Pension Act (No. 3902 of 1986) provides that a person who has an objection to a decision of the National Pension Service concerning entitlement to old-age, invalidity or survivors' benefit, basic monthly income, the pension premium and other benefits, has to make a request (which will also be interpreted as a complaint) to the Service for review. The National Pension Examination Committee is established to examine such requests. Any person who is dissatisfied with a decision made by the Committee may appeal to the National Pension Re-examination Committee within 90 days. In *Hungary*, the pension insurance administrative body may modify non-law-infringing decisions in favour of a client and without any restrictions on the basis of new facts and data obtained, upon request or ex officio, after the decision becomes final. Second instance procedures are examined by the Pension Insurance Legal Remedy Directorate, which is an independent body of the Central Administration of National Pensions Insurance and has jurisdiction over the whole country. If the decision is law infringing, the applicant has the right to appeal to the courts, which may overturn the decision and, if necessary, order the administrative body to conduct a new procedure within 22 working days, or it may modify the decision itself. In *Canada*, any complaint lodged by the surviving spouse or children of employees killed on duty concerning the amount, refusal or discontinuance of pension payments is reviewed by a separate body, the Canada Pension Commission. The Commission reviews the complaint, reaches a decision and informs the survivors and the administrator of the Public Service Income Benefit Plan for Survivors of Employees Slain on Duty (PSIBP). The Canada Pension Commission is administered by the Labour Program on behalf of the Treasury Board Secretariat.

421. In matters relating to medical care, the National Health Insurance Act of the *Republic of Korea*, provides that a person who objects to a decision by the National Health Insurance Corporation concerning entitlements, insurance premiums, benefits and benefit costs, has the right to complain. The Corporation and medical care institutions, for example, may also complain if they have an objection to a decision of the Health Insurance Review and Assessment Service assessing the reasonableness of medical care costs and benefits. Any person who is not satisfied with such a decision may request adjudication by the Health Insurance Dispute Medication Committee. If the person objects to a decision of the Corporation or the Health Insurance Review and Assessment Service, or a decision on his/her complaint and request for adjudication, an administrative appeal may be brought against the decision. A decision on such an appeal has to be made within 60 days of the date of the filing of the appeal and, once the decision has been made, written notice of the decision has to be provided to the appellant without delay. In *Hungary*, a two-level public administrative procedure is envisaged. The body responsible for examining complaints within the National Health Insurance Fund is entitled to consider any complaint against a decision by a first-level regional health insurance body. If the complainant is not satisfied with the decision of the first instance, he/she may appeal to the Health Insurance Supervisory Authority. In the *Dominican Republic*, those covered by pension fund administrators, health managers and occupational risk managers may appeal to the National Medical Committee if they disagree with an opinion respecting a disability issued by a regional medical commission. The appeal may be made no later than ten days following the day on which the opinion

was issued. In *Turkey*, with regard to invalidity benefit, a Higher Health Board of Social Insurance is authorized to hear appeals against a decision by the Social Security Institution.

422. With regard to unemployment insurance, the Social Security Protection Act of 2004 (Public Law No. 108-203) of the *United States* requires states to offer all individuals whose claims for unemployment compensation have been denied an opportunity for a fair hearing before an impartial tribunal. All state laws provide that appeals at the initial stage are to be examined by a single person, who is usually a referee, examiner or administrative law judge. The time period for making an appeal varies between five and 30 days. Most states provide for a second stage of administrative appeals, often to a three-member board representing workers, employers and the public. Individuals who are not satisfied with the outcome of their administrative appeals can take their cases to the state or federal court system, and all the way to the Supreme Court. In *Poland*, unemployment benefit is granted by the administrative decision of a *staroste* (director of the district job centre), which can be appealed to the territorially competent *voivode* (governor of a province), as envisaged in the Code of Administrative Procedure. The decision of a *voivode* can then be appealed to an administrative court.

423. In the family benefit scheme, for example in *Estonia*, the right to challenge decisions related to benefits is set out in the State Family Benefits Act, the Maintenance Allowance Act and the Parental Benefit Act. Any person who disagrees with a decision relating to allowances and benefits under these Acts has the right to complaint to the Pension Committee. In the event of disagreement with the decision of the Pension Committee, he or she may have recourse to an administrative court within 30 days.

424. In matters of employment injury benefit, the Industrial Accident Compensation Insurance Act (No. 4826 of 1994) of the *Republic of Korea* provides that any person who is dissatisfied with a decision by the Workers' Compensation and Welfare Service (with regard to insurance benefits, medical expenses, pharmaceutical expenses, measures to change a medical treatment plan, the lump-sum payment of insurance benefits, the collection of undue gains and the subrogation of the right to receive benefits) may apply for the decision to be reviewed by the Service's Industrial Accident Compensation Insurance Examination Committee, which is composed of experts, and subsequently to the Re-examination Committee. Both Committees have to make a decision on a request for examination or re-examination within 60 days of the date on which the request was received.

D. The claimant's right to assistance by a qualified person

425. The right to receive legal aid is an essential means of helping beneficiaries in their efforts to identify and understand their legal rights and obligations. It is often the case that the provisions of the relevant national legislation are not formulated in simple and readily understandable terms. Such aid is also rendered necessary by the unequal positions of the parties involved, as state institutions and bodies are in a more favourable position. Beneficiaries often feel helpless when faced with complicated provisions, and without proper assistance they may be unable to resolve the issues that arise. Assistance in social security matters enables people to understand their legal obligations and assert their legal rights more effectively.

426. As early as 1944, Recommendation No. 67 indicated that appeal bodies should be composed of referees who are experts in social insurance law, assisted by assessors,

representative of the group to which the claimant belongs and, where employed persons are concerned, by representatives of employers also (Annex Paragraph 27(8)). The third generation social security instruments took this idea forward by formally recognizing the right of beneficiaries to receive legal assistance. The Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), provides that procedures shall be prescribed which permit the claimant to be represented or assisted, where appropriate, by a qualified person of his choice or by a delegate of an organization representative of persons protected (Article 34, paragraph 2). Convention No. 168 explicitly provides that the appeal procedure shall enable claimants to be represented or assisted by a qualified person of the claimant's choice or by a delegate of a representative workers' organization or by a delegate of an organization representative of protected persons (Article 27, paragraph 2).

427. Some countries referred in their replies to the right to be represented by a qualified person of the claimant's choice (*Australia, Austria and Poland*). In *Switzerland*, section 37 of the Federal Law on General Social Insurance of 6 October establishes the right to representation and aid by legal assistance in matters related to social security. In *Australia*, a person can be legally represented at any stage of the review process. In *Austria*, the plaintiff is entitled to represent her – or himself during the proceedings at the regional court, although representation by a lawyer is usually required in such proceedings. The plaintiff may also be represented by a representative of a voluntary professional association referred to in a collective agreement. In *Poland*, the legal assistance provided by a lawyer or a legal adviser is obligatory if the dispute is referred to the Supreme Court. In the *Dominican Republic*, Act No. 87-01 establishing the Dominican Social Security System entitles beneficiaries to be assisted by the Directorate of Information and the Defence of Insured Persons where such protection is necessary. This assistance includes information about their rights, duties, resources, legal entities, legal action and the lodging of complaints, representation and the follow-up of cases. In the *United States*, in some cases, claimants are entitled to financial assistance to obtain legal representation. In *Spain*, the proceedings before the Social Court do not require the assistance of a counsel or attorney. Employees may be represented and/or advised by a person of their choice.

E. Simple and rapid litigation procedures

428. **Simple and rapid procedures are crucial to ensure that the rights of complaint and appeal are accessible and effective. They are especially important in social security matters as benefits are, in most cases, the only financial support available to beneficiaries. The Committee stresses that decisions by the relevant administrative body that reject or modify benefits, claims or requests should be explained to individual claimants in writing in simple, clear and easy to understand terms.** By “easy to understand” the Committee intends for language and terminology to be used that would be readily understood by an individual of similar background, education and related circumstances.

429. Recommendation No. 67 recognized that the law and regulations relating to social insurance should be drafted in such a way that beneficiaries and contributors can easily understand their rights and duties. In devising procedures to be followed by beneficiaries and contributors, simplicity should be a primary consideration (Annex, Paragraphs 27(3) and (4)). Convention No. 168 gives expression to this idea by providing that the available complaint and appeal procedures shall be simple and rapid (Article 27, paragraph 1).

430. In the *United States*, the Social Security Act does not explicitly require simple and rapid procedures. It does however address related matters by requiring that notices about programme benefits be written in simple and clear language (section 42). Because the Act establishes an obligation to provide benefits promptly, social security institutions are continuously looking for ways to streamline processes. In *Austria*, the procedural law of the social courts provides for the rapid treatment of claims. In *Italy*, in order to achieve a more rapid and simple procedure and effective protection of social rights, the Code of Civil Procedure introduced a process that includes oral hearings and the right of the judge to attempt conciliation. Hearings may not be postponed and the sentence must be filed with the Registry within 15 days. The procedure is also characterized by immediacy through the direct enforceability of interim rulings in favour of workers, as well as by the extended powers of the courts.

431. However, the trend to make the procedures in social security matters simple and rapid is not universal. One country, *Namibia*, admitted that the appeal procedures in social security matters are neither simple nor rapid. In *Peru*, according to a report by the ombudsperson, as reported by the workers' organizations (CGTP, CATP and CUT), the number of complaints in social security matters increased significantly in 2007, while the treatment of complaints, particularly in relation to old-age benefits, suffers from severe deficiencies. The Welfare Standards Office (ONP), which is responsible for the recognition and payment of pension entitlements, is one of the main causes of delays and the denial of pension rights. In 2008, some 15,000 procedures were delayed for over a year, while over 90,000 others were awaiting examination. The Constitutional Court³³¹ has found that the participation of the ONP in judicial proceedings related to old-age benefit is unconstitutional and contrary to its case law. Despite the time that has elapsed, no effective measures have been taken. The responsibilities of the ONP include the assessment and payment of pensions, which is preventing thousands of workers from enjoying their entitlement to social security.

F. Observance of the principles of due process

432. The right to appeal a decision is a fundamental element of procedural fairness and of fair treatment. In addition to the provisions of international social security standards referred to above, the universal and fundamental nature of the right of access to the courts and the complementary right to an effective remedy are recognized by the international human rights instruments. Set forth by the Universal Declaration of Human Rights in 1948 (Articles 8 and 10), the right of every person to a fair and public hearing by an independent and impartial court or tribunal within a reasonable time has since then also been recognized by several international and regional human rights standards, including the International Covenant on Civil and Political Rights (ICCPR) (Article 14) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (Article 6(1)). In a general comment, the UN Committee on Economic, Social and Cultural Rights (ESCR) emphasized the importance of ensuring the availability of appropriate means of redress and accountability for violations of ESCR within national legal systems. States are under a duty to ensure that legal remedies, whether of a judicial or administrative nature, are available to aggrieved individuals or groups. These remedies must be "accessible, affordable, timely and effective".³³²

³³¹ Case No. 05561-2007-PA/TC, of 24 March 2010.

³³² General comment No. 9, *The domestic application of the Covenant* (19th Session, 1998), UN doc. E/C.12/1998/24, para. 9.

433. The right to a fair trial therefore is a fundamental safeguard to ensure that individuals are protected from unlawful or arbitrary deprivation of their human rights and freedoms, including the right to social security, and enables effective functioning of the administration of justice. This fundamental right is intended to guarantee that courts and judges are impartial and have judicial independence to decide disputes according to the facts and the law, including freedom from improper internal and external influence. They should also have comprehensive legal knowledge and expertise. The right to a fair trial guarantees that any decision has to be duly motivated or, in other words, explain the reasoning that led to the decision in the dispute, and be legally enforceable. It also implies procedural equality between the parties to the dispute. **The right to have a recourse duly examined has been considered by the Committee of Experts as falling under the general responsibility of the State to guarantee the proper administration of social security institutions and services.**³³³ Any dysfunctions in social security recourse procedures therefore have to be duly addressed by the State in conformity with the principles guaranteed by international social security law. The Committee of Experts has also observed in this respect that the existence of appropriate recourse procedures should not be used abusively by forcing beneficiaries to file claims against decisions systematically denying their right to benefits.³³⁴

434. As mentioned above, social security disputes are settled in two stages: a first complaint phase, generally before the higher level administrative body within the social security institutions, and a second stage of appeal against the decision of the administrative body, generally before an administrative, judicial, labour or social security court or tribunal. Both in the complaint and appeal phases of disputes, the fundamental principles guaranteed by ILO standards and human rights instruments should be generally applied, as they intrinsically form part of the notion of the rule of law. Common law countries have developed the notion of *due process*, which ensures that the State and its services have to comply with all the legal rights due to a person in accordance with the law. The European Court of Human Rights has acknowledged that the “right to fair trial” (Article 6 of the Convention), is applicable to claims concerning social security benefits. That means that within all the 47 Member States of the European Convention on Human Rights “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.³³⁵ The non-execution of judgments granting social benefits is considered to be a violation of “fair trial” as well (*Burdov v. Russia*, 2002). Thus, the protection of the right to complaint in social security under the European Convention on Human Rights is very comprehensive.

435. In most cases, fundamental procedural guarantees cut across labour, civil and administrative procedures for the settlement of social security disputes. Nevertheless, certain important, yet very specific procedural rules, such as those related to the burden of proof or prescription periods, may sometimes vary in administrative and judicial procedures. In other cases, while complaint procedures may be regulated by administrative procedural law, appeal procedures may in turn fall under the rule of judicial procedures. Such differences do not facilitate the situation of beneficiaries, as they may have to submit claims under distinct procedural rules.³³⁶

³³³ For example, CEACR, Convention No. 102, observation, *Peru*, 2009.

³³⁴ For example, CEACR, Convention No. 102, observation, *Spain*, 1996.

³³⁵ The leading cases were *Feldbrugge v. Netherlands* in 1986 and *Deumeland v. Germany* in 1986.

³³⁶ For example, CEACR, Convention No. 24, observation, *Colombia*, 2006.

436. The general principles set out in international social security instruments, which call for recourse procedures to be simple and rapid, militate in favour of the harmonization of the applicable procedural law throughout dispute settlement procedures in social security matters. In certain cases, due to the sometimes inadequate guarantees relating to the impartiality and independence of the administrative bodies that examine complaints in the first resort, **emphasis should be placed on observance during the complaint procedures of certain fundamental principles, which should therefore be reinforced, such as the right to obtain a rapid and reasoned decision or the right of access to information. The principle of equality between the parties is also extremely important in social security disputes, as claimants usually come up against a government or administrative body. Dispute settlement bodies should therefore ensure that individual claimants have reasonable opportunities to assert or defend their rights. Pursuant to Articles 70(1) and 71 of Convention No. 102, where the gratuity of the appeal procedures for the beneficiary is not ensured, the cost of appeal should be kept at the absolute minimum so as to allow for the effective exercise of this right, including by persons of small means. Both parties should be guaranteed the right to engage a lawyer or other qualified representative of their choice. The law should guarantee that claimants who cannot afford legal assistance are entitled to be represented by a public defender/counsel for the defence appointed by the competent authority. Each party should also have access to the relevant evidence, including documents, expert opinions, etc. One of the most important principles of regular proceedings, namely the prompt rendition of justice, is also crucial in social security matters, since claimants often have to rely on benefits to survive. This underscores the need to establish a procedure for the rapid solution of cases where the urgency is manifest. Another principle that is applicable in social security legal procedures concerns the burden of proof, which should not lie exclusively with the complainant.**

437. The Committee considers that development by the ILO of a best practice guide to social security procedures would be a valuable tool for legislators and social security institutions and, if widely disseminated and followed, would no doubt facilitate improved access, expediency and efficiency in the exercise in practice of the social security rights of the persons protected. Clearly, any such improvements in the procedures regulating the provision of benefits the world over would result in tens of thousands of beneficiaries being salvaged from undue hardship. The establishment of such a social security procedural guide would improve the efficiency with which individual rights are exercised in social security matters.

438. These features – the right to clear and easy to understand notice, the right to simple and rapid litigation procedures ending in the prompt rendition of justice, the right to appeal an adverse decision, and the right to assistance from a qualified person throughout the claims and appeals process – are core elements of procedural fairness. Many countries provide some of these elements and a number of countries provide all of them. Social security claimants around the world too often face related challenges in terms of poverty, literacy, and remote living conditions as they struggle for access to critical income support and medical care. The Committee believes strongly that all countries should provide these core elements of due process, which are vital to claimants' achievement and maintenance of essential social security protections.

Part IV. Making up the deficit in social security regulation

439. This part of the Survey relates social security to three out of four strategic objectives of the ILO – social protection, employment policy and social dialogue – within the framework of the integrated approach established by the Declaration on Social Justice for a Fair Globalization of 2008.³³⁷ It delineates a global deficit of social security regulation, such as to undermine the ability to maintain its finances in a viable and healthy state, create and exploit synergies emerging from coordinated economic and social policies, and to strengthen social cohesion and equity through effective social dialogue. **The Committee is particularly concerned as to the fact that the current global financial and economic crisis has produced an effect of “negative integration” of financial, economic and social policies, where financial problems lead to economic slowdown, public budget deficit results in cuts in social protection, austerity measures lead to a breakdown of social dialogue, which in turn threatens social cohesion and political stability. Social security is being increasingly drawn into the vicious circle of depleting resources, growing public debts, reduction of benefits and social protests. Different means are used by governments to break out of this vicious circle, ranging from strong economic stimulus to severe austerity measures. While not prejudging the outcomes, both economic and political, the Committee of Experts points out the capacity of the power of the rule of law and ILO standards to establish a post-crisis financial and economic order in which social security schemes would be more financially protected, economically integrated and democratically managed.**

440. Until recently, the prevailing paradigm for the health of the global economy has revolved around a prescription (following the “Washington Consensus”) in which countries pursue policies of financial deregulation, fiscal discipline and privatization. However, in light of the experience of the recent financial crisis, a new consensus, as discussed at the G20 Meeting of November 2010 in Seoul, will be built around a set of nine pillars for generating growth, of which social protection and good governance are part.³³⁸ Beliefs that more markets are always better and light-touch regulation of such markets is preferred are being questioned and criticized. The solution to the global financial and economic crisis required increased involvement by governments through strengthening of the rule of law. A precondition to sustainable progress is seen in recasting the regulatory framework of the financial system, strengthening public oversight and returning to solidarity-based social security systems.

³³⁷ The linkages between social security and the strategic objective of promoting respect for fundamental principles and rights at work were already examined by the Committee in Part II of the Survey.

³³⁸ See the Seoul Summit Document, www.seoulsummit.kr.

Chapter 1

Strengthening protection of social security funds

441. Ever since the mid-1990s when the World Bank sounded an alarm regarding the future viability of social security systems of countries with ageing populations, an increasing number began to review their schemes. A significant trend developed wherein countries redirected part of the social security contributions from pay-as-you-go (PAYG) schemes into partially or fully funded schemes; financial interests thus took centre stage, seeking in higher yields a solution to pension problems. As a result, high levels of assets accumulated in social security funds, quickly turning them into the biggest institutional investors and intensifying the need to maximize the performance of their assets. In many instances, financial management was outsourced to external managers whose goals and management culture often did not align with those of the social security schemes. A proper understanding of relevant social security standards (including how transparent the decisions should be and what independent oversight was needed to hold management accountable), was late in coming to institutional investors. The responsibility of the State for the proper management of its social security system, which applied directly in the PAYG schemes, became thinly spread over the emerging multi-pillar social security systems, with the possibility of privately managed schemes escaping proper financial supervision.

442. In recent years, the understanding has crystallized that, in order to address the increasing range of contingencies that social security systems are exposed to and to align risks and returns in line with their primary goals of providing social protection to their members, it is necessary to put in place an effective financial governance structure. The financial crisis of 2008 made it evident that a stronger “firewall” of financial regulations and international governance standards need to be constructed to shield social security finances from imprudent fiscal/fiduciary decisions and political pressures. The building blocks for this firewall, the Committee wishes to underline, are readily to hand in the form of the principles of good governance set out in Convention No. 102. To draw the attention once again of the ILO constituents to these principles, the Committee has structured this chapter around the following four principles, which, though representing nothing more than common sense, facilitate, inter alia, the distinguishing of properly from badly managed social security systems:

- **social security financing should be sustainable, with the assumption by the State of general responsibility for it;**
- **social security funds should be protected to the best extent possible against mismanagement, cyclical fluctuations and market failures;**
- **the purchasing power of benefits in payment should be maintained by adjusting them in relation to the cost of living;**

- **financial deficits in relation to social security should be obviated in the long term, through the establishment by the State of a funding plan to assure such solvency.**

A. Provisions for sustainable financing and the general responsibility of the State

1. The principle of collective financing

443. An effective means of deriving revenue is an obvious prerequisite for the success of any social security scheme. Certainty, security and adequacy of benefits paid out of social security funds depend on the regular and systematic inflow of financial resources and pose the basic question of how these resources should be raised. There are, broadly speaking, two main options available for this purpose with a view to secure an equilibrium between the system's revenues and expenditures on benefits: to raise the necessary resources collectively from all members of the community or to leave each member to rely on the individual accumulation of capital, the investment of which will provide future benefit. The surveyed instruments, as is the case for all up-to-date ILO social security Conventions, are based on the principle of collective financing of benefits, following which the cost of benefits, as well as expenses for their administration, shall be borne collectively by way of insurance contributions or taxation or both and distributed fairly among the stakeholders (Article 71(1) of Convention No. 102). This was made particularly clear during the preparatory work on Convention No. 102: "The primary question concerning financial resources to be dealt with in the international regulations, therefore, would appear to be that of the appropriate allocation of financial responsibility among insured persons, employers and the State. ... It is an essential part of the concept of social security that the risk being dealt with be pooled, through collective assumption of the financial burden of paying benefits. There are various possible combinations of contribution or tax arrangements by which this may be effected. The language proposed ... does not attempt to prejudge these, except that it would undertake to rule out solutions which would prove unduly onerous for persons having small means. The language also suggests the desirability of placing an upper limit on the share of employees, in order that at least half of the revenues of social security schemes will be derived in a more social manner through subsidies from general revenues or employer contributions".³³⁹

444. The Committee observes that national practices regarding the financing of social security schemes exhibit considerable diversity ranging from tripartite contributions by insured persons, employers and the State, to schemes financed by the contributions of each one of them alone, as well as schemes financed jointly by the contributions of workers and employers, with or without state subsidies. In view of such diversity of national financial policies, Convention No. 102 did not attempt "to give a stamp of approval to one particular method of financing, to the exclusion of alternative methods"; instead it sought "to set forth certain broad basic principles with which many countries could comply even though applying quite diverse financial policies".³⁴⁰

445. The flexibility of Convention No. 102 with regard to the methods of financing, however, does not mean that "anything goes":

³³⁹ *Objectives and Minimum Standards of Social Security*, Report IV(1), International Labour Conference, 34th Session, 1951.

³⁴⁰ *ibid.*

flexibility is not a synonym of laxism and the possible equivalence in the use of different formulae does not mean that all the solutions are admissible. Thus, the periodic nature of the cash benefits, the obligation to guarantee their level and to maintain their real value cannot be ensured by the defined contribution schemes. The option of means testing the benefits, which converts them into a safety net, is in turn limited only to schemes covering all residents. The use of voluntary insurance schemes, to which belong the majority of private occupational schemes, is subjected to the condition of their supervision by the public authorities or by the social partners and of the extension of their coverage to a substantial part of workers. Financing by way of contributions or taxation excludes schemes based on direct liability of the employer as well as those financed through commercial insurance “primes”. It is apparent that notwithstanding the different levels of protection required by the international standards, there are limits to reforms, particularly to those which lead to privatization of social security. In this resides a guarantee against social regress, the provision of which has been traditionally the role of ILO standards and which acquires the prime importance under the present circumstances.³⁴¹

446. It should be borne in mind that the design of a pension scheme – which is often the most costly element of a national system of social security and hence attracts the most attention – is the result of a large array of choices. Of these, two, in particular, stand out and are often used as the basis on which to characterize the scheme as a whole:

- whether the basis of pension calculation should be related to pre-retirement earnings (so-called defined benefit, or DB schemes) or directly to contributions paid (so-called defined contribution, or DC schemes); and
- whether the financial system should be based on the provision of monies as needed for each year’s benefit payments (so-called pay-as-you-go, or PAYG financing) or based on the advance accrual (from higher contribution rates) of assets which are invested in reserved funds (so-called full or partial funding).

From a technical perspective, each choice has advantages and disadvantages. Many schemes seek to maximize the former and minimize the latter by means of a so-called “multi-pillar”, or “multi-tier” approach, in which elements of DB or DC design, PAYG or funding, are combined in selected proportions. In recent years, a strong trend has developed towards schemes with DC pensions, often associated with fully funded financing based on individual accounts. Such schemes (if implemented on a single-tier basis) carry high risks for members, whose prospective pensions are very vulnerable to the risks associated with investment fluctuations – as seen vividly in the recent global financial crisis. For this reason DC schemes may not meet the requirements of Convention No. 102. Because of the close association between the trends to DC design and (full) funding, some commentators have assumed, mistakenly, that these features of scheme design are equivalent. In fact, many DB schemes are funded, and in a few countries experience is being gained with PAYG-financed DC schemes (so-called “notional defined contribution”). In light of the diverse range of possibilities, rather careful analysis is needed of both the adequacy of and risks associated with each national system in totality.

447. Over recent decades, proliferation of such fully funded schemes based on individual accounts was observed in transition countries of Central and Eastern Europe and in Latin American countries, challenging the basic principles of organization and management of social security advocated by the international labour standards. In 1981, *Chile* was the first country to initiate old-age pension reforms based on mandatory funded individual retirement accounts and moving away from public management. Beginning in the 1990s, several other Latin American countries went in a similar

³⁴¹ M. Voirin: “Les normes internationales de sécurité sociale à l’épreuve du temps”, in *Repenser la sécurité sociale*, Réalités sociales, Lausanne, 1993.

direction: *Argentina* (1991), *Bolivia* (1997), *Colombia* (1994), *Costa Rica* (2001), *Dominican Republic* (2003), *El Salvador* (1998), *Mexico* (1997), *Panama* (2008), *Peru* (1993) and *Uruguay* (1996). In Central and Eastern Europe, private pension schemes were introduced in *Bulgaria*, *Croatia*, *Czech Republic*, *Estonia*, *Hungary*, *Latvia*, *Lithuania*, *Poland*, *Romania*, *Russian Federation*, *Slovakia* and *Slovenia*. The core element characterizing these reforms was the restructuring of the public PAYG defined benefit systems through the establishment of often privately managed fully funded schemes based on individual pension accounts, which resulted in the reduction of social solidarity previously ensured through redistributive mechanisms.

448. Ever since these reforms were adopted, the Committee of Experts has been engaged in an intensive dialogue with the governments concerned on a very broad spectrum of issues of non-compliance with ILO social security standards. It observed in particular that pension schemes based on the capitalization of individual savings managed by private pension funds were organized in disregard of the principles of solidarity, risk sharing and collective financing, which formed the essence of social security, and also in disregard of the principles of transparent, accountable and democratic management of pension schemes featuring the participation of representatives of the insured persons. The Committee of Experts pointed out in its General Report of 2009 that these principles underpinned all ILO social security standards and technical assistance and offered the appropriate guarantees of financial viability and sustainable development of social security; neglecting them, on the contrary, and at the same time removing state guarantees, exposed members of private schemes to greater financial risks.

449. One of the main lessons of the economic crisis has been the conclusion that, where the schemes were financed collectively and have been fully managed by the State, in particular through PAYG financing, the immediate impact has been small. In contrast, fully funded schemes, where individual savings have been invested in relatively volatile products, have sustained severe losses. This distinction was made particularly clear by the Government of *Germany*, which has stressed that statutory pension insurance in the country is financed on a PAYG basis and therefore is not dependent on share prices and rates of return on the equity and bond markets. Hence the payment of pensions and the levels of pensions are not at risk from this source. The statutory pension insurance has a sustainability reserve which can be tapped to offset the crisis-induced losses in contribution revenue and to avoid the possibility that cyclical fluctuations may lead to a rise in the contribution rate. *Japan* has explicitly stated that, because the Government adopted the PAYG method, the effect of the recent financial crisis is relatively small compared to systems based on advance funding methods. Similar conclusions were made by *Austria*, *Cyprus*, *Czech Republic*, *Finland*, *Malta*, *Norway*, *Poland* and other countries.

450. The Committee observes that the failure of so many private pension schemes to deliver decent pensions, not least due to the losses sustained during the financial crisis, has led many governments to undertake a second round of significant reforms, allowing workers to switch back to PAYG schemes, and re-establishing or reinforcing solidarity and income redistribution mechanisms. In 2009, *Argentina* nationalized its heretofore private pension system. In 2007 and 2008, *Peru* and *Uruguay* permitted workers enrolled with the private pension funds to switch back to the PAYG scheme if they met the contribution conditions to retire under that scheme. In an attempt to reach a better balance between solidarity-based and market-based pension insurances, a number of countries (re)established non-contributory, tax-financed, old-age pensions for poor categories of the population. The case of *Chile* best illustrates this trend where a

comprehensive pension reform was approved in 2008 in order to provide universal and more equitable benefits.³⁴² *Colombia* created in 2003, a solidarity pension fund which grants non-contributory benefits and tops up contributions for low-income workers. *El Salvador* introduced a subsidy for retirees receiving pensions from private funds that were lower than they would have been under the previous PAYG scheme.

451. The Committee welcomes the reinforcement of the involvement of the State and the reconstruction of solidarity mechanisms based on the principle of collective financing as major components of national social security systems. Besides improving social security administration, management and supervision, public systems more readily abide by the governance principles set out in ILO social security instruments, as observed typically in the well-established social security systems of high-income countries. In this context, the Committee is also pleased to note the marked change in the position of the World Bank, which, having initiated the privatization of social security systems in the 1980s, is now paying more attention to public mechanisms to reduce poverty in old age, to expand coverage and equity and to protect populations from market risks.

452. The Committee considers that the principles of collective financing and social solidarity are inseparable. Social solidarity is a powerful weapon against poverty and an effective instrument for making societies more equal and just. Indeed, the historic achievement of the social security concept embodied in Convention No. 102 consisted in establishing a mechanism whereby social solidarity, originally operating within particular branches, was put to work at the national level for the whole of society. The Committee believes that the way to progressive development of social security lies in strengthening and extending social solidarity as the manifestation of the collective values of social cohesion, mutual assistance and sharing of responsibilities, and of the human values of empathy, compassion and care for the weak. These collective values make the communities more resilient to common risks, while the human values inspire each member of the community to voluntarily assume his or her share of responsibility for the common welfare.

453. The realization of the right to social security presupposes that solidarity will be reflected in the financing of social protection. The Committee is concerned, however, that in **recent** decades the level of solidarity was tending to weaken, as individualist values were gaining greater favour. Solidarity between successive generations, which is at the heart of old-age pension systems, is being called into question, as the burden of supporting an ageing population increases. Obviously, benefit schemes must take account of demographic trends and other factors influencing the relative proportions of the active and non-active members of society, but in approaching these questions the principle of solidarity should continue to be emphasized as one of the guiding considerations. Social solidarity should also be given a proper place in occupational and local arrangements so as to maximize the risk-sharing capacity of social insurance systems. Tax-financed schemes implicitly relying on solidarity should be promoted in developing countries, where the application of the principle of solidarity through social security has generally remained limited. **The Committee believes that in the global economy progress will largely depend on the operation of a wider international solidarity which would enable these countries to raise their standards of living. The**

³⁴² In March 2008, Act No. 20.255 established a basic universal public solidarity pension of approximately US\$150, which serves as a complement to the private pension in case it does not attain the minimum pension level, and as assistance pension to those who had not been able to contribute throughout their working lives. The number of beneficiaries of the Solidarity Pension System is expected to increase to approximately 1,200,000 beneficiaries by December 2012.

ILO initiative for the establishment of the global social protection floor, if implemented as widely as possible, has the potential of making social solidarity a governing principle for the global society.

2. General responsibility of the State for the due provision of benefits

454. Governments have a fundamental responsibility to ensure a basic standard of living for their people. In doing so, they have to resolve difficult questions of balance relating to the appropriate division between statutory and private provision, between providing protection and fostering self-reliance, between resources and needs, and between seemingly conflicting priorities. Besides ensuring solvency, viability, adequacy and sustainability of their social security systems, they have to achieve cohesion between the various components of a social protection system both at the policy and the operational level. It is clearly desirable to deal with these and many other questions through the framework of a national social security strategy. These are some obvious considerations which led the authors of Convention No. 102 to entrust the State with the general responsibility over its social security system.

455. Regardless of the financing sources and mechanisms, the State “shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention, and shall take all measures required for this purpose” (Article 71(3) of Convention No. 102). The overall financial responsibility of the State is complemented and reinforced by its “general responsibility for the proper administration of the institutions and services concerned in the application of the Convention” (Article 72(2)). From the financial point of view, the general responsibility of the State generates many related obligations, including the need to ensure that: (1) the rates of contributions or taxes coming into the system, while being sufficient to finance the cost of benefits, do not constitute too heavy a burden for persons of small means, specific classes of persons protected and the economy at large (Article 71(1)); (2) the costs of benefits are distributed fairly between the employees, their employers and the State, so that the total share of insurance contributions borne by the employees in the financing of the system protecting them and their families does not exceed 50 per cent, the remaining funds being provided by the contributions from the employers and the subsidies from the State (Article 71(2)); (3) adequate benefits not lower than the minimum level prescribed by the Convention are regularly paid out by the system (Articles 65, 66 and 67); (4) revenues and costs for the system are maintained in a fairly stable financial equilibrium (Article 71(3)); and (5) provisions are made to minimize the possibility that social security funds may be misused, lost or stolen. The system of public institutions responsible for the supervision of social security schemes varies from country to country and may become as complex as the three-level system of supervisory bodies in *Germany* (see box). However, if, notwithstanding public supervision, something goes wrong at any stage in this chain of responsibilities, the State is obliged in principle to remedy the situation, if necessary by the provision of public funds. Thus, *Saudi Arabia* has explicitly reported that its social security system is financed only in part by the statutory contributions because they are not paid in full, and the State has to provide financial subsidies in order to secure the due provision of benefits.

Pension fund monitoring system in Germany

The statutory pension is financed on a PAYG basis and does not depend on the equity and bond markets. Sustainability reserves prevent any pro-cyclical rise of contribution rates.

At a second level, *Riester contracts* consist in bank or equity-linked savings schemes provided by banks, companies and life insurers that are required as a minimum to provide, at the beginning of the payout phase, not less than the saver's contributions plus the state subsidies are available to basic pension payments on par value commitment. The Federal Financial Supervisory Authority ensures the compliance.

Occupational retirement provisions are protected by virtue of the established liability of the employer. It implies that the employer is always liable for the promised pension regardless of whether an external provider is involved or not. In form, the scheme is therefore of the defined contribution type scheme but with a guarantee of the amount of the pension. In case of the employer's insolvency, the Pension Benefit Guarantee Association ensures that pension payments continue.

Pension funds, independent of the employers in terms of decision-making, are however supervised by the Federal Financial Supervisory Authority. They are not restricted in terms of equity investment but any shortfall is covered by the employer and, in case of bankruptcy, by the Pension Benefit Guarantee Association. As a result, the money saved by the contributor is never at risk from an investment downturn.

456. As a rule, governments have confronted the risk of insufficiency of funds by broadening the contribution base and seeking additional sources of financing for social security schemes. Thus, in *Canada*, unemployment insurance is based on universal coverage, with contributions paid by virtually all workers in insurable employment however small their apparent risk of making a claim. This policy is intended to provide a broad revenue base for funding benefits, which guarantees that contribution rates can be kept low and stable under changing economic circumstances. *Brazil* has reported that contributions from insured persons and companies are presently insufficient to ensure the financial equilibrium of the statutory scheme. As a result, a *special levy* on certain revenues has been imposed. The gaps are filled by transfers of budgetary resources, which come from other contributions to the social security system. In *Algeria*, since 2006, 2 per cent of the revenues from the oil industry are allocated to the social security budget. In 2010, a special social security fund was created, which is filled by a part of the revenues coming from the tax on tobacco, the tax on the profits from the import of medicines, and the tax on the purchase of yachts.

457. There are however countries where the governments frankly admit being unable to accept and fulfil the responsibility for the proper maintenance of their social security systems and the due payment of benefits. The report from *Antigua and Barbuda* states that "the Government has been negligent in securing the financial viability of the system" and that actuarial recommendations are not always followed. The report mentions unpaid loans and contributions, the failure to repay government bonds, using social security funds to guarantee government projects, etc. The Government of *Uganda* has also reported that "according to the workers, the State has failed to assume its responsibility in the protection of the social security fund". Several developing countries acknowledged that their social security systems do not provide a sufficient guarantee of protection from poverty, a poverty line is not established and, even if it exists, it is not used as a minimum parameter for social security benefits. In *Jamaica*, the benefits payable under the National Insurance Scheme are not high enough to ensure sufficient replacement of wages or to provide an income above the poverty line. In *Botswana*, the measures adopted so far to eradicate absolute poverty have failed to provide income above the poverty line to more than 30 per cent of the population.

458. The economic crisis of 2008–10 has made obvious the State’s primary role in keeping afloat the nation’s welfare and underlined the importance of the primary function of social security in alleviating poverty. The establishment of basic pensions guaranteed by the State has been reported by the Governments of *Albania, Bosnia and Herzegovina, Canada, Estonia, Finland, France, Germany, Lithuania, Mauritius, Morocco, Romania* and *Sweden*. The Government of *Romania* introduced a minimum social pension during the crisis, which benefited 1,200,000 persons. At the same time, the Government of *Lithuania* has reported that the minimum income policy introduced in 2008 proved to be unsustainable in 2009 when the economic situation worsened and the number of beneficiaries grew sharply.

459. The introduction of guaranteed minimum pensions should be accompanied by the establishment of a poverty line or a subsistence minimum and the increase of the minimum pensions above this parameter.³⁴³ Thus, the Economic and Social Council of the *Federation of Bosnia and Herzegovina* decided to define the social minimum in the country and to provide a corresponding guaranteed minimum amount of pension. The *Russian Federation* adopted laws with a view to raising basic social security pensions to the level of subsistence minimum in 2009. *China* has reported that, although there is no general poverty line established in the country, there are different poverty standards established at the local level. Thus, the Regulations on Unemployment Insurance provide that the standards for unemployment insurance compensation are to be set by people’s governments of provinces, autonomous regions and municipalities at a level which should be lower than the minimum local salary but higher than the guaranteed minimum living standards for urban residents. Some countries mentioned the fact that a poverty line is used as a parameter in their social security systems, even though the minimum benefits are not yet adjusted to it. In *India*, under the National Old Age Pension Scheme, persons who are living below the poverty line and who are above the age of 65 are eligible to receive a special pension. *Mongolia* has reported that the average social security benefit in the country is above the poverty line.

460. The Committee observes that the information supplied in reply to the article 19 questionnaire concerning the adequacy of social security benefits showed a variety of indicators used to measure the level of benefits and was too fragmented to permit the Committee to form any consistent global picture. What has become apparent, however, is the widening of the divide between the high-income countries, on the one side, and the middle and low-income countries, on the other side, in terms of the value and adequacy of the benefits provided by their respective social security systems. While in the former group of countries benefits as a rule are superior even to the advanced standards established by subsequent social security Conventions, the middle and low-income countries often have a level of benefits that does not attain the minimum benchmarks set by Convention No. 102 to permit a beneficiary to maintain himself and his family “in health and decency”.³⁴⁴ **The Committee is concerned by the fact that social security schemes, which are naturally designed so as to provide adequate benefits, have degenerated in many developing countries to the point that benefits are paid at levels below the poverty line; in such cases the State may be seen to be failing to fulfil its responsibilities.** The Committee calls attention in this respect to the chapter of the Survey where it stresses the role of the enforcement of legislation and collection of

³⁴³ In *Belgium*, for example, the federal plan for combating poverty adopted on 4 July 2008 provides for measuring different aspects of poverty according to 15 parameters. In 2009, minimum pensions for salaried employees and self-employed workers were increased by 3 per cent, while the social inclusion income (“revenu d’intégration”) and assimilated allowances – by 2 per cent.

³⁴⁴ Article 67 of Convention No. 102.

social security contributions in raising effectiveness and efficiency of the operation of social security schemes.

461. The fact remains that economic development in recent decades has not resulted in narrowing of the divide in the standards of social protection between the rich and the poor countries. On the contrary, this gap has widened to the extent that comparisons of their respective social security systems has become rather difficult. **The Committee considers, however, that in extrapolating the principles of Convention No. 102 to the global economy, governments collectively must accept the general responsibility for the poor state of social security globally and take urgent measures to narrow this divide.** In this respect the Committee notes with interest the recent findings of many authoritative studies showing that all countries, whatever their level of income, possess some fiscal space which may be utilized to increase the financing of their social security programmes. The studies also suggest that there may be sufficient additional fiscal space to install the global social protection floor in the majority of countries presently lacking provision, while other (poorer) countries should be able to do so with the help of the international community. The Committee trusts that the discussion of the recurrent item report by the International Labour Conference in June 2011 will show the existence of sufficient political will to use the existing fiscal space for the purpose of installing the social protection floor and improving the adequacy of benefits.

B. Protection of social security funds against mismanagement, cyclical fluctuation and market failures

462. This section examines the government replies to question 5.1 of the article 19 questionnaire concerned with “the financial viability of the system, protection of social security funds, regular actuarial and financial studies and due provision of benefits”. These replies highlight three major instruments of good financial management of social security common to any mature system and highly necessary in any underdeveloped one. **Implemented together, the following principles may offer the best available guarantees against major causes of financial difficulties threatening modern social security systems:**

- **regular actuarial studies help to prevent mismanagement of the scheme in the long run;**
- **establishment of contingency reserve or stabilization funds may help to weather short periods of cyclical economic fluctuation; and**
- **strict investment rules help to prevent losses during market downturns.**

1. Actuarial studies

463. The implementation of effective safeguards against mismanagement of the social security funds consist in a twofold assessment: firstly, an independent and transparent audit to assure proper day-to-day operations, and secondly, the conducting of periodic actuarial valuations of the fund to assure long-term solvency. The general responsibility of the State to ensure the due provision of benefits encompasses the obligation to “ensure, where appropriate, that the necessary actuarial studies and calculations concerning financial equilibrium are made periodically and, in any event, prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question” (Article 71(3) of Convention No. 102). The Committee’s experience reveals that this provision of the Convention is neither well known nor

properly understood and, because of its technical nature, requires some additional explanations even to lawyers, particularly with regard to the notions of “actuarial studies” and “financial equilibrium”. The work of an actuary is complementary to that of an auditor who verifies the accuracy and probity of annual accounts. The task of a social security actuary consists of assessing the long-term solvency of a social security scheme. This is usually achieved by projecting future income and expenditure on the basis of a coherent “model” of future demographic and financial conditions. The aim of actuarial studies is to assess the future financial equilibrium of the scheme, in other words, whether the assets of the scheme will at least meet its liabilities for benefit provision at all future times.

464. In modern conditions, the design of the financial systems considered appropriate for a social security scheme, the determination of the initial contribution rates for the various benefits, their amounts and other important parameters are normally subject to the formal advice of (amongst others) an actuary, as required by Convention No. 102. Social security schemes however are dynamic and subject to change, which may be evolutionary because of changing demographics (e.g. the ageing of the population) or abrupt, particularly when new legal requirements are introduced to reform the system. In either case, the result may be the loss of the long-term actuarial equilibrium and solvency. It is precisely for this reason that the Convention requires actuarial studies to be carried out periodically to take account of evolutionary change, and particular occasions to take account of abrupt changes, – “which may lead prior to any change in benefits, the rate of insurance contributions, or the taxes allocated to covering the contingencies in question”.

465. **The Committee would like to stress that proper financial and legal governance of social security systems in situations of reform would be greatly facilitated if an actuarial valuation were mandated prior to the submission of the relevant draft laws to parliaments. The Committee has observed that all too often changes in social security legislation are done hastily with immediate interests in mind and without a substantial financial and economic analysis of their future impact and eventual cost to the society.** Noting that this situation is rather common even in the developed countries, it is likely to be rife in the developing world. There is no doubt that social security should be ruled by law, but if the law is to be changed, the illumination provided by an independent actuarial assessment of the relevant impact is vital – not only in the short-term perspective usually evaluated by governments, but also from the point of view of the long-term impact of any new law on the financial sustainability of the system.

466. If social security lawmakers should take a step towards social security actuaries to work in tandem as much as possible, the actuaries in turn should do the same by taking a proactive approach towards social security law. **An actuarial study should include forthright comments on any matters which affect the financial status of a social security scheme, pointing out among others the deficiencies in legal provisions under which the scheme operates. Such deficiencies in national law may be diagnosed by reference to the minimum standards of Convention No. 102 and the likelihood that, under alternative scenarios of future development, a national social security scheme is sustainable.** Actuarial studies and reports represent important tools through which national law- and policy-makers may work towards the fulfilment of ILO standards on social protection. These tools are valuable in case “reforms” are aimed at improving levels of social protection, but in case of reforms aimed at the opposite direction, they are vital.

467. In this context, the Committee would like to point out that, in order to comply with the abovementioned provisions of Convention No. 102, member States must regularly compile a set of essential statistical and financial data on the operation of their scheme(s), both to provide management with the information needed to administer the scheme effectively, and for the purposes of the periodic actuarial valuations. The Committee is aware that compilation of economic and demographic data pertinent to the operation of the social security schemes presents a major difficulty for the majority of developing countries and constitutes a constant preoccupation of technical cooperation activities undertaken by the Social Security Department of the ILO. While all efforts should be made to compile the necessary data, the fact that some data are incomplete, unreliable or not available should not constitute an excuse for any government to avoid carrying out the required periodic actuarial valuations of its social security schemes. In such a case the actuary would typically make an assessment and recommendations on the basis of assumptions which are judged to be reasonable and appropriate to the scheme. The techniques of “sensitivity” analyses in which the impact of variation of the values of relevant factors from “best estimate” values is tested, permit the checking of the variability of the overall result of the valuation. Moreover, as the Conference stressed in its 2001 conclusions concerning social security, “there is a need for social dialogue on the assumptions to be used in the evaluation and on the development of policy options to address any financial imbalance”.³⁴⁵ In simple terms, the board and management of a social security scheme must be able to refer to, and cannot fulfil their duties without, an actuarial study even if based on assumptions which may be tenuous. Nor can a government elaborate a national social security strategy without reference to an appropriate actuarial study. It is, moreover, easier for a government to obtain support of the social partners and develop a consensus on any changes to be made, if they are based on the objective recommendations of an independent actuary. **In the global economy where financial management of social security systems and protection of their funds have taken increasing importance, it is imperative to promote a culture in social security which respects professional oversight, including that of actuarial and legal specialists, of the political decision-making in this area.**

468. The Committee notes that, whereas few governments have replied to the article 19 questionnaire on this subject, it is nevertheless apparent that, while in the developed countries the commissioning of regular and periodic actuarial valuations is a matter of routine, in the developing world this is by no means common practice. Where such studies are undertaken, they are carried out on an ad hoc or irregular basis. The Committee would like to stress that in countries where social security systems are underdeveloped the role of actuarial studies is even greater as they may be the only way for the government to monitor the financial equilibrium of the scheme. In countries where a social security scheme is not yet established, actuarial studies are the best way to assess the feasibility of the creation of a national scheme. Such studies, for example, are currently being undertaken by *Swaziland* in order to establish a pension fund. Regular actuarial reviews are required by law in, amongst others, *Cameroon, Ghana, Jamaica, Lao People’s Democratic Republic* and *Lesotho*. In *Namibia*, for example, under section 17 of the Social Security Act, on the recommendation of the Social Security Commission, the competent minister must approve the appointment of an actuary; actuarial recommendations are approved by the Board of the Commission and submitted to the minister for endorsement.

³⁴⁵ Resolution and conclusions concerning social security, International Labour Conference, 89th Session, 2001, para. 14.

2. Establishment of reserve funds

469. **The maintenance of adequate reserves is one of the main measures to ensure the financial sustainability of a social security system, and has proved to be important in times of economic crisis. Although this measure is not expressly provided by Convention No. 102, it may be regarded as implicit in the general principle of the State's responsibility for the due provision of benefits.**³⁴⁶ The establishment of contingency or stability reserves has become relatively common in member States.³⁴⁷ The Government of *Japan* underlined that the existence of such a reserve helps to guarantee the stability of benefits when unemployment is high; the reserve can accumulate funds during prosperity periods and be drawn down in times of economic downturn.

470. If the reserves prove to be insufficient, the deficit may be covered by a transfer from the state budget, which is the option of last resort after other measures have been exhausted. **The Committee considers that where the government undertakes to cover the deficit of the social security scheme, it is the ultimate proof that it assumes its general responsibility to ensure the system's solvency and the due provision of benefits.** In this regard, the legislation of the *Philippines* provides that, in case of deficit, benefits cannot be reduced, and that the Government will guarantee the due provision of benefits through subsidies from the state budget. In *Azerbaijan* and the *Russian Federation*, the budget of the social security system is approved by Parliament, and any deficit is covered by transfers from the state budget. The legislation of *Romania* provides that the possible current deficit of the state social insurance budget shall be covered from the liquid assets of the budget from previous years and, if this is not enough, from the contingency reserve. *China* has reported that, in order to guarantee the provision of old-age pensions, in 2009, the central Government allocated to the local governments ¥132.6 billion (around US\$19 billion) as subsidies for their old-age insurance funds. In *Brazil*, the resources of the Fund of the General Welfare created under the Fiscal Responsibility Law are used to guarantee the payment of social security benefits. When the resources are insufficient, the state treasury makes contributions to cover the system's financial needs.

471. The mechanisms of financing such reserves vary: these may include the allocation of a specific percentage of revenues from general social security contributions, by establishing specific contributions or by transferring all the surpluses when realized from the schemes. A deficit can also be covered through the establishment of a mechanism of system-wide subsidies among different social security schemes. In such a system, funds are loaned or transferred from one social security scheme to another when the latter is running a deficit. In *Romania*, article 13 of Law No. 19 of 17 March 2000 on public system of pensions provides that up to 3 per cent of the incomes of the state social insurance budget shall be charged annually for the setting up of a contingency reserve. In *Cameroon*, the target for such reserves is equal to a quarter of technical expenses foreseen for each social security branch in the last actuarial review. In *Finland*, unemployment schemes are required to have a reserve ("equalization fund"), to which their annual surplus is transferred. Some 50 per cent of the fund can be used in case a scheme shows a deficit. In addition, all schemes are members of a common support fund, which can be used in case a given scheme still has a deficit after using up to 50 per cent

³⁴⁶ CEACR, Convention No. 102, observation, *Portugal*, 2006.

³⁴⁷ The countries that have reported the establishment of reserve funds in their social security schemes include *Algeria, Cameroon, China, Finland, Japan, Luxembourg, Republic of Moldova, Philippines, Poland, Romania*, etc.

of its equalization fund. The assets of the support fund can be used up to a maximum limit of 50 per cent in a given year.

3. Investment rules

472. Notwithstanding the choice, for many countries, between PAYG financing and advance funding, many schemes do in practice accumulate invested funds which are large in size. The basic principles which govern the investment of social security funds are not different from those of other fiduciary organizations: safety (security), yield (profitability) and liquidity. The formalization of these principles, though incomplete in some cases, underlies statutory regulation in many countries and is described in many textbooks on social security.³⁴⁸ There is a general consensus that very strict rules have to be observed as regards the safety, placement and control of the investments. In recent years, and in the light of a variety of cases of mismanagement, market losses and abuse of social security funds, the realization has grown that investment regulations must also reflect the principles of transparency and predictability of investment decisions and accountability and liability of those who take them. In many countries these new principles, though obvious, have yet to be incorporated into law.

473. The spectacular losses sustained by many pension funds during the 2008–10 financial crisis due to the risky investment portfolios revealed the need to review the balance in social security funds as between the competing principles of safety and yield. In the *Philippines*, for example, the law requires the Investment Reserve Fund to be managed “with skill, care, prudence, and diligence”; investments shall satisfy the requirements of liquidity, safety and yield in order to ensure the actuarial solvency of the funds, and the social security institution shall submit an annual report on all investments made to both Houses of Congress of the Philippines.³⁴⁹ *Ghana* has also mentioned the investment of funds as a major problem, elements of which include low returns, inadequate investment opportunities and a high risk of losses. In order to regulate this area, the Government has passed a new law which establishes the obligation for every scheme to have an investment policy document which could be reviewed when necessary. The draft law also provides for the possibility to invest social security funds in foreign markets. The Committee observes in this respect that, while it is true that there may be less opportunities for domestic investment in developing countries, it is also true that in many cases schemes that invested abroad have been more badly affected by the crisis.

474. Investments on the global financial markets require not only the levels of professionalism and proper attention to their management appropriate to investments in equity and real estate on the national market, but also specialist knowledge of investment conditions in a range of countries. The required level of knowledge and experience may not be readily available in the management of social security schemes whose primary function is to provide benefits to their members in an effective and efficient manner. In order not to divert the attention of management from its primary responsibilities, many schemes outsource the management of funds to professional financial intermediaries. This, however, sets a further problem in that participation of the representatives of the members in the administration of the scheme’s investments can only be rather indirect, and it may be that the result is weak compliance with the requirements of ILO social security instruments. The Committee recalls that in accepting the general responsibility

³⁴⁸ ISSA: *Guidelines for the Investment of Social Security Funds*, found at www.issa.int/Media/Files/Events/2005/Investment-guidelines.

³⁴⁹ Sections 26 and 36 of Presidential Decree No. 626, as amended.

for the sustainable development of the social security system, governments should also ensure that the voice of the representatives of the persons protected or their representative associations is clearly heard at all levels of management of the social security system, particularly with regard to such vital issues as the safety of investments of social security funds. The Committee wishes to stress that the periodic actuarial surveys provided for in Article 70(3) of Convention No. 102 and the participatory management of the system foreseen in Article 71(1) together provide the best guarantees that the social security system is governed in a knowledgeable and transparent manner, which minimizes the risks of financial losses, disequilibrium and unsustainable development.

475. The Committee believes that social security funds should, to the extent consistent with prudent fiduciary conduct, be invested in order to create employment in the national economy and to improve the overall quality of life in the country. Where social security funds are not invested directly in the social economy, infrastructure and enterprises providing health, educational and other social services, investment policies of the funds should be assessed as to their social and economic utility for the country in question. It is here that the principle of coordination of economic and social policies and the use of social security as a means to promote employment advanced by Convention No. 168 becomes particularly important. Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176), Paragraph 10, advises countries in this respect to “invest any reserves accumulated by statutory pension schemes and provident funds in such a way as to promote and not to discourage employment within the country ...”.

476. When decisions on the specific funding level are made, social security planners have to collaborate closely with economic, fiscal and development experts, applying nationally the same integrated approach that the ILO is advancing on the international level. The Committee considers that post-crisis financial regulations that are being formulated urgently in many countries should not only aim at excluding investment of social security funds from an inappropriate balance between risk and yield, but should also ensure that investment policies are transparent, predictable and accountable, and should also demand an integrated management of investment policies ensuring that social, economic and financial objectives are advanced simultaneously.

C. Maintaining the purchasing power of benefits

477. According to Articles 65(10) and 66(8) of Convention No. 102: “The rates of current periodical payments in respect of old age, employment injury (except in case of incapacity for work), invalidity and death of breadwinner, shall be reviewed following substantial changes in the general level of earnings where these result from substantial changes in the cost of living”.

478. The reports of the high- and medium-income countries show that the practice of automatic adjustment of benefits to maintain their purchasing power has become a standard feature of contemporary social security systems. In the wide variety of adjustment formulas used, two methods advocated by the Convention stand out as most common: adjustment of benefits to the general level of earnings measured, for example, by reference to the average wage in the country,³⁵⁰ and adjustment of benefits to general

³⁵⁰ Adjustment to the growth in average wage is undertaken in *Australia, Barbados, Croatia, Finland, Germany, Latvia, Mongolia, Montenegro, New Zealand, Poland, Romania and Turkey.*

inflation, measured by the prices of selected consumer goods,³⁵¹ and reflected in some type of a consumer price index. In many countries, the two basic adjustment mechanisms *to inflation* and *to the general earnings* are used in a complementary way. In *New Zealand*, where main social security benefits are annually adjusted to the consumer price index, a further adjustment is made according to the net average general wage movement, if required. In *Finland*, wages and earnings which constitute the basis for future benefits are adjusted using a mixed “coefficient”: 80 per cent of the coefficient is determined by changes in the level of earnings and 20 per cent by changes in prices. The Committee has recently noted with satisfaction the introduction of the indexation of long-term benefits in *Barbados*, which are increased by the same percentage as the lesser of the three-year average of wage or price increases, subject to actuarial advice on the maximum which may be granted.³⁵²

479. However, some countries clearly prefer one mechanism over the other. In *Azerbaijan*, as provided by the Social Allowances Law of 1 January 2006, the incremental part of social security benefits shall be indexed at least once a year according to price inflation. *Côte d’Ivoire* has reported that currently the benefits are adjusted to the growth in wages. However, due to the low level of average wage growth in the country, the Institution for Social Security has proposed the reform of the indexation mechanism to link the adjustment to price inflation. In *Austria*, since 2004, pensions have been adjusted on the basis of inflation in line with increases in consumer prices. This inflation-based adjustment has replaced the previous system of net adjustment introduced in 2001, according to which average pensions were adjusted in line with the average income of the working population. According to the Social Code of *Germany* (article 68, Book VI) pensions are considered to be a substitute for a wage, and the appropriate basis for their adjustment is the evolution of earnings.

480. The Committee considers that, whichever method of adjustment is used, the purchasing power of pensions should be maintained. It recalls that Article 29(1) of the Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128), requires that note must be taken of both changes in the cost of living (price inflation) and changes in the general level of earnings of the working population. In fact, there is an element of complementarity as between the two methods of indexation – the first permits the maintenance of the purchasing power of pensioners in line with prices, while the second ensures that pensioners may share equally with wage-earners in any increase of the general standard of living in line with earnings. The ability of the national pension system to maintain both principles of adjustment of pensions is an important indicator of the financial health of the system and its contribution to the sustainable social development and social cohesion in the country. Adjusting pensions to the cost of living alone, while safeguarding the standard of living of pensioners against sliding into absolute poverty, would not prevent them from experiencing relative poverty, as their pensions would progressively lag behind the growth of the average income of the working population.³⁵³

481. The regularity of adjustment is an important factor which is not in fact specified by Convention No. 102. The country reports have shown the wide range of adjustment arrangements, starting from obligatory adjustment twice a year to ad hoc revision of benefits at the discretion of the authorities, subject to the availability of resources. In

³⁵¹ *Albania, Argentina, Australia, Azerbaijan, Belgium, Brazil, Canada, Croatia, Estonia, France, India, Latvia, Malaysia, New Zealand, Poland, Romania, Turkey, etc.*

³⁵² CEACR, Convention No. 102, observation, *Barbados*, 2009.

³⁵³ CEACR, Convention No. 128, direct request, *Austria*, 2009.

Australia most working-age allowance payments are indexed twice a year in line with increases in the cost of living as measured by the consumer price index. In *Denmark*, benefit rates are adjusted yearly (based on the growth in wages and salaries). Other countries have adopted a similar system of automatic adjustment of benefits. In *Japan*, a system of automatic adjustment to macroeconomic indicators was introduced by the 2004 Pension Reform into the Employees' Pension Insurance. **The Committee of Experts is of opinion that, although the Convention does not oblige member States to introduce automatic indexation of benefits, "it may be the most advanced method of adjusting the rates of the benefits to inflation and the cost of living".**³⁵⁴

482. Many countries³⁵⁵ have reported that, while provisions are lacking from national legislation for obligatory regular adjustment of benefits, the government nonetheless undertakes ad hoc adjustment of benefits as necessary. Such countries seemingly outnumber those which have established regular adjustment mechanisms. *Jamaica* has reported that the benefits are reviewed in line with the guidance of actuaries regarding the sustainability of the National Insurance Fund, although the adjustment does not necessarily maintain the purchasing power of benefits. In *Mali*, as provided by section 167 of the Social Security Code, benefits are adjusted pursuant to a decree of the Council of Ministers upon the proposal of the Labour Minister and after a deliberation by the Management Board of the system. However, this adjustment is not directly related to either inflation or the increase in wages. In *Fiji*, the non-contributory benefits are currently under review by the Ministry of Social Welfare with a view to restoring their purchasing power in the face of national inflation. Some countries (*Cameroon, Uganda*) have explicitly stated that the available resources are insufficient to guarantee basic replacement rates, let alone protect the benefits from inflation or raise them above the poverty line. Finally, several countries have reported simply that they do not undertake any adjustment of social security benefits.³⁵⁶

483. In practice, it is observed that countries have developed a wide and increasing array of adjustment indices – calculated separately for example for urban and rural areas, and using different “baskets” of goods for the calculation of price indices – that could hardly be described in this chapter. The complexity of the overall picture may be further exacerbated by the fact that some indices can be calculated only with time lags. Each of these methods of adjusting benefits has its own pitfalls and limitations, as observed repeatedly by the Committee in its comments. In particular, **the Committee has pointed out consistently that the term “cost of living” should be interpreted broadly and that adjustment in line with the consumer price index alone should not in general be regarded as sufficient, for the reasons noted above.**³⁵⁷

484. One significant trend which may be noted is the development of complex indexation mechanisms based on non-traditional criteria for adjustment. Examples of this new approach have appeared in the last decade in certain high-income countries, such as *Germany*,³⁵⁸ *Japan, Portugal*³⁵⁹ and *Sweden*. The approach links the adjustment

³⁵⁴ CEACR, Convention No. 102, direct request, *Barbados*, 2008.

³⁵⁵ *Algeria, Antigua and Barbuda, China, Ethiopia, Ghana, Republic of Korea, Mauritius, Namibia, Philippines, Saudi Arabia, Syrian Arab Republic, Zimbabwe*, etc.

³⁵⁶ *Belize, Cameroon, Thailand and Uganda*. Also, in its observation addressed to the Government of *Niger* in 2007, the Committee of Experts stated that “no adjustment of pensions had taken place for over 25 years to take into account inflation and follow fluctuations in the general level of earnings in the country”.

³⁵⁷ See, for example, CEACR, ECSS, *Turkey*, 2000.

³⁵⁸ CEACR, Convention No. 128, direct request, *Germany*, 2006.

³⁵⁹ CEACR, ECSS, *Portugal*, 2007.

of benefits to the rate of the country's economic growth and other macroeconomic indicators. Due to the complexity of such adjustment mechanisms, the outcome of which may not even be reliably predicted by their authors, the Committee has found it necessary to request the governments concerned to provide detailed explanations based on statistical data, to clarify the basis for the introduction of the new methods of adjustment, as well as the proofs that the new system would continue to maintain the real value of benefits in relation to the cost of living.

485. In *Sweden*, a system has been established which links pension adjustment directly to the rate of economic growth, under which, as the Committee noted, pensions can be adjusted downwards at times of economic contraction. As was stated in the report, "The pension reform in Sweden", "when times are bad, pensioners bear their share of the burden. In good times, they benefit from the rise in living standards". The Committee pointed out in this respect that such a mechanism hardly conforms with **the underlying aim of the mechanism of the adjustment of benefits established by Article 65(10) of Convention No. 102 and by Article 29 of Convention No. 128, which consists both in maintaining the purchasing power of benefits "when times are bad" by adjusting pensions to substantial changes in the cost of living, and raising the standard of living of pensioners "in good times" by adjusting pensions to substantial changes in the general level of earnings.**³⁶⁰

D. Managing the financial deficit of social security

486. The Committee notes that increased attention has been paid in the last decade to the sustainable financing and sound management of social security systems, with many governments adopting a range of measures aimed at reducing the social security deficit: the tools for doing so include broadening the contribution base and phasing out the ceilings on insurable earnings, introducing new taxes and contributions, and intensifying the fight against social security evasion and fraud.

487. In *France*, for example, besides the phasing out of ceilings on the contribution base, the resources of the General Social Security Scheme have been extended to include levies related to certain behaviours that are costly to the scheme (for example the consumption of certain types of alcohol and tobacco, automobile insurance premiums) and other levies (on interest from assets and investments, which go to the family and old-age branches) intended to strengthen financial solidarity between the members of the Scheme. Earmarked levies have been introduced on the turnover of the pharmaceutical industry and the wholesale marketing of pharmaceutical products, on company profits and on polluting activities. A new funding instrument with the legal status of a tax – the General Social Contribution – has been introduced gradually since 1991. In 1996 the Social Debt Redemption Fund (CADES) was created for the purpose of clearing, by 2014, both the interest and the principal of the debt accumulated by the General Scheme. The resources of CADES mostly come from a special fiscal levy to repay social security debt (CRDS), the base for which extends to most incomes other than *minima sociaux* (means-tested benefits). The Social Security Audit Board analyses the accounts of the social security schemes every year and submits reports to Parliament. Since 1996, the draft annual social security financing law has been accompanied by a report setting out the main lines of health and social security policy and the objectives that will determine the general conditions for financial balance in social security. The overall management

³⁶⁰ CEACR, Convention No. 128, direct request, *Sweden*, 2002.

of public social security policy has been improved by the Organic Act of 2 August 2005, which introduced multi-annual budgeting for income estimates and spending targets.

488. As a result, the social security deficit declined significantly in 2006. However, in its report *La sécurité sociale*, September 2007, the Court of Auditors considered that the remedial measures currently applied by the Government were not commensurate with the gravity of the situation. Although between 2004 and 2006 CADES took over €50 billion worth of deficits from the sickness branch of the General Scheme, the total deficits in other branches, financing funds and those foreseen for the coming years in the annex to the 2007 Social Security Financing Act were projected to exceed €40 billion by 2009. Besides the deficits, the social security schemes are encumbered by unpaid receivables from the State. At 31 December 2006, the debts entered under this heading in the State's balance sheet amounted to €9.13 billion. The Court of Auditors considered that, having acknowledged these debts in its 2006 accounts, the State has a duty to clear them as soon as possible. Furthermore, to avoid accumulating new debts, the State should make sufficient budgetary provision to meet its commitments on a yearly basis; a return to an annual balance in the social accounts must be the public authorities' priority.³⁶¹ In its comments of 2008–09 on Convention No. 102, the Committee noted that the French Government was determined to clear the debt contracted by the State and to introduce rules of governance to minimize the possibility of any recurrence of debt in the future, setting the objective to return to financial equilibrium for the General Scheme by 2011 and to reimburse all social security deficits by 2021.³⁶²

489. The Committee observes that high deficits of the social security schemes mean further carry-over to future generations of a significant part of the cost of social protection. The persistence of this situation runs counter to the logic of sustainable development for social security, which is what underpins Convention No. 102. In the Committee's view, a continually mounting public debt sits ill with the principles of good governance of social security established by the Convention, which a State has a duty to apply and which confer on it a general responsibility for the management of risks, the provision of benefits and the maintenance of the system's financial balance. On the contrary, these principles require the State to clear former social security debts as soon as possible and make sufficient budgetary provisions for future commitments.

490. The Committee wishes to emphasize in this respect that during periods of crisis no member State can discharge its general responsibility under Article 71, paragraph 3, of the Convention for the maintenance of financial equilibrium and to safeguard the viability of the social security system without, at the same time, being committed to the obligation to achieve time-bound results. It is with the aim of achieving the desired result within the determined time limits that this provision of the Convention places each member State under the obligation to "take all measures required", including emergency measures dictated by the crisis, with a view to:

- (i) re-establishing the financial equilibrium of the social security system;**
- (ii) stopping the continued growth of the public debt in relation to social security.**
- (iii) paying off former debts contracted by the State;**

³⁶¹ CEACR, Convention No. 102, direct request, *France*, 2007.

³⁶² CEACR, Convention No. 102, direct request, *France*, 2008.

- (iv) envisaging sufficient budgetary allocations to cover the State's future commitments to social security, particularly in relation to the compensation of exemptions or benefits provided on behalf of the State; and
- (v) introducing governance rules to clarify the financial relations between the social security system and the State so as to prevent debts from being renewed in the future.

E. Steering social security through the global financial and economic crisis ³⁶³

491. In November 2008, the Committee observed that many national economic indicators were giving the convergent message that the impact of the current financial crisis may be severe, long lasting and global, thereby posing a real threat to the financial viability and sustainable development of social security systems and undermining the application of ILO social security standards. In this situation, the Committee was bound to remind governments that, under the ILO Conventions on social security, governments must accept general responsibility for the proper administration of the national social security institutions and for due provision of benefits; to enable them to effectively discharge this general responsibility, the Conventions place them under the obligation to “take all measures required for this purpose”. ³⁶⁴

492. Experience showed that social security and the overall economy were inseparable, particularly in periods of crisis, and needed to be governed and managed together, at both the national and global levels. It meant that bringing the economy out of the crisis required enhanced measures of social protection and, indeed, making social security part of the solution. The Committee recommended basing these measures on the requirements of ILO Conventions, which have been drawn up by governments and social partners with the interests of the economy in mind so as to keep it working effectively. It cannot repeat too often that taking economic and social issues together in a synergetic approach is a precondition for good governance, in which international labour standards are instrumental. The Committee hopes that out of this crisis will emerge an understanding of the need to ensure full integration of the social dimension into the emerging post-crisis financial and economic order.

493. With the rapidly diminishing trust in private saving schemes, which have sustained severe financial losses, public opinion is becoming once again more receptive to the principles of social cohesion, collective risk sharing and the stability of public insurance schemes as preferable to the uncertainty of private systems. This may compel governments to find the new balance between the public and private tiers in the post-crisis social order. When private schemes face the prospect of being unable to pay out expected benefits and with some even facing bankruptcy, governments must be ready to accept increased responsibility for the proper administration and supervision of such schemes, which may include taking them over in extreme cases. The global financial crisis calls for a State that is willing and able to effectively regulate markets by all appropriate means. In some countries, governments have already been forced to take on once again the responsibilities that they had previously ceded to private actors,

³⁶³ CEACR, General Report, 2009, paras 128–136.

³⁶⁴ Articles 71(3) and 72(2) of Convention No. 102; Articles 24(2) and 25 of Convention No. 121; Article 35 of Convention No. 128; Article 30 of Convention No. 130; and Article 28 of Convention No. 168.

particularly in the pension insurance sector. Rebuilding the State's institutional and regulatory capacity to manage their expanding responsibilities now needs to be identified as a priority objective of international cooperation in the field of social security. The prospects of overcoming the crisis are linked to more, and not less, government regulation and, in this process, States can fully rely on the basic principles and provisions of the ILO's social security standards.

494. While it is clear that in the unprecedented conditions of the global financial crisis there is a manifold increase in the role of the State, the manner in which the State fulfils these responsibilities and obligations also takes on primary importance. Governments must see national social security schemes, both public and private, through the period of crisis in such a way as to ensure the lowest possible level of losses. They must manage the skyrocketing levels of budgetary deficit in such a way as not to endanger the social guarantees of the population. It is the view of the Committee that measures taken by governments to salvage private providers cannot be taken at the expense of cutting the resources available to public social security schemes. In conditions of financial and economic crisis, it may also be very tempting to tap the social security funds for many types of urgent measures intended to salvage enterprises, preserve jobs and kick-start economic growth. The Committee observes in this context that the diversion of social security resources for other purposes, however important they may be, is liable to adversely affect in the long term the sound management and financial balance of the system. There is therefore a pressing need for more thorough control to ensure that social allowances and subsidies granted out of public or social insurance funds, as well as various advantages and exemptions from social security contributions, are used effectively and efficiently.

495. **In the light of the recent developments, the Committee is bound to reaffirm that collective financing and the sharing of risks on as broad a basis as possible, combined with the transparent, accountable and participatory management of social security schemes under the overall responsibility and direct oversight of the State offer the best guarantees of the financial viability and sustainable development of social security.** While it is true that the provisions of ILO social security Conventions were not designed for the management of social security in a crisis situation, they nevertheless establish parameters – compliance with which is intended to ensure the stability and sound governance of the system. A good policy to exit out of the crisis would consist of bearing these parameters in mind so as to allow the progressive return of the system to its normal condition, even though emergency measures may temporarily introduce significant corrections into these parameters. **The role of the ILO's social security standards takes on particular importance in ensuring the concerted recovery from the crisis by helping countries to bring their social security systems back to the initial internationally agreed parameters. Setting aside the diversity of national situations, it is in safeguarding these common parameters and values through periods of financial and economic turbulence that the system of international obligations that bind member States under the ILO's social security Conventions has proved its full worth.**

Chapter 2

The need for effective coordination between social security and employment policy

496. Convention No. 168 requires promoting full, productive and freely chosen employment by all appropriate means, including social security (Article 7). Means like, inter alia, employment services, vocational training and vocational guidance should go hand in hand and be harmonized with social security benefits for unemployed. Methods of providing unemployment benefit should contribute to the above objective and do not discourage employers from offering, and workers from seeking, productive employment (Article 2). The implementation of measures taken to this effect was to be made in consultation and cooperation with the organizations of employers and workers (Article 3). Thus, the Conference's 1988 adoption of Convention No. 168 showed employment policy and unemployment protection must be seen in a dynamic, dialectical relation.³⁶⁵

497. Other means to promote employment envisaged by Convention No. 168 with which social security needs to be coordinated include special programmes promoting additional job opportunities, where they are established. Such programmes should encourage employment opportunities for identified categories of disadvantaged persons having or liable to have difficulties in finding lasting employment, such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country as well as workers affected by structural change (Article 8). System of protection against unemployment should include social benefits to be established for new applicants for employment (Article 26), as well as subsidies granted to enterprises in order to safeguard employment (Article 30). The general design and interaction of the provisions of Convention No. 168 are already explained in detail in Chapter 1D of Part I of the Survey.

498. **The Committee wishes to point out that, in addition to the above provisions of Convention No. 168 which concentrate on the main measures of coordination, in practice the need of close coordination and harmonization of employment policies with social security benefits to unemployed is wider, includes the range of other employment measures, as well as the need to coordinate both unemployment protection and employment policy with social insurance and social assistance programmes providing protection against the whole range of social risks** (sickness, employment injury, disability, old age, death of the breadwinner, maternity, family obligations or general poverty and social exclusion). The need for such coordinated and harmonized administration is clearly spelled out in Recommendation No. 67 (Annex, paragraph 27). In a more general context, employment and social security policies

³⁶⁵ CEACR, General Report, 1996, para. 56.

should be coordinated with economic, labour and developmental policies, which are rooted in international labour standards and add up to the decent work concept, as spelled out in the 2008 Declaration on Social Justice for a Fair Globalization.

A. Obstacles to efficient coordination between employment policy and social security

499. As revealed by the current General Survey and statistically analyzed by the ILO World Social Security Report 2010–11, the majority of the world’s populations has no access to comprehensive social security systems. While there is no country in the world which would not have at least one social security programme, in many countries the existing programmes cover only a minority of the population. Statutory programmes providing benefits for unemployed exist only in 78 out of 184 countries.³⁶⁶

500. In the 2010 General Survey concerning employment instruments,³⁶⁷ the Committee observed that almost all countries are committed to the goal of increasing productive employment, which is enshrined in their constitutions, special laws on employment promotion and key policy documents, such as national employment plans or policies, or poverty reduction strategies. Most countries also have either legislation and/or policies on key elements of employment policy, such as human resources development, small and medium-sized enterprises and cooperatives. Turning to the institutions for achieving these policy goals, the Committee noted that most countries also have public agencies responsible for overall employment policy. However, with reference to the monitoring and evaluation, only a small minority of countries demonstrated that this is indeed a regular part of the process of formulating and implementing employment policies and projects. Very limited information was also provided as regards the integration of employment policies into overall economic policies, as well as regards the outcomes or impact of various employment policies and programmes. The Committee stressed that there was a deficit of monitoring and evaluation of employment policies and programmes. Also, most countries, including many industrialized ones, clearly appeared to understand the term “employment policy” in a narrow sense, to mean only the activities that are typically within the remit of ministries of labour, such as active labour market policies and employment services, whereas a broader approach includes mainstreaming the objective of full employment in macroeconomic, trade, investment and industrial policies. In addition, the Committee noted that most developing countries do not appear to have strong institutions for the integration of employment policy into overall development strategies or economic and social policies.

501. Such a narrower approach to employment policy is reflected in the replies of many countries to the article 19 questionnaire where it asks about coordination of employment policy with social security. Employment promotion and provision of social security are both on the political agenda of many countries worldwide. In practice, however, even in the minority of countries where social security for unemployed exists, it is often not well harmonized with employment policies. Both facts are possibly explaining the poor ratification of Convention No. 168. Government reports contain little information on cooperation between the ministries responsible for labour and social security to develop an integrated approach. While a distinction needs to be made according to the level of economic development, most replies to the question whether social security benefits are

³⁶⁶ World Social Security Report 2010/11: Providing coverage in times of crisis and beyond, ILO, 2010, fig. 5.2.

³⁶⁷ General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, Report III (Part 1B), International Labour Conference, 99th Session, 2010.

or should be coordinated with employment policy and used as a means to increase employability and promote employment contained little more than general statements or intentions without clear indications of an overall strategy or priorities. The exceptions for the most part reflect the recent trend to condition unemployment insurance benefits or assistance on participation in active labour market programmes. Even when one ministry is responsible for both objectives, still often social security and employment promotion are not coordinated. **The Committee is bound to stress that there is a deficit of understanding the scope and practical arrangements for coordination of social security and employment policy, which needs to be addressed by the ILO within the framework of the integrated approach established by the Declaration on Social Justice for a Fair Globalization of 2008.**

502. **The Committee indeed considers that no durable progress could be achieved at the present time without meeting the challenge of integrating employment and social policies and harvesting the growth energy which such a fusion will produce. Concurrent logic leads the Committee to warn that effective realization of the Social Justice Declaration and the Global Jobs Pact would very much depend on the extent to which this deficit of integrated policies could be made up through practical guidelines and policy recommendations to the constituents, which might be developed by the ILO.** The obvious point of departure for the elaboration of such guidelines would be a joint reading and cross-referencing of the provisions of the two major “families” of ILO standards – those concerned with employment policies and the ones dealing with social security. The Committee would like to recall in this respect that already in 1996 it underlined the interdependence of the ILO’s standards, in the hope of contributing to comprehensive policy formulation by, where it seems relevant, pointing out the connections between social security Conventions and other standards such as those on employment policy, human resources development, or employment services.³⁶⁸ In the name of enhancing policy coherence, the Committee would like to invite the competent departments of the Office to conduct a mapping of these provisions with a view to determining the consistency of international standards in giving integrated recommendations, highlighting synergies and avoiding conflicts between widely defined employment policies and social security programmes.

503. Most high-income countries in their reports acknowledged the importance of ensuring coordination of employment and social security policies and referred to the institutional framework making such coordination effective. The Government of *New Zealand*, for example, indicates that it provides employment services and social security benefits in an integrated manner. This means that a jobseeker is directed straight into assistance to boost his/her job search skills as soon as he/she makes first contact with a public service delivery agency. As a result, over one third of people who make contact with the agency are supported through employment services and do not need unemployment assistance. This approach implies strong case management of working-age beneficiaries, with case managers focusing on early intervention to prevent a person becoming long-term unemployed. In the *Republic of Korea*, on the other side, the same result is being achieved by broadening the range of benefits to unemployed: under the Employment Insurance Act, employment insurance provides also early re-employment allowances, vocational skills development allowances, wide-area jobseeking allowances and moving allowances.

504. In between those two approaches laying emphasis either on employment services or on unemployment benefits, there is a multitude of national policy mixes which could

³⁶⁸ CEACR, General Report, 1996, para. 55.

hardly be subjected to any useful categorization. The following examples of *Ecuador*, *Mongolia*, *Tunisia* and *Uruguay* provide meaningful illustrations. The Government of *Mongolia* points to the integrated legal framework existing in the country to coordinate employment promotion and social security policies: the Law on Employment Promotion in 2001, followed in 2002 by the launch of the National Programme on Employment Promotion and the adoption of the Law on Vocational Education and Training and the Social Security Strategy Paper in 2003. By adopting these laws and policy documents the legal environment for industrial relations and employment was refined and an employment promotion policy was introduced. In 2006, amendments to the Law on Employment Promotion addressed many important issues such as the extension of public employment services to vulnerable groups of society, including workers in the informal sector and herders, and diversification of employment services. In 2008, the Government introduced special services and measures designed to promote disabled persons' employment and is currently revising the Law on Employment Promotion with a view to improving organization of public works, employment promotion programmes for different population groups, employer support services to retain their workforce and the use of the unemployment insurance fund for employment promotion services.

505. The Government of *Tunisia* indicates that the opening of the economy to the world market requires continuously upgrading and improving the employability of the labour force. This approach can result in some cases in vocational rehabilitation, training, retraining or vocational and geographical mobility. In this context, the social security benefits support the national employment policy measures (e.g. concession granted by the State to companies assuming employers' social security contributions for a period of up to seven years; the concentration of enterprises in priority areas of regional development; the creation of jobs for graduates and reintegration of the displaced employees). Such measures are continuously strengthened so as to boost the employment sector by allowing social security to be a lever for sustainable development of the country.

506. In *Ecuador*, employment policy is developed in cooperation between the Labour Ministry and the Ministry of Production, Employment and Competitiveness. The process of designing the employment promotion programme involves governmental institutions as well as workers' and employers' organizations. Vocational qualification and training is ensured through a technical autonomous body which aims at fostering human skills and productivity growth. The Labour Ministry implements the Employment Partner Network (*Red Socio Empleo*) as one of the operational components to improve the public employment service, expand health-care coverage and facilitate job placement of target groups. The Ministry of Social Development has launched the "Young Partner System" with the objective to generate decent work opportunities for youth.

507. In *Uruguay*, the Government has established a Social Cabinet which regroups the President of the Republic, Ministers of Social Development, Finance, Education and Culture, Labour and Social Security, Health, Tourism and Sport, Housing, Territorial Planning and Environment, Office of Planning and Budget and the President of the Congress of Mayors. The National Employment Service was established in 2005 in order to guide, mediate and provide services to unemployed persons as well as to enterprises, and to establish training needs and provide support for entrepreneurs. In 2008, the creation of the National Institute of Employment and Vocational Training (INEFOP), a tripartite body under coordination by the Ministry of Labour and Social Security, aimed at incorporating a systemic vision of employment and training policies. Since 2007, the Government is also implementing programmes providing incentives to private employers contracting long-term unemployed in situations of poverty. In 2008, the

unemployment benefit scheme was reformed to include provision of mandatory training directed to dismissed workers after the initial three months of receipt of unemployment benefits.

508. Globally however, an important number of replies from low- and middle-income countries point to the lack of effective measures taken to coordinate social security and employment policy. The Ministry of Labour of the *Plurinational State of Bolivia* merely indicates that this area is not in its competence but falls under the competence of the Ministry of Planning and the General Directorate of Employment. The Governments of *Antigua and Barbuda*, *Belize*, *Benin*, *Gabon*, *Nicaragua*, *Saint Lucia*, *Senegal* and *Suriname* indicate that there is currently no coordination measures between employment policy and protection against unemployment but that this is an area that should be developed. The trade union organization, Nature, of *Sri Lanka* points out that there is no planned activity to link social security to employment and employability and, in *Botswana*, according to the Government's report, there is no employment policy at all. The Government of *Mozambique* also indicates that, in the existing legal framework, there is no coordination between the entities that manage social insurance and those in charge of elaborating employment policies. Better coordination between them is however considered crucial to improving the employability of citizens and extending scope of contributory social security to include financing of active employment promotion measures. In the *Central African Republic*, an Employment Forum held in 2010 was to discuss coordination between social security and employment policy with a view to improving employability. The Government of *Djibouti* points to the need for an adequate training policy, as there is a shortage of workforce qualified to be employed by international investors. The Government of *Madagascar* indicates that, while social legislation does not provide any social cash benefits to support vocational rehabilitation and retraining, occupational or geographical mobility, the Government is making efforts to promote employment through the National Programme for Support to Employment (PNSE).

509. A number of reports indicate that at least some policy and administrative links between employment and social protection are being sought and established, raising the general awareness of the need to modernize public policies and institutions for this purpose. The Government of *Ethiopia* states that the process of formulating employment policy is ongoing, with the draft being currently validated by the tripartite constituents and other stakeholders. Benefits in the form of credit and capacity-building training aim, inter alia, at increasing youth and women employability and the development of small and medium-sized enterprises. The Government of *Malaysia* indicates that coordination between employment and social security policies should not be restricted to providing sufficient safety nets for workers, but also necessitates much broader actions, including preventive measures such as vocational education, training and retraining. For its part, the Government of *Mauritius* indicates that, although a comprehensive national employment policy has yet to be formulated, the existing social security system does operate in such a manner as not to let the various benefits create disincentives either to work or to employment creation. The Government of *Mali* indicates that, since 1998, the country has adopted an active and concerted employment policy strategically based on sustainable human development and the fight against poverty, attained, inter alia, by way of extending social security protection to the poorest segments of the population. In *Colombia*, the unemployment benefit programme launched in 2002 implemented by the Promotion of Employment and Protection against Unemployment Fund has a threefold mission: to pay unemployment benefit providing income security and protecting the economic assets of unemployed persons; to ensure vocational rehabilitation; and to assist

the most vulnerable parts of the population. No measures are however foreseen in favour of the long-term unemployed or the new applicants for employment such as those listed by Article 26 of Convention No. 168.

510. Most other replies refer to a series of specific or isolated fiscal, labour or social security measures, which do not appear to form part of a defined, comprehensive and articulated strategy aimed at ensuring synergy between social security systems and the promotion of full, productive and freely chosen employment. The reason is that many countries have not yet introduced protection against unemployment as part of their still rather limited social security systems. The Committee notes, however, that reports of the majority of countries indicate the need to link existing social security programmes with national training policies, including vocational training and guidance, as well as with the national policy for disabled persons, including vocational rehabilitation and return-to-work programmes.

511. Like in many other countries, in *Costa Rica*, while there exists a system of vocational orientation and training, there is no unemployment protection scheme, neither any measures targeting special groups like the long-term unemployed or new applicants for employment. In 2008, the Government established a national system for intermediation, orientation and information for employment and in 2009 a Labour Market Observatory coordinated with the institutions providing vocation training. The Government of Panama states that the law authorizes the social security institution to allow invalids to work with a view to their reinsertion into the labour market and that the national Constitution provides for the obligation of the State to elaborate an economic policy promoting full employment.

512. In *Malaysia*, which also lacks an unemployment protection scheme, the Government indicates that, under the social security protection scheme, rehabilitation programmes such as the Return to Work Programme helps injured workers reintegrate into the labour market, and monthly cash benefits to employees undergoing physical and vocational rehabilitation are under consideration. The Government of *Djibouti* reports the creation of the National Agency for Employment, Training and Professional Insertion (ANEFIP).

513. The Government of *Côte d'Ivoire* indicates that social reintegration measures include legally binding provisions on the prohibition of dismissal of victims of occupational accidents and occupational diseases and incentives such as discounts or exemptions from social contributions when hiring an injured or disabled worker. *South Africa* states that the Compensation Fund is currently developing a policy framework on rehabilitation and early return to work after an occupational injury or disease. *Swaziland* indicates that it is considering taking measures with respect to ensuring professional rehabilitation and cash benefits for vocational training, retraining and occupational mobility, as the training institutes for rehabilitation are being enhanced and will be decentralized countrywide.

514. The Government of *Ghana* states that social security reserves are supposed to be invested in targeted sectors of the economy to generate good returns and ensure security of the investments, but at the same time to support expansion of the economy and creation of more employment. The Government of *Uganda* indicates that social security investments should target job creation and that social exclusions should be addressed.

B. Flexible forms of employment and social security coverage gap ³⁶⁹

515. At the beginning of the 1990s, the Committee observed that flexible forms of employment had developed in industrialized countries at the same time as permanent waged employment had decreased, the growth of part-time employment had been generally stronger than the growth of more regular employment and attracted mostly women workers with inferior protection as regards dismissal, hours of work and social security. It was hard to distinguish precarious employment from flexibility, and the question how far new kinds of employment relations were in conformity with the overall aims of ILO standards merited further consideration. In the information provided as to efforts to improve the working of the labour market and facilitate the adjustment of manpower and its qualifications to job offers, the Committee noted the approaches which stressed the role of employment services, the need to give priority to training and retraining of workers, and the need to make more active use of the unemployment benefits system in order to stimulate workers' return to employment. ³⁷⁰ Activation policies adopted in many countries over the last decades resulted in increasing incidence of contractual flexibility and discontinuous career paths. Many countries seem to encounter difficulties in coping efficiently with these flexible forms of employment, which require adapting existing social security schemes to their atypical conditions of employment. As the *Austrian* report suggests, workers' vulnerability is not always captured by official data, since some categories are not entitled to unemployment allowances. This trend has led to situations where many workers were obliged to accept precarious work and were left without social security coverage. Part-time and discontinuous employment do not fit the traditional earnings-related contributory social security schemes usually designed to serve a conventional career pattern of full-time lifelong employment followed by full retirement. Access of the affected groups of population to social security and the adequacy of future benefits therefore need to be duly taken into consideration, where appropriate, in conjunction with measures taken to flexibilize the labour market.

516. Atypical and discontinuous employment is often characterized by lower earnings which makes it necessary for social security systems to better take into consideration these situations through a variety of policy measures by, for example, providing easier access to coverage or contribution credits for periods of lower earnings, or allowing the possibility to buy back contributions. Such measures would ensure that social security responds to the changing social and economic conditions, while at the same time addressing the growing need for greater income security. As stressed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), flexible labour legislation should not be accompanied by drastic cuts in funding available for worker education, training and skills development programmes. A "work first" approach to training policy, as opposed to a "good jobs" approach, has the effect of trapping workers in low-wage jobs with little opportunity for advancement. The AFL-CIO also considers it essential that the level of protection by social security benefits is not lowered when social security resources are also used to finance active employment policies.

³⁶⁹ Coverage of specific categories of workers is considered in Chapter 1B of Part III of the Survey. The trend to flexibilization and deregulation of the labour market in the 1990s is described also in Chapter 2 A.1 of Part I of the Survey.

³⁷⁰ CEACR, General Report, 1990, para. 43.

517. For the last 20 years, the Committee has been insisting on the need to implement an integrated and coherent policy concept that pursues the twin objectives of employment promotion and social security coverage aimed at achieving both simultaneously. **The Committee notes that the plans drawn up in recent times with a view to activating labour markets often only provided for the weakening of the labour law framework and did not comprise an adequate social security component, as advocated by Convention No. 168. The Committee considers that this imbalance should be straightened out and that flexible types of employment should receive appropriate social security protection through, inter alia, designing new types of benefits, which would provide adequate social protection to these categories of workers.**

518. The Committee noted however that an increasing number of governments appear to be making an effort to ensure a link between promotion of entrepreneurship and innovative forms of social benefits, most commonly by extending basic social protections to the self-employed and helping to subsidize coverage of workers in micro- and small enterprises. Other countries have gone further, by allowing unemployment benefits to be converted into a lump sum to start a micro-enterprise, and providing technical support for running a business and the possibility of receiving unemployment assistance later on if the enterprise fails. Jobseekers in some countries may now register for unemployment benefits or assistance, receive placement counselling or training, and search for a job all in the same “one-stop shop”. A growing number of countries, particularly in Europe, allow persons with disabilities and older workers with reduced working capacity to work part time without loss of disability benefits.³⁷¹ The Committee encourages member States to consider similar creative measures to strengthen the relationship between employment and social protection.

519. A very strong confirmation of the necessity to integrate economic, employment and social security policies came with the experience of the recent economic and financial crisis and from various policies adopted by countries to cushion effects of the crisis and bring the recovery. Integrating social security into the crisis responses packages brings a triple benefit. It protects people from becoming trapped in debilitating poverty, empowers them to seize market opportunities and contributes to aggregate demand.³⁷² **The crisis has shown very clearly the impact of social security on demand and, for the first time, social security has been seen by many financial sector analysts not as public spending, but as investment.³⁷³ In that context, those countries which have not yet done so may be well advised to introduce a strong social security component to their employment and recovery strategies.**

C. The need for coordinated strategies for the informal sector

520. The prevalence of the informal forms of employment leaves many (in some countries even most) workers and their families outside of coverage by contributory social security schemes. This situation requires implementation of measures extending effectively social security coverage to those in forms of employment not covered by the statutory social security schemes. This should be done in synergy with other measures

³⁷¹ CEACR, General Report, 2001, para. 152.

³⁷² In macroeconomics, aggregate demand is the total demand, i.e. personal consumption expenditures, government spending, and business expenditures and plus exports minus imports.

³⁷³ *The Global Jobs Pact and Prospects*, synthesis of statements by Juan Somavia, Director-General of the International Labour Office at the 307th Session of the Governing Body.

aimed at formalization of employment. With this objective in mind, in 2001, the International Labour Conference concluded that “the fundamental challenge posed by the informal economy is how to integrate it into the formal economy. This is a matter of equity and social solidarity. Policies must encourage movement away from the informal economy. Support for vulnerable groups in the informal economy should be financed by society as a whole”.³⁷⁴ Those in the informal sector are often the ones most in need of protection and member States should therefore “consider ways in which they may extend coverage of social protection as an integral part of their employment policies”.³⁷⁵ On a more practical level, the Committee notes that a synergistic approach produces more effective policies. Active poverty prevention strategies are crucial for promoting employment because, as a growing body of research clearly shows, they enable people to acquire and maintain the marketable basic skills they must possess to be employable.³⁷⁶ Sustainable social security is both a condition for reversing the progression of the informal economy and the result of inclusive employment strategies containing a social protection dimension. Virtuous cycle of coordinated economic, employment and social security policies enables to increase human capital, enhance employability, formalize employment, and provide feedback into higher economic growth, greater income security and better social services, which again enhance productivity and employability of the labour force.

521. In general, however, only a small proportion of replies explicitly stressed the need for more inclusive employment policies and extending social security to informal workers.³⁷⁷ The Government of *Senegal* states that, while the social security system covers only formal sector workers, its extension is a priority and more and more experiments are under way, such as the plan to set up a platform for shared management of health insurance for people in the informal sector. The Government of *Thailand* also indicates that it is currently in the process of extending social security to informal workers. The Government of *Mongolia* indicates that the existing social insurance system is well established for the formal sector, but not fully suitable for serving the needs of workers in the informal sector and agriculture where a major part of the population is. The Government therefore considers that this challenge should be addressed at the policy level. In *Ghana*, the Social Security and National Insurance Trust (SSNIT) has established a special scheme, which potentially enables coverage for all categories of workers in the informal sector. The Government of *India* indicates that, with its vast workforce of over 400 million, the country is constantly endeavouring to improve the coverage of the social security net of workers both in the formal and informal economies. The Government of *El Salvador* mentions projects aimed at adapting the social security system to the needs and circumstances of informal workers.

522. One of the examples of actions taken, which is publicly financed hiring subsidy programmes in providing incentives to formalize unregistered jobs, should not be underestimated. Although such subsidies are not generating new jobs, they introduce certain regulation into informal employment, creating entitlement to some benefits but at the same time recovering a portion of the costs involved through subsequent social security contributions. For example, in 2009, *Argentina* implemented a programme for regularizing unregistered jobs and promoting registered employment. This was done by

³⁷⁴ Resolution and conclusions concerning social security, International Labour Conference, 89th Session, 2001, paragraph 6.

³⁷⁵ CEACR, General Report, 2000, para. 53.

³⁷⁶ CEACR, General Report, 2001, para. 150.

³⁷⁷ See also Part III, Chapter IB.2 dealing with social security coverage of informal economy workers.

reducing employers' social security contributions by 50 per cent in the first 12 months of the membership in the scheme and by 25 per cent in the 12 months thereafter. In the context of the crisis, the programme led to more than 300,000 unregistered workers being registered and benefiting from social security coverage.

D. The economic and social rationale behind the concept of suitable employment

523. Many new policy designs tend to condition more strongly entitlements to unemployment benefits on participation in various labour market programmes, as well as on undertaking new employment within the shortest time span. It is important, however, to recall that Conventions Nos 102 and 168 introduce the notion of “suitable employment”, which should occupy the central place in the coordination of the unemployment protection with employment policy. The notion of suitable employment sends a simple but very meaningful message for coordinating efforts on both sides – on the one side, employment policy should be designed so as to promote not only full, productive, freely chosen, but also *suitable* employment carrying full social security rights and respecting the dignity of the worker; on the other side, social security as a means to promote employment should be designed so as to enable jobseekers to look for *suitable* employment and protect them from decisions depriving them of their social security entitlements in case of refusal to accept unsuitable offers of employment or participate in unsuitable labour market programmes.³⁷⁸ The concept of suitable employment is not meant to put into question the principle of priority of the objective of shortening periods of unemployment and making people employed. Such priority is inherent to the definition of the contingency of unemployment given by Convention No. 168, which arises only in situations where the efforts of *actively seeking* employment resulted in the inability to obtain one that is suitable. In assessing the suitability of employment, Convention No. 168 provides that the competent authority shall take into account, “under prescribed conditions and to an appropriate extent, of the age of unemployed persons, their length of service in their former occupation, their acquired experience, the length of their period of unemployment, the labour market situation, the impact of the employment in question on their personal and family situations and whether the employment is vacant as a direct result of a stoppage of work due to an ongoing labour dispute” (Article 21, paragraph 2).

524. In conformity with ILO instruments, the majority of European countries have established the obligation to take a job only if this is considered as “suitable” and allows workers to make use of their full working potential and skills. On a number of occasions, however, the further development of active labour market policies in some countries went hand in hand with the abandonment of the concept of suitable employment and a refocus on the requirement for unemployed persons to be “genuine jobseekers” willing to take up any ordinary job for which they are physically and mentally fit. The only reasonable grounds justifying the refusal of a job offer were family and health reasons.

525. The Committee observed in this respect that the aim of Conventions Nos 102 and 168 consists precisely in offering unemployed persons protection during the initial period of unemployment from the obligation to take up any job which is not suitable, so as to leave open the possibility to provide them with suitable employment ensuring the most effective utilization of their human resources potential for their own benefit and

³⁷⁸ On conditionality attached to unemployment benefits, “welfare-to-work” and “workfare” programmes, see Chapter 2D of Part II.

that of society as a whole. In matching jobseekers with vacancies, the public employment service should not only strive to fill the supplied vacancies with whoever suits them, but is also called to fulfil the no less important task of ensuring that, on the demand side, the jobs offered are of such a quality that corresponds to the professional skills and qualifications of the prospective jobseekers. Formal disregard by the employment service of the jobseeker's competence in judging the reasonableness of his or her refusal to accept the employment offered might result in compelling the jobseeker concerned to take up a lower quality job unsuitable to his or her qualifications, but which the employment service has to fill, particularly during periods of low unemployment. Nationwide, if skilled workers, disregarding their higher qualifications, were to be systematically placed in less skilled jobs, such labour market policy would inevitably lead to deskilling of the national workforce and the substantial reduction of employment opportunities for unskilled workers at the low end, pushing them into long-term unemployment and exclusion. Thus, favouring the supply-side over the demand-side approach in regulating the labour market, orienting the employment service to providing workers suitable for jobs rather than jobs suitable for workers, would in the long run lead to labour market imbalances and inefficiencies and to situations of underutilization of the human resources potential. On the contrary, in the logic of Convention No. 168 which sought to strike a balance between supply and demand in the labour market in terms of quality and not only quantity of employment, such situations were to be prevented through the systematic application by the public employment service of the concept of suitable employment in their placement policies.

526. The Committee has noted in this regard on previous occasions that “governments are increasingly realizing that merely placing stricter conditions on the receipt of unemployment benefit is not sufficient in itself in moving the unemployed into employment. They also need to provide quality services that bring about positive results for participants. ... This realization is most striking in the area of placement services”.³⁷⁹ The Committee observes that this trend is confirmed as, in their reports, a large number of governments identified improvement of public employment services as a top priority. Reasons stated range from the need to reduce frictional unemployment to the need to take more proactive measures to prevent people falling into long-term unemployment. Numerous governments are reorganizing the public employment services to improve their effectiveness. Some are also stressing the importance of tailoring services to the needs of the individual and of providing high-quality placement services to employers to encourage them to register vacancies. The Committee welcomes these developments and encourages all member States to make quality placement services for both jobseekers and employers a cornerstone of their employment promotion policy.

527. In certain cases the notion of suitable employment is only disregarded for the long-term unemployed who are required to accept any job offered. Nonetheless, such a policy would also not be compatible with Convention No. 168 since this instrument does not permit any trade-off between the suitability of employment and the duration of the benefit, where provision of longer benefit may be conditioned by the acceptance of less suitable jobs. Convention No. 168 distinguishes between short-term and long-term unemployment not to introduce stricter benefit conditions for the latter, but, on the contrary, to provide them with additional assistance in finding “suitable” employment. Such assistance should provide persons whose particular skills are no more in demand on the labour market with professional upgrade through vocational training programmes, so as to maintain their employability both in terms of quality and freedom of choice of

³⁷⁹ CEACR, General Report, 2002, paras 63 and 65.

employment. Besides the initial period of payment of unemployment benefit, Convention No. 168 therefore requires a follow-up benefit to be provided in the event of unemployment continuing beyond the initial period and to grant appropriate additional assistance to the persons to find suitable, productive and freely chosen employment.

528. The Committee observed, in this respect, that the notion of suitable employment fulfils both the economic goal of preserving the quality of the workforce and the social goal of preserving workers against compulsion to accept work below their level of education and skills. Unemployment benefits should not be used as an instrument for channelling unemployed persons into any available jobs under the threat of having no income at all, which would completely undermine the nature and the purpose of unemployment benefit as considered by ILO standards. The Committee considers that treating all workers as ordinary labourers, who should only be physically and mentally fit for the job they are offered, leads to commodification of the labour market and negation of the principle that “labour is not a commodity” enshrined in the Declaration of Philadelphia. The Committee considers that governments have the responsibility to eliminate the risk of undue suspension of benefits in case of refusal to accept unsuitable jobs by restoring balance between quality of jobs offered and qualifications of jobseekers. This concern for the suitability of employment constitutes one of the essential elements of the general responsibility of the State for the proper administration of the employment service, which it has to accept under Article 28 of Convention No. 168.

E. The lack of effective monitoring of the use of social security subsidies to safeguard employment

529. Coordination between employment and social security policies does not mean that one should be done at the expense of the other. Just as unemployment protection schemes should not discourage employers from offering and workers from seeking productive employment, employment policy also should not cause prejudice to social security. On the contrary, such coordination should entail mutual gains for each of them. The Committee observed that this is not always the case, particularly when employment promotion measures mandated by the State are financed by subsidies provided out of social security funds. Already in 2003 the Committee observed that, while more ratifying States are declaring and promoting active labour market policies, less attention has been paid to evaluating the impact of measures taken in pursuance of these policies. The Committee noted that, if outcomes are not measured, funds invested in job-creation activities may not be wisely spent. It also noted that any evaluation of the impact of employment promotion policies requires, as an essential step, that accurate statistical data regarding the labour market be available and recognized that in some member States the technical capability for producing such data needs to be developed.³⁸⁰

530. Existing practice shows a tendency to promote active labour market measures and enterprise development at a risk of undermining sustainability of social security finances by granting incentives to enterprises in the form of reduction of, or exemption from, social security contributions. The underlying idea of employment subsidies is that of reducing labour costs in such a way that will help an enterprise through difficult periods by minimizing lay-offs through work-sharing or other working time arrangements, or facilitating new hiring. Cost of such measures often has to be covered by unemployment

³⁸⁰ CEACR, General Report, 2003, paras 58–59.

insurance funds. Just before the global crisis, the Committee observed that numerous arrangements for exemption, reductions or adjustments of the contribution base resulted in a lowering of the resources of social security systems.³⁸¹ The number and variety of these arrangements, the exact scale of which is not known, add to the complexity and financial instability of the system and impose constraints on its management, undermining the latter's efficiency. The significant resources withdrawn from social security go to the benefit of economic interests which are sometimes far removed from the objectives of social security. During the global financial and economic crisis, recourse to exemptions from social security contributions became more widespread. A number of G20 countries, including *Canada, Germany, Japan* and *Mexico*, also chose to temporarily reduce employers' social security contributions.

531. The governments must take the necessary steps to ensure that the payments are expended only for the intended purpose and to prevent fraud or abuse by those who receive such payments (Articles 7 and 30 of Convention No. 168). This message includes three related aspects, each important in its own right: (1) in accordance with the employment promotion objective of the Convention, subsidies need to be effective, that is to fulfil the intended purpose of safeguarding employment and not being used for any other purpose, however important it may be for political or other reasons; (2) in accordance with the general responsibility of the State for the sound administration of its unemployment protection system established by Article 28 of the Convention, the government or the social security institution shall establish a monitoring mechanism permitting the assessment of the effectiveness of granting and using employment subsidies; (3) to discharge the obligation to prevent fraud and abuse, both on the part of those who disburse employment subsidies and those who receive them, member States shall make such offences punishable under national law and entailing sufficiently dissuasive sanctions.

532. While at first sight looking rather straightforward, the fulfilment of these provisions is not a simple or easy task. One has to take into account that employment subsidies could take different forms – reduction of social security contributions, payment of a fixed wage subsidy, vouchers for workers, accumulation of tax credits for each additional worker hired, etc. – and have multiple sources of financing: general taxes, social insurance, public employment service programmes, special central or regional development funds. Properly managing and monitoring such an array of labour market measures, as required by Article 30 of the Convention, would in fact amount to having a well-designed unemployment protection system closely coordinated with the employment policy, as required by Article 2. **The Committee observes that there is a lack of proper arrangements for monitoring and supervising the use of social security subsidies to stimulate employment.** Consequently, where total or partial exemptions from social security contributions are complementing a range of other measures, including fiscal, aimed at encouraging economic activity, the Committee considers that the governments concerned need to explain the reasons for exempting enterprises from social security contributions and thereby potentially raising the deficit of social security systems, as well as to indicate whether any financial compensation was provided to the social security systems and the amounts subsequently recovered.

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533. The Committee is concerned that given the long list of highly visible current economic problems – from mortgage defaults to state budget shortfalls – social security

³⁸¹ In *France*, for example, the largest state debts to social security stem from exempting enterprises from social security contributions (€4.5 billion in 2006). CEACR, ECSS, *France*, 2008.

woes may lurk in the background. Even as some economic indicators started to turn positive, social security indicators are set to remain bleak for some more years before future economic growth will start refilling its discharged reserves. The key indicator to watch here is unemployment. Put more workers on the payroll and social security contributions would start coming in, while benefits and social assistance to unemployed would stop coming out. Evidence from the previous crises indicates however that labour markets tend to recover only four to five years after the economic recovery has begun.³⁸² The sickly pace of job creation is a real legacy of the crisis which shapes the political debate across all leading economies. Systems of protection against unemployment should therefore be paired with active labour market policies bringing forward the principles of their coordination laid down in Convention No. 168. These principles would serve well the objective of the ILO Social Justice Declaration “to place full and productive employment and decent work at the centre of economic and social policies”³⁸³ by means of a rights-based integrated approach.

534. In concluding this chapter, the Committee would wish to emphasize that to achieve this objective in conditions of uncertainty which will characterize the labour markets still for some years to come, ILO constituents would be well advised to coordinate their employment and social security policies in such a way as to prioritize investment in two sets of skills: (1) investing in a human being’s unique abilities of problem-solving, creativity and adaptability, which make for innovation, efficiency and productivity growth and go to the very heart of entrepreneurship; and (2) investing in a human being’s unique sense of compassion with other human beings, which makes for social cohesion and mutual help and goes to the very heart of social security. Coordinating employment and social policies would therefore depend on the country’s ability to develop its human and social capital together and make full and productive use of both through generation of decent work.

³⁸² *The Financial and Economic Crisis: A Decent Work Response*. International Institute for Labour Studies, ILO, 2009.

³⁸³ ILO Declaration on Social Justice for a Fair Globalization, Part I(A).

Chapter 3

Advancing social security through social dialogue

535. The ILO Declaration on Social Justice emphasizes the importance of social dialogue and tripartism as the most appropriate method for adapting the implementation of the four strategic objectives to the needs and circumstances of each country. Advancing the objective of social security for all requires an effective social dialogue between public authorities and the representatives of employers and workers. The latter can involve, in a broader dialogue, the representatives of other stakeholders such as the beneficiaries of social assistance. Convention No. 102 ensures the participation of the representatives of the persons protected in the management of social security, alongside the representatives of employers and of the public authorities (Article 72(1)). Article 3 of Convention No. 168 stipulates the necessity to implement its provisions concerning employment promotion and protection against unemployment in consultation and cooperation with the organizations of employers and workers. Such consultation and co-operation should aim, in particular, as suggested in Paragraph 5(b) of the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), “at ensuring that the competent public authorities seek the views, advice and assistance of employers’ and workers’ organisations in an appropriate manner, in respect of such matters as:

- (i) the preparation and implementation of laws and regulations affecting their interests;
- (ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and
- (iii) the elaboration and implementation of plans of economic and social development.”

536. In the last two decades the issues of tripartism and social dialogue were on the agenda of the International Labour Conference in 1996³⁸⁴ and in 2002.³⁸⁵ The promotion of social dialogue and tripartism became one of the four strategic objectives of the ILO under the Decent Work Agenda and was reaffirmed as such by the Declaration on Social Justice for a Fair Globalization of 2008 (Part IA(iii)). The role of social dialogue in social security was specifically examined in the general discussion held at the 89th Session of the International Labour Conference in June 2001.³⁸⁶

³⁸⁴ ILO: *Tripartite consultation at the national level on economic and social policy*, Report VI, International Labour Conference, 83rd Session, Geneva, 1996.

³⁸⁵ ILO: Resolution concerning tripartism and social dialogue, International Labour Conference, 2002.

³⁸⁶ ILO, 2001: Sixth item on the agenda: *Social security – Issues, challenges and prospects*, Report of the Committee on Social Security, ILC, 89th Session, Geneva.

537. Many member States indicate that they consult the social partners on major questions of reforms of social security systems and the drafting and adoption of related legislation. In *Cuba*, for example, the development of laws in the area of social security is done with an active involvement of trade unions and employers; wide consultations were held on Law No. 105/2008 on social security, which was passed in January 2009. In *Peru*, in accordance with the strategy prepared by the ILO and under the auspices of the United Nations Development Programme (UNDP), in 2001 the National Dialogue on Social Security was initiated with the participation of the representatives of workers, employers and the Government, which resulted in the adoption of the Organic Law No. 51 on the Social Insurance Fund of 27 December 2005. In June 2009, as part of the reform process, the Law on Organization and Functioning of the Ministry of Labour and Employment Promotion No. 29/381 was passed, which stated that “social dialogue and collective bargaining” is a programme area of work of the Ministry, in accordance with the Constitution of Peru and the ILO Convention No. 144 on tripartite consultation, ratified by the country. During the recent reform of the Social Security Scheme (2007) in *Belize*, the trade unions were represented on the Social Security Legislation Reform Committee and were instrumental in identifying sections of the legislation that required reform. The *Dominican Republic* reported that consultations were held to inform the social partners about the need to reform the social security system and to obtain public opinion regarding the changes. In South-Eastern Europe, an ILO survey published in 2008 has revealed that the central institutions for social dialogue were only modestly involved in pension reform deliberations.³⁸⁷

List of workers’ and employers’ organizations which have replied to the article 19 questionnaire

Countries	Workers’ organizations
Argentina	Confederation of Workers of Argentina (CTA) General Confederation of Labour of the Republic of Argentina (CGT-RA)
Austria	Federal Chamber of Labour (BAK)
Brazil	Single Confederation of Workers (CUT)
Canada	Canadian Labour Congress (CLC)
Colombia	Single Confederation of Workers of Colombia (CUT) Confederation of Workers of Colombia (CTC) General Confederation of Labour (CGT)
Costa Rica	Confederation of Workers Rerum Novarum (CTRN)
Djibouti	General Union of Djibouti Workers (UGTD)
Dominican Republic	Autonomous Confederation of Workers’ Unions (CASC) Republic National Confederation of Trade Union Unity (CNUS) National Confederation of Dominican Workers (CNTD)
Honduras	Worker’s Central Union of Honduras (CTH) Worker’s General Central Union (CGT) Single Confederation of Workers of Honduras (CUTH)
India	Hind Mazdoor Sabha (HMS)
Italy	Italian General Confederation of Labour (CGIL)
Latvia	Latvian Free Trade Union Federation (LBAS)
Lithuania	Lithuanian Trade Union “Sandrauga”

³⁸⁷ Y. Ghellab, *Social dialogue on pension reform in South Eastern Europe: A survey of the social partners*, ILO, 2008.

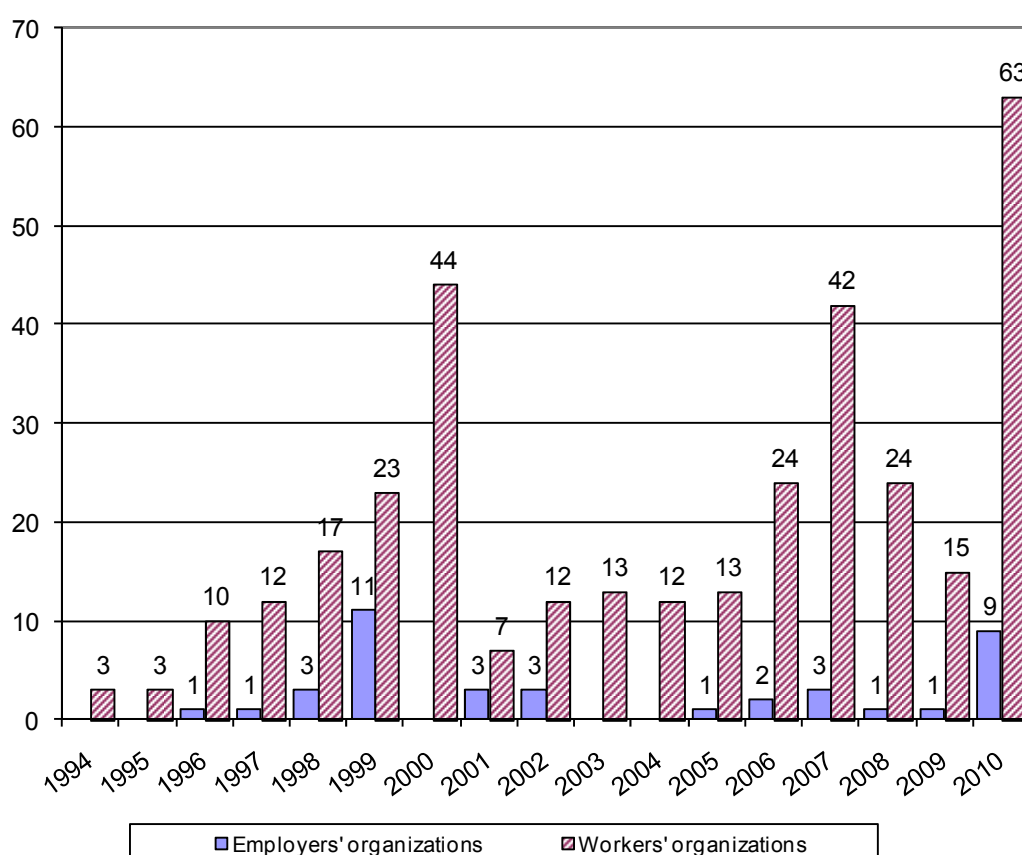
Countries	Workers' organizations
Mexico	Confederation of Workers of Mexico (CTM)
Montenegro	Confederation of Trade Unions of Montenegro
New Zealand	New Zealand Council of Trade Unions (NZCTU)
Pakistan	Pakistan Workers' Federation (PWF)
Paraguay	Central Confederation of Workers (CUT)
Peru	CGTP–CATP–CUT
Philippines	Trade Union Congress of the Philippines (TUCP)
Poland	All–Poland Trade Unions Alliance (OPZZ) Independent and Self/Governing Trade Union “Solidarnosc”
Portugal	General Workers' Union (UGT) General Confederation of Portuguese Workers – National Trade Unions (CGTP–IN)
Senegal	National Federation of Independent Trade Unions of Senegal (UNSAS)
Slovakia	Confederation of Trade Unions of the Slovak Republic (KOZ SR)
Spain	Trade Union Confederation of Workers' Commissions (CC.OO.)
Sri Lanka	Employees' Trust Fund Board (ETF) Agricultural and Agrarian Insurance Board Lanka Jathika Estate Workers' Union (LJEWU) National Association for Trade Union Research and Education (NATURE)
Turkey	Confederation of Turkish Trade Unions (TÜRK–İS)
United States	American Federation of Labor and Congress of Industrial Organizations (AFL–CIO)
Uruguay	Inter-Union Assembly of Workers – Workers' National Convention (PIT–CNT)
Bolivarian Republic of Venezuela	Confederation of Workers of Venezuela (CTV)
Countries	Employers' organizations
New Zealand	Business New Zealand
Portugal	Confederation of Trade and Services of Portugal (CCSP) Portugal Confederation of Portuguese Industry (CIP)
Switzerland	Union of Swiss Employers (UPS)
Turkey	Turkish Confederation of Employers' Associations (TİSK)
Bolivarian Republic of Venezuela	Federation of Chambers and Associations of Commerce and Republic of Production of Venezuela (FEDECAMARAS)

A. Issues raised in replies to the article 19 questionnaire

538. In the last two decades the number of workers' and employers' observations on the application of social security Conventions submitted under article 23 of the ILO Constitution increased by the end of each decade, reaching a peak in 2000 and 2007 respectively. The peak in 2000 reflected the desire of workers' organizations to bring their concerns over the retreat of the welfare state and the privatization of the social security schemes during the 1990s to the attention of the International Labour Conference in June 2001 when it had the general discussion on social security. The number of workers' submissions peaked again in 2007 – the year when governments had to supply detailed reports on the application of ratified social security Conventions. The workers' comments showed their dissatisfaction with the increasing number of violations of ILO Conventions and, in general, with the direction globalization was taking. In 2010 – the year of the preparation of the General Survey – the number of observations

from workers' organizations increased again, not least because of the new problems brought by the global financial and economic crisis. By November 2010, 44 workers' organizations and six employers' organizations from 32 countries and the tripartite National Labour Council (CNT) of Belgium sent in their replies to the article 19 questionnaire. Out of the reports of the workers' organizations, 17 came from the Americas region, 11 from Europe, eight from Asia and the Pacific and two reports were received from Africa. In view of the importance of the subject matter, the Committee of Experts would welcome more replies from employers' and workers' organizations.

Table 7. Number of employers' and workers' organizations which have made comments on social security instruments under articles 19 and 23 of the ILO Constitution



539. Among various problems raised by workers' organizations in their replies to the article 19 questionnaire on social security instruments, as well as in their observations on article 22 governments' reports on ratified social security Conventions, there are several issues that constitute common concerns for workers across the globe. In general, *low level of social security benefits*, which does not protect from poverty stands out as the major concern of workers around the world. Both the General Confederation of Labour (CGT) of *Argentina* and the Confederation of Argentinean Workers (CTA-ETS), report that minimum pensions and social assistance benefits are much lower than minimum salaries, causing social tensions. The *Canadian* Labour Congress reports that social assistance benefits are not high enough to guarantee a level of income above the poverty line. The AFL-CIO (*United States*) reports that the average social security benefit is just slightly above the minimum wage income, while a typical retiree needs almost twice the average monthly social security benefit to preserve a reasonable standard of living. Likewise, the Single Confederation of Workers of *Colombia* (CUT), CASC, CNMUS

and CNTD (*Dominican Republic*), the CGT, CATP and CUT (*Peru*), Inter-Union Assembly of Workers – Workers National Convention (PIT–CNT) (*Uruguay*), NATURE (*Sri Lanka*), Confederation of Trade Unions of *Montenegro* and the Confederation of *Turkish* Trade Unions express serious concern about the levels of benefits being too low to provide a sufficient replacement of previous wages and in many instances not guaranteeing an income above the poverty line. In this context, the CTA–ETS (*Argentina*) calls for the need to introduce minimum universal old-age benefits. In addition, many trade unions expressed concern as regards the insufficient adjustment of benefits notwithstanding increases in inflation and the cost of living.³⁸⁸

540. Another recurrent problem underlined by the workers' organizations relates to *the low coverage* of social security systems and particularly low level of protection against unemployment. Social security systems in most countries only cover formal sector workers, while the *self-employed* and workers in the informal sector are often excluded. The need for wider coverage has been reported by the workers' organizations from *Argentina, Colombia, Dominican Republic, Montenegro, Pakistan, Peru, Philippines, Poland* and *Turkey*. Several workers' organizations refer in particular to low levels of coverage for unemployment protection. The CUT (*Colombia*) indicates that, although the unemployment benefit branch was created ten years ago, due to the scarcity of resources assigned, the coverage is still very low with less than 5 per cent of the unemployed actually receiving the benefit. The workers' organizations from *Poland* (the Independent and Self-governing Trade Union “Solidarność”) and *Portugal* (General Workers' Union) are concerned with the conditions for entitlement to and the calculation of unemployment benefits.

541. The shared concern of trade unions is that workers of the *informal sector* as well those in *precarious jobs* are deprived of social security. As reported by the *Pakistan Workers' Federation*, precarious jobs are increasing and employers keep workers on precarious and temporary contracts to evade the application of labour and social security laws. The *Italian General Confederation of Labour* points out that workers in atypical employment (part-time, temporary, occasional, and short-term employment) were hit by the crisis much more than the ones in regular employment. As reported by the workers' organizations of *Austria (Bundesarbeitskammer)*, when analysing the impact of the crisis, the Government only considered workers in permanent employment, i.e. those entitled to an unemployment benefit, despite the fact that the crisis affected the workers in precarious employment much more. It is therefore important to establish a minimum guaranteed level of protection.

542. Half of the replies of workers' organizations point to *problems in national health-care systems*. The CUT (*Colombia*) reports that the health-care system is inoperative and that the main problems relate to corruption, insufficiency of resources, high costs of administration and provision of services, and the lack of access to services. Several workers' organizations mention the lack of qualified specialist and medical personnel (notably the Confederation of Workers Rerum Novarum (CTRN) (*Costa Rica*), CUT AUTENTICA (*Paraguay*). Workers' organizations from *Colombia* (CUT and CTC), *Dominican Republic* (CASC, CNUS and CNTD), *Peru* (CGT, CATP and CUT), *Pakistan Workers' Federation*, Trade Union Congress of the *Philippines*, *Belgium* (Conseil National du Travail) point to the lack of the universal access to medical care, in particular for the poorest and pensioners. Many workers' organizations advocate an effective medical care scheme ensuring free access for all.

³⁸⁸ CTA–ETS (*Argentina*), Canadian Labour Congress, CUT AUTENTICA (*Paraguay*), CGT, CATP and CUT (*Peru*), Lanka Jathika Estate Workers' Union and NATURE (*Sri Lanka*).

543. Some workers' organizations are concerned with the *financial viability of the social security system* due to the evasion of contributions, the non-observance of the principle of collective financing and the lack of adequate protection of social security funds. Concerns as regards the financing of social security benefits have been reinforced as a result of the global financial and economic crisis, which has exerted increasing pressures on social security funds, as well as benefits. Several workers' organizations warn that the social security system does not adequately prevent evasion and fraud, particularly because sanctions are non-existent or not sufficiently dissuasive. For example the CGT, CATP and CUT (*Peru*) inform that existing penalties are not high enough and the Government has not taken effective measures to combat tax evasion and to recover social security arrears. The Confederation of Workers Rerum Novarum (*Costa Rica*) also note that the evasion of contributions is a serious problem affecting the viability of the social security system. There should be more control of the payment of contributions in order to improve the efficiency of the system.

544. Workers' organizations from several countries refer to *the need for better protection of social security funds*. The Trade Union Congress of the *Philippines* stresses that, to strengthen the financial viability of the social security system, investments should be domestic, high impact and labour intensive. According to the Congress, the crisis emphasized the risk of investing in foreign instruments. Also, the losses from mishandling of social security funds by the Government should be funded by government contributions and not by additional mandatory contributions from members. The National Union of Autonomous Trade Unions of *Senegal* (UNSAS) reported problems with social security financing due to the poor investment climate, evasion and fraud. The need for special measures to protect social security funds from fraud has also been underlined by the workers' organizations of *Argentina* (General Confederation of Labour, CGT) and *Paraguay* (CUT AUTENTICA).

545. A major problem expressly addressed by the workers' organizations from many countries³⁸⁹ is *the lack of workers' participation in the administration of social security funds*. Workers from *Argentina* (CGT-RA and CTA-ETS) stress the need, besides the consultative role of workers in the administration of social security schemes, for their direct involvement in the decision-making process, financing and control matters. The AFL-CIO (*United States*) states that there is no involvement of a workers' organization in the administration of the funds and that the State does not take all measures necessary to ensure the proper administration and supervision of private pensions. Also, US bankruptcy law makes it possible for businesses to offload their defined benefit pension liabilities by reorganizing through bankruptcy. The problem of the lack of participation in the administration of social security schemes has also been reported by CUT (*Colombia*), the Confederation of Workers Rerum Novarum (*Costa Rica*), CUT AUTENTICA (*Paraguay*), CGT, CATP and CUT (*Peru*), PIT-CNT (*Uruguay*), the Trade Union Congress of the *Philippines*, Lanka Jathika Estate Workers' Union (*Sri Lanka*), the Independent and Self-governing Trade Union "Solidarność" (*Poland*) and the Confederation of *Turkish* Trade Unions.

³⁸⁹ *Argentina, Peru, Philippines, Poland, Sri Lanka, Turkey, United States and Uruguay.*

**Ensuring compliance of the private and public pension schemes
in Peru with the basic principles of the international
social security law: The diagnosis of the workers**

The General Confederation of Workers of Peru (CGTP), the Autonomous Confederation of Workers of Peru and the Unitary Confederation of Workers (CUT) consider that the Government does not have a comprehensive policy regarding the challenges faced by the national social security system. The workers' organizations indicate that the current social security system contains a number of flaws in terms of coverage, financing, universality and equity:

- Large parts of the economically active population such as the self-employed and poor workers are excluded from the social security system as a result of the reforms of the 1990's characterized by a strong trend towards privatization. As a result of these reforms, the social security coverage was cut, as the tax system did not take into account workers in the informal sector. In addition, no effective measures have been taken to avoid hardship on persons of small means.
- The private pension system, the public pension system as well as invalidity and survivors' insurance schemes are funded only by workers in violation of the principle of collective financing. Regional and local governments do not contribute to the social security budget which results in the increase of the fiscal debt.
- The level of benefits paid is not sufficient to guarantee throughout the contingency the minimum replacement rate established by Convention 102 and there are no technical criteria for the adjustment of pensions. No periodic actuarial studies are made to ensure the financial viability of the social security system. There is little or no democratic participation of workers in the administration and management of social security.
- The country lacks an effective medical care scheme ensuring access for all. The newly established Integral Health Insurance Scheme (SIS) directed to employees working for micro-enterprises only ensures a lower level of health protection in breach of the principles of equality and universality. Also, state policy and the current regulations do not respect the principle of the inviolability of the resources of the SIS.
- Although Peru has ratified the Unemployment Provision Convention, 1934 (No. 44), there is no unemployment protection scheme or coordination between the social security and employment policies.
- There is no comprehensive system of family protection. Multiple uncoordinated measures fall short of combating poverty efficiently.
- Severe deficiencies are also observed in the mechanisms for complaint and appeal concerning social security, particularly in respect of entitlement to benefits. Existing penalties are not sufficiently dissuasive but the Government has not taken effective measures to combat tax evasion and to recover social security payments arrears.

546. Another major problem is the *non-observance of the principle of collective financing and the unfair distribution of the cost of benefits* reported by the majority of trade unions of the Latin American countries. The report from the workers' representatives from *Uruguay* (PIT-CNT) state that workers in the country contribute 15 per cent of their salaries, which is considerably higher than in other countries, while employers only contribute 7.5 per cent. In 1995, the Government introduced a mixed system with an individual capitalization pillar, which, according to the union, hampers the principle of solidarity. In addition, the benefits provided are lower than those foreseen by the law establishing the system. The Confederation of Workers *Rerum Novarum Costa Rica*) argue that the State should contribute more to social insurances. For example, the State only contributes 1.25 per cent for the old-age pension scheme, whereas workers and employers contribute 3 per cent and 5.75 per cent, respectively. According to the CGT, CATP and CUT (*Peru*), the pension system and the invalidity

and survivors' insurance schemes are only funded by workers in violation of the principle of collective financing of social security established by ILO instruments. Regional and local governments do not contribute to social security which results in a worsening of the fiscal debt and no effective measures have been taken to avoid hardship for persons of small means.

547. Workers' organizations have expressed their concern regarding *the impact of the crisis on social security*. They point out that the crisis has not only affected the investment of social security funds but also provoked the decrease in contribution levels and the higher number of beneficiaries. AFL–CIO (*United States*) and CGT–RA (*Argentina*) emphasize the key role of social security as a counter-cyclical economic stabilizer. According to the AFL–CIO, the current economic crisis has exacerbated US wage stagnation, contributing to the recent deterioration of the finances of the social security programme. The economic downturn, combined with the shift to defined contribution pensions as workers' primary retirement plans in the private sector, has exposed severe deficiencies in the current private sector retirement system. Therefore, much more needs to be done to promote social security for workers through the establishment of employer-provided pension plans through collective bargaining or otherwise. Much more federal investment is needed in retraining and skills development programmes which enable workers to improve their living standards. In the context of the global economic crisis, many workers' organizations advocate an adequate plan to deal with the consequences of the economic crisis for the social security system with a view of maintaining and improving the level of social protection.

548. Finally, some organizations expressed concerns with poor ratification and compliance with the surveyed instruments. Thus, the trade unions of *Argentina, Colombia, Djibouti* and *Pakistan* mention *the need to ratify ILO Conventions Nos 102 and 168*. The *Polish* trade union “Solidarność” stresses *the need of compliance* with the requirements of Convention No. 102 as regards unemployment insurance. The trade unions of *Peru* state that the level of pensions paid is not sufficient to guarantee the minimum replacement rates established by Convention No. 102 and that there are no technical criteria for the adjustment of benefits.

549. The Committee notes the concerns expressed by workers' organizations regarding the challenges faced by the social security systems, particularly the lack of financial viability of the social security funds, the impact of the global economic crisis on their long-term sustainability and the lack of participation of social partners in the management of social security schemes. **The replies received from workers' organizations have shown their expertise and the soundness of their analysis with respect to the situation of social security schemes. The Committee stresses that governments would be well advised to use this expertise and knowledge and considers that an effective involvement of social partners would contribute to the advancement of social security.**

B. The deficit of participatory management of social security schemes

550. The *principle of participatory management* of social security systems stems from Article 72(1) of Convention No. 102, which stipulates that “where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature, representatives of the persons protected shall participate in the management, or be associated therewith in a consultative capacity, under prescribed conditions; national laws or regulations may likewise decide as to the

participation of representatives of employers and of the public authorities”. Thus, whereas state responsibility is the rule in all cases, participatory management of social security was to complement it in all cases where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature. The principle of participation in the management of social security institutions is recognized with respect to the representatives of the persons protected and extends beyond the limited circle of employed persons. Convention No. 168 reinforces the principle of participative management by guaranteeing the participation in the administration in an advisory capacity of representatives of the protected persons, as well as of the employers, even in cases where the administration is directly entrusted to a government department responsible to Parliament. The principle of participatory management provides an additional guarantee that social security is managed in a sound and transparent manner, particularly in the case of private social insurance schemes.

551. Main institutional forms of social dialogue in social security matters include national tripartite bodies concerned with economic and social policies, participation of representatives of the workers’ and employers’ organizations in the management boards and advisory councils of the social security schemes, establishment and regulation of supplementary schemes through collective agreements. In Europe, despite the fact that the State has traditionally been central in the administration of social security schemes, there is a strong involvement of the persons protected in the management of the schemes. Thus, the Government of *Austria* indicates that the social security institutions are set up as public bodies under the principle of self-government. The decision-making bodies (called administrative management bodies) are formed by so-called “insurance representatives” that represent the respective insured communities in consideration of their interests. The vast majority of insurance representatives are chosen by the employees’ and employers’ organizations. In *Portugal*, employers as well as the main organizations that represent persons protected have a seat on the Standing Committee for Social Dialogue and the National Council for Social Security. In *Greece*, representatives of insured persons, employers and pensioners participate in the administrative boards of social insurance bodies.

552. Many governments have reported the possibility for social partners to set up voluntary (private) schemes. *Angola* reported that, by virtue of Law No. 7/04 on social protection, workers and employers are permitted to create complementary social protection funds and mutual associations. In *Hungary*, the legal framework for supplementary schemes was established by Act XCVI of 1993 on voluntary mutual insurance funds. The Government of *Tunisia* reported that workers and employers can agree in a collective agreement or a statute regulating the relationship between the two parties to establish certain social and voluntary supplementary schemes. The Government of *Ghana* indicated that, through their labour unions, public sector workers have been able to set up supplementary provident schemes for their members, for example the Teachers Fund (GNAT), Judicial Service Staff Fund, etc. The Government of *Sweden* indicated that, apart from the publically financed unemployment insurance, there are also a number of additional private unemployment insurance schemes administered by trade unions and financed solely through union membership fees. *Finland* indicated that, on a voluntary basis, employers can provide employees with a group supplementary pension in addition to the basic coverage. The Government of *China* indicated that, according to section 75 of the labour law, “the State encourages the employer to set up supplementary insurance for employees according to its practical conditions.” The State Council Decision on the establishment of a basic health insurance system for urban employees (SC[1998]44) provides that: “In addition to joining the basic

health insurance, the enterprise may set up supplementary health insurance.” *Benin* mentioned the possibility of setting up a supplementary scheme that will be managed by a tripartite body.

553. Many government reports from Latin America mentioned the involvement of social partners in the establishment and management of supplementary social security schemes, which are often set up through collective agreements. In *Argentina*, supplementary social security schemes can be created both at the enterprise level and at the level of a trade union. In *Belize*, most private sector employers establish defined contribution schemes, which are co-managed by employers and trade unions. In *Brazil*, collective bargaining can be the basis for the establishment of supplementary pension schemes at the company level, with independent management. However, the report states that there is only one representative of the participants and retirees in the Management Board of the Pension Funds. The Government of the *Dominican Republic* reported that the country’s labour legislation provides for the possibility to establish complementary social security benefits by means of collective agreements. In *Uruguay*, supplementary schemes can be created by collective bargaining process or by legislation. In the *Bolivarian Republic of Venezuela*, collective agreements both in the public and private sectors have a wide scope of regulation which includes the social security benefits. According to the Organic Labour Act, collective agreements regulate, inter alia, the option to retire due to the length of service, access to mortgage credit, monthly food allowance, free medical care for both the beneficiaries and their families and child-care allowances. In *El Salvador*, the social dialogue process is being planned in order to create complementary social security schemes. In *Honduras*, due to the lack of consent between workers and employers, the idea to create auxiliary schemes has not been implemented.

554. The national tripartite institutions for social dialogue, such as, for example, an economic and social council, serve as forums for governments and social partners to deliberate on national economic and social policies, including social security. This goal is assigned to them by laws and regulations which define their mandate and methods of work. Different social security advisory councils may exist at the national level. As a rule, such tripartite bodies have a consultative and advisory role on social security matters.

555. Tripartite administration of social security schemes may be exercised through autonomous public institutions with a tripartite governing body or through government agencies with the participation of representatives of the persons protected. Article 11 of the Law on Social Security of *El Salvador* provides that the Management Board of the Institute of Social Security of El Salvador should be composed on a tripartite basis and have the representatives of workers, employers and the Government. According to the Law, trade unions that are juridical persons elect their representatives to the Board by means of direct elections. The Institute of Social Security of El Salvador and the Ministry of Labour and Social Security nominate the respective workers’ organizations according to defined criteria. The Government of *Jordan* reported that it maintained the focus on tripartism in the recent reform of the social security system. Thus, the Social Security Corporation of Jordan, which administers the social security system, is formed from members representing the Government, employers and employees. Two new councils formed by experts – the investment council and the insurance council – have been established under the SSC board’s span of control. This approach has allowed the Government to use external expertise in order to alleviate the impact of the financial crisis as well as to find solutions on a tripartite basis. The Social Security and National Insurance Trust (SSNIT) scheme in *Ghana* is managed by a board of directors comprising government, employers and organized labour representatives. In *Djibouti*,

the leaders of workers' organizations are members of the board of directors of the National Social Security Scheme, alongside the representatives of associations of retired persons and private sector employees. In *Brazil*, the social security system is essentially public, consisting of a scheme for private sector employees and a special scheme for civil servants. While these schemes are administered by a public body, an advisory board has been established. The board is composed of government representatives, employers, workers and pensioners. There are six trade union confederations with a permanent seat on the advisory board.

556. Besides the social partners, tripartite bodies dealing with social security matters can also have representatives from other social movements, associations, sections of the community and professions. In *Panama*, Organic Law No. 51 on the Social Security Fund, article 23, provides that the members of the board shall include the representatives of different sectors of society. They are responsible for setting the board's policy and the plans of action; they decide on the improvement and modernization of the Social Security Fund, as well as supervision and control of its administration. In *Portugal*, Legislative Decree No. 279 of 19 October 2001 established the National Solidarity Council, an advisory body responsible for ensuring the participation of the social partners and the representative associations of the persons concerned at the national level in the process of determining and monitoring the policy, objectives and priorities of the social security and solidarity system. In *Bulgaria*, the National Council for the Integration of Persons with Disabilities acts as an advisory body to the Council of Ministers. The National Council comprises representatives of the State designated by the Council of Ministers, the national organizations of people with disabilities, the national workers' and employers' organizations, and the National Association of the Municipalities. In *Chile*, Act No. 20.255 of 2008 established the Commission of Pension System Beneficiaries, which is composed of one representative each from workers, pensioners, public institutions, private pension schemes and a university professor who chairs the Commission. The Commission's role is to inform the Secretariat of Social Welfare and other public bodies on the constituents' opinion regarding the operation of the social security system and to propose strategies for the development of the system.

**The private management of pension funds in Chile:
The diagnosis of the workers¹**

The structural problems in the management of private pension funds could be summarized under eight headings:

- (1) The ILO had recommended that the pension system should be managed by non-profit making institutions. Nevertheless, pension fund administrators (AFPs) continued to be private enterprises that were highly profitable for their administrators, as one in three pesos paid in contributions were for their benefit. They were managed by an exclusive club of directors for whom the selection criterion was not known, nor was their income. The AFPs exercised great political and economic influence in the country, such that they had decided to invest in only 60 enterprises the owners of which were aligned with their economic and political tendencies.
- (2) The ILO had indicated to the Government that the representatives of insured workers needed to be able to participate in the administration of the system. Nevertheless, workers did not participate in any way in decisions on the management of their money (investment, management and control).
- (3) The ILO had also urged the Government that employers should provide funds to the pension system. No effect had been given to this recommendation, as workers paid 100 per cent of the contribution to their individual accounts, paid on a monthly basis. Employers did not make contributions to these funds.

- (4) With regard to coverage, around 40 per cent of the population was outside the system, which placed a very heavy burden on the State. Statistics showed that only 11 per cent of workers paid contributions regularly.
- (5) The contributions of over 50 per cent of workers did not guarantee a minimum pension.
- (6) The pension system was based on the income that could be obtained from financial markets. However, this basis for the sustainability of the system had failed to prove its worth. Over the course of the last century, global financial markets had mainly operated at a loss and rarely exceeded inflation. This situation had been aggravated by the current global financial crisis. The capital accumulation and income on workers' funds had made losses ranging between 30 and 40 per cent of the accumulated assets which, in terms of contribution years, amounted to between seven and 14 years on average. Nobody accepted responsibility for this situation, with the Government claiming that it was inhibited by the law and the enterprises administering the funds claiming that it was the fault of the market. In practical terms, this meant that many workers had not been able to do so because their funds were inadequate.
- (7) The situation was deteriorating because the system was compulsory and there was no freedom to opt for other systems, which meant that workers' contributions were captive.
- (8) This system, which was unique in the world, allowed the employer to deduct the contribution, declare it and fail to deposit it in the worker's individual account, based on the ill-termed declaration without payment.

¹ Conference Committee on the Application of Standards: Extracts from the intervention of the Worker Member of Chile in *Recording of Proceedings*, International Labour Conference, 98th Session, Geneva, 2009 (16, Part two, p. 11).

557. In the *Plurinational State of Bolivia*, according to the Government's report, there are no workers' or employers' organizations that participate in the management of the social security system and the current legislation does not contain mechanisms to implement paragraph II of article 45 of the Bolivian Constitution which states that: "the administration and management of social security is the responsibility of the State with the participation and control by society". The reports of several governments show that participation of beneficiaries in the administration of social security schemes has yet to be developed. The Government of *Jamaica* reported that there is only one representative of the pensioners' association on the Social Security Board. Apart from this, there is no other way to guarantee the participation of protected persons in the administration of the scheme. In *Suriname*, most of the public schemes are managed by the Government, with the exception of occupational training in which the social partners are involved.

558. **The Committee stresses that well-established social dialogue can be used as a valuable control mechanism to ensure that social security schemes are functioning properly. The social partners are best equipped when it comes to the knowledge of particular needs of the beneficiaries and the challenges encountered by businesses. In addition to their members, the social partners that participate in the management of social security schemes represent the interests of a wider range of persons protected and often of the whole community, which helps to activate civil society and enterprises, as well as to promote social cohesion. The social partners have an important role to play with regard to supplementary and other negotiated schemes, while the State's role is to promote an effective regulatory framework, and supervisory and enforcement mechanisms. Social partners should not be excluded from participation in the management of private pension schemes and should be consulted in determining the appropriate mix of schemes in the country so as to strengthen and not to weaken the mechanisms of social solidarity, which lie at the heart of the social contract binding the State with its citizens.**

Institutionalized representation and tripartite oversight had proven helpful in creating consensus-based governance systems in social security necessary for transparent and accountable management of the huge financial resources involved in the best interests of the persons protected and the nation as a whole. The ILO's standards recommend that the tripartite management of social security schemes should be strengthened. Governments cannot deal with social security on their own. The success of reforms depends on consensus among the social partners and wide social acceptance involving civil society organizations, community and local administration. Having general responsibility for the overall management of social security systems, governments should create a regulatory framework that encourages tripartite consultations, builds up the confidence of the people who participate in the system and permits avoiding conflict when major reforms of the system become necessary.

C. The role of social dialogue in coping with the global economic crisis

559. The speed and magnitude of the crisis in the world economy conveyed a simple and sobering message. During the initial period of the crisis from the end of 2008 to 2009, social dialogue and tripartism gained momentum and played an important **role** in crisis response. In the countries hit by the crisis, social dialogue has been triggered by the adoption of stimulus packages to reverse the economic freefall and shelter the labour market from mass redundancies. In many countries (*Belgium, Chile, Germany, Japan, Netherlands, Nigeria, Singapore, South Africa, etc.*), governments involved social partners in the shaping of stimulus packages meant to mitigate the impact of the global economic downturn on workers and enterprises and accelerate recovery. Social partners had a common interest in seeing governments adopt measures in favour of employment and protection of workers' income and survival of businesses. In most European countries, tripartite negotiations on ways and means to address the crisis have been instrumental in adopting emergency measures to protect vulnerable categories from the worse effects of the crisis. In most cases, the packages implemented based on tripartite social dialogue contained measures related to social security.

560. There are a few cases where social dialogue on anti-crisis measures has resulted in the adoption of fully fledged tripartite agreements, in which social security measures were part of the package. The well-known examples include the "mutual commitment" campaign in *China* launched at the national tripartite meeting on the economic crisis in January 2009; the national tripartite agreement (Tripartite Pact) for employment, training and labour in *Chile* which was enacted into law on 28 May 2009; the annual tripartite consultations on social and economic policy in the *Netherlands*, which have led to the introduction of shortened working time to avoid a sharp increase of crisis-related dismissals. Countries that successfully involved social partners (*Belgium, Finland, Netherlands and Norway*) had generally well-established channels of social dialogue, which facilitated agreements linking wage moderation and measures to safeguard employment. In *Belgium*, bipartite negotiations between the Federation of Employers of Belgium and five trade union confederations supported by the Government resulted in the conclusion of two inter-professional agreements in December 2008 and February 2009. These agreements have strengthened the anti-crisis measures taken by the Government and opened the door for innovative sectoral negotiations in the country.

561. In many European countries, agreements to compensate workers for lost working hours, as *provided* for by Convention No. 168, were concluded. In *Germany*, the

“Kurzarbeit” programme illustrates the efficiency of a partial state subvention to safeguard employment. Representatives from both workers’ and employers’ organizations have supported these measures. In *Norway*, workers’ and employers’ confederations signed an agreement to moderate wages, with measures in favour of low wages and a more flexible system for temporary lay-offs. In *Sweden*, despite disputes among trade unions during inter-professional negotiations, crisis agreements were signed in certain sectors, including the manufacturing sector, to put in place arrangements allowing shorter working hours covered by partial unemployment compensation.

562. In some European countries, no formal tripartite concertation took place at the national level, and the governments took unilateral measures which were later supported by social partners (*Austria* and *Denmark*). In several other countries negotiations surrounding stimulus plans have been tougher and agreements included only a part of the trade union movement. In *Lithuania*, an agreement leading to reduced social benefits, increased social insurance contributions and reduced profit tax was signed with a limited number of social organizations. Even in the countries where social dialogue is a long-lasting tradition, the crisis has brought unusual difficulties. In *Ireland*, social partners at some point reached a stalemate on the strategy to clean up public finances. New negotiations on a “better, fairer” way to redistribute the costs of the crisis have been relaunched but the dialogue has remained tense. In *Spain*, employers’ demands to liberalize dismissals and reduce the severance pay led to a serious breakdown in the social dialogue in spite of a joint statement signed in June 2008 on the reinforcement of their collaboration. Examples of the disruption of social dialogue in relation to the crisis measures can also be found in *Finland*, *France*, *Italy* and *Portugal*.

563. In several countries, disagreements between the government and social partners constituted obstacles to the implementation of anti-crisis plans and social dialogue broke down at some point. Governments have been accused of acting unilaterally notwithstanding the protests emanating from the social partners. In *Bulgaria*, the Government has been accused by the two main confederations of trade unions, CITUB and Podkrepa, of violating the National Pact on Economic and Social Development in effect for the period 2007–09. As a sign of protest against insufficient consultation, they both withdrew from the National Council for Tripartite Cooperation. However, the election of a new Government in July 2009 led to the resumption of negotiations and both unions returned to the table for negotiation. A consensus was reached on a set of measures to avoid mass dismissals and improve the business environment for enterprises. In *Estonia*, *Latvia* and *Romania*, downsized budgets resulted in protest and criticisms emanating from unions and the population. The Free Trade Union Confederation of *Latvia* emphasizes the antisocial character of the 2010 budget, which increased taxes, reduced pensions, and lowered the salaries of teachers and public employees. In *Estonia*, the reform of the labour market led the trade unions ETTA, EAF and EAKL to hold protests and strikes in June 2009.

564. The crisis has shown that having social security benefits that satisfy the minimum ILO standards is good prevention policy by allowing the Government time to engage in discussions with the social partners on the subsequent measures to be taken. It has also shown that having social security systems built according to the financial, organizational and management principles laid down in ILO standards provides the reliable framework for working out an anti-crisis strategy where social security plays the role of an economic, social and political stabilizer. In many countries the social partners played a very active role in the shaping of national responses to the crisis; not only did they analyse the Government’s plans but they also tabled their own proposals of innovative

measures, including in the broad field of social security, in order to save jobs and workers' income and at the same time to promote enterprise sustainability.³⁹⁰

565. Since the beginning of 2010, many governments, particularly in Europe, have chosen to implement severe austerity plans aimed at addressing the challenge of public debt and budget deficits and enhancing fiscal consolidation. The reform of pension systems represents a key component of the austerity plans in several countries. In *Iceland*, being among the hardest hit, austerity measures are expected to close a €1,116 million budget gap over the next four years. The 2010 state budget orders all ministries and state institutions to lower their expenditure of 10 per cent on average, with exceptions made only in respect of state educational and welfare institutions, which were meant to lower their expenditure of 7 per cent and 5 per cent respectively. The rates of sickness and unemployment benefits, old-age and invalidity pensions remained the same, but no indexation was foreseen in 2010 and the rules on means-testing for the pension entitlement were made much stricter. In *Ireland*, in September 2010 the Government announced that the cost of bailing out the Republic of Ireland's stricken banks had risen to €45 billion, opening a huge hole in the Government's finances. The increased cost will see the Government run a budget deficit equivalent to 32 per cent of GDP this year, which it intends to bring down to 2.9 per cent by 2015. In preference to general cuts in social welfare payments, the Irish Government targeted selected areas, such as not paying in 2009 of a "Christmas bonus" to recipients of specified long-term payments, reducing the upper age for receipt of child benefit and withdrawal of early child-care supplement.

566. Austerity measures announced by the Government of *Greece* on 1 May 2010 include, inter alia, cuts in public sector salaries, elimination of public sector annual bonuses amounting to two months' pay, scaling back of pensions for retired workers and increased taxes. Overall, the increase in taxes and reduction in spending amounts to 10 per cent of Greece's GDP. *Germany* will cut the budget deficit by a record €80 billion over the next five to six years and plans to slash €30 billion from the welfare budget, including a reduction in subsidies to stay-at-home parents. Up to 15,000 government jobs could be cut over a four-year period. In *Latvia*, decisions were to reduce the amount of old-age and long-service pensions paid under the Law "On State Pensions" by 10 per cent and prematurely granted old-age pension in the period before its recipient reaches the statutory retirement age by 50 per cent. The working recipients of old-age and long-service pensions will receive 30 per cent of the calculated pension. Some of these decisions were later declared unconstitutional.³⁹¹ The *United Kingdom's* sweeping austerity measures particularly within the area of social spending are not only some of the most drastic in its history but are unprecedented when compared to those of other advanced economies. The new Government plans cuts of \$128 billion over four years, over \$11 billion fall in welfare support, 490,000 public-sector job cut by 2014–15, and cutting universal child benefit for high earners.

567. Since the onset of the crisis and throughout its evolution there has been a noticeable deterioration in important social indicators, such as increased mental health difficulties (i.e. more mental depression, increased use of anti-depressant drugs and suicide), lower trust in government, lower job satisfaction, declining perception of the standard of living/quality of life, and more social unrest. The austerity measures will no

³⁹⁰ ILO, 2010: *Employment and social protection policies from crisis to recovery and beyond: A review of experience*, ILO report to the G20 Labour and Employment Ministers' Meeting, Washington, DC, 20–21 April 2010.

³⁹¹ See Chapter 3C of Part II of the Survey.

doubt lead to further deterioration of these social indicators in the near future. **It appears that in some cases the imperative need to achieve fiscal consolidation has not been balanced with sufficient concern for the social and human costs of such rapid austerity measures. Not only social cohesion will be put at risk, but in such conditions the economic recovery may be accompanied by a prolonged “human recession”. One should also remember that governing only by financially oriented criteria may lead to an undermining of social justice and equity. Public opinion is much less ready to accept drastic austerity measures if it sees that the efforts requested are not equally distributed and shared by everyone.**

568. When governments of European countries started the wave of austerity measures in 2010, the process of constructive social dialogue in many of them seemed to come to a halt. In many cases, austerity measures have been adopted hastily by governments, under the pressure of financial markets, without much consultation with the social partners. As a result, complex and sensitive reforms such as the change of pension age and rates of benefits are being hurried and tripartite consultations between governments and social partners have been relegated to a less prominent role as compared to the period of autumn 2008 to the end of 2009, during which social dialogue and tripartism played an important role in crisis response. The reversal in the public policy from stimulus to austerity raised angry questions why the taxpayers' money has been diverted from health and social benefits to bail out banks and financial companies. Where social cuts would be drastic, people's anger may grow into social unrest and political crisis. In all the abovementioned countries there have already been public protests against austerity measures and in some even violence and property damage.

569. Along with an extensive economic debate on whether the massive uncoordinated budget cuts would actually contribute to the economic recovery, the implementation of austerity measures led to serious conflicts in industrial relations. In *France*, the year 2010 was marked by massive protests and strikes following the Government's announcement that it would raise the retirement age from 60 to 62 by 2018. Several French trade unions (CFDT, CGT, FSU, Solidaires, UNSA) made a joint statement claiming that the reforms are directed against younger and precarious workers. The implementation of austerity measures led to a conflict in *Italy*. The strikes organized by the Italian General Confederation of Labour (CGIL), which has about 6 million members and is the largest trade union confederation in the country, were directed against the €25 billion austerity package approved by the Government. The CGIL claimed that the measures were unfairly directed at the poorest workers and made “It's all on our shoulders” the slogan of the protests. In *Greece*, trade unions accused employers of making use of the crisis to “infringe blatantly on labour law and workers' rights”.³⁹² At the end of June 2010, public sector trade unions of Greece (ADEDY) united with the private sector trade unions (GSEE) in the general strike against the pension reform outlined by the European Union and the International Monetary Fund.

570. In *Romania*, the trade unions rejected an austerity plan proposed by the Government in November 2009. In an effort to reduce budget deficits, the Government introduced a new law providing rationalization measures in the public sector, including job cuts, compulsory ten-day unpaid leave for civil servants and reduced working hours. In opposition to the text, 11 public sector trade union federations united under the name of the Budgeters' Alliance (AB). Further austerity measures announced in May 2010 provoked numerous protests on behalf of all the main trade unions in the country. The conditions on the allocation of the second tranche of the International Monetary Fund

³⁹² www.eurofound.europa.eu/eiro/2009/05/articles/gr0905079i.htm.

loan were discussed by the tripartite Economic and Social Council. However, the adopted austerity measures, and specifically the pension cuts, were accused of unconstitutionality, and the Romanian Constitutional Court was invited to decide on the matter. In June 2010 the Constitutional Court of Romania proclaimed most of the parts of the austerity package concerning social security pensions unconstitutional.³⁹³

571. These examples illustrate how delicate it is to foster a productive dialogue when the sacrifices imposed upon the workers and their families and the employers are perceived as being unfair and decided in a unilateral manner. The adoption of pension reform plans and complex structural reforms of social security schemes in a hasty way without much consultation with social partners in many countries is already triggering social tensions, thus impacting negatively on industrial relations. At the same time, it carries the risk of making inappropriate policy choices. Lessons learned from past crises show that there is no credible alternative to social dialogue and tripartism to deal with the challenges of the time such as pension reforms. As stipulated by the ILO Global Jobs Pact, “Social dialogue is an invaluable mechanism for the design of policies to fit national priorities” and is “a strong basis for building the commitment of employers and workers to the joint action with governments needed to overcome the crisis and for a sustainable recovery.”³⁹⁴

* * *

572. Shared values, trust and mutual expectations are essential in lowering the costs of economic and social transactions and sustaining strong economic performance. Mutual expectations and trust emerge and develop only in the social and political environment created by open and broad social dialogue, tripartite consultations and collective bargaining. The quality of the social dialogue addressing increasingly complex issues such as pension reform can now make the difference between positive and negative outcomes, between outcomes which strengthen social coherence and those which fail to do so. Effective social dialogue is needed to achieve a high degree of cooperation and coordination among the various parties essential for good governance, policy coherence and fair distribution of costs and benefits of reforms. Regrettably, the institutional framework of social dialogue in many countries is inadequate. Complex reforms require more broad forms of social dialogue which should include other civil society actors. Effective cooperation among various partners in the area of social security can broaden the scope and increase the effectiveness of the dialogue in society as one of the principal means of action to strengthen social cohesion. To avoid conflict between long-term perspectives and short-term financial expediency, it is essential to institute dialogue between political and social forces. Time spent on such dialogue is well invested when it results in broad social and political support of the necessary reforms and reduces opposition. Time saved by the swift and smooth implementation of reforms brings substantial economic and competitive benefits. Reformed social protection systems resulting in a broad-based national consensus become a powerful factor to economic performance.

³⁹³ See Chapter 3C of Part II of the Survey.

³⁹⁴ *Recovering from the crisis: A Global Jobs Pact*, adopted by the International Labour Conference at its 98th Session, Geneva, 19 June 2009, para. 16.

Part V. Normative action and technical cooperation

Chapter 1

Policy support and technical cooperation needs in social security

A. Obstacles and difficulties for ratification and implementation

573. Difficulties involved in the ratification and application of Conventions Nos 102 and 168 reported by governments can be divided into two broad categories: (1) economic and financial difficulties; and (2) non-conformity of national legislation and problems relating to specific aspects of the Convention. Several governments emphasize in this respect that member States of the ILO have different capacities and constraints in view of their unique geographical, political, socio-economic and cultural conditions, which have to be kept in mind in assessing their national situations.³⁹⁵

574. Some obstacles are related to the perception of the instrument in general or to the lack of political will to ratify. In this respect, *Cuba* states that the technical complexity of Convention No. 102 presents an obstacle to ratification. The workers' organization, NATURE Sri Lanka, noted the lack of interest on the part of the stakeholders and that the Government should be encouraged to ratify social security Conventions. The Pakistan Workers' Federation has also been urging the Government to take steps to ratify Convention No. 102. The Government of *Uganda* reported the position of the National Organisation of Trade Unions, which considered that there was a lack of political will and commitment to ratify the instrument, while workers wanted a tripartite consultation, the Convention to be ratified and social benefits to be provided to workers. In contrast, the Government of *Vietnam* reports that there is no obstacle in terms of laws related to the ratification of Conventions Nos 102 and 168. However, it is necessary to create a roadmap for ratification and implementation in a detailed and clear way.

575. The fact that many social security systems are undergoing continuous reform prevents, according to some countries (*Colombia, Thailand*), ratification or the acceptance of additional parts of the Convention (*Italy, Norway*). **The Committee wishes to point out in this respect that consideration of the ratification of Convention No. 102 together with technical assistance, as appropriate, could in fact present an opportunity for the country to guide its reform process and to establish**

³⁹⁵ *Bangladesh, India, Kuwait*. *Kuwait* suggests that perhaps the only way to avoid such difficulties in the normative action is to seek the views of States and take into account the nature of their societies, as well as the particularities of their law and practice and the general interest. *India* suggests that overall action taken by member States to implement the provisions of ILO standards should be taken into account to reach a conclusion about their extent of commitment to labour welfare and reform.

minimum benchmarks to be achieved. The practice of systematic gauging of social security reforms at an early stage by the standards contained in Convention No. 102 could function as a rule of good governance, implementing the common knowledge that prevention is cheaper than the cure.

1. Economic and financial difficulties

576. Nine member States consider that the country's insufficient level of development and lack of financial resources constitute the main obstacle preventing ratification of Convention No. 102.³⁹⁶ In *Suriname* there is no social security system and in *Zimbabwe* the economy is not robust enough to sustain a comprehensive social security system. *Mauritius* reports that the main obstacle relates to the financial implications in respect of contingencies not covered, or partly covered, by the social security system. Given the present economic situation, the Government states that it would not be appropriate to introduce contributory sickness benefit, family benefit or unemployment benefit, as this would entail an additional burden on the Government, employers and employees in the form of higher rates of contribution to the National Pensions Fund (NPF). On the other hand, the coverage of such contingencies on a universal non-contributory basis will definitely prove to be stringent on the still vulnerable, though fast-developing economy. Constraints of resources, infrastructure and manpower for enforcement to cover the entire workforce exist in *India*. *Albania*, which has recently ratified Convention No. 102, reports that it is not in a position to accept the remaining Part VII on family benefits, as at the current stage of development of the social insurance system the branch on family benefits is absent. The *Czech Republic* reports that, due to the recent economic downturn and budgetary constraints, it is not in a position to accept the remaining Parts IV and VI of Convention No. 102. *Nicaragua* reports that, although overall it is in a position to ratify Convention No. 102, the country cannot accept Parts IV (unemployment benefit) and VII (family benefit) because of the lack of financial capacity to provide the benefits in question.

577. Six member States referred to economic and financial difficulties preventing the ratification of Convention No. 168.³⁹⁷ The *Netherlands* and the *Czech Republic* report that they are reluctant to ratify the Convention as a result of the financial crisis. *Benin* states that it could give effect to this Convention as soon as the level of economic development allows mastering the issue of employment and unemployment statistics. *Saint Vincent and the Grenadines* refers to the high level of unemployment which impedes ratification. *Guatemala* is experiencing financial difficulties and *Poland* considers that the high costs of adjustment to the provisions of the Convention form the main obstacle to its ratification. Some member States refer to the large informal sector in their economies and the resulting impossibility to meet the coverage required by the Convention.³⁹⁸

³⁹⁶ *Bangladesh, Benin, Gabon, Guatemala, Honduras, India, Mauritius, Suriname and Zimbabwe.*

³⁹⁷ *Bangladesh, Benin, Guatemala, Netherlands, Poland, and Saint Vincent and the Grenadines.*

³⁹⁸ *India, Mauritius and Sri Lanka.*

2. Non-conformity of national legislation and problems relating to specific aspects of the Conventions

Social Security (Minimum Standards) Convention, 1952 (No. 102)

578. Numerous countries report that they are not in a position to ratify the Convention due to discrepancies between national law and practice and the requirements of the Convention. *Bosnia and Herzegovina, India, Sri Lanka* and *Tunisia* indicate *specific* difficulties relating to the level of coverage provided for in the Convention. *Tunisia* states that it has not ratified Convention No. 102 because the rate of coverage of the social security system is below the threshold required by it. *Bosnia and Herzegovina* considers that the ratification of the remaining parts of the Convention is obstructed by the fact that their acceptance would significantly expand the coverage, which could undermine the existing system of pension and disability insurance and potentially lead to its inability to meet the obligations in all areas of social protection. The Government of *Kazakhstan* has reported that it is not yet in a position to implement the provisions of Convention No. 102 related to the equality of treatment of the non-nationals; social protection of the non-nationals is regulated through bilateral agreements, as it is not possible at the moment to provide equal standards of protection.

579. *India* and *Sri Lanka* refer to the informal sector representing a large part of the economy. *India* states that the formal sector is covered by a safety net, but the informal economy employs 94 per cent of the total workforce. *India* cannot presently fulfil some of the provisions of Convention No. 102, for example those requiring the extension of social security to 50 per cent of all employees. *Sri Lanka* states that Convention No. 102 cannot be ratified at the moment, due to the mandatory number of parts required by Article 2(a). The main difficulty relates to the provision of coverage: 60 per cent of the labour force is in the informal economy and *Sri Lanka* is unable to extend coverage to the prescribed percentage of employees. In response to the obstacles raised by *India* and *Sri Lanka* as regards the large informal economy preventing the developing countries from ratifying the Convention, the Committee points out that the requirement as to percentage of employees protected contained in Convention No. 102 refers to employees as defined in national legislation. In countries with large informal sectors, where the social insurance system covers only a small portion of the population, the promotion of the Convention should be geared to social assistance programmes covering all residents of small means or at least the main classes of the economically active population, and constitutes a development goal with regard to progressive extension of protection and coverage.

580. *Australia* reports that its social security system is not based on a wage replacement model and that benefits are not linked to the minimum wage. According to the Government, Convention No. 102 contains prescriptive rules for the calculation of social security benefits, which attempt to link the quantum of benefits with the wages of skilled and/or unskilled workers. However, working-age social security payments in *Australia* are not meant to be a replacement of previous wages, but rather designed to provide people with a safety net, whilst providing sufficient incentives for people to return to or undertake paid employment. Indexation arrangements for all payments ensure that payment rates remain adequate to meet the basic needs of recipients. The Committee wishes *Australia* to study the provisions of the Convention more thoroughly, particularly Articles 66 and 67, which determine the quantum of benefits for systems which are not wage related.

581. Some countries generally report that certain provisions are not compatible with domestic laws and impede ratification,³⁹⁹ whereas other States point to more specific aspects of the Convention which pose problems for ratification. The Committee notes that *Austria* and *Hungary* have raised many questions as regards Convention No. 102 and suggests therefore that the Office establishes direct contacts with these countries to clarify the issues in question.

*Employment Promotion and Protection against Unemployment
Convention, 1988 (No. 168)*

582. Countries, which have no protection against unemployment, report that national law and practice is not compatible with the obligation to provide unemployment benefits for the unemployed.⁴⁰⁰ The legislation of other countries does not provide unemployment benefit for partial unemployment⁴⁰¹ and/or to part-time workers who are actually seeking full-time work⁴⁰² and they therefore consider Article 10 (paragraphs 2 and 3) an obstacle to the ratification of Convention No. 168.

583. *New Zealand's* social security benefit system complies with much of Convention No. 168, however the Government states in its report that it may not comply with Articles 2 and 7, because the system is based on provision of social security benefits to those in need and not necessarily to promote full and productive employment. Similarly, the *United Kingdom* reports that its system of benefits for unemployed people generally meets the standards set out in Convention No. 168. However, the structure of the Convention does not leave it open to the United Kingdom to consider the social security provisions in isolation and there are aspects concerning the employment promotion which the Government does not accept. While the Government has developed a wide range of employment services and training measures, it believes that promotion of employment is best achieved through its economic policies rather than through special job creation programmes.

584. For Portugal, Article 11(1) provides an obstacle due to the requirement to include apprentices as part of the persons protected. The Committee would like to draw the Government's attention to the fact that full coverage of apprentices has become a standing feature of modern labour and social security law and is ensured in all up-to-date international labour Conventions, where relevant.

B. Technical assistance received and requested

1. Technical assistance received

585. The Committee recalls that the ILO Declaration on Social Justice for a Fair Globalization calls on the ILO to assist member States in their efforts to implement international labour standards, in accordance with national needs and circumstances. To this end, the article 19 questionnaire asked member States to identify any technical assistance received from the ILO and its effect. In total, 27 member States responded

³⁹⁹ *Benin, Gambia, Republic of Korea, Kuwait, Malaysia, Poland and Saudi Arabia.*

⁴⁰⁰ *Canada, El Salvador, Jamaica, Malaysia, Mali, Republic of Korea, Poland, Spain and Tunisia.*

⁴⁰¹ *Austria, Hungary and New Zealand.*

⁴⁰² *Australia, Austria, France, Germany, New Zealand and Portugal.*

that they have received or are currently benefiting from technical assistance in the field of social security,⁴⁰³ which can take a number of different forms.

586. The ILO has provided assistance to countries wishing to set up a social security system or to extend its coverage. Such technical assistance, as illustrated by the case of *Mali*, consists of studying the underlying economic, social and administrative conditions and in drawing up guidelines taking into account the immediate needs, the country's administrative resources and future prospects.⁴⁰⁴ Many member States, like *Argentina* for example, have received technical cooperation on issues relating to social security in the context of a Decent Work Country Programme.⁴⁰⁵ Other forms of technical cooperation relate to assistance in carrying out actuarial studies⁴⁰⁶ or more branch-specific assistance.⁴⁰⁷ Technical support can also concern the resolution of problems involved in the organization and administration of social security institutions with a view to improving their methods of operation.⁴⁰⁸ Some countries, such as *Uruguay*, for example, report they have received integrated technical assistance on social security relating to a number of aspects.⁴⁰⁹ In collaboration with the International Training Centre in Turin, the ILO provides training through scholarships or organization of courses at the national and regional levels enabling national authorities in the field of social security to improve their knowledge. The ILO also engages in research and publication of studies aimed at achieving a better understanding of the various problems encountered in social security.

587. The ILO has also provided technical assistance specifically relating to international labour standards on social security, including assistance in the analysis of domestic legislation with a view to the ratification of Convention No. 102. For example, ILO technical cooperation provided in 2000 in *Poland* relating to the verification of conformity of the national legislation with the provisions of Convention No. 102 resulted in the ratification by Poland of the Convention in 2003. Major promotional efforts for

⁴⁰³ *Albania, Argentina, Bangladesh, Benin, Plurinational State of Bolivia, Brazil, Bulgaria, Cameroon, Colombia, Costa Rica, Czech Republic, Djibouti, Fiji, Hungary, Mali, Malaysia, Mongolia, Mozambique, Peru, Poland, Sri Lanka, Sudan, Suriname, Syrian Arab Republic, United Republic of Tanzania, Uruguay and Zimbabwe.*

⁴⁰⁴ *Mali* has received support for a study on the legal and regulatory framework on social welfare, the realization of three diagnostic studies on social protection (public, private and informal); a three-day workshop to discuss and reflect on social protection based on the three diagnostic studies; and the development of a national action plan to extend social protection and a workshop to validate that action plan in 2003.

⁴⁰⁵ The Decent Work Country Programme of *Argentina* (2008–11) includes action to establish integrated policies designed for the unemployed, including cash benefits, through training and an employment agency (Product 4.1.2).

⁴⁰⁶ For example, the ILO is currently providing technical support for the preparation of an actuarial study to establish a relief fund for loss of employment in *Malaysia*, as well as an actuarial evaluation of the disability, old-age and death scheme (IVM) in *Costa Rica*.

⁴⁰⁷ For example, the *Czech Republic* has received technical assistance for the pension reform in connection with the ageing of the population and the fiscal sustainability of the social security system; a subregional tripartite seminar on pension reform was organized in Prague in December 2005.

⁴⁰⁸ *Mozambique* reports to have received assistance with regard to the administration of social security institutions, including training of new officials in order to quickly integrate them in the system of management of social insurance.

⁴⁰⁹ The Government of *Uruguay* reports that the ILO has provided technical advice on social security, and in the planning, development and monitoring of the national dialogue on social security. Concrete support has materialized in laws and regulatory decrees on issues such as ease of access to retirement and unemployment benefits. In December 2005, an agreement was signed between the International Labour Organization (represented by the International Labour Office) and the Social Provident Bank on reciprocal cooperation to set up a technical consultation mechanism on a regular basis to discuss social security issues generally.

the ratification of Convention No. 102 have been carried out in *Ukraine* in 2006–10, which is already considering the ratification, and in the *Russian Federation* (2008–10). The Government of *Mongolia* also reports that it has requested the ILO to provide technical assistance to assess the possibility to ratify Convention No. 102. In response to this request, the ILO supported a tripartite seminar on the Convention on 23–24 March 2009 in Ulaanbaatar, *Mongolia*, which concluded that the country may meet minimum requirements to ratify this Convention. Following this exercise the Government of *Mongolia* further requested the ILO to conduct a complete assessment to examine whether the provisions of Convention No. 102 are applied in national legislation. The assessment has been carried out by the ILO and the Government would like to organize a national workshop on findings of the assessment and to identify future steps towards ratification. In *Benin*, a comparative analysis is currently being carried out of the national legislation and the provisions of Convention No. 102.

588. Technical advice and assistance have also been extended to countries, which experience difficulties of a legal or technical nature in the application of certain provisions of the Conventions,⁴¹⁰ on the implementation of comments of the Committee on Convention No. 102 and the European Code of Social Security⁴¹¹ or on report writing on Convention No. 102.⁴¹² Technical assistance is equally available to governments which envisage reforming their social security systems. By encouraging these governments to make a preliminary assessment of their reform proposals in the light of their legal obligations under the international labour standards, the Committee seeks to ensure a common approach in the development of social security standards and coherence in their application by member States. Numerous member States report currently receiving, or having recently received, ILO assistance when reforming their social security systems, in particular in the development of policies, drafting or revising social security legislation.⁴¹³ **The Committee observes that technical assistance has become increasingly of a comprehensive nature from the design of the scheme to the drafting of laws and capacity building for the social partners.**⁴¹⁴ **The Committee also considers that its comments should assist countries in formulating a comprehensive national strategy for social security development.** The integrated

⁴¹⁰ For example, *Costa Rica* and *Mexico* in 2004.

⁴¹¹ e.g. *Netherlands* in 2004; *Denmark* in 2009.

⁴¹² A training workshop for the Ministry of Labour and Social Policy of *Bulgaria* was organized by the ILO in 2004 in Sofia, on the ILO reporting procedures.

⁴¹³ In *Cameroon*, the ILO has provided technical assistance in social security reform, which according to the Government has had an important impact on the proposals made so far. *Djibouti* has requested ILO expertise to support the social security reforms under way relating to the harmonization of pension plans in the National Social Security Fund; the extension of coverage; the establishment of supplementary pension schemes; a health insurance plan; and a Code of Social Security. An ILO expert on international labour standards and an ILO expert on actuarial studies visited *Sudan* in 2003 in order to examine the possibility of consolidating the Social Insurance Act and the Pensions Act in accordance with a decision to that effect by the Council of Ministers. In the *United Republic of Tanzania*, the ILO has contributed to the development of the Social Security Regulatory Authority Act, 2008, and provided a set of recommendations on the future development of social security. In *Costa Rica*, the ILO collaborated intensively in the reform of the disability, old-age and death scheme (IVM) in 2005. The ILO has been consulted in the process of the elaboration of the *Bolivian* draft law on “Extension of coverage of social security systems in health”, which is currently being considered for approval. The ILO has recently prepared a draft comparative study on pension systems in *Mongolia*, which according to the Government’s report will be a good base for further discussions on pension reform. In the *Syrian Arab Republic*, technical consultations, in cooperation with the World Bank are taking place regarding the adoption of amendments to the Social Insurance Code.

⁴¹⁴ In *Peru*, the ILO has organized several capacity-building workshops, which have allowed social actors to better evaluate the legislation on social security.

comment by the Committee on the compliance with all social security Conventions ratified by the *Plurinational State of Bolivia* ⁴¹⁵ constitutes an example of such comprehensive assistance, as well as the effective collaboration between the International Labour Standards Department (NORMES) and the ILO Social Security Department (SECSOC).

589. Additional forms of technical assistance offered by NORMES concern the legal and technical advice provided upon requests for information on Conventions, as well as informal opinions on the meaning of certain provisions. The Office is also working with employers' and workers' organizations to process their observations under article 23 of the ILO Constitution. In this context it is also interesting to note that, of the total of 128 representations received by the ILO under article 24 of the Constitution, 15 (almost 12 per cent) related to ILO social security Conventions (for a detailed list see Annex III).

590. The ILO has also provided technical assistance in collaboration with the Council of Europe for the ratification and improved application of Convention No. 102 and the European Code on Social Security, specifically in Central and Eastern European countries. The International Labour Standards Department has pioneered a coordinated approach to the management of a country's legal and administrative obligations under European and ILO standards, which resulted in joint ILO–COE technical assistance programmes to countries, which could ratify European standards on the basis of obligations they have already accepted under corresponding ILO Conventions and vice versa. In addition, a number of Western European countries (*Denmark, Malta, Netherlands, Spain*, etc.) have used joint ILO–COE country assistance programmes to carry out in-depth assessment of their draft legislation and social security reform proposals in the light of their legal obligations under the European Code and the related Conventions of the ILO. ⁴¹⁶ Social security in this respect is one of the rare areas where technical assistance of the Office has been solicited by the most advanced countries experimenting with new forms of social protection and organization of social security schemes.

⁴¹⁵ CEACR, Convention No. 102, observation, *Plurinational State of Bolivia*, 2009.

⁴¹⁶ *Turkey* made recourse to the technical expertise of the Council of Europe and the ILO during a technical expert meeting in Ankara (20–21 September 2005) to assess the compatibility of the new Turkish unemployment benefit scheme with the Code and Convention No. 102 for the purposes of accepting obligations of Part IV (unemployment benefit) under these instruments. In 2005 and 2006, technical assistance was provided to *Slovenia* and *Estonia*, respectively, for the preparation of the first report on the European Code of Social Security. A technical assistance meeting took place in *Denmark* on 22 May 2006 to discuss issues concerning Part IV of the Code (unemployment benefit) and, in particular, the notion of suitable employment.

ILO Regional Meetings and social security

Africa – The 11th African Regional Meeting in Addis Ababa adopted as part of its conclusions the following target on social security, which is also underpinned by the Decent Work Agenda in Africa: 2007–15: “All African countries adopt coherent national social security strategies, including for the introduction or extension of a basic social security package that includes essential health care, maternity protection, child support for school-age children, disability protection and a minimum pension” (conclusions of the 11th African Regional Meeting, AfRM/XI/D.3(Rev.), Addis Ababa, 24–27 April 2007, paragraph 17).

Americas – The 16th American Regional Meeting in Brasilia, 2–5 May 2006 discussed the Director-General's Report, *Decent work in the Americas: An agenda for the Hemisphere 2006–15*, which promotes as an objective the extension and strengthening of social protection systems for workers and targets to increase social security coverage by 20 per cent within ten years (section 4.1.3).

Arab States – In 2008, in Amman, the Interregional Tripartite Meeting on the Future of Social Security in the Arab States concluded that schemes still face problems in achieving full population coverage and some in achieving good governance and abolishing some design flaws. Future ILO activities in the region should focus on knowledge base, capacity building, policy development and the monitoring of progress.

Asia – The conclusions of the 14th Asian Regional Meeting in Busan, 29 August–1 September 2006, set as one of the priorities for national action, “extending the effectiveness and coverage of social protection for all, including workers in the informal economy” (paragraph 12). In support of this priority, ILO action was requested to establish benchmarks and good practices on the extension of social protection to all working women and men and their families (paragraph 16).

Europe – The most recent Regional Meeting took place in Europe in Lisbon in February 2009 and was marked by the economic crisis. The conclusions emphasized the importance of social security systems to counter economic downturns, offsetting the impacts of the crisis on workers with family responsibilities, ensuring income support for unemployed, funded supplementary schemes becoming a sustainable part of comprehensive social security systems and maintaining essential social services and poverty alleviation schemes (conclusions of the Eighth European Regional Meeting, ERM/VII/D.5(Rev.), Lisbon, 9–13 February 2009, paragraphs 38–42). The proposals for future work by the ILO include the provision of an assessment of employment and social protection support measures and the objective to increase its assistance to countries seeking to build their capacity to administer and finance basic social security systems (paragraph 55).

2. Technical assistance requested

591. The Committee notes that 34 member States and two workers' organizations included in their replies requests for technical assistance and support for devising, implementing and improving social security. Requests relate to the extension of social security, actuarial and feasibility studies, revision of social security legislation and training on social security. New areas of requests of technical assistance concern the establishment of a social protection floor and the promotion of social dialogue in social security. The Committee notes each specific request for technical assistance received, which are detailed below, and points out that they should be taken into account as part of the technical cooperation component of the standards strategy for social security. The Committee emphasizes the importance of considering these requests in the context of the Decent Work Country Programme, if existing for the member State in question, and in light of the priorities relating to social security that have been established by the ILO's Regional Meetings.

Table 8. List of countries and employers' and workers' organizations requesting technical assistance in the reports submitted under article 19 of the Constitution

Asia	
Bangladesh	Any support for income generation and employment creation would be of great support among various other types of assistance
India	<ul style="list-style-type: none"> – Technical cooperation projects to extend minimum social security benefits, to poor and marginalized unorganized sector workers, whether migrant or home-based. – Assistance to undertake research studies to determine the gaps in social security benefits.
Fiji	ILO technical assistance needed for expertizing new laws and for capacity building of new institutions.
Indonesia	ILO should conduct a study concerning the development of social security in emerging economies, taking into account obstacles and potential development schemes.
Lao People's Democratic Republic	Studies and drafting policy on the implementation of unemployment and child allowance benefits.
Malaysia	Actuarial studies and feasibility studies for the introduction of new schemes of benefits.
Mongolia	Feasibility study for the introduction of a two-tier pension system.
Myanmar	Feasibility study for the introduction of a basic social security package is needed for the country to give effect to the objectives of the instruments.
Sri Lanka	Sri Lanka is seriously considering the proposal to establish a "social protection floor", support is needed for in-depth studies to establish such a floor.
Viet Nam	ILO is asked to support the review and evaluation of Viet Nam's legislation initiated by the Government with a view to create a roadmap for ratification and implementation of Conventions Nos 102 and 168. Viet Nam is willing to cooperate with the ILO in researching and completing legal documents related to social security, exchanging experiences and effectively implementing the tripartite mechanism in handling social security issues, as well as establishing a monitoring mechanism.
Africa	
Benin	<ul style="list-style-type: none"> – Feasibility study to establish basic social security benefits for the entire population. – Support for the implementation of health insurance.
Botswana	Technical assistance and policy advisory services are necessary.
Cameroon	<ul style="list-style-type: none"> – Training of trainers and officials responsible for implementing the new social security system (agents, managers, senior executives). – Technical assistance for identifying beneficiaries of the new system for a wider coverage and the establishment of mechanisms to cover the informal economy. – Support to determine mechanisms of implementation and survival for mutual insurances schemes (<i>les mutuelles</i>).
Gabon	Assistance as regards the promotion of social dialogue in the field of social security and the evaluation of the national social security legislation.
Gambia	Technical assistance on how to build an effective social security system that would be labour friendly.
Lesotho	Technical assistance to carry out studies and draft policies on the implementation of unemployment and child allowance benefits.
Mali	Evaluation of national social security legislation.

Mozambique	Promotion of social dialogue in the framework of social insurance, revision of legislation on insurance from the point of view of gender, training and provision of materials connected to the implementation of Conventions Nos 102 and 168.
Senegal	ILO technical support is necessary for the reform of the social security system, in particular as regards the extension of protection to all workers in the formal and informal economy. Technical assistance is also needed for developing a Single Social Security Code giving effect to the ILO social security standards.
Sudan	<ul style="list-style-type: none"> – Need for expertise on unemployment to determine how best to assess its true extent and impact on the national economy, as well as an integrated system for a national census (population census); – Need for expertise to enable Sudan to benefit from other countries' experience in regard to coverage of small employers and the self-employed; – Need for expertise on occupational classification to assess the size of each occupation and identify shortages in certain occupations in order to achieve coordination between the Ministry of Labour and the ministries responsible for education to identify labour market requirements; – Technical assistance projects in the field of social protection; – Assistance on actuarial studies.
Swaziland	The request has been for the structuring and establishment of Social Security Directorate or authority of the new ministry and the transformation of the existing Swaziland National Provident Fund into the Swaziland Social Security Authority, governed by the tripartite Swaziland National Social Security Board.
United Republic of Tanzania	Promotion of social dialogue in social security.
Uganda	<ul style="list-style-type: none"> – Actuarial studies to be provided by the ILO. – Policy development on social reform. – Drafting the bill/regulations. – Creating administration bodies.
Zimbabwe	Policy advice and technical support on the extension of social security to cover the informal sector and other hitherto uncovered groups.
Arab States	
Kuwait	Technical support and advice to give effect to the objectives of the instruments in question.
Syrian Arab Republic	The request was made to the Regional Office in Beirut to provide technical consultations in cooperation with the World Bank regarding the adoption of amendments to the Social Insurance Code in Syria.
Americas	
Belize	<p>There are four suggested areas for future policy advisory support:</p> <ul style="list-style-type: none"> – feasibility study to introduce unemployment benefits; – gender audit of social security legislation; – strengthening of the scheme for self-employed workers, which have become very relevant with the shifting nature of employment to the informal sector; and – linking social security with employment policies.
Plurinational State of Bolivia	Exchange of information on experiences in reforms of social security systems. Training of human resources through specialized technical training and transfer of technology to be used for the design and implementation of social security policies.
Chile	A review of national legislation from a gender perspective, considering the difference in retirement age between men and women.
Costa Rica	<ul style="list-style-type: none"> – Assistance in the continuation of the process of extending contributory insurance, taking into account non-traditional schemes. – Impetus to social development and public safety through feasibility studies and investment to provide employment. – Cost and administration of unemployment insurance financing. Sharing of successful experiences.

Guatemala	Studies characterizing the informal sector, so that interventions can be generated to encourage formalization or coverage of specific groups with the ability to pay social security contributions.
Honduras	Promote social dialogue in social security.
Peru	The need for constant advice and technical cooperation from the ILO in order to create mechanisms and strategies ensuring the viability of the social security system. It would also be useful to have access to expertise on social security issues, to train staff in the sector, and to organize seminars on the scope of the Conventions and Recommendations.
Honduras	Policy advice with respect to extending social security coverage and parametric reforms of the current system.
Suriname	After consultations on the solidarity fund and the national insurance scheme have been finalized, it is possible that ILO advisory support and technical assistance will be requested for its implementation.
Saint Vincent and the Grenadines	Policy advice with respect to extending social security coverage, parametric reforms of current system.
Uruguay	The National Directorate on Social Security would like to count on the assistance of the ILO in terms of economic advice and advice on social security standards.
Europe	
Albania	The Institute of Social Insurance (ISI) will need technical and advisory support in the promotion of social dialogue and a study for the presentation of the trends and cohesion of the basic social security package.
Bosnia and Herzegovina	Promotion of social dialogue in the field of social security, health care and health insurance.
Estonia	Consultations on social security legislation.
Workers' organizations	
Union Générale des Travailleurs Djiboutiens (UGTS)	<ul style="list-style-type: none"> – Organization of a national tripartite seminar on the ratification prospects of Convention No. 102; this could assist the social security reform process. – A national tripartite workshop to reflect upon the implementation of social security schemes and their regulation through collective agreements. – ILO technical assistance would be desirable as regards the review and renegotiation of collective agreements on social security.
Employers' organizations	
FEDECAMARAS (Venezuela)	– Need to monitor the development of the social security system and to evaluate the quality of the system to determine whether beneficiaries are satisfied. ⁴¹⁷

592. Although many developed countries reported that they did not require any explicit technical support from the ILO, the Committee notes their sustained interest in learning from other countries' experiences and information sharing through the ILO (e.g. *United Kingdom*). Other countries generally emphasized in their report the importance of the technical cooperation component of the ILO's work. *China*, for example, underlined the importance of providing ILO technical support to member States in their efforts to improve their social security systems in the areas of extending coverage of social security and promoting social dialogue on social security matters. *Hungary* stated that on 17 March 2010 at the session of the tripartite National ILO Council social partners expressed a need for the advisory support and technical cooperation of the ILO in order to promote the ratification of Conventions Nos 102 and 168, and asked the Government

⁴¹⁷ FEDECAMARAS provides as an example the study carried out by the Latin American Institute for Social Investigations (ILDIS) on health-care policies in July 2008, available at www.ildis.org.ve/website/administrador/uploads/MarinoGonzalez2008PolicyPaperSaludfinal.pdf.

to inform the ILO of this need. The Government indicated however that it did not support the proposal, because it did not consider it timely. The Committee recalls its suggestion made to the Office, in paragraph 581 above, to establish direct contacts with Hungary.

C. Enhancing impact through technical cooperation

593. The Committee emphasizes the key role of technical cooperation in enhancing the impact of international labour standards. The combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation and assistance has always been one of the key dimensions of the ILO supervisory system. The aim of the strengthened combination between the work of the supervisory bodies and the Office's technical assistance is to provide a supportive framework to member States to improve compliance with their standards-related obligations and implementation of ratified Conventions. In this context, the Committee has since 2009 highlighted in its General Report the cases for which, in the Committee's view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions. The full list of cases in which technical assistance for the implementation of social security Conventions was deemed particularly useful over the past two years is as follows.

Table 9. List of cases for which technical assistance would be particularly useful for the member States, General Report, CEACR

Country	Convention No.
2010	
Antigua and Barbuda	17
Peru	102
2009	
Barbados	102
Bulgaria	17
Guinea-Bissau	18
Guyana	42
Sao Tome and Principe	18 and 19
Sierra Leone	17

594. While different vehicles for the delivery of technical cooperation exist, it is important to ensure that they carry the normative component and linkage with other strategic objectives. The importance of the linkage between technical cooperation and international labour standards, as well as the need for an integrated approach to all ILO strategic objectives was emphasized by the Declaration on Social Justice for a Fair Globalization of 2008. An integrated approach to the promotion of ILO objectives is embodied in the Decent Work Country Programmes, which are the main vehicle for the delivery of ILO support to countries. Decent Work Country Programmes organize ILO knowledge, instruments, advocacy and cooperation at the service of tripartite constituents in a results-based framework to advance the Decent Work Agenda and promote decent work as a key component of national development strategies. **The promotion and implementation of social security standards should be an integrated**

element of country-level programming and technical cooperation through Decent Work Country Programmes. The Committee notes in this respect that the replies by member States on technical cooperation illustrate the practical importance constituents attach to the interlinkage of social security with the other areas of ILO competence, such as active labour market policies and occupational safety and health, pointing out the need for a preventive and comprehensive approach of technical assistance in these areas.

595. The importance of including a social security component in Decent Work Country Programmes and working towards the extension of social protection to all has been further reinforced by the Global Jobs Pact, 2009, which requests countries that do not yet have extensive social security to build “adequate social protection for all, drawing on a basic social protection floor” and urges “the international community ... to provide development assistance, including budgetary support, to build up a basic social protection floor on a national basis”. Activities undertaken in countries that are being supported to apply the Global Jobs Pact should more fully exploit the potential of using social security as a means to promote employment, as suggested by Convention No. 168, as well as the potential of the Global Jobs Pact in extending social security coverage, as is currently done in the case of *Indonesia*.⁴¹⁸

596. The conclusions on social security by the International Labour Conference adopted in 2001 called on each country to determine a national social security strategy for working towards social security for all, taking into account the relevant ILO social security standards. **The Committee encourages ILO constituents to work towards such a holistic strategy, as no system of social protection is complete without an element on social security. The Committee suggests that every member State which has indicated specific needs for technical cooperation on social security should consider including the needs on social security in the Decent Work Country Programmes, paying particular attention to linkages with strategic objectives of employment policy and social dialogue. Thus social security would become an integral part of any national strategy for sustainable socio-economic development supported by the ILO.**

⁴¹⁸ See www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_143183.pdf.

Chapter 2

Social security standards-related action

A. Overview of standards-related action since 1988

1. Discussions on standards policy and the Cartier Working Party

597. Convention No. 168 was the last international instrument relating to social security adopted by the International Labour Conference since 1988. The Report of the Director-General of 1993, *Social insurance and social protection*, did not contain any proposals for new social security standards. However, this does not mean that standards-related action has also paused for the past 20 years. Standard-setting policy was discussed at the International Labour Conference in 1994 on the basis of the Report of the Director-General, *Defending values, promoting change; social justice in a global economy: An ILO agenda*. The Report advocated the adoption of certain basic provisions in the field of social security: “while it is perfectly natural for some countries to capitalize on legitimate comparative advantages such as lower wages or a lower cost of living (legitimate in the sense that they are not artificially maintained), there is no reason for these countries not to endeavour to provide a minimum level of protection against the most basic contingencies, in proportion to local costs, and to the extent that such protection can be financed out of the additional wealth generated by the growth of trade”.⁴¹⁹ Although it was not until seven years later that this idea on standard-setting policy surfaced again at the Conference, the discussions did result in the decision of the Governing Body in 1995 to set up a Working Party on Policy regarding the Revision of Standards. Between 1995 and 2002 the Cartier Working Party was entrusted, among other things, with undertaking a case-by-case examination of all international labour Conventions and Recommendations adopted before 1985 to determine whether they needed to be revised.

598. In 2000, the Cartier Working Party determined Recommendation No. 67 as an “up-to-date” standard and classified Recommendation No. 69 with interim status, i.e. as instrument not considered as fully up to date, but still relevant in certain respects. The examination of Convention No. 102 was left to the last year of work of the Working Party and followed the 2001 Conference general discussion on social security. The report to the Conference identified a number of possible new subjects for standard setting on social security, such as: equality of treatment between men and women; child and family benefits (the only branch of Convention No. 102 not the subject of a separate ILO standard); new emerging branches of social security such as parental benefits and

⁴¹⁹ *Defending values, promoting change; social justice in a global economy: An ILO agenda*, Report of the Director-General, International Labour Conference, 81st Session, 1994, p. 60.

long-term care.⁴²⁰ The conclusions of the ILC determined the future priorities for ILO action in social security, but no new standards were suggested.

599. The Cartier Working Party examined the relevance of Convention No. 102 in March 2002. The resulting decision of the Governing Body consisted of four components:

- (1) inviting the Office to offer technical assistance, including the dissemination of information in the light of the 2001 Conference conclusions of the general discussion on social security;
- (2) inviting member States to contemplate ratifying Convention No. 102;
- (3) inviting member States to inform the Office of obstacles or difficulties encountered that might prevent or delay ratification of the Convention; and
- (4) that the Governing Body Committee on Legal Issues and International Labour Standards (LILS) re-examine the status of the Convention in due course.⁴²¹

600. The first two elements of the decision of the Cartier Working Party have been actively taken up by the ILO Social Security Department in cooperation with the International Labour Standards Department.⁴²² As regards the third element, the article 19 questionnaire on social security instruments adopted by the Governing Body (304th Session, March 2009) in question 13 asked member States what were the obstacles that impede or delay ratification of Convention No. 102, and the present General Survey contains information on such obstacles and difficulties. With regard to the fourth element, the Committee considers that the present General Survey, its conclusions and the outcome of its discussion would provide ample grounds to re-examine, if need be, the status of Convention No. 102 in due course. It should be noted that Convention No. 168 was not considered by the Cartier Working Party as it was adopted after 1985.

2. Social security standards and strategies for the extension of social security

601. The ILO Global Campaign on Social Security and Coverage for All was launched by the International Labour Conference in 2003. Over the past years, consultations and discussions have taken place on this subject, the most recent being the “Tripartite Meeting of Experts on Strategies for the Extension of Social Security Coverage” held in Geneva from 2 to 4 September 2009. The draft document presented to this Meeting noted that, despite the pivotal importance of Convention No. 102, it appears that the existing social security Conventions are not sufficient to underpin the move to universal coverage through the implementation of a set of basic social security guarantees. There existed a need for an additional tool to establish a worldwide level playing field of social conditions. The primary objectives of a new mechanism should be twofold: (1) to realize the extension of social security to all through the provision of the minimum set of basic social security guarantees; and (2) to help countries to advance up the “staircase” of

⁴²⁰ *Social security: Issues, challenges and prospects*, Report VI, International Labour Conference, 89th Session, 2001, pp. 72–74.

⁴²¹ GB.283/LILS/5(Rev.), para. 74.

⁴²² The Office prepared numerous so-called “zero reports”, providing a detailed analysis of the compliance of national law and practice with Convention No. 102 with a view to ratification. Concerning the dissemination of information, the International Labour Standards Department came out with a publication in 2002 *Standards for the 21st century: Social security* providing a user-friendly, simple to understand overview of the main principles and provisions of the ILO social security Conventions. Another notable publication is *Setting social security standards in a global society*, Social Security Policy Briefings, Social Security Department, ILO, 2008.

social security by taking progressive steps towards higher levels of social security protection. Such a mechanism should not undermine the continued relevance of Convention No. 102. Several options were presented during consultations in 2007 and 2008; the “do nothing” option, the “do it all” approach (consolidation of all social security instruments), and the revision of Convention No. 102 were not endorsed by constituents.⁴²³

602. The Director-General reported to the 306th Session of the Governing Body (November 2009) on the outcome of the Tripartite Meeting of Experts relating to the standards-related options on social security. The Chairperson’s summary of the Meeting stated that “the ILO should intensify its efforts in promoting ratification and implementation of the main social security-related Conventions in its work agenda for the forthcoming years”. ... “Workers and a number of governments made the case for the creation of an international labour standard on the social protection floor, since current existing instruments have been developed within a specific historical context of the Second World War and its aftermath. They are focused on standards relating to social insurance schemes, and an instrument on social assistance programmes is still lacking. The Employers expressed a preference for a non-binding mechanism given that for them a pragmatic approach based on best practices would be the most efficient mechanism to achieve the goal of extending coverage of social security” (paragraph 26).⁴²⁴

B. Suggestions by Members for standards-related action

603. Article 19 questionnaire on social security asked member States, as well as employers’ and workers’ organizations, to provide suggestions concerning possible standards-related action (including new standards, revision, consolidation, and review of the status and promotion of the instruments). More than 30 responding governments provided suggestions in this respect. Seven countries propose the revision of the surveyed instruments.⁴²⁵ *Algeria, Bolivia, Bosnia and Herzegovina, and Gabon* suggest that revision should be preceded by a review of the status of the instruments. *Costa Rica, Fiji and Sweden* emphasize in this context the need to modernize the existing instruments and adapt them to current circumstances. *Fiji* points out that due to

⁴²³ Technical report: *Extending Social Security to All. A review of challenges, present practice and strategic options*, draft for discussion (updated version, Sep. 2009), available at www.ilo.org/gimi/gess/RessShowRessource.do?ressourceId=13065, Part C, pp. 126–133.

The following four options were presented in the paper to the 2009 Meeting of Experts:

Option 1: Designing a promotional strategy for wider ratification and gradual application of existing standards with the objective of extending social security to all.

Option 2: Development of a new stand-alone social security instrument (Convention or Recommendation) providing for a universal right to a minimum set of social security guarantees for all in need (social assistance Convention or Recommendation).

Option 3: Development of a new instrument (Protocol) linked to Convention No. 102 and providing for a universal right to a minimum set of social security guarantees to all.

Option 4: Development of an overarching non-binding mechanism (multilateral framework) setting out core social security principles and defining the elements of a minimum set of basic social security guarantees (pp. 131–133).

⁴²⁴ GB.306/17/2, appendix, Chairperson’s summary, paras 7 and 26.

⁴²⁵ *Antigua and Barbuda, Plurinational State of Bolivia, Bosnia and Herzegovina, Costa Rica, Gabon, Nicaragua and Sweden.*

acceleration of globalization, modernizing ILO social security standards should ensure that the reforms of national laws are better benchmarked to modern best practices. *Sudan* suggests adding the coverage of widows and divorced women as a short-term risk. The *United States* reminds that when, and if, standard-setting action is taken, the ILO should include modernizing the terminology to reflect the nature of the current workforce and family structure (for example, in Convention No. 102, the terms “widow” and “wife”).

604. Several reporting member States generally underline the need for flexibility of standards in the field of social security.⁴²⁶ *Malaysia* states that standards should take into consideration the national requirements and conditions of each member country and hence be flexible in its compliance level to promote ratification. In this respect, *Kuwait* points to the need for the ILO to develop new standards taking into account the specific conditions of labour-receiving countries. *Djibouti* recommends the introduction of a principle of gradual application of provisions for new standards. The *Syrian Arab Republic* proposes the adoption of the principle of partial ratification of Conventions. *Australia* comments specifically on Convention No. 102, stating that the calculation of social security benefits provided for in the Convention are prescriptive and complex, and do not provide the flexibility for member States to determine the value of benefits in other ways, which are still consistent with the principle of providing a decent safety net, while also not removing incentives to participate in paid work. In response to the suggestions and criticisms raised, the Committee wishes to refer to Chapter 1C of Part I clarifying the different flexibility provisions contained in Convention No. 102. In reply to *Australia*, the Committee wishes to point out that States are free to determine the value of benefits provided by their safety nets in any way they choose. The “prescriptive and complex” calculations are required by the Convention only for the purpose of demonstrating in the government’s report on the application of the ratified Convention that the minimum rate of benefits prescribed by it is attained in practice.

605. Five other member States propose the revision of the surveyed instruments by pointing in particular at their consolidation.⁴²⁷ *China* proposes to upgrade and consolidate the standards, so that they better meet the requirements of current times and lighten the reporting burden of the member States. *Brazil* and *Senegal* propose a consolidation of the social security instruments, similar to the Maritime Labour Convention, 2006. *India* states that the ILO should examine the development of new and revised standards and keeping existing standards updated, including possible consolidation, to ensure that they are conducive to the changing demands of the international environment in the light of political, economic, and social developments.

606. Six member States⁴²⁸ and two workers’ organizations recommend the adoption of a new instrument on social security. Some suggest a more general social security instrument, whereas other proposals focus on a particular aspect of social security. *Canada* supports the development of new social security instruments that recognize a diversity of systems, meet the needs of modern workplaces and societies, are gender neutral, and do not impose inflexible technical requirements that impede broad ratification and implementation. The *United Republic of Tanzania* emphasizes that ILO should develop specific social security standards, which are sustainable and meet the requirements of the developing countries. More specific proposals relate to an instrument on: mutual insurance companies or complementary insurances (*Cameroon*); social

⁴²⁶ *Australia, Djibouti, Italy, Kuwait, Malaysia and Syrian Arab Republic.*

⁴²⁷ *Brazil, China, India, Gabon and Senegal.*

⁴²⁸ *Cameroon, Canada, El Salvador, Peru, United Republic of Tanzania and United Kingdom.*

security for the informal sector (*El Salvador*); the link between employment promotion and protection against unemployment, especially in the context of international crisis (*Peru*); and social security and HIV/AIDS (National Trade Union Congress of *Belize*).

607. A number of replies on the suggestions for future standards-related activities focus on the Global Campaign on the extension of social security to all.⁴²⁹ *Canada*, the *United Kingdom* and the General Labour Confederation of the *Argentine* Republic (CGT–RA) advocate the development of a new instrument to support the social protection floor. The *United Kingdom* suggests that, if there were widespread support for a new instrument, the ILO should consider developing a universal tax-based, stand-alone instrument, probably a Recommendation, which would provide for universal coverage of a basic benefit package for everyone.⁴³⁰ The CGT–RA supports the possibility of an instrument in the form of a Recommendation to promote the creation of basic social security guarantees for all as a first step to reach a comprehensive social security system, especially in countries where large segments of the population are excluded. This basic minimum of social security can ensure a basic right to all and be a first step towards achieving full social security for all as envisaged in Convention No. 102. Such an instrument should not limit social protection only to the alleviation of poverty, but should also promote rapid horizontal extension of the system, properly funded, especially in countries with large informal economies. *Canada* is of the view that the best way forward towards achieving “social security for all” is to develop a principle-based promotional framework that could be widely endorsed, or possibly a Convention along the lines of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), that can be widely ratified and implemented.

608. Three member States specifically underline the importance of Convention No. 102 in their answers on future standards-related needs. The *United Kingdom* states that the existing ILO social security Conventions should be left unchanged, as they continue to serve a useful purpose and model for social security, particularly Convention No. 102. According to the UK Government, although it could be argued that the Convention is unlikely to attract many more ratifications in its current form, attempting to modify the Convention would risk losing the benefits the instrument provides. *Italy* reports that Convention No. 102 builds a valuable tool to monitor the level of social security and a study aimed at making it more flexible could facilitate the reopening of the debate on the opportunity of ratification of the instrument. *Saint Vincent and the Grenadines* proposes the promotion of Convention No. 102. *Mexico* does not consider it necessary to develop new standards on social security.

609. Some countries suggest that the ILO conduct specific studies.⁴³¹ The Committee notes in particular the suggestion made by *Portugal*, which proposes that the ILO,

⁴²⁹ Although *France* does not provide any particular suggestions, the Government explicitly states that it supports the Global Campaign on the extension of coverage to all.

⁴³⁰ According to the Government, this should allow for a country-led and country-owned approach whereby decisions about the scope and introduction of individual elements and priorities for developing/implementation of social security/protection would be taken by national governments in the light of each country’s specific needs and resources. Such an instrument would need to balance carefully the objective of delivering a basic universal benefit package with the need to avoid an over-prescriptive approach and/or rigid definitions which could obstruct universal ratification. A Recommendation or non-binding framework might stand a better chance of achieving those aims.

⁴³¹ *Indonesia* proposes a study concerning the development of social security in emerging economies, taking into account obstacles and potential development schemes. *Guatemala* recommends a survey on the number of unprotected persons and their vulnerability to establish fiscal pacts to ensure social spending in order to protect groups of people that cannot be covered by the contributory social security regime. *Belgium* refers to the importance of taking into account the effects of international trade and advocates for a strengthening of the

through work on the interpretation of standards, should help governments to overcome doubts that arise in their application, during the processes of ratification or when reporting under articles 22 and 19 of the ILO Constitution. **The Committee emphasizes in this context that widely disseminating information on the interpretation and practical application of social security standards could be instrumental in spreading knowledge of the instruments and eliminating any existing myths and misconceptions (for example in the form of a digest of decisions per branch).**

610. With respect to Convention No. 168, the Committee notes that only three reports provide suggestions on this instrument. *Australia* notes that, since this Convention was not covered by the Cartier Working Party report, Australia would encourage its inclusion in any future work that the ILO undertakes in pursuing the review of standards adopted after 1985. *Switzerland* proposes a quick revision of Convention No. 168 towards more flexibility in order to allow a wide ratification. The Swiss Employers' Union supports this proposal and notes that, considering the low rate of ratification of Convention No. 168, the Convention is too rigid and it is necessary to develop this instrument towards more flexibility to achieve wider ratification.

C. New trends in recent standards

611. When considering the suggestions for standards-related action on social security, one should take into account the new features that have emerged in the last decade of ILO standard setting. In line with the objective that the "ILO should concentrate its attention on high-impact standards", ⁴³² discussions on the latest standards adopted have been guided by a desire for consensus and by the objective of universal applicability and time-bound implementation, in particular as regards the Worst Forms of Child Labour Convention, 1999 (No. 182), the MLC, 2006, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

612. The inclusion of the subject of Convention No. 182 on the ILC agenda in 1998 was preceded, in particular, by an informal tripartite meeting at ministerial level at the 1996 session of the International Labour Conference; the inclusion of the subject of Convention No. 187 was preceded by a general discussion based on an integrated approach at the International Labour Conference in 2003; the consolidation of the maritime labour Conventions, which gave birth to the MLC, 2006, was a direct result of the review made by the Cartier Working Party, facilitated by the recommendations of the constituent members of the Joint Maritime Commission, concerning the status of these Conventions. The MLC, 2006 was the product of five years of preparation involving numerous preparatory consultations and meetings, and consolidated and updated 37 existing ILO maritime Conventions and 31 related Recommendations. In all three cases, the complexity and innovative character of the instrument justified the additional efforts invested in the consensus building prior to engaging the actual standard-setting process, which has relied on in-depth discussion based on comprehensive analyses. The Committee notes that the subject of social security is evolving according to a similar extraordinary consensus-building scenario.

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) as an approach to promote the protection and improvement of working conditions, social security and social integration.

⁴³² ILO: *Decent work*, Report of the Director-General, International Labour Conference, Geneva, 87th Session, 1999.

613. As regards the content, the recent group of Conventions is marked by firmness on rights and flexibility on the means of implementation. Convention No. 182 focuses essentially on the obligations which should be accepted by all countries, whatever their level of development or national circumstances. Since the adoption of Convention No. 182 time-bound action programmes have become a new mechanism of implementation of standards. **Such time-bound action programmes could be particularly appropriate for the introduction of short-term social security benefit schemes for specific areas or categories of persons (such as child, maternity and unemployment benefits).**

614. The MLC, 2006 combines firmness in requiring observance of essential principles and rights with flexibility in implementation through a concrete allocation of responsibilities and a determination of the responsible agency to produce results. The Convention's style and form is new for the ILO. It is drafted in "plain language" with a new structure: articles, regulations and a code with two parts. Each regulation is normally followed by a mandatory "standard", with a non-mandatory "guideline" indicating the way in which the standard should be implemented. The MLC, 2006 introduced also a mechanism of "continuous monitoring of application". Plain language is also needed for social security, an area rich in technical terms. The multi-layered structure similar to the MLC, 2006 may be appropriate to better reflect the structure of social security legislation, which consists of mandatory standards, procedural rules and guidelines for the deciding officers. **The codified form of presentation espoused by the MLC, 2006 could also be effectively used in social security, where developed legislations move to consolidation into comprehensive organic laws or social security codes.**

615. Convention No. 187 confirms the trend towards clear allocation of responsibilities and the introduction of the obligation of results by establishing an infrastructure encompassing three key elements (a national policy, a national system and a national programme) required for a step-by-step improvement in occupational safety and health worldwide according to concrete objectives to be achieved in a predetermined time frame, inter alia, through wider ratification of other relevant instruments.⁴³³ **The idea of the clear allocation of responsibilities and obligations among the stakeholders and the trend of more result-oriented supervision would also be appropriate for social security.**

616. One concern reflected in the government replies is the need to keep standards up to date, particularly as regards standards with a technical content, such as social security. An example is the ILO rapid response to the urgent need for identity documents for seafarers, which resulted in the adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). This Convention includes a simplified amendment procedure for the annexes of the Convention. The accelerated amendment procedure to enable the updating of technical provisions of the MLC, 2006 is another example and an innovative feature of this Convention.⁴³⁴ **As inbuilt flexibility devices may not be sufficient to adjust to rapid change, future technical standards, including on social security, might need the elaboration of specific adjustment mechanisms with respect to selected parameters preset by the standard in question.**

⁴³³ Standards policy: Note prepared by the International Labour Standards Department for the Consultations – Feb.–Mar. 2010, paras 29–36.

⁴³⁴ GB.292/LILS/7, Mar. 2005, para. 17.

617. The Committee notes that lessons can be learned from these new trends and any new standard-setting exercise in social security should take these features into account. Additionally, when exploring new methods of standard setting, complementarities with other international instruments, such as regional social security Conventions and codes, should not be overlooked. The Committee observes that while much of the work on social security has centred on basic social transfers in the low-income countries, current social security reforms in developed countries raise complex legal and conceptual issues which also require close attention by the ILO. This concerns, for example, changes in the definition of the risks and contingencies, interpenetration and integration of branches, reconfiguration of benefits and redistribution of responsibilities – all of which are challenging the traditional model of social security embodied in ILO standards.⁴³⁵

618. The Committee notes with interest the suggestions made by member States and employers' and workers' organizations, including the idea of the elaboration of an instrument on social assistance programmes, which is essential for setting up a social protection floor. **While fully supporting this idea, the Committee also sees the need of reinforcing basic governance principles, which convert moral and social values into the effective design and management of social security systems. The Committee notes that many social security systems are not achieving their objectives due to bad management and insufficient supervision of the systems. Such notions as accountability, transparency, solidarity, participatory management, prevention, etc., are absent from the vocabulary of many private social security schemes and need to be reintegrated. The Committee therefore suggests that future instruments should go beyond resonating the general responsibility on the State for the due provision of benefits contained in Convention No. 102 (Article 71(3)) to address the issues of efficient administration, protection, supervision and inspection of social security funds.**

619. As a result of the global financial crisis, the G20 started to regulate financial markets. More stringent investment rules are being adopted for pension funds, in particular as regards disclosure of their investment strategies and the obligation to carry out regular actuarial studies. The austerity measures leading to disorganized cuts show the need of an integrated financial management of the social sector permitting to steer it through the crisis in such a way as to ensure the lowest level of losses. High levels of budgetary deficit should not endanger the social guarantees of the population.⁴³⁶ **The Committee observes that there is a pressing need for more thorough control to ensure that social security funds are protected, reserve funds are established, public debts to social security repaid and no exemptions are made in the payment of social security contributions.** It should also be borne in mind that to the extent that social security contributions form part of wages, they should benefit from the same protection as wages, particularly in times of crisis.⁴³⁷ The Committee is persuaded that experience

⁴³⁵ An example of very far-reaching changes is provided by the *United Kingdom* where on 30 July 2010, the Department for Work and Pensions published a consultation document "21st Century Welfare", which outlines a number of alternative approaches to benefit simplification, including a single integrated universal credit, which could replace the current income-related benefits and tax credits for people of working age; a single unified taper, which would apply a single taper rate to an overall benefit entitlement, rather than to individual benefits; other options such as a single working-age benefit, a family allowance and a negative income tax model; as well as a modern automatic benefit payment system, which would reduce mistakes and fraud and will mean that customers need to spend less time filling out forms when a job ends.

⁴³⁶ CEACR, General Report, 2009, paras 128–136.

⁴³⁷ See *Highlight on the relevance and application of ILO wage-related Conventions in the context of the global economic crisis*, General Report, CEACR, 2010, paras 105–119.

accumulated by the ILO in applying the Labour Inspection Convention, 1947 (No. 81), and the Protection of Wages Convention, 1949 (No. 95), would provide ample guidance for considering new standards on protection of social security funds and inspection services in social security.

Concluding remarks

620. Since the adoption of the Declaration of Philadelphia in 1944, the ILO has strived to create a world order free from fear and want, where social security would “provide a basic income to all in need of such protection and comprehensive medical care”.⁴³⁸ These aspirations were concretized in Recommendations Nos 67 and 69, which provided a visionary blueprint for the development of social security in industrial societies, extending its coverage from the protection of workers to the protection of the whole population. Six years later, the ILO decided to convert these Recommendations into binding international labour Conventions and set for itself an ambitious plan of adopting a “minimum standard” of social security for countries desiring to create national systems of social security and an “advanced standard” for countries with already established systems. The minimum standard was embodied in Convention No. 102 adopted in 1952, and the advanced standard was developed in subsequent Conventions Nos 121, 128, 130 and 168. It took the ILO 38 years to accomplish this ambitious plan (1950–88), which produced a broad set of technical instruments regulating the classic system of social security and providing a decent level of protection against nine major social risks to persons in the formal sector.

621. The Committee sees the primary value added by this Survey in giving more legal precision and space to the definitions of some of the key principles and notions of international social security law, the observance of which distinguish well-designed and managed social security systems from poorly designed and badly managed schemes. Thus, for example, the content and application of the principle of the participative management of social security systems is explained by highlighting its linkages with the fundamental principles of freedom of association and collective bargaining, on the one side, and with the practical problems and mechanisms of social dialogue, on the other.⁴³⁹ The rationale behind the key notion of “suitable employment”, which plays the pivotal role in the design of the system of protection against unemployment, is explained by reference, on the one side, to the fundamental principle of the prohibition of compulsory labour and, on the other, to the practical needs of effective coordination between unemployment benefit and employment policy.⁴⁴⁰ The extension of social security coverage is put in the context of promotion of the fundamental principles of equality and non-discrimination.⁴⁴¹ The design of family and child benefits comprising the key element of the social security floor is linked with the objective of the abolition of child labour.⁴⁴²

⁴³⁸ Declaration concerning the aims and purposes of the International Labour Organisation, Part III(f), 1944.

⁴³⁹ See, respectively, Part II, Chapter 2(A) and Part IV, Chapter 3 of the Survey.

⁴⁴⁰ See, respectively, Part II, Chapter 2(D) and Part IV, Chapter 2.

⁴⁴¹ See, respectively, Part II, Chapter 2(C) and Part III, Chapter 1.

⁴⁴² See Part II, Chapter 2(B).

622. Another area where the Committee's findings could provide useful guidance for ILO constituents concerns the principle of the general responsibility of the State for the due provision of benefits and the proper administration of the institutions and services concerned, which has been detailed by the Committee in relation to various aspects of social security financing and management. For example, the Committee considered the principle of compulsory affiliation and payment of social security contributions in the context of the enforcement of social security legislation, which is the primary responsibility of the State, as is also the due provision of benefits. Possessing the necessary power to collect unpaid contributions, the State should not permit that evasion of compulsory registration and non-payment of contributions by an employer in respect of his workers results in the workers being refused the benefit otherwise due to them. The State therefore has the duty to put in place effective policies for combating undeclared work and social security evasion, while recognizing and protecting the rights of the workers, including migrants, who fall victim to such illegal activities.⁴⁴³ These are but a few examples of the Committee's conclusions. Listing here all the important findings of the Committee would take too much space. However, they can be easily accessed by following the bolded passages in the text of the Survey, which the Committee decided to highlight for quick reference.

623. What the ILO has achieved so far in the area of social security is significant and impressive. The surveyed instruments form the foundation for protecting basic human needs in income support and medical care, for a sound financial and governance structure applicable to national social security systems, and for an administrative and judicial process that accords basic due process protections. The ILO's body of standards brought into existence international social security law, which provided a firm foundation for the human right to social security and helped to bring national social security systems under the rule of law. The Committee recognizes that for the many industrial societies which the drafters of these standards had primarily in mind, ILO standards have achieved their initial objective "to relieve want and prevent destitution" for the large majority of the population.

624. This, however, has not been the case in the developing world, where the impact of the surveyed instruments was limited to the formal sector representing a small part of the economy. In the twenty-first century, it has become clear that the minimum standard of Convention No. 102 exceeds the reach of the majority of low-income countries. The classic system of social security does not extend to the informal, rural, and subsistence sectors that comprise the bulk of these countries' economies. According to a recent ILO estimate, close to 80 per cent of the global population have no social security protection.⁴⁴⁴ The Committee recognizes that current ILO social security Conventions alone are unlikely to overcome this daunting challenge and serve as optimal tools for the ILO in pursuing its constitutional mandate to extend social security to all.

625. The ILO mandate and mission in social security, as reaffirmed and updated by the Declaration on Social Justice for a Fair Globalization of 2008, now exceed the existing standards under which they are to be implemented. **The current ILO Conventions are still relevant and indeed important, but they must be supplemented with a new set of initiatives to reinvigorate the right to social security of "everyone, as a member of society"**.⁴⁴⁵ This right remains indispensable for the dignity and the free development

⁴⁴³ See Part III, Chapter 2.

⁴⁴⁴ ILO: *World Social Security Report 2010/11: Providing coverage in times of crisis and beyond*, 2010.

⁴⁴⁵ Universal Declaration of Human Rights, Article 22.

of the human personality, which is now reflected in various human rights treaties at the international and regional levels led by the United Nations International Covenant on Economic, Social and Cultural Rights.⁴⁴⁶

626. To deal with the global deficit of social security, the ILO is putting forward an ambitious strategy of promoting comprehensive social security in the developing world along both horizontal and vertical dimensions.⁴⁴⁷ The horizontal dimension of the ILO strategy of development of social security takes the form of a proposal to adopt a global social security floor, comprising a set of four essential non-contributory benefits guaranteed to every person living in the country: essential health care; family/child benefits above poverty line; basic unemployment benefit; and old-age and invalidity pensions. The vertical dimension will guide countries, which have established the social floor, up the “social security staircase” to gradually reach the level of Convention No. 102. **The Committee of Experts fully supports this endeavour but reiterates that the legal framework provided by the existing social security standards needs to be strengthened.**

627. The persistent realities of poverty and the existence of the informal sector call for drafting a new blueprint for the development of social security in the twenty-first century. There must be more effective and direct means to address subsistence needs and thereby contribute to the achievement of the Millennium Development Goals defined by the international community for the global society. The idea of underpinning the world economy by a global social security floor based on tax-financed universal schemes has the potential to alter the prevailing social security paradigm, as previously occurred in 1944 when the social security idea combined compulsory social insurance and social assistance into a single system. New notions of conditional or unconditional “cash transfers”, “basic income” and “universal tax credit”, etc. may be describing the new ways and means with which social security is going to be provided in the future in the developing as well as in some highly developed countries, moving away from risk-based social security divided into separate branches, towards more integrated forms of social protection.

628. Whereas Recommendations Nos 67 and 69, applying the Declaration of Philadelphia, aspired to social inclusion and universal coverage, social security Conventions have thus far been unable to achieve these goals, leaving open the possibility to exclude from coverage a substantial part of the population. **The envisaged instrument on the social security floor should seek to close the gap and ensure coverage for all persons in line with the human rights-based approach and the principle of non-discrimination. It should also institute a system based on sound governance, accountability and transparency, with effective supervisory mechanisms and safeguards against inappropriate or non-transparent uses of social security funds. The Committee is of the view that for developing social security further in the global economy the ILO needs to complement the existing body of standards with a new high-impact instrument sensitive to the distinctive structural realities of less-developed economies, but designed so as to be accepted by virtually all ILO member States, without regard to their level of economic development.**

629. What the surveyed instruments can contribute to the construction of the social security floor are the same fundamental objectives and principles for which successful social security systems have long been known: a rights-based approach to social

⁴⁴⁶ See table 5. “Social security as a human right: International and regional standards”, para. 160.

⁴⁴⁷ The ILO strategy is explained in para. 296 above.

protection; legal certainty and regularity of support; a guaranteed amount of benefits sufficient to maintain the family “in health and decency”; provision of cash benefits throughout a contingency and medical care until the restoration of health; resource-pooling, collective financing and social solidarity; sound financial governance and protection against misuse of social security funds; prohibition of the withdrawal or reduction of benefits except in certain well-defined cases; the right to complain and appeal and the guarantee of due process; oversight by the representatives of the persons protected; and the overall responsibility of the State. **The Committee strongly believes that the newly emerging social security paradigm will continue to respect these principles.**

630. There is a second respect in which the surveyed instruments warrant being revisited. As the product of post-war industrial society at the peak of its development, the ILO social security instruments reflect the labour market and family structure existing in the 1950s and 1960s, when the typical social security beneficiary was a male industrial employee (e.g. “a fitter or turner in the manufacture of machinery other than electrical machinery”) ⁴⁴⁸ as a single breadwinner for his dependent wife and children. Over the past 50 years in many high-income countries, service-related occupations have replaced industrial jobs, women have become equal participants in the workforce, and a noticeable shift has occurred regarding gender equality in all spheres of life. In light of these and other changes, some of the provisions of Convention No. 102, such as recognition of survivors’ benefit only for the widow and not for the widower, may be interpreted as discriminatory. Many countries complain that Convention No. 102 requires them to generate wage statistics for the abstract notion of the “standard beneficiary”, such as a “skilled manual male employee” or an “ordinary adult male labourer”, which does not exist in their national systems. ⁴⁴⁹

631. **The Committee believes that these provisions of Convention No. 102 and subsequent Conventions should be adapted to the needs of modern social security administration and the ILO’s more recent policy guidance on gender equality so as to strengthen the outgoing efforts to increase the level of ratification of Convention No. 102.** One way of doing so would be a limited revision of the Convention by the International Labour Conference or the adoption of a Protocol to the Convention to integrate gender-sensitive language and adapt the definition of the standard beneficiary to the present realities. Another way would be for the Committee of Experts to provide an interpretative declarative statement on the adaptation of certain provisions of the Convention. The Governing Body also has the possibility of reviewing the report forms related to social security Conventions with a view to simplifying and updating the monitoring criteria and requests for statistical data related to the definition of the standard beneficiary. Of course, any adaptation or language change in the provisions of the Convention should not lead to any reduction in the level of benefits guaranteed by Convention No. 102.

632. The third area in which new initiatives would yield dividends involves governance of social security systems. The Committee would emphasize that although it is critically important to preserve and promote existing social security Conventions, particularly in the emerging markets and countries undergoing industrialization, these instruments could be further improved with regard to aspects of governance and administration so as

⁴⁴⁸ Convention No. 102, Article 65(6)(a).

⁴⁴⁹ In fact, Convention No. 102 also contains the possibility, which could be used more systematically in future, to determine the standard beneficiary in a gender-neutral way by reference to “a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected” (Article 65(6)(d)).

to foster more effective social security systems worldwide. The different alternatives open to ILO constituents are not mutually exclusive; rather they reinforce one another. **The Committee believes that the lessons of the current financial and economic crisis prompt the need to elaborate guidelines on sound governance and protection of social security funds, based on principles of prudent finance, tripartite oversight and best actuarial practices.** Such guidelines could help rebuild governments' institutional and regulatory capacity to steer their social security systems through crises, find a new balance between the public and private tiers of their pension systems, and strengthen the mechanisms of social solidarity between economically active and passive, rich and poor, young and old, healthy and sick. They should concretize the general responsibility of the State for the financial and administrative management of social security schemes and include the core elements discussed in Part IV, Chapter 1.

633. **There may also be an opportunity to consider in future whether a new instrument is required to complement Convention No. 102, bearing in mind the need, on the one side, to extend social security guarantees provided by the Convention and, on the other, to combat increased instances of undeclared work, social security evasion and fraud.** Such an instrument could propose mechanisms adapting existing social security schemes to cover flexible and atypical forms of employment and specific categories of the economically active population (such as part-time, self-employed, seasonal or temporary workers), while also strengthening social security inspection services and their coordination with labour inspection, tax authorities, and other government departments concerned. Stricter enforcement of social security legislation should be accompanied by increased guarantees of due process in the litigation procedures, as discussed in Part III, Chapter 3. Adoption of such an international instrument would provide the necessary guidance for further consolidation of social security law in those countries where it develops into an independent branch of law.

634. Finally, with regard to Convention No. 168, it is evident that there has been a paucity of ratifications due to the very demanding and inflexible nature of the Convention addressed to the limited group of countries with developed formal labour markets. Yet, its message that States should build a system of protection to prepare for the various contingencies of unemployment in close coordination with their employment policy so as to enable all jobseekers to access decent work opportunities, remains relevant to all countries. **The Committee believes that this Convention would be accessible to a lot more countries if it were equipped with a flexibility clause similar to that of Convention No. 102, which permits its ratification with initial acceptance by a State of selected parts/contingencies, subject to the possibility of extending ratification to further contingencies at a later stage.** Thus, a State would be able to ratify the Convention by initially accepting its obligations at least for the contingency of full unemployment (Article 10(1) of Convention No. 168) and add the contingencies of partial unemployment (Article 10(2)(a)), temporary suspension of work (Article 10(2)(b)), part-time employees seeking full-time work (Article 10(3)), new applicants for employment (Article 26) to its ratification at a later date, as national circumstances permit. The Committee believes that such limited revision of Convention No. 168 will enhance prospects for ratification by developing countries while providing essential guidance in the gradual construction of their systems of protection against unemployment by moving upwards on the "social security staircase".

Appendix I

Social Security (Minimum Standards) Convention, 1952 (No. 102)

Date of entry into force: 27 April 1955

Country	Ratification date	Medical care (Part II)	Sickness benefit (Part III)	Unemployment benefit (Part IV)	Old-age benefit (Part V)	Employment injury benefit (Part VI)	Family benefit (Part VII)	Maternity benefit (Part VIII)	Invalidity benefit (Part IX)	Survivors' benefit (Part X)
Albania	18.01.2006	X	X	X	X	X		X	X	X
Austria	04.11.1969	X		X	X*		X	X		
Barbados	11.07.1972		X		X*	X			X*	X
Belgium	26.11.1959	X	X	X	X	X*	X	X	X	X
Plurinational State of Bolivia	31.01.1977	X	X*		X*	X*		X	X*	X*
Bosnia and Herzegovina	02.06.1993	X	X	X	X	X*		X	X	X
Brazil	15.06.2009	X	X	X	X	X	X	X		X
Bulgaria	14.07.2008	X	X		X	X	X	X	X	X
Costa Rica	16.03.1972	X			X	X	X	X		X
Croatia	08.10.1991	X	X	X	X	X*		X		X
Cyprus	03.09.1991		X	X	X	X*			X	X*
Czech Republic	01.01.1993	X	X*		X		X	X	X	X*
Democratic Republic of the Congo	03.04.1987			X	X		X		X	X
Denmark	15.08.1955	X			X	X			X	
Ecuador	25.10.1974		X*		X*	X*			X*	X*
France	14.06.1974	X		X	X	X	X	X	X	
Germany	21.02.1958	X	X*	X	X*	X*	X	X	X*	X*
Greece	16.06.1955	X	X	X	X	X		X	X	X

Country	Ratification date	Medical care (Part II)	Sickness benefit (Part III)	Unemployment benefit (Part IV)	Old-age benefit (Part V)	Employment injury benefit (Part VI)	Family benefit (Part VII)	Maternity benefit (Part VIII)	Invalidity benefit (Part IX)	Survivors' benefit (Part X)
Iceland	20.02.1961			X	X		X		X	
Ireland	17.06.1968		X							X
Israel	16.12.1955				X	X				X
Italy	08.06.1956				X		X	X		
Japan	02.02.1976		X	X	X	X*				
Libyan Arab Jamahiriya	19.06.1975	X	X*	X	X*	X*	X	X	X*	X*
Luxembourg	31.08.1964	X	X*	X	X	X*	X	X	X	X
Mauritania	15.07.1968				X	X	X		X	X
Mexico	12.10.1961	X	X		X	X		X	X	X
Montenegro	03.06.2006	X	X	X	X	X*		X		
Netherlands	11.10.1962	X	X*	X	X*	X*	X	X	X*	X*
Niger	09.08.1966				X	X	X	X		
Norway	30.09.1954	X	X*	X	X*	X	X			
Peru	23.08.1961	X	X		X			X	X	
Poland	03.12.2003	X			X		X	X		X
Portugal	17.03.1994	X	X	X	X	X	X	X	X	X
Romania	15.10.2009	X	X		X		X	X		
Senegal	22.10.1962					X*	X	X		
Serbia	24.11.2000	X	X	X	X	X*	X	X		X
Slovakia	01.01.1993	X	X*		X*			X	X	X
Slovenia	29.05.1992	X	X	X	X	X*		X		X
Spain	29.06.1988	X	X	X		X				
Sweden	12.08.1953	X	X*	X		X*	X	X		
Switzerland	18.10.1977				X*	X	X		X*	X*

Social security and the rule of law

Country	Ratification date	Medical care (Part II)	Sickness benefit (Part III)	Unemployment benefit (Part IV)	Old-age benefit (Part V)	Employment injury benefit (Part VI)	Family benefit (Part VII)	Maternity benefit (Part VIII)	Invalidity benefit (Part IX)	Survivors' benefit (Part X)
The former Yugoslav Republic of Macedonia	17.11.1991	X	X	X	X*	X*		X		X
Turkey	29.01.1975	X	X		X	X		X	X	X
United Kingdom	27.04.1954	X	X	X	X		X			X
Bolivarian Republic of Venezuela	05.11.1982	X	X		X*	X		X	X*	X*
Uruguay	14.10.2010	X		X			X	X		
Total:		34	33	26	42	35	26	33	26	32
47 ratifications		(72%)	(70%)	(55%)	(89%)	(74.5%)	(55%)	(70%)	(55%)	(68%)

* This part is no longer applicable as a result of the ratification of a third generation instrument (Conventions Nos 121, 128 or 130).

Appendix II

Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

Date of entry into force: 17 October 1991

Country	Date ratified
Albania	
<i>Pursuant to Article 5 of the Convention, the Government has availed itself of the temporary exception provided for in Article 10(4)</i>	04.08.2006
Brazil	24.03.1993
Finland	19.12.1990
Norway	19.06.1990
Romania	15.12.1992
Sweden	18.12.1990
Switzerland	17.10.1990
Total: 7 ratifications	

Appendix III

List of representations submitted under article 24 of the ILO Constitution concerning non-observance of social security Conventions

Conventions	Country	Submission year	Receivable	Non-receivable	Referral to tripartite committee
Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)	Chile	2009	X		
Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)	Chile	2004	X		X
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	Netherlands	2003	X		X
Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), and Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), and Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)	Chile	1998	X		X
Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37)	Chile	1997	X		X
Social Security (Minimum Standards) Convention, 1952 (No. 102)	Peru	1995		X	
Social Security (Minimum Standards) Convention, 1952 (No. 102)	Peru	1994	X		X
Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)	Sweden	1993	X		X
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	Iraq	1990	X		X
Social Security (Minimum Standards) Convention, 1952 (No. 102), and Equality of Treatment (Social Security) Convention, 1962 (No. 118)	Mauritania	1989	X		X
Social Security (Minimum Standards) Convention, 1952 (No. 102)	FR Germany	1987		X	
Sickness Insurance (Industry) Convention, 1927 (No. 24), and Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), and Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), and Invalidity Insurance (Agriculture) Convention, 1933 (No. 38)	Chile	1985	X		X

Conventions	Country	Submission year	Receivable	Non- receivable	Referral to tripartite committee
Social Security (Minimum Standards) Convention, 1952 (No. 102), and Medical Care and Sickness Benefits Convention, 1969 (No. 130)	Costa Rica	1984	X		X
Social Security (Minimum Standards) Convention, 1952 (No. 102)	Belgium	1983	X		X
Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)	Sweden	1982	X		X
Total		15	13	2	12

Appendix IV

Social security coverage of specific categories of workers

ILO instruments on specific categories of workers	Provisions
<i>Agricultural workers</i>	
Plantations Convention, 1958 (No. 110)	<p>Article 48</p> <ol style="list-style-type: none"> 1. While absent from work on maternity leave in accordance with the provisions of Article 47, the women shall be entitled to receive cash and medical benefits. 2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living. 3. Medical benefits shall include prenatal, confinement and post-natal care by qualified midwives or medical practitioners, as well as hospitalization care where necessary: freedom of choice of doctor and freedom of choice between a public and private hospital shall be respected as far as practicable. 4. Any contribution due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits shall, whether paid both by the employer and the employees, or by the employer, be paid in respect of the total number of men and women employed by the undertakings concerned, without distinction of sex.
Plantations Recommendation, 1958 (No. 110)	<ol style="list-style-type: none"> 53. Each Member should extend its laws and regulations establishing systems of insurance, or other appropriate systems providing security, in case of sickness, maternity, invalidity, old age and similar social risks to plantation workers on conditions equivalent to those prevailing in the case of workers in industrial and commercial occupations.
Tenants and Share-croppers Recommendation, 1968 (No. 132)	<ol style="list-style-type: none"> 25. The competent authorities should ensure that tenants, sharecroppers and similar categories of agricultural workers: <ol style="list-style-type: none"> (a) are covered in so far as practicable by appropriate and adequate social security schemes; and (b) benefit from programmes for rural development concerned with matters such as education, public health, housing and social services, including cultural and recreational activities and, in particular, from the extension of community development programmes to them.

ILO instruments on specific categories of workers	Provisions
<i>Disabled persons</i>	
Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168)	<p>39. In applying the provisions of this Recommendation, Members should also be guided by the provisions of Article 35 of the Social Security (Minimum Standards) Convention, 1952 (No. 102), of Article 26 of the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and of Article 13 of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), in so far as they are not bound by obligations arising out of ratification of these instruments.</p> <p>40. Wherever possible and appropriate, social security schemes should provide, or contribute to the organization, development and financing of training, placement and employment (including sheltered employment) programmes and vocational rehabilitation services for disabled persons, including rehabilitation counselling.</p> <p>41. These schemes should also provide incentives to disabled persons to seek employment and measures to facilitate a gradual transition into the open labour market.</p>
<i>Fishers</i>	
Work in Fishing Convention, 2007 (No. 188)	<p>Article 34 Each Member shall ensure that fishers ordinarily resident in its territory, and their dependants to the extent provided in national law, are entitled to benefit from social security protection under conditions no less favourable than those applicable to other workers, including employed and self-employed persons, ordinarily resident in its territory.</p> <p>Article 35 Each Member shall undertake to take steps, according to national circumstances, to achieve progressively comprehensive social security protection for all fishers who are ordinarily resident in its territory.</p> <p>Article 36 Members shall cooperate, through bilateral or multilateral agreements or other arrangements, in accordance with national laws, regulations or practice:</p> <ul style="list-style-type: none"> (a) to achieve progressively comprehensive social security protection for fishers, taking into account the principle of equality of treatment irrespective of nationality; and (b) to ensure the maintenance of social security rights which have been acquired, or are in the course of acquisition, by all fishers regardless of residence. <p>Article 37 Notwithstanding the attribution of responsibilities in Articles 34, 35 and 36, Members may determine, through bilateral and multilateral agreements and through provisions adopted in the framework of regional economic integration organizations, other rules concerning the social security legislation to which fishers are subject.</p> <p>Article 38 1. Each Member shall take measures to provide fishers with protection, in accordance with national laws, regulations or practice, for work-related sickness, injury or death.</p>

ILO instruments on specific categories of workers	Provisions
Work in Fishing Recommendation, 2007 (No. 199)	<p>2. In the event of injury due to occupational accident or disease, the fisher shall have access to:</p> <p>(a) appropriate medical care; and</p> <p>(b) the corresponding compensation in accordance with national laws and regulations.</p> <p>3. Taking into account the characteristics within the fishing sector, the protection referred to in paragraph 1 of this Article may be ensured through:</p> <p>(a) a system for fishing vessel owners' liability; or</p> <p>(b) compulsory insurance, workers' compensation or other schemes.</p> <p>50. For the purpose of extending social security protection progressively to all fishers, Members should maintain up-to-date information on the following:</p> <p>(a) the percentage of fishers covered;</p> <p>(b) the range of contingencies covered; and</p> <p>(c) the level of benefits.</p> <p>51. Every person protected under Article 34 of the Convention should have a right of appeal in the case of a refusal of the benefit or of an adverse determination as to the quality or quantity of the benefit.</p> <p>52. The protections referred to in Articles 38 and 39 of the Convention should be granted throughout the contingency covered.</p>
<i>Homeworkers</i>	
Home Work Convention, 1996 (No. 177)	<p>Article 4</p> <p>...</p> <p>2. Equality of treatment shall be promoted, in particular, in relation to:</p> <p>...</p> <p>(e) statutory social security protection;</p> <p>...</p> <p>(h) maternity protection.</p>
Home Work Recommendation, 1996 (No. 184)	<p>25. Homeworkers should benefit from social security protection. This could be done by:</p> <p>(a) extending existing social security provisions to homeworkers;</p> <p>(b) adapting social security schemes to cover homeworkers; or</p> <p>(c) developing special schemes or funds for homeworkers.</p> <p>26. National laws and regulations in the field of maternity protection should apply to homeworkers.</p>

ILO instruments on specific categories of workers	Provisions
<i>Indigenous and tribal peoples</i>	
Indigenous and Tribal Peoples Convention, 1989 (No.169)	<p>Article 20</p> <p>...</p> <p>2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:</p> <p>...</p> <p>(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing.</p> <p>Article 24</p> <p>Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.</p> <p>Article 25</p> <p>1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.</p> <p>2. Health services shall, to the extent possible, be community based. These services shall be planned and administered in cooperation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.</p> <p>3. The health-care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health-care services.</p> <p>4. The provision of such health services shall be coordinated with other social, economic and cultural measures in the country.</p> <p>23. The extension of social security schemes to workers belonging to the populations concerned should be preceded or accompanied, as conditions may require, by measures to improve their general social and economic conditions.</p>
<i>Migrant workers</i>	
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	<p>Article 10</p> <p>Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights, and of individual and collective freedoms for persons who, as migrant workers or as members of their families, are lawfully within its territory.</p>

ILO instruments on specific categories of workers	Provisions
Migrant Workers Recommendation, 1975 (No. 151)	<p>2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of:</p> <p>...</p> <p>(f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment.</p> <p>8.</p> <p>(3) Migrant workers whose position has not been or could not be regularized should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.</p> <p>34.</p> <p>(1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein: ...</p> <p>(ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.</p>
Migration for Employment Recommendation (Revised), 1949 (No. 86)	<p>Annex</p> <p>Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons</p> <p>...</p> <p>Article 21. Social Security</p> <p>1. The two parties shall determine in a separate agreement the methods of applying a system of social security to migrants and their dependants.</p> <p>2. Such agreement shall provide that the competent authority of the territory of immigration shall take measures to ensure to the migrants and their dependants treatment not less favourable than that afforded by it to its nationals, except where particular residence qualifications apply to nationals.</p> <p>3. The agreement shall embody appropriate arrangements for the maintenance of migrants' acquired rights and rights in course of acquisition framed with due regard to the principles of the Maintenance of Migrants' Pension Rights Convention, 1935, or of any revision of that Convention.</p> <p>4. The agreement shall provide that the competent authority of the territory of immigration shall take measures to grant to temporary migrants and their dependants treatment not less favourable than that afforded by it to its nationals, subject in the case of compulsory pension schemes to appropriate arrangements being made for the maintenance of migrants' acquired rights and rights in course of acquisition.</p>

ILO instruments on specific categories of workers	Provisions
<i>Nursing personnel</i>	
Nursing Personnel Convention, 1977 (No. 149)	<p>Article 6</p> <p>Nursing personnel shall enjoy conditions at least equivalent to those of other workers in the country concerned in the following fields:</p> <p>...</p> <p>(g) social security.</p>
Nursing Personnel Recommendation, 1977 (No. 157)	<p>53.</p> <p>(1) Nursing personnel should enjoy social security protection at least equivalent, as the case may be, to that of other persons employed in the public service or sector, employed in the private sector, or self-employed, in the country concerned; this protection should cover periods of probation and periods of training of persons regularly employed as nursing personnel.</p> <p>(2) The social security protection of nursing personnel should take account of the particular nature of their activity.</p> <p>54. As far as possible, appropriate arrangements should be made to ensure continuity in the acquisition of rights and the provision of benefits in case of change of employment and temporary cessation of employment.</p> <p>55.</p> <p>(1) Where the social security scheme gives protected persons the free choice of doctor and medical institution, nursing personnel should enjoy the same freedom of choice.</p> <p>(2) The medical records of nursing personnel should be confidential.</p> <p>56. National laws or regulations should make possible the compensation, as an occupational disease, of any illness contracted by nursing personnel as a result of their work.</p> <p>...</p> <p>69. As regards social security, Members should, in accordance with national practice:</p> <p>(a) assume to foreign nursing personnel training or working in the country equality of treatment with national personnel;</p> <p>(b) participate in bilateral or multilateral arrangements designed to ensure the maintenance of the acquired rights or rights in course of acquisition of migrant nursing personnel, as well as the provision of benefits abroad.</p>
<i>Part-time workers</i>	
Part-Time Work Convention, 1994 (No. 175)	<p>Article 6</p> <p>Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice.</p> <p>...</p>

ILO instruments on specific categories of workers

Provisions

Part-Time Work Recommendation, 1994 (No. 182)

Article 8

1. Part-time workers whose hours of work or earnings are below specified thresholds may be excluded by a Member:
 - (a) from the scope of any of the statutory social security schemes referred to in Article 6, except in regard to employment injury benefits;
 - (b) from the scope of any of the measures taken in the fields covered by Article 7, except in regard to maternity protection measures other than those provided under statutory social security schemes.
2. The thresholds referred to in paragraph 1 shall be sufficiently low as not to exclude an unduly large percentage of part-time workers.
3. A Member which avails itself of the possibility provided for in paragraph 1 above shall:
 - (a) periodically review the thresholds in force;
 - (b) in its reports on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate the thresholds in force, the reasons therefore and whether consideration is being given to the progressive extension of protection to the workers excluded.
4. The most representative organizations of employers and workers shall be consulted on the establishment, review and revision of the thresholds referred to in this Article.
6. The adaptations to be made in accordance with Article 6 of the Convention to statutory social security schemes which are based on occupational activity should aim at:
 - (a) if appropriate, progressively reducing threshold requirements based on earnings or hours of work as a condition for coverage by these schemes;
 - (b) as appropriate, granting to part-time workers minimum or flat-rate benefits, in particular old-age, sickness, invalidity and maternity benefits, as well as family allowances;
 - (c) accepting in principle that part-time workers whose employment has come to an end or been suspended and who are seeking only part-time employment meet the condition of availability for work required for the payment of unemployment benefits;
 - (d) reducing the risk that part-time workers may be penalized by schemes which:
 - (i) subject the right to benefits to a qualifying period, expressed in terms of periods of contribution, of insurance or of employment during a given reference period; or
 - (ii) fix the amount of benefits by reference both to the average of former earnings and to the length of the periods of contribution, of insurance or of employment.
7.
 - (1) Where appropriate, threshold requirements for access to coverage under private occupational schemes which supplement or replace statutory social security schemes should be progressively reduced to allow part-time workers to be covered as widely as possible.
 - (2) Part-time workers should be protected by such schemes under conditions equivalent to those of comparable full-time workers. Where appropriate, these conditions may be determined in proportion to hours of work, contributions or earnings.

ILO instruments on specific categories of workers	Provisions
	<p>8.</p> <p>(1) As appropriate, threshold requirements based on hours of work or earnings as specified under Article 8 of the Convention in the fields referred to in its Article 7 should be progressively reduced.</p> <p>(2) The periods of service required as a condition for protection in the fields referred to in Article 7 of the Convention should not be longer for part-time workers than for comparable full-time workers.</p> <p>9. Where part-time workers have more than one job, their total hours of work, contributions or earnings should be taken into account in determining whether they meet threshold requirements in statutory social security schemes which are based on occupational activity.</p>
<i>Workers with family responsibilities</i>	
Workers with Family Responsibilities Convention, 1981 (No. 156)	<p>Article 4</p> <p>With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken:</p> <p>...</p> <p>(b) to take account of their needs in terms and conditions of employment and in social security.</p>
Workers with Family Responsibilities Recommendation, 1981 (No. 165)	<p>9. With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities should be taken:</p> <p>...</p> <p>(b) to take account of their needs in terms and conditions of employment and in social security;</p> <p>...</p>
21.	
...	
(2)	<p>The terms and conditions of employment, including social security coverage, of part-time workers and temporary workers should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis.</p>
(3)	<p>Part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist.</p>
...	
27.	<p>Social security benefits, tax relief, or other appropriate measures consistent with national policy should, when necessary, be available to workers with family responsibilities.</p>
28.	<p>During the leave of absence referred to in Paragraphs 22 and 23, the workers concerned may, in conformity with national conditions and practice, and by one of the means referred to in Paragraph 3 of this Recommendation, be protected by social security.</p>
29.	<p>A worker should not be excluded from social security coverage by reference to the occupational activity of his or her spouse and entitlement to benefits arising from that activity.</p>

Appendix V

Governments' replies to article 19 questionnaire on social security (received by 15 November 2010)

Regions	Africa	Americas	Arab States	Asia and the Pacific	Europe	Total
Part I. Strengthening the legal framework, finances and coverage of social security						
A. Constitutional and legal guarantees						
Total number of governments' reports received	27	28	9	18	34	116
1. Does the Constitution of your country define a right to social security/protection and, if so, how?	26	28	8	15	33	110
2. How does the social security legislation in your country:	11	18	5	13	17	64
2.1. Define social risks/contingencies listed in Convention No. 102, including preventive, curative and maternity medical care?	25	27	6	14	32	104
2.2. Guarantee minimum income-support benefits, if any, and basic medical care?	21	27	6	16	32	102
2.3. Determine how medical care service is organized and financed?	23	28	6	16	32	105
2.4. Establish the right of complaint and appeal in social security and make the procedures simple and rapid?	25	25	5	13	32	100
3. What measures are taken to ensure enforcement of social security legislation and full collection of social insurance contributions?	25	25	6	13	32	101
B. Financial sustainability and governance of social security						
4. Are social security finances in your country sufficient to ensure that:	12	16	4	10	17	59
4.1. Benefits paid by the main scheme are high enough to ensure sufficient replacement of previous wages and/or to provide income above the poverty line?	21	28	4	13	28	94
4.2. Benefits are adjusted to inflation to maintain purchasing power and/or to growth in wages to improve the standard of living?	20	27	7	15	30	99
4.3. Measures are taken to avoid hardship and ensure coverage of persons of small means?	21	30	5	15	24	95

Regions	Africa	Americas	Arab States	Asia and the Pacific	Europe	Total
5. Please explain the role of the State and indicate whether it assumes the general responsibility and takes all measures necessary to ensure:	8	17	4	7	16	52
5.1. The financial viability of the system, protection of social security funds, regular actuarial and financial studies and due provision of benefits.	20	28	6	15	27	96
5.2. The proper administration and supervision of the social security institutions and services, including voluntary and private schemes.	23	30	6	14	26	99
6. In the light of the global financial and economic crisis, what are the main challenges for the future financial sustainability of the social security system and how does it contribute to cope with the consequences of the crisis?	24	30	6	14	26	100
C. Extension of social security coverage						
7. Please provide the latest available statistics on the total number of persons protected under the main scheme.	19	25	7	15	27	93
8. What measures have been taken or planned to extend social security coverage to unprotected categories of workers and their families in different sectors of the economy, including in the informal economy, agriculture, fishing or other sectors?	23	26	6	16	26	97
9. Does your country consider the establishment of a set of basic guarantees for income security and access to medical care for all and, if so, for what risks/contingencies?	22	27	8	14	28	99
Part II. Integrating social security into a comprehensive strategy for decent work						
D. Social security and fundamental principles and rights at work						
10. How are, or should, fundamental principles and rights at work be promoted in social security, in particular by way of:	10	17	1	5	9	42
10.1. Enabling workers and employers to set up provident, unemployment, supplementary, etc. schemes (funds) and regulate benefits by means of collective agreements?	21	26	5	13	23	88
10.2. Applying to social security the basic principles of equality of treatment and non-discrimination?	20	27	7	13	31	98
10.3. Providing universal or targeted (means-tested) benefits to families with children under school-leaving age with a view, inter alia, to preventing child labour?	17	26	4	10	26	83
E. Social security and employment policy						
11. To what extent social security benefits are, or should be, coordinated with employment policy and used as a means to increase employability and promote employment, in particular by way of:	15	21	3	12	27	78
11.1. Professional rehabilitation and cash benefits for vocational training, retraining, and occupational and geographic mobility?	21	25	5	15	25	91

Regions	Africa	Americas	Arab States	Asia and the Pacific	Europe	Total
11.2. Public works/employment guarantees schemes or additional assistance for long-term unemployed?	12	25	5	13	23	78
11.3. Social benefits (in cash or in kind) and services for prescribed categories of new applicants for employment?	10	26	4	11	26	77
11.4. Adjusting social security schemes to occupational and family circumstances of specific categories of workers?	13	28	4	14	24	83
F. Social security and social dialogue						
12. Please describe the role of workers' and employers' organizations, social dialogue and tripartism in the management of social security, indicating in particular:	11	20	3	10	18	62
12.1. What organizations represent persons protected by social security schemes and how do they participate (together with representatives of the employers and public authorities) in the administration of these schemes?	23	29	4	14	29	99
12.2. Whether tripartite consultations at the national level concerning reform and future development of social security have been held or should be held in your country?	20	30	5	11	26	92
Part III. Impact of ILO instruments						
13. What are the obstacles that impede or delay ratification and what are ratification prospects for Conventions Nos 102 and 168? If your country has not accepted all parts of Convention No. 102, what are the obstacles that prevent the acceptance of the remaining parts?	21	28	3	17	28	97
14. To what extent has effect been given, or is proposed to be given, to Convention No. 102 (or non-accepted Parts of Convention No. 102), and Convention No. 168, if not ratified, and to Recommendations Nos. 67 and 69?	19	27	3	14	21	84
15. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO?	15	26	4	11	12	68
16. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support?	16	28	3	7	9	63
17. What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?	20	21	3	14	12	70

Appendix VI

Table of reports due and received on Conventions Nos 102 and 168, and Recommendations Nos 67 and 69 under article 19 of the ILO Constitution (as at 10 December 2010)

Member States	Convention No. 102	Convention No. 168	Recommendation No. 67	Recommendation No. 69
Afghanistan	–	–	–	–
Albania	<i>Ratified</i>	<i>Ratified</i>	Received	Received
Algeria	Received	Received	Received	Received
Angola	Received	Received	Received	Received
Antigua and Barbuda	Received	Received	Received	Received
Argentina	Received	Received	Received	Received
Armenia	–	–	–	–
Australia	Received	Received	Received	Received
Austria	<i>Ratified</i>	Received	Received	Received
Azerbaijan	Received	Received	Received	Received
Bahamas	–	–	–	–
Bahrain	–	–	–	–
Bangladesh	Received	Received	Received	Received
Barbados	<i>Ratified</i>	–	–	–
Belarus	Received	Received	Received	Received
Belgium	<i>Ratified</i>	Received	Received	Received
Belize	Received	Received	Received	Received
Benin	Received	Received	Received	Received
Plurinational State of Bolivia	<i>Ratified</i>	Received	Received	Received
Bosnia and Herzegovina	<i>Ratified</i>	Received	Received	Received
Botswana	Received	Received	Received	Received
Brazil	Received ¹	<i>Ratified</i>	Received	Received
Brunei Darussalam	–	–	–	–
Bulgaria	<i>Ratified</i>	Received	Received	Received
Burkina Faso	–	–	–	–
Burundi	–	–	–	–
Cambodia	–	–	–	–
Cameroon	Received	Received	Received	Received

Member States	Convention No. 102	Convention No. 168	Recommendation No. 67	Recommendation No. 69
Canada	Received	Received	Received	Received
Cape Verde	–	–	–	–
Central African Republic	Received	Received	Received	Received
Chad	–	–	–	–
Chile	Received	Received	Received	Received
China	Received	Received	Received	Received
Colombia	Received	Received	Received	Received
Comoros	–	–	–	–
Congo	–	–	–	–
Costa Rica	<i>Ratified</i>	Received	Received	Received
Côte d'Ivoire	Received	Received	Received	Received
Croatia	<i>Ratified</i>	Received	Received	Received
Cuba	Received	Received	Received	Received
Cyprus	<i>Ratified</i>	–	–	–
Czech Republic	<i>Ratified</i>	Received	Received	Received
Democratic Republic of the Congo	<i>Ratified</i>	–	–	–
Denmark	<i>Ratified</i>	Received	Received	Received
Djibouti	Received	Received	Received	Received
Dominica	Received	Received	Received	Received
Dominican Republic	Received	Received	Received	Received
Ecuador	<i>Ratified</i>	Received	Received	Received
Egypt	Received	Received	Received	Received
El Salvador	Received	Received	Received	Received
Equatorial Guinea	–	–	–	–
Eritrea	Received	Received	Received	Received
Estonia	Received	Received	Received	Received
Ethiopia	Received	Received	Received	Received
Fiji	Received	Received	Received	Received
Finland	Received	<i>Ratified</i>	Received	Received
France	<i>Ratified</i>	Received	Received	Received
Gabon	Received	Received	Received	Received
Gambia	Received	Received	Received	Received
Georgia	–	–	–	–
Germany	<i>Ratified</i>	Received	Received	Received
Ghana	Received	Received	Received	Received
Greece	<i>Ratified</i>	Received	Received	Received
Grenada	–	–	–	–
Guatemala	Received	Received	Received	Received
Guinea	–	–	–	–
Guinea-Bissau	–	–	–	–

Member States	Convention No. 102	Convention No. 168	Recommendation No. 67	Recommendation No. 69
Guyana	–	–	–	–
Haiti	–	–	–	–
Honduras	Received	Received	Received	Received
Hungary	Received	Received	Received	Received
Iceland	<i>Ratified</i>	–	–	–
India	Received	Received	Received	Received
Indonesia	Received	Received	Received	Received
Islamic Republic of Iran	–	–	–	–
Iraq	–	–	–	–
Ireland	<i>Ratified</i>	–	–	–
Israel	<i>Ratified</i>	Received	Received	Received
Italy	<i>Ratified</i>	Received	Received	Received
Jamaica	Received	Received	Received	Received
Japan	<i>Ratified</i>	Received	Received	Received
Jordan	Received	Received	Received	Received
Kazakhstan	Received	Received	Received	Received
Kenya	–	–	–	–
Kiribati	–	–	–	–
Republic of Korea	Received	Received	Received	Received
Kuwait	Received	Received	Received	Received
Kyrgyzstan	–	–	–	–
Lao People's Democratic Republic	Received	Received	Received	Received
Latvia	Received	Received	Received	Received
Lebanon	Received	Received	Received	Received
Lesotho	Received	Received	Received	Received
Liberia	–	–	–	–
Libyan Arab Jamahiriya	<i>Ratified</i>	–	–	–
Lithuania	Received	Received	Received	Received
Luxembourg	<i>Ratified</i>	–	–	–
Madagascar	Received	Received	Received	Received
Malawi	–	–	–	–
Malaysia	Received	Received	Received	Received
Republic of Maldives	–	–	–	–
Mali	Received	Received	Received	Received
Malta	–	–	–	–
Marshall Islands	–	–	–	–
Mauritania	<i>Ratified</i>	Received	Received	Received
Mauritius	Received	Received	Received	Received
Mexico	<i>Ratified</i>	Received	Received	Received
Republic of Moldova	Received	Received	Received	Received

Member States	Convention No. 102	Convention No. 168	Recommendation No. 67	Recommendation No. 69
Mongolia	Received	Received	Received	Received
Montenegro	<i>Ratified</i>	Received	Received	Received
Morocco	Received	Received	Received	Received
Mozambique	Received	Received	Received	Received
Myanmar	Received	Received	Received	Received
Namibia	Received	Received	Received	Received
Nepal	–	–	–	–
Netherlands	<i>Ratified</i>	Received	Received	Received
New Zealand	Received	Received	Received	Received
Nicaragua	Received	Received	Received	Received
Niger	<i>Ratified</i>	–	–	–
Nigeria	–	–	–	–
Norway	<i>Ratified</i>	<i>Ratified</i>	Received	Received
Oman	Received	Received	Received	Received
Pakistan	–	–	–	–
Panama	Received	Received	Received	Received
Papua New Guinea	–	–	–	–
Paraguay	–	–	–	–
Peru	<i>Ratified</i>	Received	Received	Received
Philippines	Received	Received	Received	Received
Poland	<i>Ratified</i>	Received	Received	Received
Portugal	<i>Ratified</i>	Received	Received	Received
Qatar	Received	Received	Received	Received
Romania	Received ¹	<i>Ratified</i>	Received	Received
Russian Federation	–	–	–	–
Rwanda	–	–	–	–
Saint Kitts and Nevis	–	–	–	–
Saint Lucia	Received	Received	Received	Received
Saint Vincent and the Grenadines	Received	Received	Received	Received
Samoa	–	–	–	–
San Marino	–	–	–	–
Sao Tome and Principe	–	–	–	–
Saudi Arabia	Received	Received	Received	Received
Senegal	<i>Ratified</i>	Received	Received	Received
Serbia	<i>Ratified</i>	Received	Received	Received
Seychelles	–	–	–	–
Sierra Leone	–	–	–	–
Singapore	–	–	–	–
Slovakia	<i>Ratified</i>	–	–	–
Slovenia	<i>Ratified</i>	–	–	–

Member States	Convention No. 102	Convention No. 168	Recommendation No. 67	Recommendation No. 69
Solomon Islands	–	–	–	–
Somalia	–	–	–	–
South Africa	Received	Received	Received	Received
Spain	<i>Ratified</i>	Received	Received	Received
Sri Lanka	Received	Received	Received	Received
Sudan	Received	Received	Received	Received
Suriname	Received	Received	Received	Received
Swaziland	Received	Received	Received	Received
Sweden	<i>Ratified</i>	<i>Ratified</i>	Received	Received
Switzerland	<i>Ratified</i>	<i>Ratified</i>	Received	Received
Syrian Arab Republic	Received	Received	Received	Received
Tajikistan	–	–	–	–
United Republic of Tanzania	Received	Received	Received	Received
Thailand	Received	Received	Received	Received
The former Yugoslav Republic of Macedonia	<i>Ratified</i>	–	–	–
Timor-Leste	–	–	–	–
Togo	–	–	–	–
Trinidad and Tobago	–	–	–	–
Tunisia	Received	Received	Received	Received
Turkey	<i>Ratified</i>	Received	Received	Received
Turkmenistan	–	–	–	–
Tuvalu	–	–	–	–
Uganda	Received	Received	Received	Received
Ukraine	Received	Received	Received	Received
United Arab Emirates	–	–	–	–
United Kingdom	<i>Ratified</i>	Received	Received	Received
United States	Received	Received	Received	Received
Uruguay	Received ¹	Received	Received	Received
Uzbekistan	–	–	–	–
Vanuatu	–	–	–	–
Bolivarian Republic of Venezuela	<i>Ratified</i>	Received	Received	Received
Viet Nam	Received	Received	Received	Received
Yemen	–	–	–	–
Zambia	–	–	–	–
Zimbabwe	Received	Received	Received	Received

¹ Convention No. 102 has been ratified but was not yet in force at the time the article 19 report was requested.