



## Governing Body

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GB.323/LILS/2

Legal Issues and International Labour Standards Section  
*Legal Issues Segment*

LILS

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### SECOND ITEM ON THE AGENDA

## Promotion of the ratification of the 1986 and 1997 Instruments for the Amendment of the Constitution of the International Labour Organisation

#### Purpose of the document

This document provides information and elements for debate and guidance on the promotion of the ratification of the 1986 and 1997 Instruments for the Amendment of the Constitution of the International Labour Organisation.

**Relevant strategic objective:** Cross-cutting.

**Policy implications:** None.

**Legal implications:** None.

**Financial implications:** Subject to the decisions of the Governing Body.

**Follow-up action required:** Promotional activities for the ratification of the 1986 and 1997 Instruments of Amendment.

**Author unit:** Office of the Legal Adviser (JUR).

**Related documents:** GB.292/PV; GB.297/LILS/2; GB.309/PV; GB.312/LILS/1; GB.320/LILS/INF/1 and 2.

1. This document presents up-to-date information on the process of ratification of the 1986 and 1997 Instruments for the Amendment of the Constitution of the International Labour Organisation. It draws on similar documents, the last of which was submitted for information to the Governing Body in March 2014,<sup>1</sup> and provides an update, for the purpose of debate and guidance, on the status of ratifications, promotional efforts and possible future action.

## Status of ratifications

2. To enter into force, each of the 1986 and 1997 Amendments must be ratified or accepted by two-thirds of ILO member States, including at least five of the ten Members of chief industrial importance. As there are currently 185 member States, each of the Amendments needs to be ratified by 124 of them.
3. As of 15 January 2015, 102 ratifications and acceptances of the 1986 Amendment have been registered, of which two are from Members of chief industrial importance (India and Italy). The last instrument of acceptance (Cambodia) was received in February 2014. A complete list is provided in Appendix I. A further 22 ratifications or acceptances are therefore required for the 1986 Amendment to enter into force. These must include at least three from Members of chief industrial importance (from among Brazil, China, France, Germany, Japan, Russian Federation, United Kingdom and United States). Twenty Governing Body Members have not yet ratified the Amendment.
4. As for the 1997 Amendment, 123 ratifications or acceptances have been registered to date, including seven from Members of chief industrial importance. A complete list is provided in Appendix II. Fourteen Governing Body members have not yet ratified the Amendment. The last instrument of acceptance (Mali) was received in December 2014. As a result, only one ratification is required for the 1997 Amendment to enter into force.

## Promotional efforts

5. The Office has continued its efforts to promote ratification of the two Instruments of Amendment. It maintains two dedicated web pages,<sup>2</sup> each containing the text of the respective Instrument, an explanatory brochure with questions and answers, a sample format for an Instrument of Ratification or Acceptance, and up-to-date information on ratification.
6. The Office continues to distribute paper copies of the explanatory brochures and to meet with Government delegations with a view to promoting the ratification of both Instruments. It seizes the opportunities afforded by ILO meetings, in particular the International Labour Conference, the Governing Body and the ILO Regional Meetings. In this vein, it held targeted bilateral meetings during the recent 18th American Regional Meeting with the governments of Members that have not yet ratified the 1986 and 1997 Instruments of Amendment.
7. The Office has also been actively involved in promotional activities with new candidate member States, advising them on the ratification of the 1986 and 1997 Instruments of

<sup>1</sup> GB.320/LILS/INF/1 and 2.

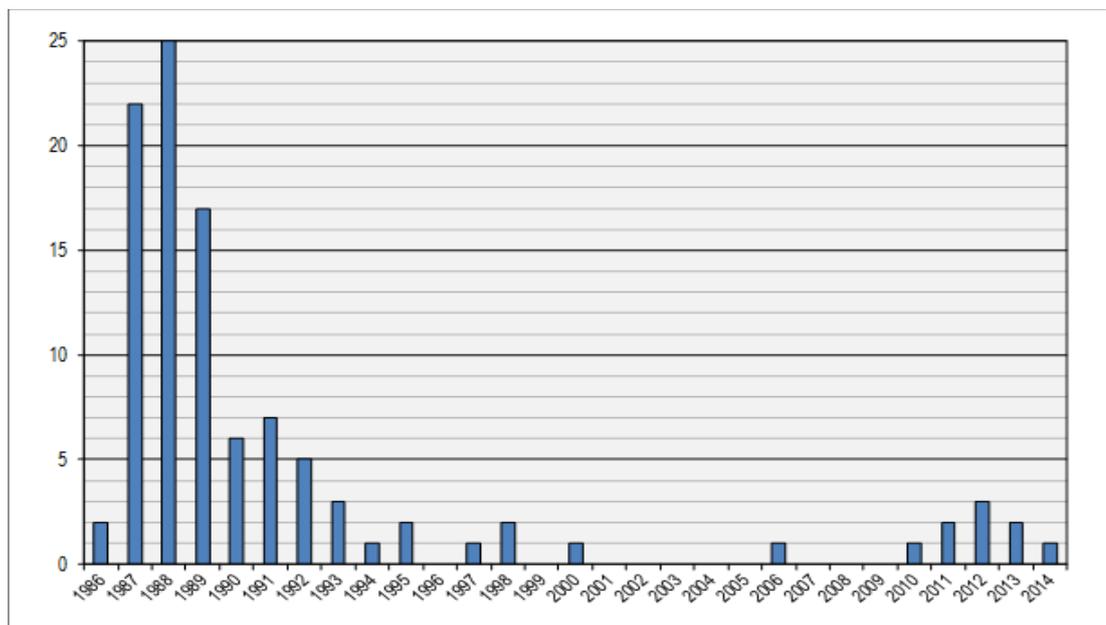
<sup>2</sup> <http://www.ilo.org/public/english/bureau/leg/amend/qna1986.htm>,  
<http://www.ilo.org/public/english/bureau/leg/news/1997ratification.htm>.

Amendment through direct contacts and information materials. A recently published brochure on becoming an ILO Member includes a section on the Instruments for the Amendment of the ILO Constitution.<sup>3</sup> The brochure reminds States wishing to become Members of the ILO that they should also consider ratifying or accepting the 1986 and 1997 Instruments of Amendment, and provides all the necessary information for them to do so. Ratification or acceptance by new Members is important as the admission of a new Member has an impact on the two-thirds threshold required for the entry into force of the Amendments.

## Assessment and possible future action

8. A number of conclusions may be drawn from a closer look at the ratification data outlined above. The tables below show the evolution in ratifications registered by year for the two Amendments. With regard to the 1986 Amendment, a marked decline in ratifications took place from the early 1990s until the launch of the ratification campaign in 2010,<sup>4</sup> which resulted in the registration of nine new ratifications in the following five years. As for the 1997 Amendment, after an initial ratification peak in the three years following its adoption, a diminishing trend was observed over the subsequent five-year period. The ratification process was reactivated with the launch of a ratification campaign in 2005,<sup>5</sup> which produced favourable results over a period of five years (37 new ratifications registered from 2006 to 2010).

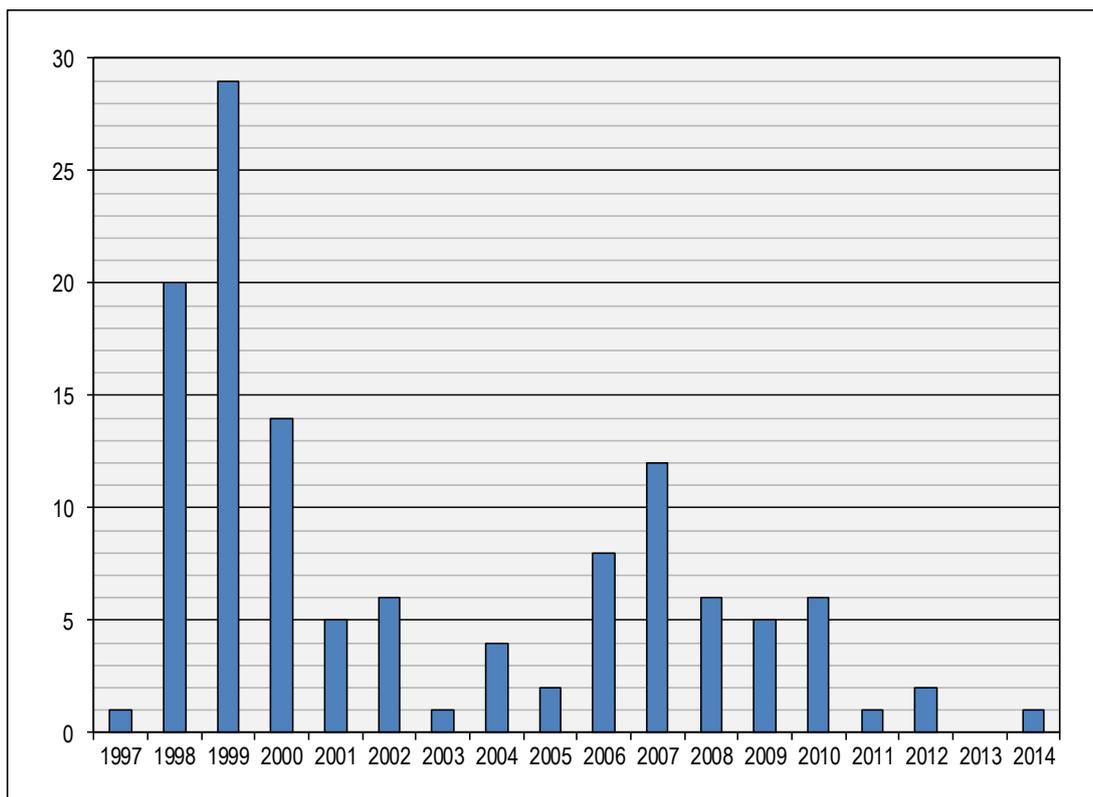
Figure 1. 1986 Amendment – Number of ratifications registered by year (102/124)



<sup>3</sup> The brochure may be accessed at:  
[https://www.ilo.org/public/english/bureau/leg/download/membership\\_2014.pdf](https://www.ilo.org/public/english/bureau/leg/download/membership_2014.pdf).

<sup>4</sup> See GB.312/LILS/1. The Office had previously undertaken efforts to promote ratification, including through letters to Members sent out by the Director-General first in 1986 and subsequently in 1988, in the wake of concerns raised during the 239th Session of the Governing Body regarding the insufficient number of ratifications received.

<sup>5</sup> See GB.292/PV, para. 202, and GB.292/10(Rev.). Previous promotional activities had included letters to Members sent out by the Director-General first in 1997 and subsequently in 1998, 2000 and 2002.

**Figure 2. 1997 Amendment – Number of ratifications registered by year (123/124)**

9. According to the tables, the ratification campaigns appear to have had a positive impact, particularly in the three to five years immediately after their launch. Moreover, promotional experience shows that targeted activities tend to be the most effective in fostering ratification or acceptance. Consequently, ratification campaigns could be relaunched with a focus on targeted activities involving Members that have not ratified an Instrument of Amendment (listed in Appendices I and II). Targeted activities could include, for instance, specific meetings with the permanent missions concerned in Geneva or with visiting government officials, as well as similar initiatives undertaken by standards specialists in the field, and also targeted missions to capital cities. Moreover, promotional activities could further engage the participation and support of social partners. To this end, additional efforts could be undertaken to keep them informed of the ratification campaigns and existing resources and materials, or to facilitate their direct participation in specific promotional events.
10. The Governing Body might also consider inviting Members that have not ratified or accepted one or both of the Instruments of Amendment to provide information on the reasons why they have not yet done so. The Office could analyse the responses received and report back to the Governing Body. This could assist in identifying challenges to ratification and may provide useful elements for improving promotional activities or considering other follow-up measures.

## Significance of the two Amendments and ratification prospects

11. The 1986 Amendment addresses four main areas. First, the composition and governance of the Governing Body, aiming to make it more representative taking into account the various geographic, economic and social interests of its constituent groups. If the

1986 Amendment enters into force, the number of regular Governing Body members will increase from 56 to 112 and there will no longer be seats guaranteed to member States of chief industrial importance.<sup>6</sup> As an interim measure, the 1995 Amendment to the Standing Orders of the International Labour Conference increased the number of seats in the Governing Body by creating the category of deputy members. However, the 1995 reform did not introduce the full range of changes envisaged by the 1986 Amendment; in particular, it did not affect the status of the Members of chief industrial importance. Second, under the 1986 Amendment, the appointment of the Director-General by the Governing Body will have to be submitted to the International Labour Conference for approval. Third, the 1986 Amendment introduces adjustments to the rules for voting at the International Labour Conference, concerning the required majorities and quorum. Fourth, the 1986 Amendment sets out different voting and ratification requirements for constitutional amendments related to specific considerations. Taking into account that almost three decades after its adoption the 1986 Amendment has not yet entered into force, the Governing Body may wish to assess the slow progress and uncertain prospects concerning its entry into force in the near future.

12. The 1997 Amendment is likely to attain the required number of ratifications for its entry into force in the near future. It is recalled that this Amendment will enable the Organization to abrogate obsolete Conventions and, in so doing, reinforce the relevance, impact and coherence of international labour standards. The 1997 Amendment simply consists in adding a new paragraph to article 19 of the Constitution to read: “Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation.”
13. As a number of Conventions have become outdated, their maintenance is damaging to the clarity and legibility of the ILO’s body of standards. It is essential for the credibility of the Organization that it should have a body of up-to-date standards, thereby concentrating its standard-setting action on the Conventions which currently contribute to the achievement of its objectives. The effect of the abrogation within the meaning of the 1997 Amendment will be to eliminate definitely all legal effects arising out of the Convention between the Organization and its Members. An abrogated Convention will cease to be an ILO Convention.<sup>7</sup> Thus, Members having ratified the Convention will no longer be obliged to submit reports under article 22 of the Constitution, and it will no longer be possible for representations (article 24) and complaints (article 26) to be made against them for non-observance of such a Convention.
14. The abrogation mechanism set out in the 1997 Amendment may also be relevant in the context of the Governing Body’s ongoing discussions on the establishment of a Standards

<sup>6</sup> Of the 56 seats reserved for governments, 54 will be distributed among four geographic regions – Africa, the Americas, Asia and Europe – with a minimum of 12 and a maximum of 15 seats for each region. Distribution of seats will be weighted by taking into account the number of member States within the region, their total population and their economic activity assessed by appropriate criteria (gross national product or contributions to the budget of the Organization). The initial allocation provided for is 13 seats for Africa, 12 for the Americas, 14 for Asia and 15 for Europe. The two remaining seats will rotate, one between Africa and the Americas and the other between Asia and Europe.

<sup>7</sup> While an abrogated Convention thus ceases to be an ILO Convention, nothing prevents member States which have ratified it (and which might oppose its abrogation) from considering that they remain bound inter se by its provisions. But they may no longer call on the ILO, on the one hand, to supervise observance and maintain procedural obligations in respect of Conventions which no longer serve its objectives or, on the other hand, to assume the resulting costs.

Review Mechanism.<sup>8</sup> It is recalled that once the 1997 Amendment enters into force,<sup>9</sup> the Governing Body will be able to place an item on the agenda of the Conference concerning the abrogation of a Convention, under the procedural guarantees provided for under article 5.4 of the Standing Orders of the Governing Body.<sup>10</sup> To date, 25 Conventions have been “shelved” (no longer supervised on a regular basis) and 31 Conventions have been classified as “outdated”.<sup>11</sup> These Conventions may be the subject of an abrogation exercise once the 1997 Amendment comes into effect.

## **Draft decision**

### **15. The Governing Body:**

- (a) urges ILO Members which have not yet done so to ratify or accept the 1986 and 1997 Instruments for the Amendment of the ILO Constitution; and*
- (b) requests the Director-General to pursue promotional efforts – in the light of the guidance provided by the Governing Body – for the ratification or acceptance of the two instruments of amendment, and to report at a future session on the basis of results obtained.*

<sup>8</sup> See GB.312/PV, para. 577.

<sup>9</sup> Under article 3 of the amendment and article 36 of the Constitution, the amendment shall take effect as soon as the required number of ratifications is attained.

<sup>10</sup> In particular, the decision to place an item on the agenda of the Conference concerning the abrogation of a Convention must, as far as possible, be reached by consensus or, where it is not possible to reach such a consensus in two successive sessions of the Governing Body, by a four-fifths majority of members of the Governing Body with a right to vote during the second of these sessions.

<sup>11</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:4140505011767860:::P12000\\_INSTRUMENT\\_SORT:3](http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:4140505011767860:::P12000_INSTRUMENT_SORT:3).

## Appendix I

### 1986 Amendment ratification/acceptance status (at 15 January 2015)

#### A. Member States which have ratified/accepted the 1986 Instrument for the Amendment of the ILO Constitution (by region)

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##### Africa

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Algeria	Ethiopia	Namibia
Angola	Gabon	Niger
Benin	Ghana	Nigeria
Botswana	Guinea	Rwanda
Burkina Faso	Guinea-Bissau	Senegal
Burundi	Kenya	Sierra Leone
Cameroon	Lesotho	South Sudan
Chad	Libya	Sudan
Comoros	Madagascar	Swaziland
Congo	Malawi	Tanzania, United Republic of
Côte d'Ivoire	Mali	Togo
Congo, Democratic Republic of	Mauritania	Tunisia
Egypt	Mauritius	Uganda
Equatorial Guinea	Morocco	Zambia
Eritrea	Mozambique	Zimbabwe

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##### Americas

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Argentina	Costa Rica	Guatemala
Barbados	Cuba	Mexico
Chile	Ecuador	Suriname
Colombia	Grenada	Trinidad and Tobago

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##### Europe

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Austria	Iceland	San Marino
Belarus	Italy	Serbia
Belgium	Luxembourg	Slovenia
Bosnia and Herzegovina	Malta	Sweden
Croatia	Montenegro	Switzerland
Cyprus	Netherlands	The former Yugoslav Republic of Macedonia
Denmark	Norway	Turkey
Finland	Poland	Ukraine
Hungary	Romania	

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##### Asia and the Pacific

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Bahrain	Kuwait	Saudi Arabia
Bangladesh	Malaysia	Singapore
Cambodia	Mongolia	Sri Lanka

India	Myanmar	Thailand
Indonesia	New Zealand	United Arab Emirates
Iraq	Pakistan	
Jordan	Qatar	

**B. Member States which have not yet ratified/accepted the 1986 Instrument for the Amendment of the ILO Constitution (by region)**

**Africa**

Cabo Verde	Gambia	Seychelles
Central African Republic	Liberia	Somalia
Djibouti	Sao Tome and Principe	South Africa

**Americas**

Antigua and Barbuda	El Salvador	Peru
Bahamas	Guyana	Saint Kitts and Nevis
Belize	Haiti	Saint Lucia
Bolivia, Plurinational State of	Honduras	Saint Vincent and the Grenadines
Brazil	Jamaica	United States
Canada	Nicaragua	Uruguay
Dominica	Panama	Venezuela, Bolivarian Republic of
Dominican Republic	Paraguay	

**Europe**

Albania	Greece	Russian Federation
Armenia	Ireland	Slovakia
Azerbaijan	Israel	Spain
Bulgaria	Kazakhstan	Tajikistan
Czech Republic	Kyrgyzstan	Turkmenistan
Estonia	Latvia	United Kingdom
France	Lithuania	Uzbekistan
Georgia	Moldova, Republic of	
Germany	Portugal	

**Asia and the Pacific**

Afghanistan	Lao People's Democratic Republic	Samoa
Australia	Lebanon	Solomon Islands
Brunei Darussalam	Maldives, Republic of	Syrian Arab Republic
China	Marshall Islands	Timor-Leste
Fiji	Nepal	Tuvalu
Iran, Islamic Republic of	Oman	Vanuatu
Japan	Palau	Viet Nam
Kiribati	Papua New Guinea	Yemen
Korea, Republic of	Philippines	

## Appendix II

### 1997 Amendment ratification/acceptance status (at 15 January 2015)

#### A. Member States which have ratified/accepted the 1997 Instrument for the Amendment of the ILO Constitution (by region)

<b>Africa</b>		
Algeria	Ethiopia	Namibia
Benin	Guinea	Nigeria
Botswana	Guinea-Bissau	Seychelles
Burkina Faso	Libya	South Africa
Cabo Verde	Malawi	South Sudan
Cameroon	Mali	Togo
Comoros	Mauritania	Tunisia
Congo	Mauritius	Zambia
Egypt	Morocco	Zimbabwe
Eritrea	Mozambique	
<b>Americas</b>		
Antigua and Barbuda	Dominican Republic	Peru
Argentina	Ecuador	Saint Kitts and Nevis
Barbados	Guatemala	Saint Vincent and the Grenadines
Brazil	Guyana	Suriname
Canada	Jamaica	Trinidad and Tobago
Chile	Mexico	
Cuba	Nicaragua	
Dominica	Panama	
<b>Europe</b>		
Albania	Hungary	Poland
Austria	Iceland	Portugal
Azerbaijan	Ireland	Romania
Belgium	Israel	San Marino
Bosnia and Herzegovina	Italy	Serbia
Bulgaria	Latvia	Slovakia
Croatia	Lithuania	Slovenia
Cyprus	Luxembourg	Spain
Czech Republic	Malta	Sweden
Denmark	Moldova, Republic of	Switzerland
Estonia	Montenegro	Tajikistan
Finland	Netherlands	Turkey
France	Norway	United Kingdom

**Asia and the Pacific**

Afghanistan	Kuwait	Saudi Arabia
Australia	Lao People's Democratic Republic	Singapore
Bahrain	Lebanon	Solomon Islands
Bangladesh	Malaysia	Sri Lanka
Brunei Darussalam	Mongolia	Syrian Arab Republic
Cambodia	Nepal	Thailand
China	New Zealand	United Arab Emirates
Fiji	Oman	Vanuatu
India	Pakistan	Viet Nam
Japan	Philippines	Yemen
Jordan	Qatar	
Korea, Republic of	Samoa	

**B. Member States which have not yet ratified/accepted the 1997 Instrument for the Amendment of the ILO Constitution (by region)****Africa**

Angola	Gambia	Senegal
Burundi	Ghana	Sierra Leone
Central African Republic	Kenya	Somalia
Chad	Lesotho	Sudan
Côte d'Ivoire	Liberia	Swaziland
Congo, Democratic Republic of	Madagascar	Tanzania, United Republic of
Djibouti	Niger	Uganda
Equatorial Guinea	Rwanda	
Gabon	Sao Tome and Principe	

**Americas**

Bahamas	El Salvador	Saint Lucia
Belize	Grenada	United States
Bolivia, Plurinational State of	Haiti	Uruguay
Colombia	Honduras	Venezuela, Bolivarian Republic of
Costa Rica	Paraguay	

**Europe**

Armenia	Kazakhstan	Turkmenistan
Belarus	Kyrgyzstan	Ukraine
Georgia	Russian Federation	Uzbekistan
Germany	The former Yugoslav Republic of Macedonia	
Greece		

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**Asia and the Pacific**

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Indonesia	Maldives, Republic of	Papua New Guinea
Iran, Islamic Republic of	Marshall Islands	Timor-Leste
Iraq	Myanmar	Tuvalu
Kiribati	Palau	

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