



Governing Body

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THIRD ITEM ON THE AGENDA

Agenda of the International Labour Conference

Addendum

Proposals for the abrogation of Conventions Nos 21, 50, 64, 65, 86 and 104 and the withdrawal of Recommendations Nos 7, 61 and 62

1. The Standards Review Mechanism Tripartite Working Group (SRM TWG), at its second meeting which was held from 10 to 14 October 2016, recommended the abrogation of six Conventions and the withdrawal of three Recommendations, namely: the Inspection of Emigrants Convention, 1926 (No. 21); the Recruiting of Indigenous Workers Convention, 1936 (No. 50); the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64); the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65); the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86); the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104); the Hours of Work (Fishing) Recommendation, 1920 (No. 7); the Migration for Employment Recommendation, 1939 (No. 61); and the Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62).¹
2. It is recalled that following the entry into force on 8 October 2015 of the 1997 constitutional amendment, the Conference is now empowered, by two-thirds majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization. The ability to abrogate Conventions in force is an important tool for the Standards Review Mechanism process to ensure that the Organization has a robust and up-to-date body of labour standards. It is noted that abrogation only relates to Conventions in force whereas Conventions that are not in force as well as Recommendations may be withdrawn by the Conference. Five Conventions and 36 Recommendations have

¹ [GB.328/LILS/2/1](#), appendix, Annex I, paras 26, 27 and 30.

been withdrawn so far while at its 106th Session (2017) the Conference will consider the abrogation and/or withdrawal of another six Conventions.²

3. The SRM TWG considered Conventions Nos 21, 50, 64, 65, 86 and 104 and Recommendations Nos 7, 61 and 62, within the broader context of instruments related to the relevant strategic objectives and the overall standards policy.³ In arriving at its recommendations with respect to Conventions Nos 21, 50, 64, 65, 86 and 104, the SRM TWG noted that the six Conventions referred to situations that virtually no longer existed and that the regulatory approach to indigenous workers and the realities of labour migration had changed dramatically since their adoption. Further key considerations were that all six Conventions had been classified as dormant since 1985 and shelved since 1996, that there have been practically no comments of the Committee of Experts since 1998 and no representations have been filed under article 24 of the Constitution alleging non-observance of any of these Conventions.
4. With regard to the proposed withdrawal of three Recommendations, the SRM TWG noted that Recommendation No. 7 had been revised by the Work in Fishing Recommendation, 2005 (No. 196), which was subsequently juridically replaced by the Work in Fishing Recommendation, 2007 (No. 199). As for Recommendations Nos 61 and 62, they had been de facto replaced by the Migration for Employment Recommendation (Revised), 1949 (No. 86), and that the Convention which these Recommendations supplemented had been withdrawn by the Conference.⁴
5. Under the terms of paragraph 5.4.1 of the Standing Orders of the Governing Body, the Office is required to place before the Governing Body a report containing all relevant information regarding the abrogation or withdrawal of the instruments concerned. As the Working Party on Policy regarding the Revision of Standards and the SRM TWG⁵ have already conducted an examination of the Conventions and Recommendations concerned, the appendix to the present document provides a summary of the information presented by the Office to the SRM TWG.⁶
6. Under the terms of paragraph 5.4.2 of the Standing Orders of the Governing Body, the decision to place on the agenda of the Conference an item on the abrogation of Conventions in force or the withdrawal of Conventions that are not in force or of Recommendations should be reached as far as possible by consensus. If such a consensus cannot be reached in

² GB.271/4/2; GB.277/2/2(Rev.1); GB.283/2/2; and ILO: *Abrogation of four and withdrawal of two international labour Conventions*, Report VII(1), International Labour Conference, 106th Session, Geneva, 2017, available at: http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS_431648/lang--en/index.htm.

³ GB.328/LILS/2/1.

⁴ According to the distinction initially made by the Cartier Working Party and followed by the SRM TWG, Recommendations which have been replaced by way of explicit Conference decision (i.e. a subsequent Recommendation that includes an express provision stating that it “supersedes” or “revises and replaces” an earlier one) were referred to as “juridically replaced”. Recommendations which have been revised by subsequent standards on the same subject (for instance, a Recommendation that contains a preambular paragraph making reference to the need to revise an earlier instrument without expressly stating that it supersedes or replaces that instrument) were referred to as “de facto replaced”.

⁵ GB.328/LILS/2/1 and technical notes 5.1, 5.2 and 5.4.

⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/meetingdocument/wcms_521975.pdf.

two successive sessions of the Governing Body, it must obtain a four-fifths majority of the members of the Governing Body with a right to vote during the second of these sessions.

7. In accordance with article 45bis of the Standing Orders of the Conference, if the Governing Body decides to place the question of the abrogation and withdrawal of these instruments on the agenda of the 107th Session (2018) of the Conference, the Office is required to communicate to all governments, so that it reaches them at least 18 months before the session of the Conference, i.e. by January 2017, a short report and questionnaire inviting their views on the issue. It is recalled that the placement of an item on the abrogation or withdrawal does not require the establishment of a technical committee as the Conference may decide to examine this item either in a plenary sitting or by sending it to the Selection Committee.
8. It is noted that contrary to the earlier practice of “shelving” outdated Conventions, the effect of the abrogation within the meaning of the new paragraph 9 of article 19 of the ILO Constitution will be to eliminate definitively all legal effects arising out of an obsolete Convention in force between the Organization and its Members that are parties to that Convention. An abrogated Convention will be removed from the ILO’s body of standards. As a result, Members that have ratified and are still bound by the Convention will no longer be obliged to submit reports under article 22 of the Constitution, and will no longer be subject to representations (article 24) and complaints (article 26) for non-observance of such a Convention. For their part, the ILO supervisory bodies will not be required to examine the implementation of the abrogated Convention and the Office will cease all relevant activities. With regard to the practical consequences of the abrogation of the six Conventions in force and the withdrawal of the three Recommendations, as established when the withdrawal of the first five Conventions⁷ was placed on the agenda of the 88th Session (2000) of the Conference, the instruments in question will no longer be reproduced in the official compendium of ILO Conventions and Recommendations. All that would remain would be their full title and number; there would also be a reference to the session and year of the Conference at which the decision of withdrawal was taken.
9. Should the Governing Body wish to proceed with the abrogation and withdrawal of the abovementioned instruments, this Addendum provides a revised version of the draft decision in paragraph 41 of GB.328/INS/3.

Revised draft decision concerning the agenda of the International Labour Conference

10. The Governing Body may wish to:

- (a) *continue the setting of the agenda of the 107th Session (2018) of the Conference by deciding on the inclusion of one or two of the following items in addition to the standard-setting item on “Violence against men and women in the world of work”:*
 - (i) *an item concerning a recurrent discussion under the new cycle, in light of the decision taken by the Governing Body in the framework of the follow-up to the resolution on Advancing Social Justice through Decent Work (proposal relating to the modalities of recurrent discussions);*

⁷ GB.271/4/2, para. 10.

- (ii) *one of the following three items:*
- *a just transition of the world of work towards environmentally sustainable economies and societies for all (standard setting);*
 - *structural unemployment and underemployment (general discussion);*
 - *effective ILO development cooperation in support of the Sustainable Development Goals (general discussion);*
- (b) *place on the agenda of the 107th Session (2018) of the Conference an item on the abrogation of Conventions Nos 21, 50, 64, 65, 86 and 104 and the withdrawal of Recommendations Nos 7, 61 and 62;*
- (c) *provide guidance on the implementation of the strategic and coherent approach to the setting of the Conference agenda for the 107th (2018) and 108th (2019) Sessions of the Conference, and its continuation beyond;*
- (d) *provide guidance on future steps to take in relation to those items not chosen within paragraph 10(a).*

Appendix

Inspection of Emigrants Convention, 1926 (No. 21)

Related instruments: The Migration for Employment Convention (Revised), 1949 (No. 97), which is of a broad and general application, calls for measures to facilitate the departure, journey and reception of migrants for employment, the maintenance of appropriate medical services, and the permission for migrants to transfer their earnings and savings. Convention No. 97 also prohibits the inequality of treatment between migrant workers and nationals in respect of living and working conditions, social security, employment taxes and access to justice. Nevertheless, as Convention No. 21 does not contain an automatic denunciation provision and, in any case, it is not revised by Convention No. 97, the ratification of Convention No. 97 does not involve the immediate denunciation of Convention No. 21.

Ratifications: The Convention has received a total of 33 ratifications and five denunciations. Convention No. 21 was last ratified by the Czech Republic and Slovakia in 1993, following the dissolution of Czechoslovakia.

Remarks: In 1996, at the time the Governing Body decided to shelve Convention No. 21 with immediate effect, it was noted that this Convention referred to “transport conditions by boat that have now disappeared or are only of marginal significance” and that “provisions concerning measures to safeguard the welfare of migrant workers and their families during the journey”, particularly on board ship, have been contained in Convention No. 97.¹ “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there have been no comments of the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 21.

Recruiting of Indigenous Workers Convention, 1936 (No. 50)

Related instruments: The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the most up-to-date ILO instrument concerning indigenous and tribal peoples and reflects a regulatory approach based on the respect for their cultures, ways of life and traditional institutions, as well as the improvement of many of the positive protections offered by the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, as Convention No. 169 does not revise Convention No. 50, ratification of Convention No. 169 does not ipso jure involve the immediate denunciation of Convention No. 50.

Ratifications: This Convention has received a total of 33 ratifications and three denunciations. Convention No. 50 was last ratified by Guatemala in 1989.

Remarks: In 1996, at the time the Governing Body decided to shelve Convention No. 50 with immediate effect, it was noted that this Convention mainly concerned the recruitment of indigenous workers in dependent territories, a practice that by 1985 had “largely disappeared, though certain independent States still have problems of recruitment of indigenous workers. Moreover, many of the countries that are parties to these Conventions no longer have any dependent indigenous populations in the meaning of the Conventions. Modern-day problems of international migration of labour need to be dealt with within the

¹ [GB.265/LILS/WP/PRS/1](#), p. 16.

context of the Conventions concerning migrant workers.”² “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there has been only one comment adopted by the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 50.

Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)

Related instruments: The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the most up-to-date ILO instrument concerning indigenous and tribal peoples and reflects a regulatory approach based on the respect for their cultures, ways of life and traditional institutions, as well as the improvement of many of the positive protections offered by the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, as Convention No. 169 does not revise Convention No. 64, ratification of Convention No. 169 does not ipso jure involve the immediate denunciation of Convention No. 64.

Ratifications: This Convention has received a total of 31 ratifications and three denunciations. Convention No. 64 was last ratified by Guatemala in 1989.

Remarks: In 1996, at the time the Governing Body decided to shelve Convention No. 64 with immediate effect, it was noted that this Convention mainly concerned the recruitment of indigenous workers in dependent territories, a practice that by 1985 had “largely disappeared, though certain independent States still have problems of recruitment of indigenous workers. In addition, many of the countries that are parties to these Conventions no longer have any dependent indigenous populations in the meaning of the Conventions. The problems which arise today in relation to the international migration of labour need to be dealt with in the framework of the Conventions on migrant workers.”³ “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there have been only two comments adopted by the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 64.

Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)

Related instruments: The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the most up-to-date ILO instrument concerning indigenous and tribal peoples and reflects a regulatory approach based on the respect for their cultures, ways of life and traditional institutions, as well as the improvement of many of the positive protections offered by the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, as Convention No. 169 does not revise Convention No. 65, ratification of Convention No. 169 does not ipso jure involve the immediate denunciation of Convention No. 65.

Ratifications: This Convention has received a total of 33 ratifications and one denunciation. Convention No. 65 was last ratified by Saint Lucia in 1980.

Remarks: In 1996, at the time the Governing Body decided to shelve the Convention with immediate effect, it was noted that Convention No. 65 mainly concerned the recruitment of indigenous workers in dependent territories, a practice that by 1985 had “largely disappeared, though certain independent States still have problems with the

² [GB.265/LILS/WP/PRS/1](#), p. 18.

³ [GB.265/LILS/WP/PRS/1](#), p. 20.

recruitment of indigenous workers. In addition, many of the countries that are parties to these Conventions no longer have any dependent indigenous populations in the meaning of the Conventions. The problems which arise today in relation to the international migration of labour need to be dealt with in the framework of the Conventions on migrant workers.”⁴ “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there have been no comments of the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 65.

Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)

Related instruments: The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the most up-to-date ILO instrument concerning indigenous and tribal peoples and reflects a regulatory approach based on the respect for their cultures, ways of life and traditional institutions, as well as the improvement of many of the positive protections offered by the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, as Convention No. 169 does not revise Convention No. 86, ratification of Convention No. 169 does not ipso jure involve the immediate denunciation of Convention No. 86.

Ratifications: This Convention has received a total of 22 ratifications and one denunciation. Convention No. 86 was last ratified by Grenada in 1979.

Remarks: In 1996, at the time the Governing Body decided to shelve the Convention with immediate effect, it was noted that Convention No. 86 mainly concerned the recruitment of indigenous workers in dependent territories, a practice that by 1985 had “largely disappeared, though certain independent States still have problems with the recruitment of indigenous workers. In addition, many of the countries that are parties to these Conventions no longer have any dependent indigenous populations in the meaning of the Conventions. The problems which arise today in relation to the international migration of labour need to be dealt with in the framework of the Conventions on migrant workers.”⁵ “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there have been no comments of the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 86.

Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No. 104)

Related instruments: The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the most up-to-date ILO instrument concerning indigenous and tribal peoples and reflects a regulatory approach based on the respect for their cultures, ways of life and traditional institutions, as well as the improvement of many of the positive protections offered by the Indigenous and Tribal Populations Convention, 1957 (No. 107). However, as Convention No. 169 does not revise Convention No. 104, ratification of Convention No. 169 does not ipso jure involve the immediate denunciation of Convention No. 104.

Ratifications: This Convention has received a total of 26 ratifications and one denunciation. Convention No. 104 was last ratified by Guatemala in 1988.

⁴ [GB.265/LILS/WP/PRS/1](#), p. 31.

⁵ [GB.265/LILS/WP/PRS/1](#), p. 33.

Remarks: In 1996, at the time the Governing Body decided to shelve the Convention with immediate effect, it was noted that Convention No. 104 mainly concerned the recruitment of indigenous workers in dependent territories, a practice that by 1985 had “largely disappeared, though certain independent States still have problems with the recruitment of indigenous workers. In addition, many of the countries that are parties to these Conventions no longer have any dependent indigenous populations in the meaning of the Conventions. The problems which arise today in relation to the international migration of labour need to be dealt with in the framework of the Conventions on migrant workers.”⁶ “Shelving” basically implied that the ratification of the Convention was no longer encouraged and that detailed reports on its application would no longer be requested on a regular basis. Since that time, there have been no comments of the Committee of Experts and no representations under article 24 of the Constitution alleging non-observance of Convention No. 104.

Hours of Work (Fishing) Recommendation, 1920 (No. 7)

Related instruments: The Preamble of the Work in Fishing Recommendation, 2005 (No. 196), explicitly refers to the need to revise Recommendation No. 7, which is accordingly de facto replaced. Recommendation No. 196 was subsequently superseded by the Work in Fishing Recommendation, 2007 (No. 199), which together with the Work in Fishing Convention, 2007 (No. 188), are the most up-to-date and comprehensive instruments on work in fishing regulating minimum requirements for work on board, conditions of service, accommodation and food, occupational health and safety protection, medical care and social security.

Remarks: This Recommendation aims at limiting the hours of work in the fishing sector recommending that member States should adopt, so far as their special circumstances permit, an eight-hours’ day or a 48-hours’ week as the standard for workers employed in the fishing industry.

Migration for Employment Recommendation, 1939 (No. 61), and Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62)

Related instruments: Migration for Employment Recommendation (Revised), 1949 (No. 86).

Remarks: These Recommendations supplement the Migration for Employment Convention, 1939 (No. 66), which concerned the recruitment, placing and conditions of labour of migrants for employment. The Migration for Employment Convention (Revised), 1949 (No. 97), revised Convention No. 66 while Recommendation No. 86 explicitly refers in its Preamble to the revision of Recommendations Nos 61 and 62 which are accordingly de facto replaced. Convention No. 66, which never entered into force due to lack of ratifications, was withdrawn by the Conference in 2000.⁷

⁶ GB.265/LILS/WP/PRS/1, p. 34.

⁷ ILO: *Record of Proceedings*, International Labour Conference, 88th Session, Geneva, 2000, p. 27/11.