



## Governing Body

338th Session, Geneva, 12–26 March 2020

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Institutional Section

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### THIRD ITEM ON THE AGENDA

## Follow-up to the resolution on the ILO Centenary Declaration for the Future of Work

### Proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work

#### Purpose of the document

The document addresses substantive questions to enable the Governing Body to continue its consideration of proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work in accordance with the procedural road map approved at its 337th Session (October–November 2019). The Governing Body is invited to request the Director-General to prepare further proposals for the 340th Session (October–November 2020), in accordance with the road map, including the placement of a technical item on the agenda of the 110th Session (2021) of the Conference (see the draft decision in paragraph 41).

**Relevant strategic objective:** Social protection and fundamental principles and rights at work.

**Main relevant outcome:** Outcome 7: Adequate and effective protection at work for all. Output 7.2: Increased capacity of member States to ensure safe and healthy working conditions.

**Policy implications:** Implications for the Conference agenda for 2021 or later sessions.

**Legal implications:** Those arising from the decisions which the Governing Body may take.

**Financial implications:** Those arising from the decisions which the Governing Body may take.

**Follow-up action required:** Those arising from the decisions which the Governing Body may take.

**Author unit:** Departments in the Policy Portfolio and in the Field Operations and Partnerships Portfolio.

**Related documents:** Resolution on the ILO Centenary Declaration for the Future of Work, 2019; ILO Declaration on Fundamental Principles and Rights at Work, 1998; ILO Declaration on Social Justice for a Fair Globalization, 2008.



## A. Origin of the proposals

1. At its 108th Session (2019), the International Labour Conference declared in the Centenary Declaration for the Future of Work that “[s]afe and healthy working conditions are fundamental to decent work”.<sup>1</sup> The Conference adopted a resolution requesting the Governing Body “to consider, as soon as possible, proposals for including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work”.<sup>2</sup>
2. At its 337th Session (October–November 2019), the Governing Body approved a “road map as a planning tool, which can be reviewed and modified by the Governing Body based on progress made, for the consideration of including safe and healthy working conditions in the ILO’s framework of fundamental principles and rights at work ..., taking into account the guidance provided during the discussion”.<sup>3</sup> The road map proposes that the 338th Session (March 2020) of the Governing Body consider

... substantive questions resulting in the identification of possible building blocks; based on the discussions in the Committee of the Whole as well as further discussion in the Governing Body, these questions may address among others whether a fundamental right to a safe and healthy working environment could be recognized, promoted and realized in the same manner as the four existing fundamental principles and rights at work, the identification of the corresponding Conventions, the ratification rates and the implications of the recognition of a fifth category of fundamental principles and rights, including on the reporting arrangements both as regards the submission of reports under article 22 of the Constitution and under the follow-up to the 1998 Declaration pursuant to article 19 of the Constitution.<sup>4</sup>

## B. Safe and healthy working conditions and the ILO’s framework of fundamental principles and rights at work

3. The ILO Declaration on Fundamental Principles and Rights at Work (1998 Declaration) recognized the consensus which the international community had reached regarding the special significance of a number of fundamental rights in the global context, and expressed the commitment of the ILO’s constituents to strengthening their universal application.<sup>5</sup> The inclusion of the four fundamental principles and rights at work in the 1998 Declaration reaffirmed certain constitutional principles – that is, principles directly flowing from or expressly referred to in the Constitution – to which the ILO Members had already committed by the very reason of their membership. This recognition enhanced their universal application, regardless of whether member States had ratified the fundamental Conventions associated with those constitutional principles.<sup>6</sup> The inclusion of safe and healthy working

<sup>1</sup> [ILO Centenary Declaration for the Future of Work](#).

<sup>2</sup> [Resolution on the ILO Centenary Declaration for the Future of Work](#) (adopted on 21 June 2019), International Labour Conference, 108th Session, para. 1.

<sup>3</sup> [GB.337/INS/3/2/decision](#).

<sup>4</sup> [GB.337/INS/3/2](#), para. 21.

<sup>5</sup> [GB.270/3/1](#), para. 6

<sup>6</sup> Between 2000 and 2016 alone, the prevalence of child labour has decreased by 38 per cent globally; see ILO, [Global Estimates of Child Labour: Results and Trends, 2012–2016](#), p. 11.

conditions in the framework of the fundamental principles and rights at work could be anticipated to have the same effect.

4. In this regard, it is useful to recall the basis of the distinction made between fundamental and other rights that led to the recognition of the four fundamental principles and rights at work in the 1998 Declaration, while not exclusive or exhaustive, included their constitutional origin and relevance to the fundamental principles on which the Organization is based – which include the principle that labour is not a commodity;<sup>7</sup> their nature as human rights; their functioning as enabling conditions or rights instrumental to the pursuit of the improvement of individual and collective conditions of work; and the fact that they have been recognized as fundamental both inside and outside of the Organization.
5. The fundamental principles and rights at work are embodied in the ILO Constitution and the Declaration of Philadelphia. Both instruments explicitly reference the protection of children, equality of treatment as well as freedom of association and collective bargaining. While these instruments do not have any explicit reference to elimination of all forms of forced or compulsory labour, the prohibition of forced labour necessarily follows from the values and principles enunciated in these texts. It can, for instance, be derived from Part II(a) of the Declaration of Philadelphia, which states that: “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. Through their embodiment in the Constitution and Declaration, the four principles are furthermore directly linked to the principle that labour is not a commodity, as expressed in Part I(a) of the Declaration of Philadelphia.
6. The fundamental principles and rights at work are also recognized as human rights in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>8</sup>
7. Fundamental principles and rights at work have been characterized as “... both rights and enabling conditions that are necessary for the full realization of all the strategic objectives ...” of the ILO.<sup>9</sup> The preamble of the 1998 Declaration refers to fundamental principles and rights at work as enabling conditions, in the following manner: “... in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential”.<sup>10</sup> As it has been noted, they “are in a sense a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work, account being taken of the circumstances of the countries concerned”.<sup>11</sup>

<sup>7</sup> GB.270/3/1.

<sup>8</sup> See Arts 4, 7, 23 and 25(2) of the [Universal Declaration of Human Rights \(1948\)](#) and Arts 2(2), 7(a)(i) and (c), 8, and 10(3) of the [International Covenant on Economic, Social and Cultural Rights \(1966\)](#).

<sup>9</sup> [ILO Declaration on Social Justice for a Fair Globalization](#), 2008, Part I(A)(iv).

<sup>10</sup> [ILO Declaration on Fundamental Principles and Rights at Work](#), 1998, fifth preambular paragraph.

<sup>11</sup> GB.270/3/1, para. 16.

8. Furthermore, the special importance of the rights giving expression to the fundamental principles and rights at work was recognized inside the ILO, even before the adoption of the 1998 Declaration. For instance, in its 1994 resolution concerning the 75th anniversary of the ILO, the Conference noted “the particular importance of ILO Conventions covering fundamental rights, including Conventions Nos. 87, 98, 100, 29 and 105, and 111”.<sup>12</sup> The importance of the four fundamental principles and rights at work was furthermore acknowledged by the international community as exemplified by the programme of action adopted at the World Summit for Social Development in Copenhagen in 1995<sup>13</sup> and in the Singapore Declaration adopted by the World Trade Organization in 1996.<sup>14</sup>
9. The right to safe and healthy working conditions could be considered to be similar in basis and scope to the existing fundamental principles and rights. The ILO Constitution recognizes “the protection of the worker against sickness, disease and injury arising out of his employment” as a fundamental element of social justice. Taking this one step further, the Philadelphia Declaration deems among the ILO’s “solemn obligation[s]” the development of programmes to achieve “adequate protection for the life and health of workers in all occupations”. These instruments underscore the fundamental importance of safe and healthy working conditions for the principle that labour is not a commodity.
10. Safe and healthy working conditions are recognized as a human right in international law. The Universal Declaration of Human Rights (1948) proclaims a right to “life, liberty and security of person”.<sup>15</sup> The International Covenant on Economic, Social and Cultural Rights furthermore recognizes a right to “safe and healthy working conditions”.<sup>16</sup> A similar right is also recognized in a number of regional human rights instruments.<sup>17</sup> Additionally, it may be noted that recent declarations adopted in the framework of the World Congress on Safety and Health at work have consistently recalled that a safe and healthy working environment should be recognized as a fundamental human right.<sup>18</sup>
11. Safe and healthy working conditions can furthermore be considered a precondition for all the rights embodied in the ILO Constitution. They are both essential and instrumental to the realization of other labour rights. Workers who become sick or injured at work, or who face life-threatening conditions at work cannot “claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential”.<sup>19</sup> Occupational safety and health (OSH) protects among the

<sup>12</sup> [Record of Proceedings](#), International Labour Conference, 81st Session, 1994, Resolutions, p. 5.

<sup>13</sup> [Programme of Action of the World Summit for Social Development](#), para. 54(b).

<sup>14</sup> [Singapore Ministerial Declaration](#), 1996, para. 4.

<sup>15</sup> [Universal Declaration of Human Rights](#), Art. 3.

<sup>16</sup> International Covenant on Economic, Social and Cultural Rights, Art. 7(b).

<sup>17</sup> Such as Art. 15 of the [African Charter on Human and Peoples’ Rights](#), Art. 7 of the [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights \(Protocol of San Salvador\)](#), Art. 3 of the [European Social Charter](#) and Art. 31 of the [Charter of Fundamental Rights of the European Union](#).

<sup>18</sup> See the Preamble to the [Seoul Declaration on Safety and Health at Work](#) (2008) and the Preamble to the [Istanbul Declaration on Safety and Health at Work](#) (2011).

<sup>19</sup> 1998 Declaration, fifth preambular paragraph.

most fundamental of human rights, the rights to life and health.<sup>20</sup> As noted by the UN Committee on Economic, Social and Cultural Rights, health is a fundamental human right indispensable for the exercise of other human rights.<sup>21</sup> Risking one's life, safety or health at work jeopardizes the very ability to work, as the Committee on the Application of Standards has recognized.<sup>22</sup> The role of safe and healthy working conditions in maintaining the link between social progress and economic growth was also recognized by the Governing Body in 2006.<sup>23</sup>

12. The fundamental nature of safe and healthy working conditions has been recognized both inside and outside of the ILO. Over the past 20 years, a number of important developments in the ILO point towards a recognition of the special importance of safe and healthy working conditions. In the 2003 conclusions of the general discussion on standards-related activities in the area of OSH, the Conference recognized OSH as a fundamental requirement for achieving the objectives of the Decent Work Agenda. It also emphasized the need to give higher priority to the promotion of OSH at international, national and enterprise levels.<sup>24</sup> In 2009 and 2017, the Committee on the Application of Standards noted the common agreement that OSH remained a subject matter of fundamental importance for all parties concerned<sup>25</sup> and that OSH is at the core of the ILO mandate and is a key component of the Decent Work Agenda.<sup>26</sup> The fundamental importance of safe and healthy working conditions was also recognized by the Conference in 2019, in the Centenary Declaration on the Future of Work, which declared that "safe and healthy working conditions are fundamental to decent work".<sup>27</sup>
13. Outside the ILO, recognition of the fundamental nature of safe and healthy working conditions has been underlined on several occasions. In its 2016 General Comment (No. 23) on Article 7 of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights stated that preventing occupational accidents and diseases is a fundamental aspect of the right to just and favourable conditions

<sup>20</sup> The right to life precedes many other rights in the Universal Declaration of Human Rights (1948), in Art. 3.

<sup>21</sup> [General Comment No. 14 \(2000\) of the UN Committee on Economic, Social and Cultural Rights](#).

<sup>22</sup> Committee on the Application of Standards: [Extracts from the Record of Proceedings](#), International Labour Conference, 98th Session, 2009, para. 208, "... [The Committee on the Application of Standards] recognized that occupational safety and health was of crucial importance for the quality of work and human dignity".

<sup>23</sup> The report prepared for the Governing Body illustrated, for example: a clear economic impact of occupational accidents and ill health at all levels; the positive impact of safe and healthy working conditions on enterprise productivity, while recognizing that the highest possible levels of OSH cannot be the same under all conditions; as well as a strong correlation between national competitiveness and national incidence rates of occupational accidents. See [GB.295/ESP/3](#).

<sup>24</sup> ILO, [Global Strategy on Occupational Safety and Health: Conclusions adopted by the International Labour Conference at its 91st Session, 2003](#).

<sup>25</sup> Committee on the Application of Standards: [Extracts from the Record of Proceedings](#), International Labour Conference, 98th Session, 2009, para. 208.

<sup>26</sup> Committee on the Application of Standards: [Extracts from the Record of Proceedings](#), International Labour Conference, 106th Session, 2017, paras 58 and 59.

<sup>27</sup> Centenary Declaration, Part II(D).

of work.<sup>28</sup> Similarly, the European Committee of Social Rights, in its digest of case law on the European Social Charter, has stated that the right of every worker to a safe and healthy working environment is a widely recognized principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights.<sup>29</sup> Similarly, the principle that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being” underlies the foundation of the World Health Organization.<sup>30</sup> The 2030 Agenda for Sustainable Development also demonstrates the universal acceptance of the need to promote safe and healthy working conditions, as SDG target 8.8 aims to “[p]rotect labour rights and promote safe and secure working environments for all workers”.

14. The fundamental importance of safe and healthy working conditions is furthermore underlined by its inclusion in many major international instruments and policy documents. Safe and healthy working conditions is for example referenced in labour clauses of a number of recent free trade agreements (FTAs).<sup>31</sup> OSH features prominently in a large number of private compliance initiatives on corporate social responsibility.<sup>32</sup> OSH is also the subject of “safeguard policies” by which international lending institutions seek to prevent harm and mitigate risk resulting from their lending operations.<sup>33</sup>
15. The fundamental importance of safe and healthy working conditions is furthermore widely recognized at the national level. Around two-thirds of all national constitutions explicitly recognize a right to health for everyone.<sup>34</sup>
16. Additionally, the Conference has recognized the four current fundamental principles and rights at work as “inseparable, inter-related and mutually reinforcing”.<sup>35</sup> As a fifth principle and right, ensuring safe and healthy working conditions would enjoy a similar relationship. As noted by the UN Committee on Economic, Social and Cultural Rights, the right to health is closely related to and dependent upon the realization of other rights, such as the rights to

<sup>28</sup> Committee on Economic, Social and Cultural Rights, [General comment No. 23 \(2016\)](#) on the right to just and favourable conditions of work (Art. 7 of the International Covenant on Economic, Social and Cultural Rights), 27 April 2016, para. 25.

<sup>29</sup> [Digest of the Case Law of The European Committee of Social Rights](#), December 2018, p. 73.

<sup>30</sup> Constitution of the World Health Organization, third preambular paragraph.

<sup>31</sup> See for example the [FTA between the USA and Jordan](#) of 2001 as well as several other FTAs concluded by the USA since 2001; the [FTA between Canada and Costa Rica](#) of 2002 and several other FTAs concluded by Canada since 2002; but also the recent [Comprehensive Economic and Trade Agreement](#) between Canada and the EU, which has however not fully come into force yet.

<sup>32</sup> For example the [Global Reporting Initiative](#), the [Ethical Trading Initiative](#), the [Fair Labour Association](#) or the [Corporate Human Rights Benchmark](#).

<sup>33</sup> See for example the [Environmental and Social Standard ESS2](#) of the World Bank Group, [Performance Standard 2: Labor and Working Conditions](#) of the IFC or the [African Development Bank Group’s Integrated Safeguards System](#), p. 50.

<sup>34</sup> Office of the United Nations High Commissioner for Human Rights, [The Right to Health, Fact Sheet No. 31](#), p. 10.

<sup>35</sup> See for example [Conclusions concerning the recurrent discussion on fundamental principles and rights at work](#), para. 5(c), International Labour Conference, 101st Session, 2012, and the [Conclusions concerning the second recurrent discussion on fundamental principles and rights at work](#), International Labour Conference, 106th Session, 2017.



human dignity, non-discrimination and freedom of association.<sup>36</sup> Promoting the right to safe and healthy working environments advances the goal of eliminating the worst forms of child labour. Indeed, work that is likely to harm the health, safety or morals of children is by definition one of the worst forms of child labour.<sup>37</sup> Similarly, forced labour victims are more likely to perform work under conditions that are degrading and hazardous which they would not otherwise freely accept.<sup>38</sup> Respect for freedom of association and the effective recognition of the right to organize and collectively bargain allows for the establishment of systems for the protection against and prevention of OSH risks.

### **C. Substantive issues resulting in the identification of possible building blocks for the inclusion of safe and healthy working conditions in the ILO's framework of the fundamental principles and rights at work**

#### **Possible pathways for including safe and healthy working conditions in the framework of the fundamental principles and rights at work**

17. There are two possible pathways for including safe and healthy working conditions in the framework of the fundamental principles and rights at work.<sup>39</sup> The Conference could either adopt an amendment to the 1998 Declaration by inserting an additional principle and right on safe and healthy working conditions, or it could adopt a separate declaration which recognizes safe and healthy working conditions as a fundamental principle and right at work. There does not appear to be a third alternative that would fit within the means of action available to the Conference.
18. An amendment of the 1998 Declaration by a Conference decision would be legally feasible, as the Conference has the power to amend and expand upon a declaration it has adopted earlier and has done so before by amending the 1964 Declaration concerning the policy of apartheid of the Republic of South Africa on several occasions.<sup>40</sup> In this case, the amendment could be limited to paragraph 2 of the Declaration, which lists the different categories of the fundamental principles and rights at work.

<sup>36</sup> General Comment No. 14 (2000) of the UN Committee on Economic, Social and Cultural Rights.

<sup>37</sup> The ILO estimates that out of the 152 million underage workers in the world, 73 million are in hazardous work that directly endangers their health, safety, and moral development; see ILO, *Global Estimates of Child Labour, 2012–2016*, p. 5.

<sup>38</sup> [ILO Indicators of Forced Labour](#).

<sup>39</sup> The agreed road map tasks the 340th Session (October–November 2020) of the Governing Body to consider “process related questions and possible forms of the decision of the Conference, including the placement of a technical item on the agenda of the 110th Session (2021) of the Conference”. See GB.337/INS/3/2.

<sup>40</sup> The 1964 Declaration remains to date the only Declaration adopted by the Conference that has been subsequently revised. In 2010, the Conference however revised the annex to the 1998 Declaration, International Labour Conference, 99th Session, 2010, [Report VII](#) and [Provisional Record No. 10](#). The annex to the 1998 Declaration foresaw that the Conference would review the operation of this follow-up.



19. A separate declaration, on the other hand, is also legally feasible. The Conference has enacted several declarations in the past few decades, including the 1998 Declaration, the ILO Declaration on Social Justice for a Fair Globalization (Social Justice Declaration), and the Centenary Declaration.
20. The Governing Body or Conference would need to decide which pathway to choose, based on considerations it deemed relevant. Some considerations include the following: an amendment to the 1998 Declaration would highlight a strong link between safe and healthy working conditions and the current fundamental principles and rights at work. The new fundamental principle and right at work would also have the weight and influence of the 1998 Declaration behind it. On the other hand, enacting a new declaration would create less of a direct link to the framework of the 1998 Declaration. For example, the Conference could introduce a separate follow-up mechanism. This approach would not change the 1998 Declaration but could, however, make less clear the fundamental principles and rights at work framework as a whole.

### **Relevant principles and rights for safety and health at work**

21. Consideration of a new fundamental principle and right at work on safe and healthy working conditions could begin with identifying relevant constitutional principles. The preamble of the Constitution refers to the protection of workers against sickness, disease and injury arising out of their employment, while the Declaration of Philadelphia refers to the ILO obligation “to further among the nations of the world programmes which will achieve ... adequate protection for the life and health of workers in all occupations”. The same is reflected in turn in the preambles of the Occupational Health Services Convention, 1985 (No. 161), and of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).
22. The 1998 Declaration states that fundamental principles and rights at work “have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization.”<sup>41</sup> In this context, the formulation of a fundamental principle relating to OSH could draw on specific rights and obligations in up-to-date OSH-related Conventions of a general scope including the “right to a safe and healthy working environment” recognized by Convention No. 187.<sup>42</sup> Additional OSH principles include the principle of prevention, which is found in the Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol as well as Conventions Nos 187 and 161.<sup>43</sup> Other basic principles include the assessment of occupational risks or hazards; the combating of occupational risks or hazards at source and the establishment of a hierarchy of controls; as well as the development of a national preventative safety and health culture that includes information, consultation and training, which are reflected in Conventions Nos 187, 155 and 161 as well as the Protocol to Convention No. 155.<sup>44</sup>

<sup>41</sup> 1998 Declaration, para. 1(b).

<sup>42</sup> Arts 1(d) and 3(2).

<sup>43</sup> See Arts 4(2) and 16 of [Convention No. 155](#), Art. 3(a)(iii) of the [Protocol to Convention No. 155](#), Arts 3(3) and 5(2)(a) of [Convention No. 187](#) and Art. 1(a) of [Convention No. 161](#).

<sup>44</sup> Art. 3(3) of Convention No. 187, Arts 5, 16 and 19 of Convention No. 155, Art. 5 of Convention No. 161 and Arts 2 and 3 of the Protocol to Convention No. 155.

## **Securing a safe and healthy working environment through a system of defined rights, responsibilities and duties**

23. Recognizing a fundamental right in the area of OSH, regardless of how it is formulated, would necessarily take into account the “protection” dimension clearly emphasized in the Constitution. In addition, the fundamental right could also encompass the preventative dimension consistent with ILO standards adopted since 1981, as well as the other relevant principles and rights for OSH, which can be derived from the ILO OSH instruments.
24. Convention No. 187 provides that a national preventative safety and health culture requires governments, employers and workers to participate actively in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties. At the level of the undertaking, such a system requires employers “to ensure that, so far as is reasonably practicable, the workplaces, machinery, equipment and processes under their control are safe and without risk to health”.<sup>45</sup> It also requires that workers “co-operate in the fulfilment by their employer of the obligations placed upon him”,<sup>46</sup> including, for example, by taking “reasonable care for their own safety and that of other persons who may be affected by their acts or omissions at work”.<sup>47</sup> Article 6 of Convention No. 155 refers to the “complementary character of such responsibilities”. The Conventions designated as fundamental would serve as the basis for any “system of defined rights, responsibilities and duties” instrumental to the achievement of OSH as a fundamental principle and right at work as well as the understanding of OSH as a continuous process based on a coherent national policy. As these concepts would be reflected in the designated instruments, it may not be necessary to include them in the formulation of the fundamental principles and rights at work.

## **The possible formulation of safe and healthy working conditions as a fundamental principle and right at work**

25. Taking these principles and rights into account, a possible fundamental principle and right at work on safe and healthy working conditions could be formulated in a number of ways. The term “safe and healthy *working conditions*” appears in the 1966 International Covenant on Economic, Social and Cultural Rights, but the more up-to-date ILO Conventions, such as Convention No. 187<sup>48</sup> mostly use the term “safe and healthy *working environment*”. With this in mind, possible formulations although not exhaustive, could include “the right to a safe and healthy working environment”; “the right to safety and health at work”; “the prevention of occupational accidents and diseases”; “ensuring safe and healthy working environments”; or “the promotion of safe and healthy working environments”.

<sup>45</sup> Art. 16(1) of Convention No. 155.

<sup>46</sup> Art. 19(a) of Convention No. 155.

<sup>47</sup> Para. 16(a) of the Occupational Safety and Health Recommendation, 1981 (No. 164).

<sup>48</sup> See Art. 3(2) of Convention No. 187, “Each Member shall promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment”.

## Identification of international labour standards associated with the principles and rights for safe and healthy working conditions

26. A fundamental principle directly reflects a constitutional value or objective, and standards are one of the Organization's principal means of achieving those objectives.<sup>49</sup> Therefore, the formal elevation of a constitutional objective to the status of a fundamental principle and right at work has gone hand-in-hand with the identification of international labour standards that give specific expression and content to that principle or right.<sup>50</sup> The tripartite constituents, through the annual Conference or the Governing Body, have the authority to make such determination.<sup>51</sup> Formally recognizing a fundamental principle or right and identifying the corresponding fundamental Convention or Conventions do not need to occur simultaneously. The identification of seven of the eight fundamental Conventions predate the formal recognition of the four categories of fundamental principles and rights at work set forth in the 1998 Declaration<sup>52</sup> while Convention No. 182 was identified after the adoption of the Declaration.<sup>53</sup>
27. As regards existing standards which could be selected, Conventions Nos 155, 161 and 187 and the Protocol to Convention No. 155 are classified as the up-to-date binding instruments that provide "general provisions" on OSH,<sup>54</sup> thus reflecting the relevant principles and rights of OSH identified above.
28. Conventions Nos 155 and 187 are the most widely ratified OSH Conventions, and ratifications have steadily increased since their adoption.<sup>55</sup> Both of these Conventions

<sup>49</sup> Centenary Declaration, Part IV(A) and Social Justice Declaration, preamble.

<sup>50</sup> The 1998 Declaration has been followed by an important increase in ratifications of the related Conventions. From 1998 to today, ratification rates increased as follows: the Minimum Age Convention, 1973 (No. 138), increased from 65 in 1998 to 172; the Worst Forms of Child Labour Convention, 1999 (No. 182), increased from 0 in 1998 to 186; the Abolition of Forced Labour Convention, 1957 (No. 105), increased from 125 to 175. The Forced Labour Convention, 1930 (No. 29) increased from 145 to 178; the Equal Remuneration Convention, 1951 (No. 100), increased from 138 to 173; the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), increased from 129 to 175; the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), increased from 120 to 155; and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), increased from 136 to 167. The large number of ratifications of the fundamental Conventions registered today suggest that recognizing them as fundamental has stimulated the voluntary ratification and application of the relevant standards to reach nearly universal acceptance over the past two decades.

<sup>51</sup> [Provisional Record 6B\(Rev.\)](#), International Labour Conference, 108th Session (2019), para. 1002.

<sup>52</sup> [Provisional Record 6B\(Rev.\)](#), para. 1013 and GB.337/INS/3/2, paras 12–14.

<sup>53</sup> [GB.277/LILS/5](#), para. 2.

<sup>54</sup> See the [List of instruments by subject and status](#), section 12 on Occupational safety and health.

<sup>55</sup> In follow-up to the adoption of the Global Strategy on Occupational Safety and Health in 2003, which guides the ILO's priorities on OSH, the ILO has promoted the ratification of OSH instruments and supported the reinforcement of national OSH systems. The ILO has implemented a Plan of Action (2010–2016) to achieve widespread ratification of the main ILO OSH Conventions, contributing, since 2010, to 13 additional ratifications of Convention No. 155, seven more ratifications of its Protocol, and 37 more ratifications of Convention No. 187. Based on the increased rate of ratification of existing fundamental Conventions, it can be expected that including safe and healthy working

describe core OSH principles and rights, which serve as the basis for the more advanced safety and health measures described in other OSH instruments. The Conventions complement each other: Convention No. 155 provides for the adoption of a coherent national OSH policy, as well as action to be taken by governments and within enterprises to promote OSH and improve working conditions. Convention No. 187 takes a system approach to promoting safe and healthy working environments by focusing on the establishment of national policies, systems and programmes, with a view to fostering a national preventative safety and health culture. ILO constituents have already confirmed the status of Conventions Nos 155 and 187 as key instruments on OSH.<sup>56</sup> The selection could involve both of the Conventions, which would reinforce their complementarity, and retain the current practice of identifying two fundamental Conventions per fundamental principle and right at work.

29. The Protocol to Convention No. 155 is also a general OSH standard and is particularly important for data collection and analysis in support of prevention. Convention No. 161 contains general OSH principles and highlights a key element of any OSH system, namely, the establishment of enterprise-level occupational health services which are entrusted with essentially preventative functions.
30. If the Conference decides to include OSH as a fundamental principle and right at work through an amendment to the 1998 Declaration limited to paragraph 2, the corresponding OSH-related Conventions would necessarily be recognized as fundamental Conventions in light of paragraph 1(b) of the Declaration. If the Conference adopts a separate declaration, another designation for the corresponding Conventions may possibly be considered.
31. It is worth noting however, that none of these Conventions can be recognized as “priority” Conventions in the current institutional framework. The term “priority Conventions” had been used by the Governing Body until those Conventions were specifically identified as “governance Conventions” in the Social Justice Declaration and its annex, following a decision of the Governing Body that these Conventions should contribute to “better governance of the world of work”.<sup>57</sup> Under Part II(B)(iii), the Declaration delineates the three subject matters of the governance instruments: tripartism, employment policy and labour inspection. Although the list of governance Conventions has always been understood as a list which could be updated, the OSH-related Conventions could not – in the absence of an amendment to the Social Justice Declaration – be considered as governance instruments as they do not “cover” one of the three subject matters set forth in the Declaration, namely tripartism, employment policy and labour inspection.

## The follow-up procedure

32. The recognition of safe and healthy working conditions as a fundamental principle and right at work would not create any new legal obligations for Members. A revised (or separate) declaration would state or declare the fundamental character of safe and healthy working conditions which flows directly from the Constitution. As such, its legal nature is declaratory rather than constitutive. Members would be bound by, and committed to achieving the Organization’s constitutional objectives, including the protection of workers against sickness and injury, by reason of their membership. Any decision to bring safe and healthy

conditions in the ILO’s framework of the fundamental principles and rights at work will also attract an increase in ratifications.

<sup>56</sup> They were for example the only Conventions chosen for the [Plan of Action \(2010–2016\)](#) to achieve widespread ratification and effective implementation of the occupational safety and health instruments, adopted by the Governing Body at its 307th Session (March 2010).

<sup>57</sup> See [GB.301/LILS/6\(Rev.\)](#), para. 7.

working conditions within the ILO framework of fundamental principles and rights at work would not impose an obligation on member States to ratify any international labour standard. The ILO Constitution guarantees that the ratification of international labour standards is a voluntary, sovereign act, so that no member State is forced to ratify any international labour standard.

33. There would however be implications for member States' reporting obligations. In the event that safe and healthy working conditions were to be included in the ILO's framework of fundamental principles and rights at work, whether by amending the 1998 Declaration or otherwise, the follow-up can be based on a decision of the Governing Body under article 19(5)(e) of the Constitution, to require member States that have not ratified all fundamental OSH Conventions to submit annual reports on their efforts to respect, to promote and to realize in good faith the fundamental principles and rights at work.
34. The annual report would invite information on efforts made, to the best of member States' resources and fully in line with their specific circumstances, to promote the right to a safe and healthy working environment. Representative organizations of employers and workers would be able to provide their observations on efforts made and reported. The annual reports would further aim to "allow the identification of areas in which the assistance of the Organization through its technical cooperation activities may prove useful to its Members to help them implement these fundamental principles and rights". As such, this follow-up would not be a substitute for the established supervisory mechanisms. The reports requested would, therefore, be expected to address efforts made to recognize, promote and realize the fundamental principle and not the provisions of fundamental Conventions.
35. Furthermore, the Governing Body would decide on the cycle of regular reporting on the application of ratified Conventions (pursuant to article 22 of the Constitution) which might be classified as fundamental OSH Conventions. The Governing Body could decide to retain a possible three-year cycle, as is currently the case for the eight fundamental Conventions, or propose a different cycle.
36. In addition to the reporting procedure, an enhanced mobilization of ILO means of action could result from the Conference's recurrent discussion on fundamental principles and rights at work in 2023. This recurrent discussion would include trends and actions taken by Members in relation to the new principle, and the actions taken by the ILO to assist them, in accordance with the follow-up mechanisms of the Social Justice Declaration and 1998 Declarations.

### **Support to member States to respect, promote and realize the fundamental principle and right at work on safe and healthy working conditions**

37. The possible inclusion of safe and healthy working conditions in the framework of the fundamental principles and rights at work would imply the commitment of member States to respect, promote and realize the fundamental principle and right at work on safe and healthy working conditions, even if they have not ratified the corresponding Conventions. Some member States might lack the technical capacity to fully realize the new fundamental principle and right at work or ratify and implement the corresponding Conventions and therefore would need support from the Office. It is thus likely that the inclusion of safe and healthy working conditions in the framework of the fundamental principles and rights at work will call for further ILO technical support to countries to strengthen national OSH systems. This includes assistance with legal and regulatory frameworks, compliance promotion, health surveillance services, risk assessment, data collection, including in light

of the statistical indicator SDG 8.8.2, OSH management systems and business support services, among others.

### **Possible impact of revised fundamental principles and rights at work framework on free trade agreements**

38. It is increasingly common for FTAs to include labour clauses that make express reference to the 1998 Declaration or to the fundamental principles and rights at work.<sup>58</sup> A number of unilateral trade arrangements also include such labour clauses as part of the eligibility criteria for special trade incentives (so called generalized schemes of preferences).
39. The possible inclusion of OSH in the fundamental principles and rights at work framework raises the question of its impact on existing FTAs and generalized schemes of preferences. While an ILO declaration produces binding legal effects on the organs of the Organization such as the Governing Body and the Office, it will not automatically affect the scope or content of those trade agreements or arrangements, which remain under the exclusive control of the contracting parties.
40. The reference to the 1998 Declaration in labour provisions of FTAs results from decisions of the signatories. Therefore, the integration of a revised 1998 Declaration, or a new ILO declaration adding OSH as a fundamental principle and right at work into existing FTAs would depend entirely on the States parties to those agreements, who would, in principle, need to take specific action to this effect – that is, explicitly agreeing to include or exclude the new fundamental principle and right at work from the scope of such agreement or not. Similarly, a country offering generalized schemes of preferences that include reference to fundamental principles and rights at work and which decided to include the new fundamental principle and right at work in its unilateral scheme, would need to take specific action to do so.

### **Draft decision**

41. *The Governing Body requested the Director-General to take into account the guidance provided during the discussion and prepare a paper for the 340th Session (October–November 2020) of the Governing Body, in accordance with the road map, for the consideration of proposals for including safe and healthy working conditions in the ILO's framework of fundamental principles and rights at work, including the placement of a technical item on the agenda of the 110th Session (2021) of the Conference.*

<sup>58</sup> A wealth of labour provisions integrated in bilateral or multilateral trade agreements refer to the 1998 Declaration (see ILO, *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*, 2017). The references vary greatly, ranging from generic references to the 1998 Declaration, to limitative lists of the fundamental principles and rights at work included in the scope of the agreement. Some refer, for example, to the 1998 Declaration in a non-exclusive manner as the source text for fundamental workers' rights, while others refer to the concept of Decent Work or to the Social Justice Declaration. Yet other labour provisions make reference to human rights instruments in general.