

ILO and the Ratification Process

How the ILO Functions

The International Labour Organization (ILO) seeks peace and justice and aims to create a socially stable climate in which the wealth that is produced by workers benefits them as well as their employers. Since its foundation in 1919, the ILO has sought to improve the conditions of labour for workers worldwide.

To meet this goal, the ILO by means of Conventions and Recommendations, establishes minimum international standards for basic labour rights such as “freedom of association, the right to organise, collective bargaining, abolition of forced labour, equality of opportunity and of treatment” and many others. Moreover, the ILO offers technical assistance to help countries realise these aims.

The ILO is the only United Nations agency with tripartite structure, in which the governments (“Member States”), the workers and the employers negotiate together on an equal basis. Thus, the standards that are set by the ILO reflect a balance among the interests of labour, employers, and government.

Conventions and Recommendations

Negotiation leading to the final text of a **Convention** can take several years. A Convention is a minimum standard. Once it is ratified by a Member State, a Convention is binding on that state under international law, which means that the country’s laws must be brought into conformity with the Convention. If a Member State that has ratified a Convention later modifies its legislation, it cannot go below the minimum standard of the Convention.

Recommendations are not open for ratification, and therefore are not binding. They provide further details or give guidelines for setting higher standards that go beyond the minimum standards set in the Conventions – in other words, they provide a certain direction towards improvement.

Once a Convention is adopted by the ILO General Conference, it is open for **ratification** by all Member States. A Convention enters into force only one year after two Member States have ratified it.

The ratification process is lengthy and it can take several years for a Member State to decide to ratify, or not to ratify a Convention. After a Member State ratifies a Convention, it has to adapt its national legislation to meet the (generally higher) level of the Convention provisions, and then implement them at the national level.

Since 1919 there have been three ILO maternity protection Conventions (C3, 1919; C103, 1952; and C183, 2000) and two Recommendations (R95, 1952 and R191, 2000). C183, came into force on 7 February 2002, one year after the second ratification by a Member State (Italy). By May 2003 it had been ratified by four countries: Slovakia, Italy, Bulgaria and Romania.

C183 supercedes C103 – Maternity Protection Convention (Revised), 1952 which is now closed for new ratifications, although it continues to apply to those countries that have already ratified C103 and have not ratified C 183.

Ratification Process of ILO Conventions

1) Submission to the “competent national authorities”

Once an ILO Convention/Recommendation has been adopted by the International Labour Conference, the instrument is sent to all Member States for consideration. The ILO Constitution requires that the instrument be sent to the representatives of the national organisations of employers and of workers as well as to the governments.

In some cases, the ILO instruments may be translated by a Member State into the national language, if the national language is not one of the official UN languages.

The ILO Constitution requires that Member States (in consultation with representatives of employers’ and workers’ organisations, and in some cases other relevant government institutions) submit the instruments to the “competent national authorities” for the enactment of legislation or other actions, including possible ratification. The competent authority is normally the national Parliament, Legislative Assembly or Congress. This procedure is more complicated for federal states, but the ILO Constitution has instructions to be followed in such cases.

The principle of submission is an important one because it aims at making the contents of the ILO instruments known to the public, to raise awareness and stimulate public debate and involvement in important labour and social matters. ILO instruments have a “normative value” on national attitudes and policies because they represent the accepted international standards. This means that whether or not a Convention is ratified by the country, it serves a purpose by being available as a model that has already been agreed upon by the tripartite partners at the ILO.

When a government (normally the Ministry of Labour) finally submits the instruments to the competent authorities, it is expected to indicate what action it considers desirable. There are at least four possible scenarios:

- The government may indicate that the instrument is already fully implemented in national law and practice, and therefore it can be ratified.
- It may recommend the enactment of legislation to give effect to the provisions of the instrument.
- It may recommend that ratification be postponed to give more time for consultations or studies.
- Or, it may recommend that the Convention should not be ratified.

Within one year of the adoption of the instruments (or at the latest within 18 months), Member States are required to complete this submission and report back to the Director General of the ILO in extensive detail, telling what they have done and the actions taken by the competent national authorities. In the case of C183, the deadline for this submission was December 2001. The outline of the report to the ILO is stated in a *Memorandum of Understanding* (MOU). The government must also indicate which employers’ and workers’ organisations have been given copies of the report.

2) If a Member State decides to ratify

When a Member State ratifies the Convention, it agrees to two important things:

- **It accepts to implement the Convention. Thus, national legislation must be reviewed *vis-à-vis* the provisions of the Convention.** A country that ratifies is not allowed to pick and choose parts of the Convention as it wishes. In the long term, all of the provisions must be applied in national law and practice. The text of C183 is quite flexible and allows for various options at the levels of “national law and practice.”
- **It must report at regular intervals to the supervisory mechanisms of the ILO.** The regulatory supervisory machinery of the ILO comes into force 12 months after the Director General of the ILO has been notified of the ratification. In the case of C183, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) is responsible for supervision.

Governments may request information, clarification or any other assistance from the International Labour Secretariat in the procedures related to the ratification process.

In Member States where national laws go beyond the provisions of the new Convention, there may be a concern that national laws will be watered down to conform to the new provisions. ILO standards are minimum standards and as stated in Article 19 of the ILO Constitution, **under no circumstances can a Member State whose legislation goes beyond a Convention's provisions weaken its national laws once it has ratified the Convention.**¹

After ratification, the Convention is valid in that Member State for a period of at least 10 years. After this period, the State may denounce the Convention if it wishes. This is an extremely rare practice.

3) If a Member State takes no action

The Committee of Experts will remind the Member State of its obligation to submit the ILO instrument to the competent authorities. A first reminder is sent out 12 months after the closing of the ILO Conference session. A second reminder is sent out after 18 months have elapsed.

4) If a Member State chooses not to ratify the Convention

After the state has submitted the instrument to its competent national authorities, the Governing Body of the ILO may request the state to report at appropriate intervals, showing the impediments to ratification that exist at the level of national law and practice.

For further information please see the *Handbook of Procedures* relating to international labour Conventions and Recommendations on the following website:

<http://www.ilo.org/public/english/standards/norm/sources/handbook/hb3.htm>

EXAMPLE OF A COUNTRY CONSIDERING RATIFICATION: GHANA

Submission of an ILO Convention to the Competent National Authorities in Ghana

1. ILO C183 is adopted in Geneva (June 2000) and countries are notified that it is open for ratification.
2. In Ghana, an officer at the Ministry of Labour (MOL) prepares a memo for a **consultative meeting** of Government, Workers, Employers, & Civil Society.
3. The tripartite meeting is held; it includes civil society groups.
4. The Officer from MOL reports to the Minister of Labour about the meeting, and the Minister reports to the Cabinet to inform the other ministers.
5. Ministry of Justice or Attorney General conducts a legal review, to get the issue ready for Parliament.
6. A select Parliamentary Committee on Labour issues discusses the ILO instrument and prepares a preliminary report.
7. Parliament debates, approves and votes on preliminary report.
8. Legal and Internal Desk at Labour Ministry reviews legal aspects.
9. Attorney General finalises legal document.
10. Sector Ministry (Labour) finalises report according to guideline (includes feasibility of ratification).
11. Report is submitted to ILO.

The following country example highlights the potential role and impact of civil society organisations in the early stages of the ratification process.

For more information concerning the ILO, ratification of Conventions and texts of Conventions refer to the ILO website: www.ilo.org

1. ILO Constitution Art. 19.8: "In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation."

