



SECOND ITEM ON THE AGENDA

**Deferred examination of instruments
concerning maternity protection****Introduction**

1. The Working Party on Policy regarding the Revision of Standards undertook a first examination of the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103), in November 1996.¹ The Working Party's recommendations, as approved by the Governing Body, included a decision that the status of Conventions Nos. 3 and 103 be re-examined at a future meeting against the background of the forthcoming revision of Convention No. 103.
2. The question of revision of Convention No. 103 and Recommendation No. 95 was on the agenda² of the 87th (1999) and 88th (2000) Sessions of the Conference and resulted in the adoption of the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000.³
3. In November 2000, in the context of the examination of Recommendations (fourth stage), the Working Party took note of the adoption of Convention No. 183 and Recommendation No. 191 and decided to defer the examination of Recommendation No. 95 until after the entry into force of Convention No. 183.⁴
4. In the light of the entry into force of Convention No. 683 on 7 February 2002, the present report is submitted to the Working Party to enable it to re-examine Conventions Nos. 3 and 103, as well as to examine Recommendation No. 95.

¹ GB.267/LILS/WP/PRS/2, pp. 25-27; GB.267/9/2, para. 14 and Appendix III; GB.267/LILS/4/2 (Rev.), paras. 39-43.

² GB.267/2, paras. 193-229, and GB.268/2, para. 44.

³ ILC, 88th Session (2000), *Provisional Records* Nos. 20, 20A, 20B and 26.

⁴ GB.279/LILS/WP/PRS/4, p. 13; GB.279/11/2, para. 13, and Appendix I; GB.279/LILS/3(Rev. 1), para. 71.

1. Maternity Protection Convention, 1919 (No. 3)

- (1) *Ratifications:*
 - (a) *Number of current ratifications:* 30.
 - (b) *Latest ratification:* Yugoslavia (2000).
 - (c) *Ratification prospects:* Convention No. 3 was adopted before the introduction of the final Article concerning the effect of the adoption of a revising Convention. Although it has been revised by the Maternity Protection Convention (Revised), 1952 (No. 103), Convention No. 3 remains open to ratification. Sixteen additional ratifications or confirmations of pre-existing ratifications have been recorded since the adoption of Convention No. 103, of which one was recorded after the adoption of Convention No. 183.
- (2) *Denunciations:* Three: Uruguay (1955), Brazil (1961) and Chile (1997) following their ratification of Convention No. 103.
- (3) *Comments by the Committee of Experts:* Comments are pending for 14 countries.
- (4) *Need for revision:* This Convention has been revised by Convention No. 103, which in turn has been revised by Convention No. 183.
- (5) *Remarks:* Convention No. 3 is one of the very earliest Conventions of the ILO. It entered into force on 13 June 1921 and 30 member States currently remain parties to it. It was revised in 1952 but, as noted above, the entry into force of Convention No. 103 did not close Convention No. 3 to further ratifications. Furthermore, Convention No. 3 does not contain any provision for its automatic denunciation in case of ratification of a revising Convention. Convention No. 3 has, in fact, continued to receive additional ratifications. In total 16 States parties to Convention No. 3 have also ratified Convention No. 103, while only three of them have decided to denounce the former. At present, there are 11 member States which are bound by both Conventions Nos. 3 and 103.⁵ In the context of article 22 reports, member States which are bound by both these instruments are only requested to report on the application of Convention No. 103.⁶ This practice seems to imply that the substantive content in these two Conventions was overlapping. The unsatisfactory situation of having such overlapping obligations appears to be one of the reasons for the decision in the course of the previous examination of these instruments to invite the States parties which had already ratified Convention No. 103 to contemplate denouncing

⁵ *Bosnia and Herzegovina, Croatia, Cuba, Greece, Hungary, Libyan Arab Jamahiriya, Luxembourg, The former Yugoslav Republic of Macedonia, Slovenia, Spain and Yugoslavia. Venezuela* denounced Convention No. 103 in 1985. In addition, the ratification by Italy of Convention No. 183 entailed the denunciation of Convention No. 103 when Convention No. 183 entered into force, on 7 February 2002.

⁶ GB.267/LILS/4/2(Rev.), para. 39; Appendix III to GB.267/9/2. See also under (b) Decisions by the Governing Body at the 209th Session (February-March 1979) following the submission of the Final Report of the Working Party on International Labour Standards (GB.209/PFA/5/3), reproduced in *Official Bulletin*, 1979, Series A, special number.

Convention No. 3.⁷ Against this background the issue is to determine the consequences, if any, that the entry into force of Convention No. 183 will have on the situation of Convention No. 3. According to the methodology of the Working Party, instruments adopted after 1985 are considered *ex officio* to be up-to-date and are to be promoted on a priority basis. Convention No. 183 and Recommendation No. 191 were adopted in 2000 and are the modern instruments in the field of maternity protection. An invitation to ratify Convention No. 183 should therefore be addressed to the States parties to Convention No. 3. The subsequent question is whether the States parties should also be invited to denounce Convention No. 3. The Office notes that two of the three member States that have already ratified Convention No. 183 are also parties to Convention No. 3.⁸ A comparison between the main provisions of Convention No. 3 and of Convention No. 183⁹ reveals that the two instruments strike two different sets of balance with distinct types of requirements and flexibilities. For member States bound by both Conventions Nos. 3 and 183, these differences could represent problems in terms of application. The Office deems it appropriate to propose to avoid such situations by inviting the States parties both to Convention No. 3 and Convention No. 183 to denounce Convention No. 3. As regards the other States parties to Convention No. 3 and the future status of this Convention more generally, the Office deems it relevant to take into account the fact that, although Convention No. 183 represents the modern view of how a system of protection of maternity should be designed, certain countries may, during a transitory period, consider the introduction of such a system of protection to be a challenging and possibly laborious process. Although the number of ratifications of Convention No. 3 should be expected to decrease as member States shift towards the new system of protection that is offered by Convention No. 183, Convention No. 3 is likely to continue to serve a useful purpose during a period of transition from the older to the recent and modern system and will, for certain countries, continue to be a possible option. Against this background, the LILS Committee of the Governing Body may wish to propose the maintenance of the status quo with respect to this Convention and to re-examine the status of this Convention in due course, when the number of ratifications of this Convention will have decreased as a result of denunciations following ratifications of Convention No. 183.

2. Maternity Protection Convention (Revised), 1952 (No. 103)

(1) *Ratifications:*

- (a) *Number of current ratifications:* 38.
- (b) *Latest ratifications:* Belize, Papua New Guinea and Yugoslavia (2000) and Bahamas (2001).
- (c) *Ratification prospects:* Nil. Closed to further ratifications since the entry into force on 7 February 2002 of Convention No. 183.

⁷ See Appendix I.

⁸ *Italy and Bulgaria.*

⁹ For example, between Article 4 in Convention No. 3 and Article 8 in Convention No. 183, and Article 3(a) in Convention No. 3 and Article 4(1), (4) and (5) in Convention No. 183. See Appendix I.

- (2) *Denunciations:*
 - (a) *Pure denunciation:* Venezuela (1985).
 - (b) *Other denunciation:* Italy (2002) following the ratification of Convention No. 183 and the entry into force of the latter.
- (3) *Comments by the Committee of Experts:* Comments are pending for 20 countries including on observations from a workers' organization in Spain as well as from an employers' and a workers' organization in Portugal.
- (4) *Need for revision:* This Convention has been revised by Convention No. 183.
- (5) *Remarks:* The Maternity Protection Convention (Revised), 1952 (No. 103), which revised Convention No. 3, was adopted in 1952. Convention No. 103 was in turn revised by Convention No. 183 in 2000. This latter Convention is thus the most recent instrument in this context. The entry into force of Convention No. 183 marked the closing of Convention No. 103 to further ratifications. Furthermore, a ratification of Convention No. 183 by a State party to Convention No. 103 entails the automatic denunciation of the latter. It is therefore proposed to invite the States parties to Convention No. 103 to contemplate ratifying Convention No. 183 which will involve the immediate denunciation, *ipso jure*, of Convention No. 103.

3. Maternity Protection Recommendation, 1952 (No. 95)

- (1) *Related instruments:* This Recommendation is linked to Convention No. 103, and supplements it.
- (2) *Need for revision:* These two instruments were revised respectively by Convention No. 183, which is now in force, and its supplementing Recommendation No. 191. Recommendation No. 95 has thereby been replaced by Recommendation No. 191.

Proposals

Maternity Protection Convention, 1919 (No. 3)

5. The Working Party might recommend to the Governing Body:

- (a) ***that it invite the States parties to the Maternity Protection Convention, 1919 (No. 3), to contemplate ratifying the Maternity Protection Convention, 2000 (No. 183), and denouncing Convention No. 3 at the same time;***
- (b) ***the maintenance of the status quo with regard to Convention No. 3;***
- (c) ***that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 3 in due course.***

**Maternity Protection Convention
(Revised), 1952 (No. 103)**

6. *The Working Party might recommend to the Governing Body that it invite the States parties to the Maternity Protection Convention (Revised), 1952 (No. 103), to contemplate ratifying the Maternity Protection Convention, 2000 (No. 183), which will, ipso jure, involve the immediate denunciation of Convention No. 103.*

**Maternity Protection Recommendation,
1952 (No. 95)**

7. *The Working Party might recommend to the Governing Body that it note the replacement of the Maternity Protection Recommendation, 1952 (No. 95), by the Maternity Protection Recommendation, 2000 (No. 191).*

Geneva, 15 February 2002.

Points for decision: Paragraph 5;
Paragraph 6;
Paragraph 7.

Appendix I

Instruments on maternity protection: Comparative table

Conventions Nos. 3 and 183

Scope	Convention No. 3	Convention No. 183
	Any public or private industrial or commercial undertaking other than an undertaking in which only members of the same family are employed (Article 3).	All employed women including those in atypical forms of dependent work. Each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature (Article 2).
Personal field of application	The term "woman" signifies any female person, irrespective of age or nationality, whether married or unmarried, and the term "child" signifies any child whether legitimate or illegitimate (Article 2).	The term "woman" applies to any female person without discrimination whatsoever and the term "child" applies to any child without discrimination whatsoever (Article 1).
Duration of leave	<ul style="list-style-type: none"> - A woman shall not be permitted to work during six weeks following her confinement; she shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks (Article 3(a)(b)). - [...] no mistake of the medical adviser in estimating the date of confinement shall preclude a woman from receiving these benefits from the date of the medical certificate up to the date on which the confinement actually takes place (Article 3(c)). 	<ul style="list-style-type: none"> - Not less than 14 weeks. This leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers (Article 4(1), (4)). - The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave. (Article 4(5)). - On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth (Article 5).

Scope	Convention No. 3	Convention No. 183
Cash benefits and care	<ul style="list-style-type: none"> - A woman on maternity leave shall be paid benefits sufficient for the full and healthy maintenance of herself and her child (Article 3(c)). - [The woman is] entitled to free attendance by a doctor or certified midwife (Article 3(c)). 	<ul style="list-style-type: none"> - Cash benefits shall be provided to women on maternity leave or on leave in case of illness or complications. Such benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living (Article 6(1), (2)). - Where [...] cash benefits [...] are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings. Where [...] other methods are used to determine the cash benefits, [...] the amount of such benefits shall be comparable to the amount resulting on average from the application of the [above method] (Article 6(3), (4)).
		<ul style="list-style-type: none"> - A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with [the above] if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations (Article 7). - Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies. Where a woman does not meet the conditions to qualify for cash benefits [...] she shall be entitled to adequate benefits out of social assistance funds (Article 6(5), (6)). <p>Medical benefits shall be provided and include prenatal, childbirth and postnatal care as well as hospitalization care when necessary (Article 6(7)).</p>
Financing	[Benefits shall be provided] either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority (Article 3(c)).	<ul style="list-style-type: none"> - Benefits shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. - An employer shall not be individually liable for the direct cost of any such monetary benefit without that employer's specific agreement except where: (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention; or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers (Article 6(8)).

Scope	Convention No. 3	Convention No. 183
Nursing	If she is nursing her child [the woman is] allowed half an hour twice a day during her working hours (Article 3(d)).	A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. These breaks [...] shall be counted as working time and remunerated accordingly (Article 10).
Prohibition of dismissal and protection of employment	Where a woman is absent from her work [on maternity leave or] for a longer period as a result of illness medically certified to arise out of pregnancy or confinement and rendering her unfit for work, it shall not be lawful, until her absence shall have exceeded a maximum period to be fixed by the competent authority in each country, for her employer to give her notice of dismissal during such absence, nor to give her notice of dismissal at such a time that the notice would expire during such absence (Article 4).	<ul style="list-style-type: none"> - It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave [...] or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer (Article 8(1)). - A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave (Article 8(2)).
Non-discrimination		Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including [...] access to employment. [These measures] shall include a prohibition from requiring a test for pregnancy when a woman is applying for employment with [certain exceptions] (Article 9).
Health protection		Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child (Article 3).

Appendix II

Previous examinations of the Maternity Protection Convention, 1919 (No. 3), the Maternity Protection Convention (Revised), 1952 (No. 103), and the Maternity Protection Recommendation, 1952 (No. 95) (excerpts from Governing Body documents)

1. *Maternity Protection Convention, 1919 (No. 3)*

Working Party on Policy regarding Revision of Standards ¹

V.1. C.3 – *Maternity Protection Convention, 1919*

- (1) *Ratifications:*
 - (a) *Number of current ratifications:* 30.
 - (b) *Latest ratification:* Bosnia and Herzegovina, 1993.
 - (c) *Ratification prospects:* Few. Despite having been revised, this Convention has not been closed to further ratifications. It was adopted before the introduction of the final Articles providing, in the absence of a contrary decision by the Conference, for the closure of the Convention to further ratifications upon the adoption of a revising Convention, and the automatic denunciation of the original Convention upon the ratification by a State of the revising Convention.
- (2) *Denunciations:* Two States have denounced the Convention and three subsequently ratified the Maternity Protection Convention (Revised), 1952 (No. 103).
- (3) *Comments by the Committee of Experts:* Comments pending for 12 countries.
- (4) *Need for revision:* Convention already revised by the Maternity Protection Convention (Revised), 1952 (No. 103) (33 ratifications as of 31 December 1995).
- (5) *Remarks:* The Ventejol Working Party of 1979 had classified Convention No. 3, which had already been revised, and Convention No. 103 in both the category of instruments to be promoted on a priority basis and the category of instruments to be revised. The Ventejol Working Party of 1987 had nevertheless considered that it continued to be difficult at that stage to formulate proposals for the revision of those instruments and had excluded the possible revision of Conventions Nos. 3 and 103 from the revised classification. However, the Employer members as well as some Governments felt that these standards should be revised. Subsequently (see Convention No. 103 below), only the revision of Convention No. 103 was to be considered by the Governing Body for purposes of revision. It should be noted that 11 States parties to Convention No. 3 had already ratified Convention No. 103 without, however, denouncing Convention No. 3 at the same time. This Convention does not, in fact, contain provisions providing for the automatic denunciation of the Convention should a revising Convention be ratified, and is thus still in force for these States. The Working Party could propose that these States be invited to re-examine the status of Convention No. 3, which has become obsolete in so far as they are concerned.
- (6) *Proposals:*
 - (a) The Working Party could recommend to the Governing Body that it contemplate the desirability of including the revision of the instruments on maternity protection (or some of them) on the agenda for a forthcoming session of the Conference, and that it take Convention No. 3 into consideration in that context.

¹ GB.267/LILS/WP/PRS/2 (Nov. 1996), Conventions in need of revision (second stage), pp. 25-26.

- (b) It could recommend to the Governing Body that it invite the States parties to Convention No. 3 which have already ratified the Maternity Protection Convention (Revised), 1952 (No. 103), to re-examine the effects of these superimposed ratifications and to make proposals in that respect.
- (c) The Working Party (or the LILS Committee) should re-examine the status of Convention No. 3 in due course.

Committee on Legal Issues and International Labour Standards ²

C.3 – *Maternity Protection Convention, 1919*

- 39. A representative of the Director-General observed that the Committee of Experts had decided that the request for reports under article 22 of the Constitution from countries that have ratified both Convention No. 3 and Convention No. 103 would relate only to the application of Convention No. 103.
- 40. The Worker members, without wishing to prejudge the Governing Body's decision on the matter, again advocated the revision of Conventions Nos. 3 and 103.
- 41. The Employer members asked that subparagraph (b) of the Office's proposals be amended to the effect that the States parties to Convention No. 3 that have ratified Convention No. 103 be invited to denounce Convention No. 3.
- 42. The Working Party proposes: ³
 - (a) to recommend to the Governing Body that it consider the desirability of including the revision of the instruments on maternity protection (or some of them) in the agenda of a forthcoming session of the Conference, and that it take Convention No. 3 into consideration in that context;
 - (b) to recommend to the Governing Body that it invite the States parties to Convention No. 3 which have already ratified the Maternity Protection Convention (Revised), 1952 (No. 103), to contemplate denouncing Convention No. 3;
 - (c) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 3 in due course.

2. ***Maternity Protection Convention (Revised), 1952 (No. 103)***

Working Party on Policy regarding Revision of Standards ⁴

V.2. C.103 – *Maternity Protection Convention (Revised), 1952*

- (1) *Ratifications:*
 - (a) *Number of current ratifications:* 33.
 - (b) *Latest ratification:* Chile, 1994.
 - (c) *Ratification prospects:* Convention likely to receive further ratifications.

² GB.267/9/2 (Nov. 1996), Appendix III; GB.267/LILS/4/2(Rev.), Report of the Working Party on Policy regarding the Revision of Standards, paras. 39-42.

³ Proposal adopted by the Governing Body. GB.267/9/2 (Nov. 1996), Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards, para. 14.

⁴ GB.267/LILS/WP/PRS/2 (Nov. 1996), Conventions in need of revision (second stage), pp. 26-27.

- (2) *Pure denunciations:* 1.

	<i>Ratification</i>	<i>Denunciation</i>
Venezuela	1982	1985

Reasons for denunciation: No reason given for denunciation.

- (3) *Comments by the Committee of Experts:* Comments pending for 18 countries containing an observation made by a workers' organization.
- (4) *Need for revision:* The question of the revision of Convention No. 103 had been proposed to the Governing Body with a view to its inclusion on the agenda for the Conference in 1995 and 1997, but this had not been followed up. The question is again submitted to the Governing Body at its present session with a view to its inclusion on the agenda for the Conference in 1999.
- (5) *Remarks:* In the light of the proceedings of the Ventejol Working Party in 1979, which had concluded that there was a need to revise Convention No. 103, and those of the Working Party of 1987, which had considered that the necessary consensus for the revision of the Convention did not exist at the time, the Office had continued its technical studies on the Convention. It had proposed that the Governing Body examine the question of the revision of the Convention with a view to its inclusion on the agenda for the Conference in 1995 and 1997. The proposal had been endorsed at the time by a number of Government representatives as well as by the Workers' group. On that occasion the Office had drawn attention to various obstacles to the ratification of the Convention, which had received relatively few ratifications given its fundamental importance. This question is before the Governing Body for examination at its current session, with a view to its inclusion on the agenda for the Conference in 1999.
- (6) *Proposals:*
- (a) The Working Party could examine the desirability of the revision of Convention No. 103 and make recommendations to the Governing Body in that respect.
 - (b) The Working Party (or the LILS Committee) would re-examine the status of Convention No. 103 at a subsequent meeting.

Committee on Legal Issues and International Labour Standards ⁵

C.103 – *Maternity Protection Convention (Revised), 1952*

43. The Working Party noted that the question of revising Convention No. 103 was being considered by the Governing Body at its present session with a view to its inclusion in the agenda of the Conference in 1999, and it recommended that the instrument be revised. It proposes that the Working Party (or the LILS Committee) re-examine the status of Convention No. 103 at a subsequent meeting. ⁶

⁵ GB.267/9/2 (Nov. 1996), Appendix III; GB.267/LILS/4/2(Rev.), Report of the Working Party on Policy regarding the Revision of Standards, para. 43.

⁶ Proposal adopted by the Governing Body. See GB.267/9/2 (Nov. 1996), Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards, para. 14.

3. **Maternity Protection Recommendation, 1952 (No. 95)**

Working Party on Policy regarding Revision of Standards ⁷

V.2. *R.95 – Maternity Protection Recommendation, 1952*

- (1) *Related instruments:* This Recommendation is linked to the Maternity Protection Convention (Revised), 1952 (No. 103), and supplements it.
- (2) *Need for revision:* These two instruments were revised during the last session of the Conference. Convention No. 103 was revised by the Maternity Protection Convention, 2000 (No. 183), and Recommendation No. 95 was revised by the Maternity Protection Recommendation, 2000 (No. 191). Convention No. 183 is not yet in force. In these circumstances, it is proposed that the Working Party should also re-examine the implications of the recent revision for the status of Convention No. 3 and of Convention No. 103 and Recommendation No. 95 at its next meeting.

Committee on Legal Issues and International Labour Standards ⁸

V.2. *R.95 – Maternity Protection Recommendation, 1952*

71. The Working Party agreed to defer the examination of the Maternity Protection Recommendation, 1952 (No. 95), until after the entry into force of the Maternity Protection Convention, 2000 (No. 183). ⁹

⁷ GB.279/LILS/WP/PRS/4 (Nov. 2000), Examination of Recommendations (fourth stage), p. 13.

⁸ GB.279/11/2 (Nov. 2000), Appendix I; GB.279/LILS/3(Rev.1), Report of the Working Party on Policy regarding the Revision of Standards, para. 71.

⁹ Proposal approved by the Governing Body. GB.279/11/2 (Nov. 2000), Reports of the Committee on Legal Issues and International Labour Standards, Second report: International labour standards and human rights, para. 13.