



## SECOND ITEM ON THE AGENDA

**Deferred examination of Conventions****(a) Paid Educational Leave Convention, 1974  
(No. 140) (Short survey)****Contents**

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## Introduction

1. The Working Party undertook a first examination of the Paid Educational Leave Convention, 1974 (No. 140), in March 1997.<sup>1</sup> This examination resulted in a decision to invite member States to contemplate ratifying Convention No. 140 and to provide information on obstacles and difficulties encountered that might prevent or delay ratification or that might point to the need for a full or partial revision of the Convention. In March 1998, the Working Party re-examined Convention No. 140 in the light of the results of consultations held with constituents on this issue.<sup>2</sup> Pursuant to the recommendations of the Working Party, the Governing Body decided that member States be invited to contemplate ratifying this Convention and that a “short survey” be carried out on the obstacles and difficulties encountered that might prevent or delay a ratification of the Convention or that might point to a need for its revision.
2. The Office then carried out the requested short survey, which is appended. The short survey builds upon the General Survey on human resources development of 1991<sup>3</sup> and the abovementioned discussions and examinations, including the consultations of 1997. Regarding these consultations, the Office has taken into account 19 replies in addition to the 45 responses which were included in the initial examination of 1998. It also expands the factual information available with a review of legislation on educational leave adopted since the last General Survey of 1991. Such legislation was found in 29 member States including 12 in Africa, two in the Americas, three in Asia and 12 in Europe. Furthermore, legislation on matters related to the wider policy background underlying paid educational leave was found in another 19 countries. This information is analysed in the context of the current policy framework of lifelong learning, as reflected in the general discussion on human resources training and development which took place during the 88th Session (2000) of the International Labour Conference<sup>4</sup> and in light of the guidelines provided in the Director-General’s Report, *Decent work*.<sup>5</sup>
3. The Working Party on Policy regarding the Revision of Standards is invited at its 12th meeting to re-examine Convention No. 140 against the background of the information available, the short survey and the proposals made.

<sup>1</sup> GB.268/8/2, Appendix II; GB.268/LILS/5(Rev.1), paras. 77-80. For excerpts from the relevant Governing Body documents, see Appendix II to this paper.

<sup>2</sup> GB.271/11/2, Appendix I; GB.271/LILS/5(Rev.1), paras. 77-79.

<sup>3</sup> *Human resources development, General Survey of the Reports on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and the Human Resources Development Convention (No. 142) and Recommendation (No. 150), 1975*, ILC, 78th Session, 1991, Report III (Part 4B).

<sup>4</sup> *Record of Proceedings*, International Labour Conference, 2000, Report 21, Conclusions concerning human resources training and development.

<sup>5</sup> Report of the Director-General, *Decent work*, ILC, 87th Session, 1999.

## Re-examination of the Paid Educational Leave Convention, 1974 (No. 140)

### Recent developments

4. Since the previous examination of Convention No. 140 in March 1998, three additional ratifications<sup>6</sup> have been registered, bringing the total number of ratifications to 31.<sup>7</sup> The Committee of Experts on the Application of Conventions and Recommendations has comments pending for 22 member States, including on observations submitted by workers' organizations in Finland and the United Kingdom.

### Summary of the short survey

5. In a first part the short survey outlines the main provisions of Convention No. 140, provides a summary overview of its background and traces its origins. It emphasizes that Convention No. 140 is a flexible instrument. It belongs to a series of ILO standards and other international and regional instruments of relevance primarily to questions of human resources development. The social and economic objectives of the Convention are mainly to expand the individual's opportunities for education in order to help workers keep up with scientific and technological progress, promote economic competitiveness and safeguard equity and social justice.
6. The second part focuses on an identification of obstacles and difficulties encountered with regard to ratification and on the possible need for revision of the Convention. It includes a further analysis of the consultations held in 1997 that included reports on obstacles to ratification, as well as calls for the revision of the Convention. This information is complemented by an examination of the national legislation on paid educational leave adopted during the last ten years in 29 member States. The overall outcome of the 1997 consultations and of the examination of national legislation provides information from 83 member States. The survey suggests that 31 of these member States did not seem to face substantial obstacles to ratification, while another 36 seemed likely to encounter obstacles. In addition to this, 12 of the responding countries were a party to the Convention: seven of them saw no difficulties in the implementation of the Convention, four were against revision and one was in favour of revision. Finally, the outcome was uncertain with regard to four countries. In addition to this examination, the Office took note that legislation in another 19 countries appeared to set up basic enabling elements for the adoption of a lifelong learning policy and in this sense could be conducive to the eventual adoption of a paid educational leave policy within the same framework.<sup>8</sup>

<sup>6</sup> *Belize, Chile and Zimbabwe.*

<sup>7</sup> *Afghanistan, Azerbaijan, Belgium, Belize, Bosnia and Herzegovina, Brazil, Chile, Cuba, Czech Republic, Finland, France, Germany, Guinea, Guyana, Hungary, Iraq, Kenya, Mexico, Netherlands, Nicaragua, Poland, San Marino, Slovakia, Slovenia, Spain, Sweden, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, United Kingdom, Venezuela and Zimbabwe.* Convention No. 140 was applicable on the territory of the Federal Republic of Yugoslavia (FRY) prior to the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY). The FRY became a Member of the Organization on 24 November 2000. It has not yet notified the ILO of its decision concerning the Conventions previously ratified by the former SFRY.

<sup>8</sup> See Appendix I, summary conclusions to the section on consultations and legislative trends.

7. In the third part, the survey examines the objectives of Convention No. 140 in the light of the current policy framework of lifelong learning and the guidelines found in the report *Decent work*. It is suggested that, even though Convention No. 140 was adopted 25 years ago in a different context, its goals remain relevant and up to date. By virtue of its flexible provisions and balanced objectives, Convention No. 140 seems to be able to accommodate change and contribute a means, among others, for the promotion of lifelong learning policies in accordance with the ILO's strategic objectives. Finally, the survey concludes by taking a closer look at the obstacles to the ratification of Convention No. 140. It suggests that material obstacles would seem to be inherent in any attempt to promote economic and social objectives which require a large investment of resources. The survey notes that the proposal regarding the revision of the Human Resources Development Recommendation, 1975 (No. 150), and the standards-related activities which surround this proposal are likely to shed more light on these material obstacles and provide means for their resolution. The survey finally notes that the provision of more information on the content and scope of Convention No. 140 could also help overcome certain obstacles to ratification.

## Remarks

8. Against this background, it is proposed that the Working Party confirm its initial recommendation to invite member States to contemplate ratifying Convention No. 140 so as to integrate paid educational leave within their lifelong learning policies. It is also proposed that the Office be invited to provide assistance and information to countries facing obstacles to ratification, taking into account that additional means for the resolution of such obstacles could be provided by the standards-related activities proposed in the Conclusions concerning human resources training and development adopted at the 88th Session (2000) of the International Labour Conference.<sup>9</sup>

## Proposal

9. The Working Party may wish to recommend that member States be invited to contemplate ratifying the Paid Educational Leave Convention, 1974 (No. 140).
10. ***The Working Party is invited to re-examine the Paid Educational Leave Convention, 1974 (No. 140), against the background of the appended short survey and on the basis of the proposal set out above, and to make recommendations to the Committee on Legal Issues and International Labour Standards of the Governing Body.***

Geneva, 28 February 2001.

*Point for decision:* Paragraph 10.

<sup>9</sup> Conclusions, op. cit., paras. 12, 17 and 21.

## Appendix I

### Short survey concerning the Paid Educational Leave Convention, 1974 (No. 140)

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## Introduction

1. The present short survey is submitted to the Working Party with a view to providing it with additional information on the obstacles and difficulties encountered that might prevent or delay ratification of the Paid Educational Leave Convention, 1974 (No. 140), or that might point to a need for its revision, in order to assist the Working Party in recommending future action with respect to this Convention.

## Content, origin and legal context of Convention No. 140

### Main provisions

2. This section presents the content and legal nature of the obligations contained in Convention No. 140. It relies for this purpose on the analysis made by the Committee of Experts on the Application of Conventions and Recommendations in the General Survey of 1991.<sup>1</sup>

### Definition

3. Article 1 defines “paid educational leave” as “leave granted to a worker for educational purposes for a specified period during working hours, with adequate financial entitlements”. Thus, the Convention defines leave in the broad sense of any release from work for educational purposes.<sup>2</sup> Paid educational leave enables the completion of training and education whilst in employment. Like other kinds of leave, it does not affect the employment relationship or the employment contract.<sup>3</sup>

### Benefits

4. Convention No. 140 provides workers with an opportunity to receive training and education without bearing the full costs in terms of time and income. First of all, the Convention stipulates that educational and training activities take place during working hours. Second, the Convention also stipulates that educational leave should be remunerated. However, the Convention does not demand that total earnings and other entitlements be maintained for a worker who has been granted educational leave. The Conference adopted a flexible formulation which authorizes total or partial compensation for loss of earnings.<sup>4</sup> Thus, according to Article 1, leave must be accompanied by adequate financial entitlements. The determination of the amount and the form of such financial entitlements is a matter for national policy and practice.<sup>5</sup> Finally, while recognizing the right of a worker on educational leave to receive financial benefits, the Convention does not specify the person or body responsible for meeting the corresponding financial obligation. Here again, the

<sup>1</sup> *Human resources development, General Survey of the Reports on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and the Human Resources Development Convention (No. 142) and Recommendation (No. 150), 1975, ILC, 78th Session, 1991, Report III (Part 4B).*

<sup>2</sup> *ibid.*, para. 348.

<sup>3</sup> *ibid.*, para. 428.

<sup>4</sup> *Record of Proceedings*, International Labour Conference, 1974, Report 17, paras. 22-24.

<sup>5</sup> *General Survey*, *op. cit.*, para. 350.

appropriate arrangements are a matter for national policy and are likely to vary according to the purpose of the leave in question.<sup>6</sup>

## Objectives

5. The educational purposes of paid educational leave are specified in Article 2 of the Convention which distinguishes three types of education and training to be provided by means of such leave: “(a) training at any level; (b) general, social and civic education; and (c) trade union education”.<sup>7</sup> The Conference refrained from proclaiming a right of all workers to be granted paid educational leave for an educational purpose that they themselves have chosen.<sup>8</sup>
6. Article 3 defines the objectives to which the policy for the promotion of paid educational leave should be designed to contribute:
  - (a) to the acquisition, improvement and adaptation of occupational and functional skills, and the promotion of employment and job security in conditions of scientific and technological development and economic and structural change;
  - (b) to the competent and active participation of workers and their representatives in the life of the undertaking and of the community;
  - (c) to the human, social and cultural advancement of workers; and
  - (d) generally, to the promotion of appropriate continuing education and training, helping workers to adjust to contemporary requirements.

The Committee of Experts saw a correspondence between the purposes and objectives of Articles 2(a) and 3(a), 2(b) and 3(c), and 2(c) and 3(b).<sup>9</sup>

## Safeguards

7. Article 7 of the Convention states that the financing of arrangements for paid educational leave must be “on a regular and adequate basis and in accordance with national practice”. However, the Convention merely states the principle: it does not include any provision specifying how the expenses relating to paid educational leave are to be shared among the parties involved in its implementation. Throughout the preparatory work, the general recognition of the need for regular and adequate financing was in fact accompanied by a special insistence on the wide diversity of national conditions and practice which could be taken into account only by leaving it up to States to choose the most appropriate methods to ensure such financing and the distribution of the costs among the parties concerned.<sup>10</sup>
8. The Convention does not lay down details as to the conditions for the granting of paid educational leave. The instrument leaves it to appropriate national measures to determine means adapted to

<sup>6</sup> General Survey, op. cit., para. 351.

<sup>7</sup> During the preparation of the Convention, the Conference Committee on Paid Educational Leave agreed that the expression “training at any level” meant training related to employment accessible to every category of worker from the simple labourer to the executive. *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, Report 17, para. 32.

<sup>8</sup> General Survey, op. cit., para. 357.

<sup>9</sup> General Survey, op. cit., para. 352.

<sup>10</sup> General Survey, op. cit., para. 444.

national conditions and practice to implement paid educational leave as defined in Article 1.<sup>11</sup> Article 10 merely states that conditions of eligibility for paid educational leave may vary according to whether such leave is intended for training at any level; general, social or civic education; or trade union education.

9. The Convention does contain one provision which is mandatory in the context of the conditions for the granting of paid educational leave, irrespective of its educational purpose: the provision on equal treatment laid down in Article 8. Under this Article, paid educational leave may not be denied to workers on the ground of race, colour, sex, religion, political opinion, national extraction or social origin.<sup>12</sup> Moreover, Article 9 envisages special provisions for particular categories of workers, such as rural workers, shiftworkers or workers with family responsibilities, and for particular categories of undertakings, such as small or seasonal undertakings.
10. Paid educational leave must not simply provide entitlement to financial benefits. It must also, in accordance with Article 11 of the Convention, be assimilated to a period of effective service for the purpose of establishing claims to social benefits and other rights deriving from the employment relation.<sup>13</sup>

### ***Nature of obligations***

11. Article 2 of Convention No. 140 requires ratifying States to “formulate and apply a policy designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave” for the three purposes mentioned above.<sup>14</sup> The main obligation is thus to formulate and apply a policy to promote the granting of paid educational leave. As noted by the Committee of Experts, this obligation “presupposes that the public authorities have decided upon a specific course of action that necessarily involves these authorities and bodies for a certain length of time”.<sup>15</sup>
12. As mentioned in the General Survey, the Convention does not require the immediate introduction of provisions to regulate the granting of paid educational leave. Although States have an obligation to formulate and implement a policy, they are allowed a certain amount of scope as to the methods they choose. Article 5 illustrates the variety of means that might be used, consistent with national law and practice, to apply the policy of granting paid educational leave. These “may include national laws and regulations, collective agreements, arbitration awards, and such other means as may be consistent with national practice”.
13. Nor does the Convention place ratifying States under the residual obligation, provided for in other ILO Conventions, to draft legislation if the provisions of the Convention fail to be implemented by other means.<sup>16</sup> Moreover, unlike a number of international labour Conventions that also require the formulation and implementation of a policy, Convention No. 140 contains no specific provisions placing national authorities under particular obligations as regards the areas of employment under their direct control. The government of a ratifying State is not therefore expressly bound to use

<sup>11</sup> General Survey, op. cit., para. 395.

<sup>12</sup> General Survey, op. cit., para. 396.

<sup>13</sup> General Survey, op. cit., para. 441.

<sup>14</sup> See para. 5 above.

<sup>15</sup> General Survey, op. cit., para. 327.

<sup>16</sup> General Survey, op. cit., para. 326.



methods of direct implementation at its disposal or take measures to grant educational leave to public officials or workers in the public sector.<sup>17</sup>

14. The obligation is flexible from many standpoints. For example, the policy is dynamic and aims at the gradual grant of paid educational leave over time and taking account of the “stage of development and the particular needs of the country and of different sectors of activity”, in accordance with Article 4. This may result in the grant of paid educational leave being promoted “by stages”. States may concentrate first on granting paid educational leave for one of the purposes listed in the Convention, or in certain branches of activity, only subsequently promoting it for the other two purposes stipulated, or in other branches of activity. Furthermore, the definition of paid educational leave is itself very flexible: the regulations pertaining to the grant of paid educational leave, the form it takes and its duration, as well as the nature and amount of “adequate financial entitlements” are to be appropriate to national conditions and practice.<sup>18</sup>
15. Thus, Convention No. 140 contains an obligation of *best efforts*. In the General Survey, the Committee of Experts took special care to emphasize that, despite its flexibility, the Convention contains binding legal obligations:

When it introduced the concept of “promotional Conventions” a few years ago, the Committee used the term to describe standards which (...) a State binds itself to apply on ratification, set objectives to be attained by means of a continuing programme of action. (...) becoming a party to this type of Convention does not imply that all of the prescribed objectives have already been achieved or must be achieved in the immediate future, but involves a commitment to implement them gradually by adopting appropriate policies, attitudes and measures. The Committee, however, must also recall that the designation of a Convention as promotional in no way implies that it is not a legal instrument containing concrete obligations. Nor does the flexibility of a promotional Convention imply the absence of substantive requirements; rather, this flexibility lies in the discretion of member States to define, within the context of ongoing efforts, the nature and pace of the measures to be taken to achieve the objectives laid down.<sup>19</sup>

## Related ILO instruments

16. The antecedents to Convention No. 140 include the ILO Constitution and the Philadelphia Declaration, which first expressed the ILO’s concern with training.<sup>20</sup>
17. Convention No. 140 and its accompanying Recommendation No. 148 are closely related to the Human Resources Development Convention, 1975 (No. 142), and its accompanying Recommendation No. 150. These instruments were initially designed in the process of setting up an ILO policy on human resources development and were adopted in two successive sessions of the

<sup>17</sup> General Survey, op. cit., para. 338.

<sup>18</sup> General Survey, op. cit., para. 328.

<sup>19</sup> General Survey, op. cit., para. 484.

<sup>20</sup> The Preamble to the Constitution, which outlines a programme to be carried out by the ILO, includes “the organisation of vocational and technical education” among measures to ensure an improvement in working conditions. The Declaration concerning the aims and purposes of the ILO, which was adopted in 1944 by the Conference in Philadelphia and was incorporated in the ILO Constitution in 1946, recognizes “the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: (a) full employment and the raising of standards of living; (b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour”.

International Labour Conference. Convention No. 140 reflected, at the time of its adoption, the most innovative aspect of human resources development by calling for the generalization of the practice of paid educational leave, which was not widespread.<sup>21</sup>

18. The close relationship between the two sets of instruments is reflected in their provisions. Convention No. 140 includes training among the purposes for which educational leave may be granted. In turn, Paragraph 23(2) of Recommendation No. 150 states that workers receiving training off the job should be granted educational leave in accordance with the terms of the paid educational leave Convention and Recommendation, 1974. Moreover, the granting of paid educational leave for purposes of training, general and trade union education, fits logically into the context of the policy pursued under the terms of Article 1, paragraph 5, of Convention No. 142 to encourage and enable all persons to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society.<sup>22</sup> Conventions Nos. 140 and 142 overlap but also complement each other. For instance, Convention No. 140 includes among its educational purposes not only training, but also general, social, civic and trade union education. Convention No. 142, in turn, includes vocational guidance and continuing employment information in its scope, while it covers not only employed adults but also the unemployed and young persons.
19. Convention No. 140 is also related to instruments concerning non-discrimination. Article 8 of Convention No. 140 expressly refers to the seven criteria of discrimination laid down in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as prohibited grounds for denying paid educational leave.
20. Moreover, Convention No. 140 is related to instruments concerning employment policy. Article 4 of Convention No. 140 provides that a policy designed to promote the granting of paid educational leave should be coordinated with general policies concerning employment. In turn, the Employment Policy Convention, 1964 (No. 122), provides that a policy designed to promote full, productive and freely chosen employment shall aim at ensuring that there is a fullest possible opportunity for each worker to qualify for a job for which he or she is well suited.
21. Convention No. 140 is also related to instruments which include special measures for facilitating the employment of workers with family responsibilities and older workers. Article 9 of Convention No. 140 provides that special provisions must be established, as necessary, where workers find it difficult to fit into general arrangements by reason of their belonging to a particular category of workers, or where particular categories of undertakings find it difficult to fit into general arrangements. Particular categories of workers include “workers with family responsibilities”. Conversely, Article 7 of the Workers with Family Responsibilities Convention, 1981 (No. 156), provides that all measures must be taken to enable such workers to become and remain integrated in the labour force, including measures in the field of vocational guidance and training. Paragraph 13 of the accompanying Recommendation (No. 165) specifies that vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family responsibilities. Moreover, according to Paragraph 5(b)(iii) of the Older Workers Recommendation, 1980 (No. 162), older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers as regards, inter alia, paid educational leave, particularly for the purpose of training and trade union education.
22. Convention No. 140 is also related to instruments in the field of industrial relations. According to Article 2(c) of the Convention, paid educational leave is to be provided for trade union education. In turn, Article 2(1) of the Workers’ Representatives Convention, 1971 (No. 135), provides that “such facilities in the undertaking shall be afforded to workers’ representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently”. Paragraph 11(1) of the accompanying Recommendation (No. 143) stipulates that, in order to enable them to carry out their functions effectively, workers’ representatives should be afforded the necessary time off for

<sup>21</sup> General Survey, op. cit., paras. 9-10.

<sup>22</sup> General Survey, op. cit., para. 325.

attending, inter alia, trade union courses and seminars. Moreover, while Convention No. 140 provides that public authorities and employers' and workers' organizations shall be associated with the formulation and application of a policy for the promotion of paid educational leave, Articles 5 and 6 of the Labour Administration Convention, 1978 (No. 150), specify that employers' and workers' organizations shall participate in the preparation, administration, coordination, checking and review of national labour policy.

23. In addition, Convention No. 140 is related to instruments pertaining to working-time policies. Article 4 of Convention No. 140 specifies that a paid educational leave policy shall be coordinated with policies concerning hours of work. Relevant instruments among ILO standards include the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47), the Reduction of Hours of Work Recommendation, 1962 (No. 116), and the Holidays with Pay Convention (Revised), 1970 (No. 132).
24. Finally, it should be recalled that at its 88th Session (2000), the International Labour Conference held a general discussion on human resources training and development. The Conference decided that Convention No. 142 continued to be up to date, but that Recommendation No. 150 should be revised in order to reflect the newest developments in the field of human resources development.<sup>23</sup> A decision to place this item on the agenda of the 91st Session (2003) of the ILC is being considered at the present session of the Governing Body.<sup>24</sup> The last section of the survey concerning obstacles to ratification will return to this question.

## Other relevant international and regional instruments

25. The protection offered by Convention No. 140 belongs to a well-established legal framework, which is entrenched in international and regional instruments. The most wide-ranging among these is the Universal Declaration of Human Rights, which specifies in article 26 that everyone has the right to education, and that technical and professional education should be made generally available. At the time of its adoption, Convention No. 140 was expected to establish an important new measure for realizing these goals. One of the main objectives of the policy to promote paid educational leave was to provide equality of opportunity. It was a means of compensating for the disadvantages suffered by those who had a poor education, especially the undereducated or those who worked in arduous and unpleasant conditions.<sup>25</sup>
26. Article 6 of the 1966 International Covenant on Economic, Social and Cultural Rights includes technical and vocational guidance and training programmes among the measures which States parties must take in order to achieve the full realization of every person's right to the opportunity to gain his/her living by work which he or she freely chooses or accepts.
27. At the regional level, a number of European instruments also contain relevant provisions. Under article 10 of the European Social Charter of the Council of Europe, the parties undertake to provide or promote technical and vocational training to all persons, including the handicapped, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.
28. In the framework of the European Union, article 14 of the recently proclaimed Charter of Fundamental Rights states that: "Everyone has the right to education and to have access to vocational and continuing training." Point 15 of the Community Charter of the Fundamental Social Rights of Workers (1989) states in particular that:

<sup>23</sup> *Record of Proceedings*, International Labour Conference, 2000, Report 21, Conclusions concerning human resources training and development, para. 21.

<sup>24</sup> GB.280/2.

<sup>25</sup> General Survey, op. cit., para. 383.

Every worker of the European Community must be able to have access to vocational training and to benefit therefrom throughout his working life. (...) The competent public authorities, undertakings or the two sides of industry, each within their own sphere of competence, should set up continuing and permanent training systems enabling every person to undergo retraining, *more especially through leave for training purposes*, to improve his skills or to acquire new skills, particularly in the light of technical development. (italics added)

## Origin

29. The question of adopting an instrument on paid educational leave was brought up in 1965 in a resolution adopted at the 49th Session of the International Labour Conference.<sup>26</sup> The resolution noted that the development of modern society was largely conditioned by scientific and technological progress and called for adequate education opportunities outside the framework of general schooling or vocational training of the conventional type. Modern working life both in industrialized and in developing countries called increasingly for higher and new skills which workers could acquire only through further general education and vocational training. Such education would enable workers in developing countries to participate more effectively in the task of economic and social development of their countries and would constitute a positive contribution to the implementation of economic and social development plans. Finally, the resolution noted that workers who were dependent on their wage or salary should not be expected to sacrifice their free time or renounce the possibility of continuing their education.
30. The preparatory reports and the *Records of Proceedings* of the 58th and 59th Sessions of the ILC reflect the different points of view which were expressed with regard to the object and utility of Convention No. 140.<sup>27</sup>
31. The arguments in favour of the adoption of the Convention can be summarized as follows: one point of view was that technological and scientific evolutions generated an economy and a society in constant mutation calling for successive cycles of continuing education beyond initial schooling. Such education would provide, expand and adapt the professional qualifications of workers in order to ensure full employment and income security, enable workers to participate in social and professional life in a more active and informed manner, and inform them of their rights at work in order to enable them to fulfil responsibly their role as social partners.<sup>28</sup> Moreover, it was believed that the Convention was flexible enough to reflect different levels of development and cultural practices in all regions of the world.<sup>29</sup>
32. The elements of objection raised against the adoption of a Convention can be summarized as follows: one point of view was that the priority objective for developing countries should be to ensure adequate education for young people and that an entitlement to paid educational leave might prevent the realization of this fundamental objective and, at the same time, slow down economic development by imposing heavy burdens upon governments and the economy.<sup>30</sup> Another view was that training should have priority over general and trade union education.<sup>31</sup> Finally, the view was

<sup>26</sup> *Record of Proceedings*, International Labour Conference, 1965, Appendix XII, Resolution concerning paid educational leave.

<sup>27</sup> Reports VI(1) and VI(2), ILC, 58th Session, 1973; Reports IV(1) and IV(2), ILC, 59th Session, 1974; *Record of Proceedings*, ILC, 58th Session, 1973, *Provisional Record* Nos. 22, 33 and 34; *Record of Proceedings*, ILC, 59th Session, 1974, *Provisional Record* Nos. 17, 23 and 30.

<sup>28</sup> *Record of Proceedings*, ILC, 59th Session, 1974, *Provisional Record* Nos. 23 and 30.

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

expressed that the diversity of economic and social conditions in the world, as well as the subject matter of the Convention, which was more appropriate for collective bargaining, did not justify the adoption of a Convention.<sup>32</sup>

33. It should be emphasized that the Conference adopted the formula of a Convention supplemented by a Recommendation, even though a single instrument in the form of a Recommendation had been envisaged originally. Moreover, at the time of the first discussion, it was thought that the Convention should define paid educational leave, on the model of the Universal Declaration of Human Rights, as “a new labour right”. The proclamation of such a right, however, was considered unrealistic, in particular in countries that lacked the necessary resources to implement it, and not in keeping with the flexibility that was intended to characterize these standards. The Conference ultimately decided to confine itself in the Preamble to a recognition of paid educational leave as “one means of meeting the real needs of individual workers in a modern society”. Thus, in presenting the draft Convention to the Conference, the Reporter of the Committee on Paid Educational Leave underlined the moderate and balanced nature of the provisions contained in the Convention.<sup>33</sup>
34. The 1991 General Survey summarized national laws and practices in ILO member States with regard to human resources development and concluded by noting the existence of obstacles to the implementation of the Convention.<sup>34</sup> In response to these difficulties, the Committee of Experts emphasized, first, the flexible nature of the obligations set out in the Convention and the possibility of their gradual implementation through a wide range of means and, second, the important role that the private sector, represented by employers and their organizations, can play in the promotion of the educational goals of paid educational leave in developing countries which lack the means to implement a fully fledged educational policy.<sup>35</sup> Finally, the Committee underscored “the importance of the instruments on (...) paid educational leave for the whole of the Organisation’s standard-setting activity and its pursuit of the objectives of social justice”, especially in the framework of policies to deal with the problems arising from structural adjustment.<sup>36</sup>

## Consultations and legislative trends

### The 1997 consultations

#### *Introduction*

35. In March 1997, six years after the above General Survey, the Governing Body undertook an examination of Convention No. 140 in the framework of the mandate of the Working Party on Policy regarding the Revision of Standards.<sup>37</sup> The Governing Body decided to invite member States to contemplate ratifying Convention No. 140 *and* to provide information regarding any obstacles to ratification or the need for a full or partial revision of the Convention. These two aspects of the Governing Body’s decision were adopted on a cumulative and not an alternative basis. Replies

<sup>32</sup> *ibid.*; *Record of Proceedings*, ILC, 58th Session, 1973, p. 685; Report VI(2), ILC, 58th Session, 1973, pp. 9-10.

<sup>33</sup> *Record of Proceedings*, ILC, 59th Session, 1974, pp. 470 et seq.

<sup>34</sup> General Survey, *op. cit.*, paras. 469-477.

<sup>35</sup> *ibid.*, paras. 478 and 483.

<sup>36</sup> *ibid.*, para. 485.

<sup>37</sup> See Appendix II.

received from 45 member States were examined in a report to the Working Party in 1998.<sup>38</sup> The present analysis includes an additional 19 replies which were not included in the previous examination because they were received subsequent to the first report or related to the fact that the country in question had ratified the Convention.<sup>39</sup> Thus, the total number of replies examined in this survey has reached 64.<sup>40</sup>

### **Invitation to ratify**

36. At the time of the 1997 consultations, 12 of the responding countries had already ratified Convention No. 140.<sup>41</sup> Seven of these countries referred to the fact that they were a party to the Convention and did not have any problems of implementation.<sup>42</sup> One of the responding countries ratified the Convention after the consultations.<sup>43</sup> As noted above, 31 ratifications are at present registered for this Convention.

### **Obstacles and difficulties encountered**

37. *No or few obstacles*: Eight countries indicated that they faced no or few obstacles to ratification.<sup>44</sup> Three of these countries said that ratification was imminent.<sup>45</sup> In the remaining five countries the issue was under consideration and there seemed to be positive prospects.<sup>46</sup>

<sup>38</sup> See Appendix II.

<sup>39</sup> *Angola, Antigua and Barbuda, Azerbaijan, Belarus, Belgium, Brazil, Croatia, France, Guinea-Bissau, Malaysia, Mexico, Myanmar, Netherlands, Poland, Seychelles, Saint Kitts and Nevis, Thailand, Togo and United Kingdom.*

<sup>40</sup> *Angola, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, France, Ghana, Greece, Guinea-Bissau, Hungary, India, Italy, Japan, Jordan, Republic of Korea, Latvia, Lebanon, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Norway, Panama, Philippines, Poland, Qatar, Romania, Seychelles, Singapore, Sri Lanka, Suriname, Saint Kitts and Nevis, Switzerland, Syrian Arab Republic, Thailand, Togo, Turkey, United Kingdom, United States and Uruguay.* In one case, comments were received from the social partners (*South Africa*), but the Government did not provide any views. The views of the social partners are noted separately only when they differ from the government view.

<sup>41</sup> *Azerbaijan, Belgium, Brazil, Cuba, Czech Republic, Finland, France, Hungary, Mexico, Netherlands, Poland and United Kingdom.*

<sup>42</sup> *Azerbaijan, Brazil, Cuba, France, Mexico, Netherlands and United Kingdom.* The request for information concerned a group of Conventions and the *Netherlands* added, in the context of its reply regarding Convention No. 132, that a proposed revision of national legislation in the field of annual leave was envisaging, in conformity with the views of the employers' and workers' organizations, to offer more flexibility for saving holidays for purposes such as early retirement and educational leave.

<sup>43</sup> *Chile* (in 1999).

<sup>44</sup> *Chile, Costa Rica, Denmark, Italy, Latvia, Norway, Romania and Seychelles.*

<sup>45</sup> *Chile, Costa Rica and Romania* (instrument of ratification received from *Chile*).

<sup>46</sup> *Denmark, Italy, Latvia, Norway and Seychelles.*

38. *Further consideration:* Ten countries<sup>47</sup> were going to further consider the issue of ratification for reasons including: that the question of submitting Convention No. 140 to Parliament for approval was being examined;<sup>48</sup> tripartite consultations were under way;<sup>49</sup> the new Labour Code was in the process of adoption;<sup>50</sup> consultations and other relevant processes were forthcoming;<sup>51</sup> and ratification would be considered when national processes, objectives and financial resources crystallized in this field.<sup>52</sup> Two countries stated that they endeavoured to apply the principles and the spirit of the Convention, subject to local conditions.<sup>53</sup> One other country would give the Convention further consideration when appropriate.<sup>54</sup> One country said that, as a result of the fact that it had ratified the Workers' Representatives Convention, 1971 (No. 135), the national laws already contained some provisions regarding paid educational leave.<sup>55</sup>
39. *Obstacles to ratification:* Twenty-eight countries reported general or specific obstacles to ratification.<sup>56</sup>
40. *General obstacles:* Twenty-three countries reported general obstacles to ratification.<sup>57</sup> Some obstacles were of a material and economic nature, including: the lack of fully developed primary, middle and secondary education facilities and the need for a huge infrastructure for continuing education which did not appear practicable in the near future;<sup>58</sup> the economic obligations involved in the implementation of the Convention, which might obstruct employment stability;<sup>59</sup> the need to concentrate on skills development to increase competitiveness;<sup>60</sup> and the need to give priority to

<sup>47</sup> *Antigua and Barbuda, Belarus, Croatia, El Salvador, Lebanon, Malaysia, Myanmar, Saint Kitts and Nevis, Suriname and Togo.*

<sup>48</sup> *El Salvador.*

<sup>49</sup> *Croatia.*

<sup>50</sup> *Belarus.* The new Labour Code was adopted on 26 July 1999: Text No. 432, *Vedomosti Verkhovnoho Soveta*, 1999-09-15, No. 26-27, pp. 2-203.

<sup>51</sup> *Saint Kitts and Nevis and Togo.*

<sup>52</sup> *Lebanon.*

<sup>53</sup> *Antigua and Barbuda and Malaysia.*

<sup>54</sup> *Myanmar.*

<sup>55</sup> *Suriname.*

<sup>56</sup> *Angola, Argentina, Australia, Austria, Colombia, Canada, Comoros, Côte d'Ivoire, Dominican Republic, Estonia, Guinea-Bissau, India, Japan, Jordan, Luxembourg, Mauritius, Morocco, Panama, Philippines, Qatar, Singapore, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, Turkey, Uruguay and United States.*

<sup>57</sup> *Angola, Argentina, Austria, Colombia, Comoros, Canada, Côte d'Ivoire, Dominican Republic, Estonia, Guinea-Bissau, India* (the All-India Trade Union Congress was in favour of ratification), *Jordan, Morocco, Qatar, Panama, Singapore, Sri Lanka, Switzerland* (the Union Syndicale Suisse was in favour of ratification), *Syrian Arab Republic, Thailand, Turkey, United States, Uruguay* and *Business South Africa*. (In addition, *China* confined itself to listing the Conventions for which ratification was envisaged, without including Convention No. 140 among them.)

<sup>58</sup> *India.*

<sup>59</sup> *Colombia and Singapore.*

<sup>60</sup> *Business South Africa.*

general education.<sup>61</sup> Other obstacles which related to legal and policy issues included: considerations that education and training should be left to the social partners;<sup>62</sup> the lack of widely accepted paid educational leave provisions in collective agreements and the consequent lack of relevant legislation;<sup>63</sup> the absence of plans to extend paid educational leave entitlements to other groups of employees in the foreseeable future;<sup>64</sup> and the absence of generally applicable provisions on educational leave in national or federal legislation.<sup>65</sup> Some countries referred to the lack of adequately advanced national legislation, without providing further details.<sup>66</sup> Finally, some obstacles seemed to be of a more general nature and did not concern Convention No. 140 in particular. These included the lack of tripartite consensus regarding ratification policy;<sup>67</sup> the need to focus on the Conventions which have already been ratified;<sup>68</sup> the need to overcome general material and political obstacles;<sup>69</sup> the fact that labour legislation reform was under way;<sup>70</sup> and the fact that ratification was not a priority (although ILO standards had been taken into account during the reform of the labour legislation).<sup>71</sup>

41. *Specific obstacles*: Five countries<sup>72</sup> reported specific obstacles. Regarding Article 2, one country reported that it represented an obstacle to ratification without specifying the exact nature of this

<sup>61</sup> *Thailand.*

<sup>62</sup> *Switzerland.*

<sup>63</sup> *Canada.*

<sup>64</sup> *Austria.*

<sup>65</sup> *Qatar, Turkey and United States.* *Qatar* also added that specific provisions provided for educational leave in some cases. Educational scholarships law applied by the Ministry of Education and Culture regulated all scholarships and holidays with pay for workers in the governmental sector. Some large institutions, such as that of the State of Qatar for petrol provided, according to their regulations, for holidays with pay for their workers for training and improving vocational and technical skills. *Turkey* added that amendments to national legislation would be required in order to overcome obstacles with regard to the calculation of paid educational leave entitlements and the allowances or payments to be provided for paid educational leave and that the Convention can be ratified if such amendments are adopted following the country's socio-economic development. The *United States* added that some laws could run contrary to such entitlement. Section 7(q) of the Fair Labor Standards Act allowed the exclusion of ten hours of employment per week from an employee's overtime compensation if during such time the employee was receiving remedial education, he/she did not have a high school diploma or educational attainment at the eighth-grade level, the training provided skills at an eighth-grade level or below and the education did not include job-specific training.

<sup>66</sup> *Jordan, Panama, Sri Lanka and Syrian Arab Republic.*

<sup>67</sup> *Uruguay.*

<sup>68</sup> *Guinea-Bissau.*

<sup>69</sup> *Comoros.*

<sup>70</sup> *Argentina.*

<sup>71</sup> *Côte d'Ivoire.*

<sup>72</sup> *Australia, Japan, Luxembourg, Mauritius and Philippines.*



obstacle.<sup>73</sup> In another country,<sup>74</sup> Convention No. 140 had been identified as an appropriate target for ratification, but there was a reservation that Article 2(c) on trade union education could create difficulties in demonstrating compliance. One country reported that, although it had legislation on trade union and general educational leave, it had rudimentary provisions on professional training (Article 2(a)) and was in the process of enacting legislation in this domain.<sup>75</sup> In another country, national legislation did not seem to cover general education (Article 2(b)), although it did cover paid educational leave for training and trade union education.<sup>76</sup> Furthermore, due to financial constraints, one country had difficulties with both paragraphs (b) and (c) of Article 2 because the Government could only for the time being promote paid educational leave for study programmes that had direct relevance to the work of the employees concerned.<sup>77</sup>

## Revision

42. *In favour of revision (or abrogation):* Five countries were in favour of a revision or abrogation of the Convention.<sup>78</sup> Among these, one State had ratified the Convention<sup>79</sup> and considered that a revision was advisable in order to take account of new work arrangements, such as part-time work, and to emphasize increased opportunities for redundant workers to find other work through continuous training. Another country considered that the Convention would be difficult to implement in the informal sector and proposed to add an exclusion clause to Convention No. 140 “to enable countries with weak economies especially their private sector to exclude these industries and firms which would not be capable of granting paid educational leave”.<sup>80</sup> Another country noted that the Convention should be partially revised to take account of new working conditions.<sup>81</sup> One country<sup>82</sup> focused on the need to streamline ILO standards in the field of human resources development and proposed to integrate Convention No. 140 into the Human Resources Development Convention, 1975 (No. 142), or to revise Convention No. 140 and adopt it as a supplementary Recommendation to Convention No. 142. Finally, one country suggested that Convention No. 140 should be considered for abrogation because educational leave was not an appropriate subject for an ILO Convention.<sup>83</sup>

<sup>73</sup> *Japan.*

<sup>74</sup> *Australia.*

<sup>75</sup> *Luxembourg.* The Office takes note of the adoption of the Act of 22 June 1999, which contains provisions on this issue. This Act is included in the national laws reviewed in the next section.

<sup>76</sup> *Philippines.*

<sup>77</sup> *Mauritius.*

<sup>78</sup> *Belgium, Egypt, Ghana and the Republic of Korea* were in favour of a revision and *New Zealand* was in favour of abrogation.

<sup>79</sup> *Belgium.*

<sup>80</sup> *Ghana.*

<sup>81</sup> *Egypt.*

<sup>82</sup> *Republic of Korea* (the Korean Employers’ Federation was of the view that there were “no specific problems with the ratification of this Convention”).

<sup>83</sup> *New Zealand* (the NZCTU was in favour of revision). The Office notes that in 1992 the Union Representatives Education Leave Act, 1986 (Act No. 102 of 1992) was repealed, while in October 2000, the Employment Relations Act (No. 24 of 2000) reintroduced trade union educational leave provisions and is included among the laws examined in the next section.

43. *Against revision: Five countries* considered that a revision was not necessary.<sup>84</sup> Four of them have ratified Convention No. 140.<sup>85</sup> One State which is party to the Convention<sup>86</sup> considered it:

... important that the ILO seeks to promote and encourage ratification of this Convention. In today's labour market situation education and training plays an absolutely critical role in facilitating the ongoing structural changes in the workplace and in securing the continuity of employment. It also provides an important avenue for those who have been made redundant to return to work. An important consideration in assessing the need to revise Convention No. 140 or to prepare an entirely new Convention is the global employment situation, which has changed considerably during the past two decades. It might also be worth looking into the possibility of formulating a Convention that takes into account the different life situations of workers. A revision of Convention No. 140 is not considered imperative, however. The provisions contained in the Convention are flexible enough to give member States (which differ quite markedly in terms of their current stage of development) the latitude they need to take account of their national situation. However, each member State does have an obligation to formulate and apply a policy that is designed to promote, by methods appropriate to national conditions and practice and by stages as necessary, the granting of paid educational leave.

Another State party considered that the Convention ensured sufficient support and protection to employees.<sup>87</sup> The rest of the countries replied that they did not see any need for revision, without providing further explanations.

## Outcome

44. The detailed analysis of the consultations shows that *eight countries* saw no or few obstacles to ratification<sup>88</sup> and *ten countries* were going to give consideration to this issue.<sup>89</sup> In addition to this, *five countries* did not see any need for revision.<sup>90</sup> The arguments against revision underlined the flexible nature of Convention No. 140 and its importance for promoting employment. Moreover, seven countries stated that they had ratified the Convention and that they saw no obstacles to its implementation or any need for revision.<sup>91</sup>
45. However, the analysis also shows that there are general or specific obstacles to the ratification of Convention No. 140 in *28 countries*.<sup>92</sup> Material obstacles were reported by several countries. Other obstacles include concerns regarding the appropriate role of the State and the social partners with regard to paid educational leave, the lack of legislation in this field and the fact that national laws do not fully cover the three educational purposes of Convention No. 140. The Office notes that certain obstacles reported in the consultations might be overcome if more information were provided to elucidate the flexibility of the provisions of Convention No. 140 and the possibility of their gradual implementation by methods appropriate to national conditions and practice and by "taking into

<sup>84</sup> *Czech Republic, Finland, Greece, Hungary and Poland.*

<sup>85</sup> *Czech Republic, Finland, Hungary and Poland.*

<sup>86</sup> *Finland.*

<sup>87</sup> *Hungary.*

<sup>88</sup> See para. 37 above.

<sup>89</sup> See para. 38 above.

<sup>90</sup> See para. 43 above.

<sup>91</sup> See para. 36 above.

<sup>92</sup> See para. 39 above.

account the stage of development and the particular needs of the country and of different sectors of activity”.<sup>93</sup>

46. Another five countries considered a revision or an abrogation of this Convention as necessary or advisable.<sup>94</sup> One of these countries had ratified the Convention and considered that revision was justified by the need to encompass the situation of the unemployed and those engaging in atypical forms of employment. Two countries focused on the need to boost economic activity by avoiding legal constraints. One country addressed the need to streamline ILO standards in the field of human resources development by consolidating all relevant instruments, including Convention No. 140. Finally, one country suggested the abrogation of Convention No. 140 because its subject was not appropriate for a Convention.
47. Thus, the 1997 consultations pointed in different directions, as well as underlining the existence of obstacles to the ratification of Convention No. 140. In order to find out more about the legislative trends in this field, legislation on paid educational leave adopted in ILO member States during the last ten years is examined in more detail in the next section. The outcome of this examination is then analysed in the light of the outcome of the 1997 consultations.

## Recent developments in national legislation

### Introduction

48. In order to provide the Working Party with additional information, national legislation on educational leave adopted since 1990 has been examined on the basis of publicly available information in NATLEX, the ILO database on national legislation.<sup>95</sup> The purpose of this examination is to provide an indication of the impact of the Convention, its relevance to current conditions and the impediments to its ratification. The Office has chosen to focus its attention on legislation concerning educational opportunities for employed adults amounting either to educational leave or comparative arrangements, enacted or amended in the last ten years in ILO member States which are not parties to Convention No. 140.<sup>96</sup> Legislation was found in 29 countries which provides workers with the opportunity to take leave for various training and educational purposes during working time.<sup>97</sup> The regional representation is as follows: Africa: 12;<sup>98</sup>

<sup>93</sup> Articles 2 and 4.

<sup>94</sup> See para. 42 above.

<sup>95</sup> <http://natlex.ilo.org/>

<sup>96</sup> This information is not the result of direct consultations with the member States on the application of Convention No. 140 and the conclusions that can be drawn from the analysis are therefore general trends in legislation as they appear in the principal Acts. Laws relative to education, apprenticeship and training of young persons, children and the unemployed were not taken into consideration. Training for occupational safety and health purposes was also considered as lying beyond the scope of this study. Furthermore, the examination did not include information on the practical implementation of the legislative provisions. Finally, the examination of certain laws was prevented due to translation deadlines.

<sup>97</sup> *Algeria, Bulgaria, Burkina Faso, Burundi, Cameroon, Congo, Croatia, Djibouti, Dominican Republic, Ecuador, Estonia, Greece, Kazakhstan, Republic of Korea, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Mali, Republic of Moldova, Namibia, New Zealand, Portugal, Russian Federation, Seychelles, Swaziland, Tajikistan and Yemen.*

<sup>98</sup> *Algeria, Burkina Faso, Burundi, Cameroon, Congo, Djibouti, Lesotho, Madagascar, Mali, Namibia, Seychelles and Swaziland.*

Americas: two;<sup>99</sup> Asia and Pacific: three;<sup>100</sup> and Europe: 12.<sup>101</sup> The results of this examination are presented below and the factual information collected is summarized in tabular form in the annex to this survey. In addition, the Office took note of laws adopted in 19 other countries with regard to the wider policy background of paid educational leave.<sup>102</sup> These cover subjects such as human resources development, education and training. This information is included in a complementary table which can be found in the annex.

49. The examination focused exclusively on the principal obligations established by Convention No. 140 with regard to paid educational leave. As already mentioned above,<sup>103</sup> the main obligation is to formulate and apply a policy to promote the granting of paid educational leave, as defined in Article 1, for the three educational purposes stipulated in Article 2 and with adequate financial entitlements, as provided in Article 7. Thus, the examination of national laws focused on provisions that corresponded to these obligations.
50. Convention No. 140 also contains obligations that pertain to wider issues and constitute a specific application of more general obligations in the particular context of paid educational leave. These include the obligation to ensure the participation of social partners and other entities in the implementation of paid educational leave policies in accordance with Article 6, protect workers against discrimination in accordance with Article 8, adopt special provisions for certain groups in accordance with Article 9 and take account of educational leave for the purpose of establishing claims to social benefits in accordance with Article 11. As the Committee of Experts noted in the 1991 General Survey, these wider obligations are usually provided in more general laws. For instance, the obligation to ensure equal access to paid educational leave without discrimination is likely to be covered by the existence of texts of a more general scope, such as the Constitution, the Labour Code, or generally applicable Acts respecting conditions of employment which, by virtue of their general application, allow the conditions for the granting of paid educational leave to be made subject to the principle of non-discrimination.<sup>104</sup> Similar considerations seem to apply with regard to measures concerning particular categories of workers and the conditions of entitlement to social benefits.<sup>105</sup> The examination of such issues would necessitate taking into account laws of a scope that went far beyond the range of a short survey.
51. Another point that merits attention is that the information collected here covers only one among several means of promoting a policy on paid educational leave, namely the adoption of laws.<sup>106</sup> Article 5 allows a much wider choice of means for the implementation of the obligations contained

<sup>99</sup> *Dominican Republic and Ecuador.*

<sup>100</sup> *Republic of Korea, New Zealand and Yemen.*

<sup>101</sup> *Bulgaria, Croatia, Greece, Estonia, Kazakhstan, Latvia, Lithuania, Luxembourg, Republic of Moldova, Portugal, Russian Federation and Tajikistan.*

<sup>102</sup> *Benin, Cape Verde, Chad, China, Ethiopia, Gabon, Indonesia, Lao People's Democratic Republic, Mauritania, Mongolia, Mozambique, Nepal, Niger, Paraguay, Sao Tome and Principe, Senegal, South Africa, Tajikistan and Viet Nam.*

<sup>103</sup> See para. 11 above.

<sup>104</sup> General Survey, op. cit., para. 403.

<sup>105</sup> The Committee of Experts also noted that, beyond the fundamental requirement of non-discrimination, provisions on the eligibility of workers for paid educational leave contained in Article 10 would seem to apply where a worker's subjective right to this leave is recognized. However, the Convention remains applicable even if paid educational leave is granted, not on the basis of an individual right, but on the basis of enterprise policy at the request of the employer. General Survey, op. cit., para. 398.

<sup>106</sup> See Article 5 of the Convention and para. 12 above.

in the Convention. Furthermore, according to the Committee of Experts, States parties to the Convention are not under the residual obligation provided for in other ILO Conventions to draft legislation if the provisions of the Convention fail to be implemented by other means.<sup>107</sup>

52. Moreover, as already mentioned above, the Committee of Experts has noted that the ratification of Convention No. 140 depends on the existence of a policy aiming at promoting the granting of paid educational leave for the three purposes stipulated in the Convention by methods appropriate to national conditions and by stages, as necessary. The pursuance of a policy presupposes that the public authorities have decided upon a specific course of action that necessarily involves these authorities and bodies for a certain length of time.<sup>108</sup> Thus, the Convention does not require the immediate introduction of provisions to regulate the granting of paid educational leave. The policy is dynamic and aims at the gradual granting of paid educational leave over time and taking account of the “stage of development and the particular needs of the country and of different sectors of activity”. This may result in the granting of paid educational leave being promoted “by stages”. According to the Committee of Experts, member States may concentrate first on granting paid educational leave for one of the purposes listed in the Convention or in certain branches of activity, only subsequently promoting it for the other two purposes stipulated or in other branches of activity.<sup>109</sup>
53. Thus, in order to evaluate whether the laws examined in this section reflect the requirements of the Convention, it is necessary to discern whether these laws reflect the existence of a policy to promote paid educational leave. However, the existence of such a policy is rarely explicitly proclaimed and the three educational purposes of Convention No. 140 are implemented through different means in practically all of the countries examined.<sup>110</sup> Under these conditions, the existence of a policy has to be inferred on the basis of indications. Two indications were retained as relevant. A policy is likely to exist if paid educational leave is granted pursuant to a law of general application, such as a Labour Code, for at least one of the educational purposes set out in Article 2, or where paid educational leave is accorded for all three educational purposes pursuant to specific laws in certain sectors of economic activity.<sup>111</sup>

### **Definition**

54. The table contained in the annex reveals the variety of terms used to describe different types of arrangements which provide workers with the opportunity to take leave in order to pursue a training programme, cultural activities or trade union education. The expression “paid educational leave”, or a similar expression is used in national legislation in 12 countries.<sup>112</sup> In nine countries, measures amounting to the granting of educational leave are found in provisions on human resources

<sup>107</sup> See paras. 13-14 above.

<sup>108</sup> General Survey, op. cit., para. 327.

<sup>109</sup> See paras. 13-14 above.

<sup>110</sup> See the annexed list of legislative sources.

<sup>111</sup> This evaluation is somewhat obstructed by the fact that the laws examined here are posterior to 1990. Laws which could constitute stages in the gradual implementation of a policy of paid educational leave could precede 1990. Thus, the Office has also taken into account, where available, complementary information on the laws available in each country, especially on the basis of the 1991 General Survey and the replies of governments to the 1997 consultations. This has been the case for *Luxembourg* (para. 346 of General Survey and reply to 1997 consultations).

<sup>112</sup> *Bulgaria, Burundi, Congo, Croatia, Dominican Republic, Ecuador, Greece, Lesotho, Lithuania, Madagascar, New Zealand and Seychelles.*

development and vocational training.<sup>113</sup> Two countries use the term “privileges” instead of “leave”.<sup>114</sup> Some countries use terms such as “special leave”, “additional leave” or simply “paid leave”.<sup>115</sup> Finally, two countries refer to “unpaid leave”<sup>116</sup> and two refer to “holidays without pay”.<sup>117</sup> The diversity in terms brings to mind the comments of the Committee of Experts, which noted in the 1991 General Survey the wide array of arrangements which exist in this domain, including leave of absence for examinations, reduction of daily or weekly working hours to facilitate attendance at evening classes, permission to attend classes during working hours either within or outside the enterprise, leave granted for the duration of an educational course or cycle, and sabbatical leave.<sup>118</sup>

## Benefits

55. The term “educational leave” in Article 1 refers to training and education which takes place during working hours either inside or outside the working place. Most laws examined here seem to provide the possibility of absence from the working place for a period which could last from a few hours to several years, depending on the type of activities pursued and the status of the worker.
56. Laws in 21 countries out of the 29 examined provide for financial entitlements to workers on educational leave, as stated in Article 7 of Convention No. 140.<sup>119</sup> Several laws specify that leave is unpaid or that payment is at the discretion of the employer.<sup>120</sup> In some cases, the law does not contain specific provisions on financial entitlements, or refers the issue to collective bargaining, or to the contract of employment, or specifies that the question will be examined in forthcoming laws and regulations.<sup>121</sup>

## Objectives

57. Laws in 27 countries out of 29 grant leave for purposes of training as provided in Article 2(a) of the Convention.<sup>122</sup> Laws in 16 countries seem to provide leave for purposes of general, social and civic

<sup>113</sup> *Algeria, Djibouti, Republic of Korea, Luxembourg, Mali, Portugal, Swaziland, Tajikistan and Yemen.*

<sup>114</sup> *Latvia and Russian Federation.*

<sup>115</sup> *Croatia, Kazakhstan, Republic of Moldova and Namibia.*

<sup>116</sup> *Burkina Faso and Cameroon.*

<sup>117</sup> *Estonia and Lithuania.*

<sup>118</sup> General Survey, op. cit. para. 348.

<sup>119</sup> *Algeria, Bulgaria, Burundi, Congo, Croatia, Djibouti, Dominican Republic, Ecuador, Greece, Kazakhstan (for trade union leave), Latvia, Lesotho, Lithuania (if studies are undertaken at the initiative of the employer), Luxembourg, Madagascar, Republic of Moldova, Russian Federation, Seychelles, Swaziland (for training), Tajikistan and Yemen.*

<sup>120</sup> *Burkina Faso, Cameroon, Estonia, Namibia, Portugal and Swaziland (for trade union leave).*

<sup>121</sup> *Kazakhstan (for study leave), Republic of Korea, Lithuania (if studies are undertaken at the initiative of the worker), Mali and Portugal.*

<sup>122</sup> *Algeria, Bulgaria, Burkina Faso, Burundi, Cameroon, Congo, Croatia, Djibouti, Dominican Republic, Ecuador, Estonia, Greece, Kazakhstan, Republic of Korea, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Mali, Republic of Moldova, New Zealand, Portugal, Russian Federation, Seychelles, Swaziland and Yemen.*

education, as stated in Article 2(b) of the Convention.<sup>123</sup> It is often difficult to make a clear distinction between vocational training and general education, and national laws often seem to treat these two areas as interrelated. This trend has also been noted by the Committee of Experts.<sup>124</sup>

58. Laws which grant leave for trade union education were found in 13 countries, as provided in Article 2(c) of the Convention.<sup>125</sup> The relatively lower number of countries in which legislation provides for this type of educational leave could be due to the fact that trade union education would seem to be more likely to be provided for in collective agreements. The Committee of Experts noted in 1991 that leave for trade union education was frequently included among the facilities granted to workers' representatives in accordance with Convention No. 135 and Recommendation No. 143,<sup>126</sup> and that in most countries leave for trade union education was covered by separate provisions from those governing leave for the purposes of training and general education.<sup>127</sup> The present survey shows that leave for trade union education is usually included in laws pertaining to industrial relations, whereas leave for training and general education could be provided in Labour Codes or laws pertaining to education, labour contracts, employment policies or human resources development.
59. Finally, the table provided in the annex depicts legislation, the general orientation of which could be seen as conducive to the granting of paid educational leave in an additional 19 countries.<sup>128</sup> In two cases the law invites the social partners to agree upon educational leave provisions in the framework of collective bargaining.<sup>129</sup> Several laws relate to the wider policy background of paid educational leave and aim at establishing partnerships between workers' and employers' organizations, private enterprises and government agencies in the framework of a policy of vocational training and human

<sup>123</sup> *Algeria, Bulgaria, Burkina Faso, Croatia, Djibouti, Dominican Republic, Ecuador, Estonia, Greece, Kazakhstan, Latvia, Lesotho, Lithuania, Madagascar, Republic of Moldova and Russian Federation.*

<sup>124</sup> See below, para. 85.

<sup>125</sup> *Algeria, Burkina Faso, Burundi, Cameroon, Croatia, Greece, Kazakhstan, Madagascar, Namibia, New Zealand, Russian Federation, Swaziland and Tajikistan.* In some countries, the situation with regard to paid educational leave for trade union education is not clear. For instance, in countries such as *Belarus* and *Mongolia*, the elected worker representatives exercise their duties either on a full-time or part-time basis, being remunerated for this purpose by the trade union, and there is no specific provision on leave for trade union education. In other countries, such as for instance *Benin* and *Romania*, trade union representatives are entitled to leave in order to exercise their functions, but there is no explicit provision in the law that trade union education is included among these functions. In countries such as *Guatemala, Guinea-Bissau, Nepal, Sao Tome and Principe, Turkey* and *United Republic of Tanzania*, among others, trade unions have the right to establish educational institutions and to provide education and training to their members, but there is no specific provision on the granting of leave to facilitate such activities.

<sup>126</sup> General Survey, op. cit., para. 375.

<sup>127</sup> *ibid.*, para. 355.

<sup>128</sup> See para. 48 above.

<sup>129</sup> *Ethiopia and Gabon.*

resources development.<sup>130</sup> Finally, the examination included one law on paid leave for vocational training with general provisions which do not allow further analysis.<sup>131</sup>

## Outcome

60. The Office has found indications in the laws of 16 countries suggesting a gradual implementation of paid educational leave policies.<sup>132</sup> Among these countries, paid educational leave for all three educational purposes seems to be granted in six countries.<sup>133</sup> In another ten countries, laws of general application provide for paid educational leave for at least one educational objective.<sup>134</sup> The Office notes that one of these countries reported obstacles in the 1997 consultations<sup>135</sup> which were going to be overcome through the enactment of legislation. The Office took note of the adoption of the envisaged legislation, which is included among the laws examined in this survey, and, on the basis of additional information,<sup>136</sup> concluded that adequate indications pointed towards the existence of a policy in the field of paid educational leave.
61. In four other countries,<sup>137</sup> national legislation already provided paid educational leave to a certain extent. Thus, a progressive evolution towards the adoption of a fully fledged policy in this field would seem to be possible, but more information would be needed in order to reach concrete conclusions.<sup>138</sup>
62. Obstacles to the ratification of Convention No. 140 seem to exist in another seven countries in which the laws under examination do not contain financial entitlements for paid educational leave.<sup>139</sup> Finally, the Office has found certain provisions on paid educational leave which do not amount to the existence of a policy in one country which reported obstacles to ratification during the 1997 consultations and in one other which was in favour of the abrogation of the Convention.<sup>140</sup>

<sup>130</sup> *Benin, Cape Verde, Chad, China, Indonesia, Lao People's Democratic Republic, Mauritania, Mongolia, Mozambique, Nepal, Niger, Paraguay, Sao Tome and Principe, South Africa, Tajikistan and Viet Nam.*

<sup>131</sup> *Senegal.*

<sup>132</sup> *Algeria, Bulgaria, Burundi, Congo, Croatia, Ecuador, Greece, Kazakhstan, Latvia, Lesotho, Luxembourg, Madagascar, Republic of Moldova, Russian Federation, Seychelles and Yemen.*

<sup>133</sup> *Algeria, Croatia, Greece, Luxembourg, Madagascar and Russian Federation.* In these countries, provisions relevant to paid educational leave are found in both laws of general application and specific laws pertaining to particular subjects or areas of employment (see the list of legislation in the annex).

<sup>134</sup> *Bulgaria, Burundi, Congo, Ecuador, Kazakhstan, Latvia, Lesotho, Republic of Moldova, Seychelles and Yemen.*

<sup>135</sup> *Luxembourg.* See para. 41 above.

<sup>136</sup> See para. 53 above.

<sup>137</sup> *Djibouti, Lithuania, Swaziland and Tajikistan.*

<sup>138</sup> As already mentioned, the examination of selected laws from the 29 countries presented here is confined to one means of the application of Convention No. 140, namely legal texts, while a wide variety of means are available for the implementation of this Convention.

<sup>139</sup> *Burkina Faso, Cameroon, Estonia, Republic of Korea, Mali, Namibia and Portugal.*

<sup>140</sup> *Dominican Republic and New Zealand.* See paras. 40 and 42 above.



63. The regional trends include the fact that provisions on paid educational leave seem to be much more widespread in countries from Europe and the African continent than in the Americas and Asia. The legislation examined from most European countries seems to generally follow the spirit and objectives of Convention No. 140. Similarly, most of the laws examined from the African continent seem to take account of educational leave. In the few laws examined from the Americas, educational leave seems to be accorded on a more long-term basis than in the other regions. Finally, most laws examined from Asian and Pacific countries seem to focus mainly on educational leave for training purposes.
64. Difficulties in evaluating national policies derive from the diverse manner in which paid educational leave tends to be implemented through different types of activities in different sectors of economic activity and for each educational purpose. At the same time, the possibility of gradual implementation would seem to leave room for progress in the future on the basis of legislative and other types of activities undertaken in the areas of human resources development, employment policy and industrial relations.
65. A point that merits attention is that, although the laws examined in this section were enacted after 1990, their examination by the Office often gives rise to observations corresponding to those made by the Committee of Experts in the 1991 General Survey. This would seem to indicate that the legislative trends in the field of paid educational leave have not undergone any substantial change since 1991.
66. In addition to the observations made so far, the table in the annex shows that an additional 19 countries<sup>141</sup> have legislation on matters that would appear to relate to the wider policy background underlying paid educational leave. For instance, the establishment of national policies on human resources training and development, the creation of institutions responsible for verifying and evaluating professional skills, and the clarification of the responsibilities of government agencies and employers' and workers' organizations for the training of workers, seem to set up basic enabling elements for the adoption of lifelong learning policies. These elements would seem to leave room for the future adoption of a paid educational leave policy.

## Summary conclusions

67. This section sums up information on the obstacles to ratification in 83 countries, comprising those which responded to the 1997 consultations and those whose legislation has been examined.<sup>142</sup> There are grounds for believing that there are no or few obstacles preventing ratification in 31 countries.<sup>143</sup> However, the reports received in the consultations and the examination of

<sup>141</sup> See para. 58 above.

<sup>142</sup> *Algeria, Angola, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Belarus, Belgium, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Cameroon, Chile, Congo, Côte d'Ivoire, Colombia, Comoros, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Ghana, Greece, Guinea-Bissau, Hungary, India, Italy, Japan, Jordan, Kazakhstan, Republic of Korea, Latvia, Lebanon, Lesotho, Lithuania, Luxembourg, Madagascar, Malaysia, Mali, Mauritius, Mexico, Republic of Moldova, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Norway, Panama, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Seychelles, Singapore, Sri Lanka, Saint Kitts and Nevis, Suriname, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Turkey, United Kingdom, United States, Uruguay and Yemen.*

<sup>143</sup> *Algeria, Antigua and Barbuda, Belarus, Bulgaria, Burundi, Chile, Congo, Costa Rica, Croatia, Denmark, El Salvador, Ecuador, Greece, Italy, Kazakhstan, Latvia, Lebanon, Lesotho, Luxembourg, Madagascar, Malaysia, Republic of Moldova, Myanmar, Norway, Romania, Russian Federation, Seychelles, Saint Kitts and Nevis, Suriname, Togo and Yemen.* See paras. 37, 38, 43 and 60 above. For *Luxembourg*, see paras. 41 and 60 above. It should also be recalled that *Chile* ratified the Convention after the consultations. See para. 36 above.

national legislation also reveal that there seem to be obstacles to ratification in another 36 countries.<sup>144</sup>

68. Among the 12 countries which have ratified Convention No. 140 and which responded to the consultations, seven reported that there were no problems of implementation,<sup>145</sup> four saw no need for revision<sup>146</sup> and one was in favour of revision.<sup>147</sup> As already mentioned above, this Convention has been ratified by 31 member States and three new ratifications have been registered since 1997, which is in itself a positive trend.<sup>148</sup>
69. Finally, in four cases, the Office could not reach conclusions on the basis of an examination of national legislation. Certain elements suggest that paid educational leave is granted for some educational purposes, but more information would be needed in order to conclude whether a policy exists in this field.<sup>149</sup>
70. In addition to this examination, the Office notes that legislation recently adopted in 19 countries seems to set up the essential enabling conditions which might leave room for an eventual adoption of a policy on paid educational leave at a later stage.<sup>150</sup>
71. Against this background, the following section evaluates the role of paid educational leave within the current policy framework and examines more closely the obstacles to the implementation of such a policy.

## Convention No. 140 in the context of lifelong learning

72. When Convention No. 140 was adopted in 1974, paid educational leave was seen as part of a more general policy framework of continuous education. This is indicated in the Preamble which states that “paid educational leave should be conceived in terms of a policy of continuing education and training” and in Article 3(d), which considers paid educational leave as a means to implement the policy of continuing education and training.
73. The terminology in the field of educational policy is not clear-cut and concepts are often used in an overlapping manner. The term “continuing education” could refer to that part of education which takes place after the conclusion of initial or basic (elementary) education.<sup>151</sup> The term is usually applied to refer to courses other than full-time further or higher education that need not be certified.

<sup>144</sup> *Angola, Argentina, Australia, Austria, Burkina Faso, Cameroon, Canada, Colombia, Comoros, Côte d’Ivoire, Dominican Republic, Egypt, Estonia, Ghana, Guinea-Bissau, India, Japan, Jordan, Republic of Korea, Mali, Mauritius, Morocco, Namibia, New Zealand, Panama, Philippines, Portugal, Qatar, Singapore, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, Turkey, Uruguay and United States.* See paras. 39, 42 and 62 above.

<sup>145</sup> See para. 36 above.

<sup>146</sup> See para. 43 above.

<sup>147</sup> See para. 42 above.

<sup>148</sup> See para. 4 of introductory paper.

<sup>149</sup> See para. 61 above.

<sup>150</sup> See paras. 48, 59 and 66 above.

<sup>151</sup> P.J. Sutton. “Lifelong and continuing education”, in Albert C. Tuijnman (ed.): *International Encyclopaedia of Adult Education and Training*, 2nd edition, Pergamon Press, Exeter, 1996, p. 27.

Hence, part-time education, much adult education and vocational and recurrent professional training could fall under the label of “continuing education”. According to this view, the function of “continuing education” is that of rounding off the individual’s education, of providing further education or of retraining so that, for example, the individual can always meet increased or new professional demands.<sup>152</sup> In other words, this policy seeks to provide a second or third chance to adults to complete their education and training. This concept is closely related to the policy of “recurrent education”<sup>153</sup> which is based on a more systematized access to education and presupposes that opportunities for alternation between work and study should be available to all individuals throughout their active life. These policies, which formed the basis of Convention No. 140, evolved into the modern approach of “lifelong learning”.

74. The policy of “lifelong learning” has made its appearance as a corollary to the scientific, technological and economic developments of the last 25 years. These developments have placed the economies of industrial and developing countries under major structural change, put a premium on “learning societies”, quickened the pace of introduction of new products and services and made it possible to prolong working life, even as the period of initial education has been extended into early life.<sup>154</sup> Nowadays, lifelong learning is embraced by numerous international and regional organizations and groups, including the ILO, as witnessed by the recent general discussion on human resources training and development.<sup>155</sup>
75. Lifelong learning has been described as a policy to build “a society where learning is not just a stage of life, but a way of life”.<sup>156</sup> It is a comprehensive policy which embraces individual and social development both in formal (schools, vocational, tertiary and adult education institutions) and informal settings (home, work and community).<sup>157</sup> The policy focuses on the standards of knowledge and skills needed by all, regardless of age. It emphasizes the need to prepare and motivate all children at an early age for learning over a lifetime, and provide all adults, employed and unemployed, with opportunities to retrain and upgrade their skills and knowledge.<sup>158</sup> Lifelong learning brings together a range of educational and employment policies: to enlarge access to high-quality general education and vocational training; to revitalize foundation learning in primary and secondary schools, and build up the capacity and motivation to learn throughout life; to overcome problems of transition from school to work; to promote adult learning and continuing education as

<sup>152</sup> *ibid.*

<sup>153</sup> A. Hassan. “Lifelong learning”, in Albert C. Tuijnman (ed.): *International Encyclopaedia of Adult Education and Training*, 2nd edition, Pergamon Press, Exeter, 1996, pp. 33-34.

<sup>154</sup> *ibid.*

<sup>155</sup> Conclusions on human resources training and development, *op. cit.* Other reports and statements referring to lifelong learning include: the Conclusions of the European Union Lisbon Summit (2000), the Dakar Framework of Action entitled *Education for All: Meeting our collective commitments* (adopted by the World Education Forum, Dakar, Senegal, 26-28 April 2000, convened jointly by UNESCO, UNDP, UNICEF, UNFPA and the World Bank); the Cologne Charter of the Group of Eight leading industrialized nations (1999) entitled *Aims and Ambitions for Lifelong Learning*; the UNESCO World Conference on Higher Education, Final Report, *Higher Education in the Twenty-first Century: Vision and Action*, UNESCO, Paris, 5-9 October 1998; the OECD Ministers’ Communiqué on “Making Lifelong Learning a Reality for All”, in *Lifelong Learning for All: Meeting of the Education Committee at Ministerial Level*, 16-17 January 1996, OECD, Paris, 1996.

<sup>156</sup> *Report by the UNESCO Director-General on the Outcome and Implications for UNESCO of the World Education Forum*, Executive Board, 159th Session (2000), Document 159 EX/41, Annex II, para. 6.

<sup>157</sup> Hassan, *op. cit.*, pp. 34-35.

<sup>158</sup> *ibid.*

part of self-development and adaptation to new conditions and environments; to address the lack of coherence between formal learning and on-the-job learning by linking the formal and non-formal elements of lifelong learning in flexible sets of pathways.<sup>159</sup> As can be seen from this list, continuing education figures prominently among the policies comprising lifelong learning.

76. There seem to be sufficient grounds to believe that Convention No. 140 can fulfil a useful function in the framework of lifelong learning. The fundamental goals of lifelong learning do not seem to differ in essence from the objectives of Convention No. 140, and both of them seem to be in accordance with the strategic objectives of the ILO, as restated in the report *Decent work*.
77. First, lifelong learning has an economic goal to meet the needs of an increasingly knowledge-based economic system and pursue full employment, innovation, productivity and economic growth.<sup>160</sup> This objective is reflected in Articles 2(a) and (b) and 3(a) of Convention No. 140 and constituted the main argument for the adoption of the Convention.<sup>161</sup> Most importantly, this goal is in line with the strategic objective of employment and corresponds to the cross-cutting theme of development. The report *Decent work* notes that “knowledge and continuous learning are increasingly seen as the key to business success”.<sup>162</sup> The Conclusions of the recent general discussion on human resources training and development note moreover that “education and training are ... a central pillar of decent work”.<sup>163</sup>
78. Second, lifelong learning pursues the goal of social equity, by promoting social cohesion and preventing the social exclusion of those who miss out on initial or continuing education given the importance of education in knowledge-intensive societies characterized by rapid change.<sup>164</sup> This goal of social equity aims at fostering personal development through education, especially for those who are most “at risk” of social exclusion due to their social background, gender or ethnic origin, or because they face special conditions, such as the aged and workers with family responsibilities. These considerations are reflected in Articles 2(b), 3(c) and (d), 8 and 9 of Convention No. 140 and fall within the ambit of the strategic objectives of fundamental principles and rights at work, employment promotion and social protection.<sup>165</sup>
79. Relevant to the previous objective is the broader goal of enhancing the adaptive capacity of societies in light of rapid technological and scientific evolution, in order to strengthen community and democratic values and ensure long-term economic and social stability.<sup>166</sup> Articles 2(b) and (c) and 3(b) of Convention No. 140 share this goal which helps promote social dialogue among other strategic objectives.<sup>167</sup> Paragraph 20 of the Conclusions on human resources training and development refers to trade union education:

<sup>159</sup> For an outline of the elements of this policy see Decision No. 2493/95/EC of the European Parliament and of the European Council of 23 October 1995 establishing 1996 as the “European year of lifelong learning”.

<sup>160</sup> Hassan, *op. cit.*, p. 36.

<sup>161</sup> See paras. 29 and 31 above.

<sup>162</sup> Report of the Director-General, *op. cit.*, p. 23.

<sup>163</sup> Conclusions, *op. cit.*, para. 3.

<sup>164</sup> Hassan, *op. cit.*, p. 36.

<sup>165</sup> *Decent work*, *op. cit.*, pp. 27-29, 31, 34-35; see also paras. 29-31 above.

<sup>166</sup> Hassan, *op. cit.*, p. 36.

<sup>167</sup> *Decent work*, *op. cit.*, pp. 38-39; see also paras. 29-31 above.

Education and training in industrial relations and on trade union education, business administration and the social contribution by the work and the organization of the social partners, should also be an integral part of capacity building and a part of initial and vocational training. Being a tripartite organization, the ILO should lead international cooperation to build up capacities for social dialogue and partnership building in training.

80. It appears that paid educational leave could be one vehicle, among others, for promoting lifelong learning. First of all, paid educational leave is an instrument for the promotion of continuing education which, as already noted, constitutes an integral part of lifelong learning. During the general discussion on human resources training and development, several Government members mentioned the existence of paid educational leave arrangements in their respective countries as a means of guaranteeing the right to education and training and of strengthening the capacities of the social partners to meet the challenges of their increased responsibility for human resources development and training.<sup>168</sup> Paragraph 17 of the Conclusions calls for “multiple entry and exit points in the education and training system during a worker’s career”. As already seen in the examination of national legislation, paid educational leave is used in several countries as a mechanism that facilitates transition from work towards education and training without affecting the employment relationship. The experience and practice of these countries could indicate that paid educational leave might provide a useful means, among others, to promote adult and second chance education within the general framework of lifelong learning.
81. Despite these common elements, there are some important differences between the previous and the current policy framework. The first major difference is that lifelong learning tends to involve less institutionalized and rigid arrangements than past policies. Lifelong learning tends to strengthen the development of informal education and training systems such as on-the-job training, rather than expanding formal adult education in institutions fully or partly financed from the public budget. This affects the roles previously assigned to government and the social partners. Previous strategies assigned a large role for government in organizing, managing and financing the system. Now partnership and shared responsibility tend to be emphasized and the individual responsibility of workers for cultivating their own skills and knowledge is taken into consideration.<sup>169</sup>
82. These trends were confirmed in the general discussion concerning human resources training and development.<sup>170</sup> Paragraph 10 of the Conclusions endorses the core commitments made in the Cologne Charter of the Group of Eight leading industrialized nations (1999) in calling for renewed commitment of all partners to lifelong learning: “... by governments, investing to enhance education and training at all levels; by the private sector, training existing and future employees; by individuals, developing their own abilities and careers”.<sup>171</sup>
83. The provisions of Convention No. 140, however, seem to be sufficiently flexible to accommodate these trends, even though they were adopted in a different context. For instance, the Convention does not make a specific assignment of financial responsibility beyond envisaging the creation of a permanent and ongoing financing mechanism in Article 7, while Article 1 of the Convention refers to “adequate financial entitlements”, thereby allowing room for a wide range of arrangements for its implementation.
84. The second major development is that in the past formal education and the world of work were treated as two distinct areas which workers could enter and exit in an alternating and sporadic way. Today, this notion tends to be replaced by strategies to promote learning while working and working while learning. The spheres of education and work are merging through the joint

<sup>168</sup> Conclusions, op. cit., paras. 91 and 148.

<sup>169</sup> Hassan, op. cit., p. 35.

<sup>170</sup> Conclusions, op. cit., paras. 40, 49 and 52; see also *Investing in Education: Analysis of the 1999 World Education Indicators*, UNESCO/OECD World Education Indicators Programme, OECD, Paris, 2000, p. 11.

<sup>171</sup> Conclusions, op. cit., para. 10.

development of learning programmes combining theory and practical training and through the creation of mechanisms for the assessment and certification of skills acquired through work, as well as in formal studies. The consequence is a blurring of distinctions between education and training, which are seen as interdependent and mutually reinforcing.

85. The fact that knowledge and skills can be acquired not only in the process of formal schooling but also in the course of work does not in any way deny, but rather reinforces, the usefulness of periodical training and educational programmes provided through paid educational leave. In its 1991 General Survey, the Committee of Experts emphasized that the educational and training objectives of Convention No. 140 are interrelated: “the qualities needed to perform complex and evolving tasks require not only a knowledge of highly specialised techniques but also the capacity to reason and adapt which lifelong general education seems able to develop”.<sup>172</sup> Moreover, the Convention does not dictate any specific modalities for the provision of educational programmes, which may take place within or outside the workplace.
86. Thus, the framework of lifelong learning does not seem to fundamentally question the provisions and general orientation of Convention No. 140. Rather, it seems that Convention No. 140 could represent one means, among others, through which lifelong learning policies could be promoted.

## Underlying causes to obstacles: A tentative analysis

87. The previous section tends to indicate that the objectives of Convention No. 140 can be integrated within the current policy framework of lifelong learning and the strategic objectives of decent work. It is important, however, to look more closely at how these goals can be effectively promoted by briefly analysing possible obstacles to the implementation of Convention No. 140.
88. The first obstacle which might impede the implementation of a policy on paid educational leave is the need to invest a considerable amount of resources in this policy.<sup>173</sup> This obstacle was raised by several countries during the 1997 consultations. The high cost of setting up a formal system of education at the primary, secondary and, possibly, tertiary level may considerably restrict the resources available for the implementation of continuing education, including a policy of paid educational leave.<sup>174</sup> The report *Decent work* emphasized the need to find ways to raise investment in skills and capabilities especially for low-income countries and unskilled workers, as the inability to invest in knowledge seems to be a major factor in growing global inequality.<sup>175</sup>
89. Investment in this area might be further impeded by asymmetries in the way costs and benefits are distributed among the parties concerned. For instance, participation in funding and learning may be discouraged by uncertainty about the likelihood that better trained workers may be taken on by other employers, or that productivity gains may not be captured in wages.<sup>176</sup> Moreover, difficulties in estimating the costs and benefits of paid educational leave may emerge. Given that a policy on paid educational leave pursues both social and economic objectives, there is a need to take account of

<sup>172</sup> General Survey, op. cit., para. 483.

<sup>173</sup> This section draws some insights from the OECD report on lifelong learning, OECD, op. cit., Chapter 8. It appears in this particular case that it is possible to isolate certain elements in that report which relate to the subject of paid educational leave and can be sufficiently general to correspond to the wider geographical coverage of this short survey and the particular conditions of developing countries.

<sup>174</sup> OECD, op. cit., pp. 233-236.

<sup>175</sup> *Decent work*, op. cit., p. 26.

<sup>176</sup> OECD, op. cit., pp. 239-242; see also General Survey, op. cit., para. 367.

non-pecuniary as well as pecuniary elements in order to comprehensively evaluate the appropriate levels of public and private investment. Finally, there is a lag between when costs are paid and when benefits are realized which tends to favour investment and participation in activities that focus on the short term.<sup>177</sup> Addressing these obstacles may involve setting up appropriate incentives and mutual partnerships among all stakeholders in the field of paid educational leave in order to promote efficient levels of investment and facilitate an equitable share of the relevant costs and benefits. It should be recalled, moreover, that Convention No. 140 is flexible enough to accommodate such developments.<sup>178</sup>

90. More generally, it seems that material obstacles tend to be inherent in policies relative to the dissemination of knowledge and information. Knowledge has the essential characteristics of a “public good”: once it is made public, everybody can use it without being able to preclude or exclude its use by others. This tends to create a disincentive to its private supply. Thus, public action seems to be required either to provide the right incentives for the dissemination of knowledge by the private sector, or to directly disseminate knowledge.<sup>179</sup> Such public action appears even more justified in light of the positive side effects which flow from knowledge and which include better health, improved social cohesion, enhanced technological development, higher economic growth, a more balanced income distribution, enhanced democracy and more active political participation. The most important consideration for government activity in this field, however, is to make sure that knowledge becomes available to all, regardless of social origin, gender and ethnic origin.
91. The Conclusions of the general discussion on human resources training and development take note of the obstacles faced, especially by developing countries, and add that the culture of developing, on a continuous basis, individual and collective skills for enhanced productivity and employability in a rapidly changing environment has to be improved further.<sup>180</sup> In this respect it is relevant to note that a proposal has been made to include an item on the revision of the Human Resources Development Recommendation, 1975 (No. 150), on the agenda of the 91st Session of the International Labour Conference (2003). According to the proposal, the Recommendation would attempt to identify and recognize the various responsibilities for investment and funding of education and training of various stakeholders and partners in human resources development and would examine funding responsibilities regarding, among other things, continuous training and lifelong learning. The Recommendation would also advocate the establishment of partnerships between the stakeholders for investing in training (the State, enterprises, employers’ and workers’ organizations, sectoral and professional organizations, training institutions and individuals) as a means of increasing the resources base of education and training. The opportunities to encourage enterprises, by means of various incentive mechanisms, to upgrade staff skills on a continuous basis, and also for individuals to invest in their own education, training and self-improvement would be explored in particular. The Recommendation would advocate ways and means of raising training capacities by means of technical cooperation, by giving public grants to trade unions and employers’ organizations, and by exchanging experiences and good practices between countries and social partners. The Recommendation would, moreover, be supplemented by a practical guide on examples of good practice to be renewed on a continuous basis as part of the Office’s regular work. In addition, databases on national qualifications frameworks and current expenditures on vocational and continuing training would assist member States and the social partners in implementing the Recommendation.<sup>181</sup>

<sup>177</sup> OECD, *op. cit.*, pp. 236-245.

<sup>178</sup> See paras. 4 and 7 above.

<sup>179</sup> IBRD, *World Development Report: Knowledge for development*, Oxford University Press, New York, 1999, pp. 16-17. See also Conclusions, *op. cit.*, paras. 4 and 12.

<sup>180</sup> Conclusions, *op. cit.*, para. 10.

<sup>181</sup> GB.280/2; and Conclusions, *op. cit.*, paras. 12 and 17.

92. Thus, it appears that the proposed standards-related activities in the field of human resources development could shed light on the material obstacles to the ratification of Convention No. 140 and suggest valuable insights, guidelines and methods of addressing these obstacles and of promoting further policies in this field. The impact that the proposed standards-related activities could have upon Convention No. 140 should also be taken into consideration in accordance with the integrated approach to ILO standards-related activities, which underlines the need to maintain a coordinated and coherent framework of action for families of ILO instruments which are connected by mutual synergies.<sup>182</sup>
93. Finally, as already noted, given the promotional nature and the flexibility of Convention No. 140, it should be further explored whether a certain number of obstacles could be overcome through the dissemination of information on the exact scope and content of its provisions, and especially the possibility of its gradual implementation by methods appropriate to national conditions and by taking into account the stage of development and the particular needs of the country and of the different sectors of activity concerned, as provided in Articles 2 and 4.

## Conclusion

94. This survey tends to confirm the proposal of the Working Party to promote Convention No. 140 by suggesting that the goals of the Convention seem to remain up to date and could make a positive contribution to the implementation of the strategic objectives of the ILO, as restated in the report *Decent work*. Even though Convention No. 140 does not seem to have become, as its drafters would have expected, the main instrument for promoting continuing education, the examination conducted here would tend to suggest that it can still constitute one vehicle, among others, for pursuing lifelong learning policies. The most important quality of the Convention is its flexibility, which seems to allow enough room for its continuing application within the new policy framework of lifelong learning.
95. Some additional concerns contribute to making a case in favour of promoting this Convention. Due consideration might be given to the fact that at the time of its adoption Convention No. 140 launched a novel concept which, since then, has found its way into a wide range of ILO instruments and other international mechanisms. Convention No. 140 therefore represents an essential common point of reference for maintaining coherence and mutual synergies between several international labour standards.
96. The examination of the replies to the Office consultations and of selected national laws on paid educational leave suggests that, among the countries which have not ratified Convention No. 140, some 31 seem to face no or few obstacles to ratification, while another 36 would seem to face obstacles to ratification. Among the 31 member States which have already ratified Convention No. 140, 11 do not face difficulties of implementation or see any need for revision, while one was in favour of revision. Finally, the position of four countries was uncertain. The Office also takes note that legislation in 19 countries would appear to set up basic enabling elements for the adoption of lifelong learning policies and could thus leave room for an eventual adoption of a policy on paid educational leave within this framework.
97. The obstacles to the ratification of Convention No. 140 can be summarized as relating to: the level of priority that should be given to a policy of paid educational leave in relation to objectives such as the creation of a system of primary and secondary education; the difficulties of sharing equitably the costs and benefits of paid educational leave; and considerations that paid educational leave should be left in the hands of the social partners. The analysis conducted in the survey would tend to suggest that the material obstacles to an eventual ratification of the Convention are inherent in policies that pursue complex social and economic objectives and require a considerable investment of resources. It would also tend to suggest that Convention No. 140 does not preclude the adoption of appropriate incentives and partnerships for overcoming these obstacles and attaining more

<sup>182</sup> See paras. 17-18 above.



## **Annex. National legislation on educational leave in 29 member States**

1. The following table summarizes national laws on educational leave which have been adopted or amended within the last ten years by 29 ILO member States which have not ratified Convention No. 140. A complementary table presents laws from 19 States which relate to the subject-matter of human resources development and might be conducive to the adoption of a paid educational leave policy.
2. The tables are based on information available in the legislative database of the ILO, NATLEX. This information is not the result of direct consultations with the member States and the conclusions that can be drawn from the analysis carried out are therefore general trends in legislation as they appear in the principal legislative acts.<sup>1</sup>
3. The indication n.s. is used to denote “not specified” whenever explicit provisions were not found in the particular law examined.
4. A list of the legislation examined is attached.

<sup>1</sup> The NATLEX database is mainly based on laws reviewed and summarized from official journals transmitted to the ILO from its member States. This transmission is occasionally interrupted for different reasons, which may affect a timely introduction of references to new legislation.

## National legislation on educational leave in 29 member States – Comparative table

| Country            | Term or expression used  | Leave available?   | For the purpose of training? | For the purpose of general education? | For the purpose of trade union education? | With financial entitlements?                |
|--------------------|--|--|------------------------------|---------------------------------------|---|---|
| Convention No. 140 | "paid educational leave"   | Article 1: "leave granted ... for a specified period during working hours" | Article 2(a): Yes            | Article 2(b): Yes                     | Article 2(c): Yes                         | Article 7: Adequate and regular entitlement |
| Algeria            | "training and further training actions"<br><i>(actions de formation et de perfectionnement)</i>  | Yes  | Yes                          | Yes                                   | Yes                                       | Yes   |
| Bulgaria           | "paid leave for educational purposes"  | Yes, from 12 working days to 12 months depending on type of studies        | Yes                          | Yes                                   | n.s.                                      | Yes   |
| Burkina Faso       | "authorization of absence without pay"<br><i>(autorisation d'absence sans solde)</i>   | Yes, up to 15 working days per year  | Yes                          | Yes                                   | Yes                                       | No  |
| Burundi            | "leave for workers' education, trade union training, vocational and further training"<br><i>(congés d'éducation ouvrière, de formation syndicale, de formation et perfectionnement professionnels)</i> | Yes, for the duration of the training                                      | Yes                          | No                                    | Yes                                       | Yes   |
| Cameroon           | "unpaid leave"   | Yes, up to 18 working days   | Yes                          | No                                    | Yes                                       | No  |
| Congo              | "paid leave for workers' education"<br><i>(congé payé d'éducation ouvrière)</i>  | Yes, 10 working days   | Yes                          | No                                    | No  | Yes   |
| Croatia            | "paid leave"   | Yes, duration depends on collective agreement                              | Yes                          | Yes                                   | Yes                                       | Yes   |
| Djibouti           | "continuing training"<br><i>(formation continue)</i>   | Yes  | Yes                          | Yes                                   | No  | Yes   |

| Country            | Term or expression used  | Leave available?  | For the purpose of training? | For the purpose of general education? | For the purpose of trade union education? | With financial entitlements?                     |
|--------------------|--|---|------------------------------|---------------------------------------|---|--|
| Convention No. 140 | "paid educational leave"   | Article 1: "leave granted ... for a specified period during working hours"  | Article 2(a): Yes            | Article 2(b): Yes                     | Article 2(c): Yes                         | Article 7: Adequate and regular entitlement      |
| Dominican Republic | "authorization to carry out studies, authorization to follow part-time studies" ( <i>licencias para realizar estudios, permisos para cursar estudios de tiempo parcial</i> ) | Yes, up to two years for full-time study or two hours per day for part-time study   | Yes                          | Yes                                   | No  | Yes  |
| Ecuador            | "grant to study abroad" ( <i>beca para estudios en el extranjero</i> )   | Yes, one year   | Yes                          | Yes                                   | n.s.                                      | Yes, for six months                              |
| Estonia            | "holiday without pay"  | Yes   | Yes                          | Yes                                   | No  | No   |
| Greece             | "professional training leave", "educational leave", "examination leave", "trade union leave"   | Yes, depending on the type of studies and on the type of leave. Up to five years for educational leave for civil servants | Yes                          | Yes                                   | Yes                                       | Yes  |
| Kazakhstan         | "additional leaves"  | Yes   | Yes                          | Yes                                   | Yes                                       | n.s. for study leave. Yes, for trade union leave |
| Republic of Korea  | "train a skilled worker for a long period of time during the course of work"   | Yes   | Yes                          | No                                    | No  | To be determined by Presidential Decree          |
| Latvia             | "privileges of the employees who are combining work and studies"   | Yes (leave of absence up to 20 calendar days and training during hours of work and outside working hours)                 | Yes                          | Yes                                   | n.s.                                      | Yes  |
| Lesotho            | "educational leave"  | Yes, for a "reasonable" period  | Yes                          | Yes                                   | No  | Yes  |

| Country            | Term or expression used   | Leave available?   | For the purpose of training? | For the purpose of general education? | For the purpose of trade union education? | With financial entitlements?   |
|--------------------|---|--|------------------------------|---------------------------------------|---|--|
| Convention No. 140 | "paid educational leave"  | Article 1: "leave granted ... for a specified period during working hours" | Article 2(a): Yes            | Article 2(b): Yes                     | Article 2(c): Yes                         | Article 7: Adequate and regular entitlement  |
| Lithuania          | "holidays granted to studying persons"  | Yes (duration not specified)   | Yes                          | Yes                                   | No  | Yes, if studies undertaken at the initiative of employer (if studies undertaken at the initiative of worker, see collective agreement) |
| Luxembourg         | "continuing vocational training"<br>( <i>formation professionnelle continue</i> )   | Yes (half the duration of training must take place during working hours)   | Yes                          | No                                    | No  | Yes (for 50% of training)  |
| Madagascar         | "educational leave"<br>( <i>congé-éducation</i> )   | Yes, 12 working days   | Yes                          | Yes                                   | Yes                                       | Yes  |
| Mali               | "continuing vocational training"<br>( <i>formation professionnelle continue</i> )   | Yes (duration to be determined in contract or collective agreement)        | Yes                          | No                                    | No  | To be determined in contract or collective agreement   |
| Moldova, Rep. of   | "leave"<br>( <i>congé</i> )   | Yes  | Yes                          | Yes                                   | n.s.                                      | Yes  |
| Namibia            | "special leave"   | Yes  | n.s.                         | n.s.                                  | Yes                                       | At the discretion of the employer  |
| New Zealand        | "employment relations education leave"  | Yes  | No                           | No                                    | Yes                                       | Yes  |
| Portugal           | "training course"<br>( <i>curso de formação</i> )   | Yes  | Yes                          | No                                    | No  | n.s.   |
| Russian Federation | "privileges for workers combining work with study"<br>"guarantees to employees who are members of trade union bodies and are not released from main duties" | Yes  | Yes                          | Yes                                   | Yes                                       | Yes  |

| Country            | Term or expression used  | Leave available?   | For the purpose of training? | For the purpose of general education? | For the purpose of trade union education? | With financial entitlements?   |
|--------------------|--|--|------------------------------|---------------------------------------|---|--|
| Convention No. 140 | "paid educational leave"   | Article 1: "leave granted ... for a specified period during working hours" | Article 2(a): Yes            | Article 2(b): Yes                     | Article 2(c): Yes                         | Article 7: Adequate and regular entitlement                                  |
| Seychelles         | "education leave"  | Yes, for the duration of the training programme                            | Yes                          | No                                    | No  | Yes  |
| Swaziland          | "training"   | Yes  | Yes                          | n.s.                                  | Yes                                       | Yes, for on-the-job training. At employer's discretion for trade union leave |
| Tajikistan         | trade union training   | Yes  | n.s.                         | n.s.                                  | Yes                                       | Yes  |
| Yemen              | "in-service training of workers to update their vocational skills" | Training takes place during working hours                                  | Yes                          | No                                    | No  | Yes  |

## National legislation relevant to the policy background of paid educational leave – Supplementary table

| Country                          | Terminology   | Provisions relevant to paid educational leave  |
|----------------------------------|---|--|
| Benin                            | "vocational training or continuing further training"<br><i>(formation professionnelle ou perfectionnement continue)</i> | Article 126 of the Labour Code provides that provisions on continuous training must be obligatorily included in collective agreements.   |
| Cape Verde                       | "study grants"<br><i>(bolsas de estudo)</i>   | According to Legislative Decree No. 57 of 1993, scholarships for purposes of training and professional development are offered by the State with the voluntary contribution of private enterprises.  |
| Chad                             | "vocational training"<br><i>(formation professionnelle)</i>   | Articles 38 et seq. of the Labour Code provide that continuous vocational training and education will be provided to workers either within the enterprise, or by centres for professional training. Enterprises with at least ten employees must contribute to the development of professional training.   |
| China                            | "vocational training"   | Sections 66 et seq. of the 1994 Labour Act specify that the State will take various measures to expand vocational training undertakings so as to develop the professional skills of workers and raise employment capability and work ability. People's governments at various levels shall incorporate the development of vocational training in the plans of social and economic development and encourage and support enterprises, organizations and individuals to sponsor all kinds of vocational training. The State shall determine the occupational classifications, set up professional skills standards and practise a system of vocational qualification certificates. |
| Ethiopia                         | "educational or training leave"   | The Labour Proclamation (section 83(3)) specifies that the conditions for granting educational or training leave and the form and extent of financial assistance may be determined in collective agreements or work rules.   |
| Gabon                            | "educational leave", "leave for workers' education"<br><i>(congés éducatifs, congés éducation ouvrière)</i>             | Section 127(5) of the Labour Code specifies that collective agreements may contain provisions concerning educational and training leave.   |
| Indonesia                        | "education and training"  | Decision No. KEP-143 A/MEN/1991 of the Minister of Manpower specifies that employers and enterprises employing foreign workers will pay an obligatory contribution of education and training for the implementation of manpower education programmes in order to increase the expertise and skills of Indonesian manpower in the concerned subsector.  |
| Lao People's Democratic Republic | "training"  | Decree No. 24/PR of the President of the Republic, section 8, specifies that employers have an obligation to ensure that workers under their authority are trained and acquire qualifications and expertise to enable them to gradually become skilled and specialized workers.  |
| Mauritania                       | "vocational training"<br><i>(formation professionnelle)</i>   | Decree No. 98-089 of 1998 specifies that the State shall set up vocational training centres in order to set up programmes for the professional development and retraining of qualified workers, help to match labour supply and demand, coordinate vocational training activities of enterprises, etc.   |

| Country               | Terminology   | Provisions relevant to paid educational leave   |
|-----------------------|---|---|
| Mongolia              | "professional training"   | Section 18.1.2 of the Labour Code specifies that professional training and retraining is to be regulated by collective contract.  |
| Mozambique            | "vocational training"<br>( <i>formação profissional</i> )   | Sections 166, 173 and 177 of the Labour Code, specify that the State is under an obligation to promote the professional training and conversion of workers in order to ensure human resource development and facilitate access to the labour market. Such courses can be provided by both public and private entities.  |
| Nepal                 | "training"  | Labour Rules 1993, section 6, specifies that the employers of non-Nepali workers must make arrangements for gradually replacing them by training Nepali workers for these jobs.   |
| Niger                 | "vocational training"<br>( <i>formation professionnelle</i> )   | Section L.432.3 of the Labour Code provides that collective agreements shall obligatorily contain provisions concerning the modalities of organization and implementation of vocational training at the industry or enterprise level.   |
| Paraguay              | "vocational and technical education"<br>( <i>educación profesional y técnica</i> )  | Sections 15, 16 and 67 of the Labour Code specify that workers have the right to obtain professional and technical training and that the State is under the obligation to provide such training in order to assist them in perfecting their skills and increasing production efficiency.  |
| Sao Tome and Principe | "training"<br>( <i>formação</i> )   | Sections 60 and 98 of the Statute of Public Servants (Law No. 5/97) specifies that the State shall set up a policy of human resources development and vocational training and establish a fund for this purpose. Order No. 5179 of the Labour Minister provides that specialized centres shall undertake to provide vocational training to enterprises, workers and vulnerable groups in the formal and informal sectors. |
| Senegal               | "leave for workers' education",<br>"authorization of absence without pay"<br>( <i>congé d'éducation ouvrière, autorisation d'absence sans solde</i> ) | Section L.70 of the Labour Code specifies that vocational training leave shall be granted and be counted as part of service. Section L.149 specifies that unpaid leave shall be granted for general or trade union studies.   |
| South Africa          | "training and education"  | Section 55 of the Basic Conditions of Employment Act, No. 75 of 1997, specifies that the Minister of Labour may make determinations for different sectors regulating, among others, training and education schemes.   |
| Tajikistan            | "vocational training"   | In section 4(1) of the Labour Code, the State guarantees the right of each worker to vocational training, retraining and advanced training.   |
| Viet Nam              | "training"  | Sections 20-25 of the Labour Code regulate the provision of training facilities by enterprises in order to transfer workers to other posts within the enterprise and by private organizations. The law requires a training contract and specifies its content.  |

## Legislative sources

### **Algeria:**

Loi no. 90-11 du 21 avril 1990 relative aux relations de travail, modifiée et complétée au 11 janvier 1997  
(*Journal officiel*, 1990-04-25, no. 17, pp. 488-501. *Recueil de textes législatifs et réglementaires de l'Institut national du travail*, pp. 3-44)

Loi no. 90-14 du 2 juin 1990 relative aux modalités d'exercice du droit syndical, modifiée et complétée au 10 juin 1996  
(*Journal officiel*, 1990-06-06, no. 23. *Recueil de textes législatifs et réglementaires de l'Institut national du travail*, pp. 125-142)

### **Benin:**

Loi no. 98-004 du 27 janvier 1998, portant Code du travail  
(*Printed separately*, 61 pp., available on <http://www.natlex.ilo.org>)

Décret no. 98-151 du 27 avril 1998 accordant des heures de liberté aux représentants syndicaux dans les entreprises privées et para-publiques  
(*Journal officiel*, 1998-04-27, no. 21, p. 2)

### **Bulgaria:**

Law on the Legal Terms of Employment in the Republic of Bulgaria (Labour Code), Acts Nos. 26 and 27 of 1986, as amended to 1993  
(*Sofia Press Info*, Sofia, 1993)

### **Burkina Faso:**

Loi no. 11-92/ADP du 22 décembre 1992, portant Code du Travail  
(*Journal officiel*, 1993-01-07, no. 3, pp. 1-65)

### **Burundi:**

Décret-loi no. 1/037 du 7 juillet 1993 portant révision du Code du travail  
(*Ministère du travail et de la sécurité sociale*, Bujumbura, Burundi, 1993-07-00, 101 pp.)

### **Cameroon:**

Labour Code, Act No. 92/007 of 14 August 1992  
(*Sopecam editions*, Yaoundé, Cameroon, 1992)

### **Cape Verde:**

Decreto ley núm. 57/93 por el que se define las becas de estudio como el conjunto de medios financieros puestos a disposición de los nacionales que desean proseguir sus estudios, especializarse, asistir a cursos de formación y de perfeccionamiento profesional  
(*Boletim Oficial*, 1993-09-13, núm. 34, págs. 409-413)

### **Chad:**

Loi no. 38/PR/96 du 11 décembre 1996, portant Code du travail  
(*Printed separately*, 105 pp., available on <http://www.natlex.ilo.org>)



**China:**

Labour Act of 5 July 1994  
(*China Daily*, 6 July 1994, p. 2)

**Congo:**

Loi no. 6-96 du 6 mars 1996 modifiant et complétant certaines dispositions de la loi no. 45/75 du 15 mars 1975 instituant un Code du travail de la République Populaire du Congo  
(*Printed separately*, 35 pp., available on <http://www.natlex.ilo.org>)

**Croatia:**

Labour Act No. 758/95 of 17 May 1995  
(*Narodne Novine*, 1995-06-08, No. 38, pp. 1176-1210)

**Djibouti:**

Décret no. 95-106/PR/FP du 11 octobre 1995 portant modification du décret no. 88-62/PRE relatif à la création du centre de formation administrative (CFA)  
(*Journal officiel*, 1995-10-15, no. 19, pp. 212-214)

**Dominican Republic:**

Reglamento núm. 81-94 para la aplicación de la Ley que crea el Servicio Civil y la Carrera Administrativa  
(*Gaceta Oficial*, 1994-03-30, vol. CXLIII, núm. 9879, págs. 20-91)

**Ecuador:**

Codificación del Código del Trabajo, 1997  
(*Registro oficial*, 1997-09-29, núm. 64, págs. 1-64)

**Estonia:**

Holidays Act of 7 July 1992, as amended to 27 October 1997  
(*Selection of Estonian Labour and Social Legislation*, Vol. I, Estonian Translation and Legislative Support Centre, Ministry of Social Affairs, EC Phare Consensus Programme, European Commission, 1998, pp. 45-56)

**Ethiopia:**

Labour Proclamation No. 42/1993  
(*Negarit Gazeta*, 20 January 1993, Vol. 52, No. 27, pp. 268-328)

**Gabon:**

Loi no. 3/94 du 21 novembre 1994 portant Code du travail  
(*Journal officiel*, numéro spécial, no. 1, pp. 1-36)

**Greece:**

Loi no. 2683 du 5 février 1999 concernant l'approbation du Code des Fonctionnaires et des Employés des Services Publics et des Personnes Morales de Droit Public  
(*Ephimeris tis Kivernisseos*, Premier Fascicule, 1999-02-09, no. 19, pp. 199-237)

Loi no. 2224 de 1994 portant règlement des questions relatives au travail, aux droits syndicaux, à la sécurité et à l'hygiène des travailleurs, à l'organisation du Ministère du Travail et aux personnes civiles placées sous son contrôle, et autres dispositions  
(Unofficial translation by the Office, 14 pp., available in DOC.NORMES)

**Indonesia:**

Law on Manpower Affairs (No. 25 of 1997)  
(Business News (the Act is published in instalments in 6 issues) 29 October-19 November, pp. 6078-6088)

**Kazakhstan:**

Labour Law of 1999  
(Unofficial translation available on <http://www.tradeport.com>)

**Korea, Republic of:**

Labour Standards Act No. 5309 of 13 March 1997  
(New labour-related laws, Ministry of Labour, Republic of Korea, 1997-03-00, pp. 59-85)

**Lao People's Democratic Republic:**

Decree No. 24/PR of the President of the Republic, dated 21 April 1994 promulgating Act No. 002/NA of 14 March 1994 concerning labour  
(Printed separately, 20 pp., available on <http://www.natlex.ilo.org>)

**Latvia:**

Labour Code (an unofficial translation of the text of the Labour Code of Latvia with amendments and additions made before 25 October 1994)  
(Printed separately, 56 pp., available on <http://www.natlex.org>)

**Lesotho:**

Labour Code, Order No. 24 of 1992  
(Lesotho Government Gazette Extraordinary, 1992-11-12, Vol. XXXVII, No. 118, pp. 1195-1441)

**Lithuania:**

Act No. I-2113 of 17 December 1991 on holidays  
(Parliamentary record of the Supreme Council of the Republic of Lithuania, 1992-12-00, No. 12, pp. 22-28)

**Luxembourg:**

Loi du 22 juin 1999 ayant pour objet le soutien et le développement de la formation professionnelle continue; la modification de la loi modifiée du 28 décembre 1988 réglementant l'accès aux professions d'artisan, de commerçant, d'industriel ainsi qu'à certaines professions libérales  
(Mémorial, Partie A, 1999-07-14, no. 92, pp. 1859-1862)

Loi du 12 février 1999 concernant la mise en oeuvre du plan d'action national en faveur de l'emploi 1998  
(Mémorial, 1999-02-23, no. 13, pp. 190-218)

**Madagascar:**

Loi no. 94-029 du 25 août 1995 portant Code du travail  
(*Journal officiel*, no. 2324, pp. 2564-2577)

**Mali:**

Décret no. 96-178/P-RM du 13 juin 1996 portant application de diverses dispositions de la loi no. 92-20 du 23 Septembre 1992, portant Code du Travail  
(*Journal officiel*, 1992-11-30, Spécial no. 8, pp. 2-32)

**Mauritania:**

Décret no. 98-089 du 12 décembre 1998 portant organisation et fonctionnement des centres de formation professionnelle  
(*Journal officiel*, 1998-12-30, no. 941, pp. 559-561)

Loi no. 98.007 du 20 janvier 1998 relative à la formation technique et professionnelle  
(*Journal officiel*, 1998-02-28, no. 921, pp. 230-234)

**Moldova, Republic of:**

Code du travail, approuvé par la loi du 25.05.73, mis à jour le 23 juillet 1998  
(*Printed separately*, 92 pp.)

**Mongolia:**

Labour Code, 1999  
(*Unofficial translation, printed separately*, 82 pp.)

**Mozambique:**

Ley núm. 8/98, de 20 de julio, Ley del Trabajo  
(*Printed separately, Maputo, 1998, 93 pp.*)

Decreto núm. 37/92 de 27 de octubre, por el que se crea el Instituto Nacional de Empleo y Formación Profesional  
(*Boletim da República, 1992-10-27, núm. 43, págs. 13-15*)

Ley núm. 23/91, por la que se reglamenta el ejercicio de la actividad sindical  
(*Boletim da República, Segundo Suplemento, 1991-12-31, núm. 52, págs. 10-13*)

**Namibia:**

Labour Act of 13 March 1992  
(*Government Gazette of the Republic of Namibia, 8 April 1992, No. 388, pp. 1151*)

**Nepal:**

Labour Rules of 8 November 1993  
(*Nepal Recorder, 25 December 1993, Vol. 17, No. 39, pp. 414-442*)

### **New Zealand:**

Employment Relations Act No. 24 of 2 October 2000  
(Available on <http://rangi.knowledge-basket.co.nz/gpacts/public/text/2000/ti/024.html>)

Industry Training Act 1992 (No. 55 of 1992)  
(Printed separately, 14 pp.)

### **Niger:**

Ordonnance no. 96-039 du 29 juin 1996, portant Code du travail  
(Printed separately, 82 pp., available on <http://www.natlex.ilo.org>)

### **Paraguay:**

Ley núm. 213, que establece el Código del trabajo  
(Gaceta oficial, 29 de octubre de 1993, núm. 105bis, págs. 1-30)

### **Portugal:**

Decreto-ley núm. 397/91, por el que se modifica el régimen jurídico de vacaciones y licencias sin retribución, aprobado por el Decreto-ley núm. 874/76, de 28 de diciembre  
(Diário da República, 1991-10-16, núm. 238, págs. 5370-5373)

Orden núm. 328/99, por la que se reglamenta las ayudas a la formación profesional de los desempleados que sustituyen a los trabajadores de empresa durante su periodo de formación  
(Diário da República, 1999-05-12, núm. 110, págs. 2533-2534)

### **Russian Federation:**

Labour Code, as amended to 1 March 1993  
(Kodeks zakonov o trude Rossijskoj Federacii, Ministerstvo Justicii Rossijskoj Federacii, Moskva, Rossijskaya Federaciya, 1993-00-00, pp. 1-96)

### **Sao Tome and Principe:**

Ley núm. 5/97 por la cual se dicta el Estatuto de la Función Pública  
(Diário da República, 1997-12-01, núm. 14, págs. 1-230)

Orden de 27-5-1997 del Ministerio del Trabajo, formación profesional y seguridad social, por el cual se dictan los estatutos de la célula de reconversión profesional  
(Diário da República, 1995-05-29, núm. 5, págs. 41-44)

Ley núm. 5/92, sobre los sindicatos  
(Diário da República, 1992-05-28, núm. 11, págs. 41-43)

### **Senegal:**

Loi no. 97-17 du 1er décembre 1997, portant Code du travail  
(Journal officiel, 1997-12-13, no. 5776)

### **Seychelles:**

Conditions of Employment Regulations No. S.I.34 of 1991  
(Supplement to the Official Gazette, 1991-04-29, pp. 115-136)

**South Africa:**

Basic Conditions of Employment Act No. 75 of 1997  
(*Government Gazette*, 2000-02-25, Vol. 416, No. 20933, pp. 3-34)

**Swaziland:**

Industrial Relations Act, 1996 (Act No. 1 of 1996)  
(*Government Gazette Extraordinary*, 1996-01-20, Vol. XXXIV. No. 134, pp. S1-S60)

**Tajikistan:**

Labour Code, Act No. 417 of 15 May 1997  
(*Printed separately*, 98 pp., available on <http://www.natlex.ilo.org>)

Act No. 575 of 12 March 1992 on trade unions, their rights and guarantees of their activity  
(*Printed separately*, 9 pp.)

**Viet Nam:**

Labour Code of the Socialist Republic of Viet Nam, 23 June 1994  
(*Printed separately*, 67 pp.)

**Yemen:**

Labour Code, Act No. 5 of 1995  
(*Unofficial translation by the ILO*, available in *DOC.NORMES*, 36 pp.)

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## **Appendix II**

### **Previous examination of the Paid Educational Leave Convention, 1974 (No. 140)**

#### **Excerpts from Governing Body documents**

##### **I. 268th Session (March 1997) of the Governing Body**

*GB.268/LILS/WP/PRS/1, Conventions in need of revision (third stage), pages 31-33:*

##### **VII.8. C.140 C Paid Educational Leave Convention, 1974**

- (1) *Ratifications:*
  - (a) Number of current ratifications: 28.
  - (b) Latest ratifications: Slovakia, Czech Republic, Belgium, Azerbaijan, Bosnia and Herzegovina, 1993.
  - (c) Ratification prospects: since 1987 the Convention has received nine new ratifications of which the five latest were registered in 1993. Its ratification rate remains rather low, and although it is likely to receive further ratifications, its prospects for attracting a significant number of ratifications seem doubtful.
- (2) *Denunciations:* none.
- (3) *Comments by the Committee of Experts:* comments pending for 17 countries including on observations submitted by workers' organizations in Finland and the United Kingdom.
- (4) *Need for revision:* this Convention has not been revised. A General Survey in 1991 noted certain difficulties and obstacles to ratification reported by member States, but according to the Committee of Experts these difficulties could be overcome.
- (5) *Remarks:* Convention No. 140 was adopted in 1974 after considerable discussion.<sup>53</sup> The 1979 and 1987 Ventejol Working Parties both classified this Convention in the category of Conventions to be promoted on a priority basis. In a 1991 General Survey, the Committee of Experts noted the relatively low rate of ratification and stated that economic or financial difficulties were specially important in the application of this Convention, as it contains substantive provisions concerning the financing of the arrangement for the continuing training of workers. In the Survey, the Committee of Experts underscored the promotional, flexible aspects of the Convention. It analysed in detail the reports of different national practices and concluded that this examination should provide member States with useful indications as to the possible forms of a policy designated to promote, as required by the Convention, the granting of paid educational leave for the purposes indicated, by methods appropriate to national conditions and practice and by stages as necessary.<sup>54</sup> In 1995, the Committee of Experts noted a revival of interest in the instruments on paid educational leave manifested, inter alia, by

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<sup>53</sup> The votes cast were 295 votes in favour, 43 against (38 abstentions).

<sup>54</sup> *Human Resources Development*, General Survey of the Reports on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and the Human Resources Development Convention (No. 142), and Recommendation (No. 150), 1975, p. 170.

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recent ratifications, breaking a trend since 1983.<sup>55</sup> At the 82nd Session of the Conference, 1995, in the Committee on the Application of Standards, the Employers' members noted, however, that the global number of ratifications of Convention No. 140 was only 28 and that they considered there were still a considerable number of problems concerning the practical application of this Convention.<sup>56</sup> Based on these considerations, the Working Party may wish to consider recommending to the Governing Body to invite member States to ratify Convention No. 140, and to invite member States to inform the Office of the obstacles and difficulties encountered, if any, that might impede or delay the ratification of Convention No. 140 or that might point to the need for a full or partial revision of this Convention.

*GB.268/8/2, Appendix II, GB.268/LILS/5(Rev.1), Report of the Working Party on Policy regarding the Revision of Standards, paragraphs 77-80:*

### **VII.8. C.140 C Paid Educational Leave Convention, 1974**

77. Given the difficulties noted by the Committee of Experts, the Employer members raised the possibility of the Office carrying out a special study on the status of Convention No. 140 so that the Working Party could take a decision on the existing problems. Without such a study, the Convention would continue to be fairly poorly ratified.

78. The Worker members recalled that a general survey had been carried out in 1991 and that the Working Party could hardly ask for another.

79. The representative of the Director-General said that it would pass on the Employer members' request to the competent technical department.

80. *The Working Party proposes:*

- (a) *to recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 140 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay its ratification or that might point to the need for a full or partial revision of this Convention.*
- (b) *that the Working Party (or the LILS Committee) re-examine the status of Convention No. 140 in due course.*

## **II. 271st Session (March 1998) of the Governing Body**

*GB.271/LILS/WP/PRS/2, Follow-up on consultations concerning the need for revision and obstacles to the ratification of 13 Conventions, paragraphs 101-109:*

### **II.7. C.140 C Paid Educational Leave Convention, 1974**

#### **Background**

101. In the course of the previous examination of this Convention in March 1997,<sup>80</sup> it was noted, inter alia, that the Convention had received a relatively low number of ratifications, that economic or financial difficulties were specially important in the application of this Convention,

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<sup>55</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part 4A), p. 19.

<sup>56</sup> International Labour Conference, 1995, *Record of Proceedings*, Provisional Record No. 24, p. 24/13, para. 33.

<sup>80</sup> GB.268/LILS/WP/PRS/1, section VII.8, and GB.268/8/2, Appendix II, paras. 77-80.

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and that it was a promotional and flexible Convention. Reference was also made to the Committee of Experts, which had addressed a number of problems in the General Survey of 1991 and which noted in 1995 a revival of interest in this Convention manifested, inter alia, by additional ratifications. At the Conference in 1995, the Employer members remarked, however, that the global number of ratifications of Convention No. 140 was only 28 and that there were still a number of problems concerning the practical application of this Convention.

102. In the course of the consultations held during 1997-98, a total of 45 member States<sup>81</sup> responded to the request for information.

### Ratification prospects

103. Of the 14 member States responding on this question, ratification seemed imminent in two member States (*Chile* and *Costa Rica*) where the Convention had been submitted to parliament. In four member States (*Denmark*, *El Salvador*, *Latvia* and *Norway*) the issue of ratification was under consideration. Denmark specified that a recent change in legislation seemed to have made ratification possible and that this issue was due to be examined in its Permanent ILO Committee on a tripartite basis. No specific obstacles were reported from five member States (*Italy*, *Republic of Korea*, *Luxembourg*, *Romania* and *Turkey*). Luxembourg added that current legislation did not adequately cover these issues, but that a bill on vocational training was under preparation. Three member States (*Côte d'Ivoire*, *Dominican Republic* and *Singapore*) declared that they did not contemplate ratifying the Convention.

### Obstacles or difficulties encountered

104. Of the 24 member States reporting obstacles to ratification, 16<sup>82</sup> made either a general reference to differences between national legislation and the Convention which made ratification impossible, or reported a lack of corresponding legislation. The obstacles reported by the other eight member States included: only work council members were entitled to paid educational leave (*Austria*); the application of the Convention to the informal sector was problematic (*Ghana*); trade unions considered that trade union leave was not an independent type of educational leave (*Estonia*); facilities for vocational training and workers' education were limited and did not extend to all workers (*India*);<sup>83</sup> compliance with Article 2 was a problem (*Japan*); and the main obstacle to ratification was the economic situation (*Colombia*, *Comoros* and *Mauritius*).<sup>84</sup>

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<sup>81</sup> *Argentina, Australia, Austria, Canada, Chile, China, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, Ghana, Greece, Hungary, India, Italy, Japan, Jordan, Republic of Korea, Latvia, Lebanon, Luxembourg, Mauritius, Morocco, New Zealand, Norway, Panama, Philippines, Qatar, Romania, Singapore, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic, Turkey, United States, and Uruguay.* In addition comments were received from the social partners in *South Africa*.

<sup>82</sup> *Argentina, Australia, Canada, China, Egypt, Jordan, Lebanon, Morocco, Panama, Qatar, Sri Lanka, Suriname, Switzerland, Syrian Arab Republic and United States.* In addition, a Canadian employers' organization stated its opposition to the ratification of this Convention.

<sup>83</sup> Two workers' organizations in India supported the ratification of this Convention.

<sup>84</sup> The same argument was raised by a South African employers' organization which reported that while training, in general, was needed, the ratification of this Convention could not be supported at the present stage of South Africa's development.



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## Need for revision

(a) **Revision not envisaged**

105. Five member States (*Austria, Czech Republic, Greece, Hungary and Suriname*) did not seek the revision of this Convention.

(b) **Proposals for revision**

106. Two member States proposed revisions: paid educational leave should be awarded according to working conditions (*Egypt*); and account should be taken of new working time arrangements, in particular part-time work (*Belgium*).

*GB.271/11/2, Appendix I, GB.271/LILS/5(Rev.1), Report of the Working Party on Policy regarding the Revision of Standards, paragraphs 77-79:*

### II.7. C.140 C Paid Educational Leave Convention, 1974

77. The Employer members expressed their agreement with the suggestion to undertake a short survey concerning Convention No. 140 and were opposed to promoting its ratification in the immediate future because of the many obstacles encountered. The consultations had shown that only a very few member States were likely to ratify this Convention. Furthermore, the number of replies received had been inadequate to consider that the consultations stage had been completed. They insisted on the request for a special survey.

78. For their part, the Worker members were in favour of promoting the ratification of Convention No. 140. They pointed out that it would not be possible to ask the member States the same questions again.

79. After an exchange of views, *the Working Party proposed to recommend to the Governing Body:*

- (a) *to invite the member States to contemplate ratifying the Paid Educational Leave Convention, 1974 (No. 140), and, in the case of the member States which had not yet provided any input to the present consultations, to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of the Convention or that might point to the need for its full or partial revision;*
- (b) *to request the Office to undertake a short survey concerning Convention No. 140 to be submitted for consideration by the Working Party at its meeting in March 1999.*

## Appendix III - Convention No. 140

## Appendix IV - Recommendation No. 148