

CHAPTER II

MEDIUM OF WAGE PAYMENT

65. Four principal methods of payment are provided for in the Convention – cash, bank cheque, money order and payment in kind. Other non-cash methods, such as Giro credit transfer and bank credit transfer, which today is generally regarded as the most efficient method of payment, are not specifically dealt with in the Convention. The Convention, however, prohibits the payment of wages in currency surrogates alleged to represent legal tender, such as promissory notes, vouchers or coupons. As for payment in kind, it may only be permitted under well-circumscribed conditions, which attest to the potentially problematic nature of such a method of payment. The present chapter takes a close look at the rights and obligations arising out of Articles 3 and 4 of the Convention and analyses the manner in which these provisions are being implemented in practice.

1. Payment of wages in legal tender

1.1. Payment in money

66. Article 3, paragraph 1, of the Convention lays down the principle that wages payable in money must be paid only in legal tender.¹ This provision seeks to ensure that workers are paid in a form that is readily exchangeable into goods of their choice and freely convertible into other currencies.

67. The labour laws in nearly all countries contain provisions relating to the payment of wages in legal tender. In most countries the legal requirement for the payment of wages exclusively in legal tender is expressed in unconditional

¹ As the preparatory work on the Convention reveals, the provision on the medium of payment of cash wages met with general acceptance from the outset. All the replies to the Office questionnaire on this point concurred that the Convention should provide that wages should be paid only in legal tender, while at the Conference discussions there was practically unanimous support for the text proposed by the Office; see ILC, 31st Session, 1948, Report VI(c)(2), p. 72; ILC, 31st Session, 1948, *Record of Proceedings*, p. 460; ILC, 32nd Session, 1949, *Record of Proceedings*, p. 503.

terms. For example, in *Chad*,² *Djibouti*,³ *Senegal*⁴ and *Togo*⁵ wages are payable in legal tender notwithstanding any agreement to the contrary. In *France*,⁶ the law provides that, notwithstanding any stipulation to the contrary, payment of wages must be made, under pain of being declared void, in cash or in banknotes representing legal tender. This is also the case in *Bolivia*,⁷ *Colombia*,⁸ *Mexico*⁹ and *Panama*,¹⁰ where the law requires wages payable in cash to be paid in legal tender. The same holds true for *Uruguay*¹¹ but only in so far as minimum wages are concerned. Also, in *Madagascar*,¹² *Sri Lanka*¹³ and *Yemen*,¹⁴ the law stipulates that all wages must be fully paid in legal tender, while in *Algeria*¹⁵ remuneration is to be expressed in purely monetary terms and paid in purely monetary form. In New Zealand,¹⁶ wages must be paid in money only.

68. In other countries, however, the principle of the payment of wages in legal tender is qualified by reference to the possibility of paying part of labour remuneration in kind. For example, in *Lebanon*,¹⁷ the legislation provides that the remuneration of wage earners, if it is not in kind, shall be made in legal tender. In the same vein, in the *Democratic Republic of the Congo*,¹⁸ labour remuneration must be paid in cash after deduction (where applicable) of the cash

² (1), s. 257. See also *Benin*, (1), s. 220; *Comoros* (1), s. 103; *Congo* (1), s. 87; *Côte d'Ivoire* (1), s. 32.1; *Gabon* (1), s. 151; *Mauritania* (1), s. 89; *Morocco* (1), s. 1; *Niger* (1), s. 158; *Rwanda* (1), s. 90; *Switzerland* (2), s. 323b.

³ (1), s. 99.

⁴ (1), s. L.114.

⁵ (1), s. 95.

⁶ (1), s. L.143-1. See also United Kingdom: *Montserrat* (21), ss. 3, 5.

⁷ (1), s. 53. See also *Ecuador* (2), s. 87; *Honduras* (2), s. 365; *Nicaragua* (1), s. 82(2); (2), s. 86.

⁸ (1), s. 134.

⁹ (1), s. 123A(x); (2), s. 101.

¹⁰ (1), s. 151.

¹¹ (2), s. 2; (3), s. 3.

¹² (1), s. 72.

¹³ (1), s. 19(1)(a); (2), s. 2(a).

¹⁴ (1), s. 61.

¹⁵ (1), s. 85.

¹⁶ (1), s. 7.

¹⁷ (1), s. 47.

¹⁸ (1), s. 79.

value of any benefits provided in kind. Similarly, in *Belarus*,¹⁹ *Mauritius*²⁰ and *Tunisia*,²¹ the law requires the payment of wages in legal tender, unless otherwise provided under any laws or regulations, such as provisions authorizing benefits in kind.

69. In defining legal tender, certain countries refer specifically to the official national currency, while others refer simply to the legal currency in circulation. In *Azerbaijan*,²² *Brazil*,²³ *Hungary*²⁴ and *Russian Federation*,²⁵ for instance, the law stipulates that money wages must be paid in the official currency of the country. In *Bahamas*²⁶ and *Guyana*,²⁷ the term “wages” is construed as a cash amount obtained from the employer, while “cash” is taken to mean the current coins and currency notes of the country. In *Iraq*,²⁸ the law prescribes that wages shall be paid in Iraqi currency and that payment in other currencies shall not release the employer from his obligations, while in the *Libyan Arab Jamahiriya*²⁹ workers’ wages are paid in Libyan currency and it is formally prohibited to enter into an agreement whereby wages are to be paid outside the country.

¹⁹ (1), s. 74. Similarly, in *Ghana* (1), s. 53(1) and *Singapore* (1), ss. 56, 59, the legislation provides that the entire amount of the salary earned by, or payable to, any worker must be paid in legal tender subject to any arrangements for payment in kind in addition to the money salary as may be stipulated in the contract of employment.

²⁰ (1), s. 10(1).

²¹ (1), s. 139.

²² (1), s. 174(4). This is also the case in *Cape Verde* (1), s. 119(1); *Germany* (1), s. 115(1); *Islamic Republic of Iran* (1), s. 37; *Kyrgyzstan* (1), s. 234(1); *Slovenia* (1), s. 29(1); *Suriname* (1), s. 1614H. See also *Kuwait* (1), s. 29; *Oman* (1), s. 54; *Qatar* (1), s. 29(1); *Saudi Arabia* (1), s. 116; *United Arab Emirates* (1), s. 55. The situation is similar in *Indonesia* (2), s. 13(1), where the law requires payment of wages to be made in the legal currency of the Republic, while in *Thailand* (1), s. 54, wages and other pecuniary benefits related to employment must be paid in Thai currency. In *China* (1), s. 5, the law requires payment in the form of statutory currency, while in *Kenya* (1), s. 4(1), the entire amount of the wages earned by or payable to an employee must be paid to him directly in the currency of Kenya.

²³ (2), s. 463.

²⁴ (1), s. 154(1).

²⁵ (1), s. 131.

²⁶ (4), s. 14(2); (1), s. 3. Similarly, in *New Zealand* (1), ss. 2, 7, wages are to be paid in money, which is defined as any New Zealand coin and New Zealand bank notes, or combination of both. In *Dominica* (1), ss. 3, 5, wages are payable in the current coin of the country or in Eastern Caribbean currency notes or other legal currency for the time being in use in the country.

²⁷ (1), ss. 2, 18(1).

²⁸ (1), s. 42(2).

²⁹ (1), s. 32.

70. Also, in *Costa Rica*,³⁰ *Dominican Republic*,³¹ *Egypt*³² and *Ukraine*,³³ wages must be paid in the legal currency that is in circulation, while in *Argentina*,³⁴ *Israel*,³⁵ *Poland*³⁶ and Viet Nam,³⁷ the law merely states that labour remuneration is payable in cash, without specifying the currency or currencies that may be used. In *Guinea*,³⁸ wages must be paid in legal tender, whether coins or paper money. In India,³⁹ all wages must be paid in current coins or currency notes, or both.

71. In Australia, according to the information provided by the Government, there are no legislative or regulatory provisions at the federal level requiring wages to be paid in legal tender. At the state level, however, there is a range of legislation establishing that wages must be paid in cash, unless the employee or the legislation itself authorizes some other form of payment. This is the case in New South Wales,⁴⁰ South Australia⁴¹ and Western Australia.⁴² In Queensland,⁴³ wages are to be paid in Australian currency unless the employee consents in writing to a cashless method of wage payment. In Tasmania,⁴⁴ the Industrial Relations Act states that if an employee is entitled to be paid any sum by his employer, that employer is guilty of an offence if that sum is paid otherwise than in money, while most Tasmanian industrial awards contain

³⁰ (1), s. 165. This is also the case in Chile (1), s. 54; *Cuba* (1), s. 123; El Salvador (1), s. 38(4); (2), s. 120; *Guatemala* (1), s. 102(d); (2), s. 90; *Paraguay* (1), s. 231; *Syrian Arab Republic* (1), s. 45.

³¹ (1), s. 195.

³² (1), s. 33.

³³ (2), s. 23.

³⁴ (1), s. 124. This is also the case in *Bulgaria* (1), s. 269(1); Estonia (2), s. 6(1); Finland (1), Ch. 2, s. 16; Japan (2), s. 24(1); Republic of Korea (1), s. 42(1); *Sudan* (1), s. 35(1); *Venezuela* (1), s. 147. Moreover, the Government of Lithuania has reported that, under section 186(4) of the new Labour Code which was adopted in June 2002 but has not yet entered into force, wages must be paid in cash.

³⁵ (1), s. 2(a).

³⁶ (1), s. 86(2).

³⁷ (1), s. 59(2).

³⁸ (1), s. 213.

³⁹ (1), s. 6; (2), s. 11(1).

⁴⁰ (5), s. 117(2)(a).

⁴¹ (8), s. 68(2)(a).

⁴² (10), s. 17C(1)(a).

⁴³ (7), s. 393(2)(a).

⁴⁴ (9), s. 51(3).

clauses providing for the payment of wages in cash, by cheque, or direct deposit to an employee's bank account.⁴⁵

72. Finally, in a limited number of countries, such as Croatia, *Cyprus*, Jordan and *Tajikistan*, there seem to be no legislative provisions requiring wages to be paid in legal tender, or alternatively, prohibiting the payment of wages in the form of promissory notes, vouchers or coupons. The Governments of Denmark and Sweden have stated that matters such as the form and manner of payment of labour remuneration are exclusively regulated by collective agreements or individual contracts.

73. An interesting question arises as to whether a legal provision authorizing the payment of workers' wages in a foreign currency would be compatible with the letter and the spirit of Article 3, paragraph 1, of the Convention. In the opinion of the Committee, the term "legal tender" in this specific case should not be understood as necessarily limited to the currency that is legal tender within the national definition of each ratifying State. It may be deemed to cover other currencies which are generally accepted as legal tender internationally and which, subject to the exchange control laws in each member State, are immediately and freely convertible into the national currency of the country concerned. Indeed, the Committee considers that there is nothing in the Convention to prevent member States from providing in their legislation that, for the purposes of employment contracts, collective agreements or the payment of wages, convertible currencies shall be considered as legal tender.⁴⁶

74. In practice, several countries make express provision in their legislation for the possibility of paying wages in foreign currencies. In *Belgium*,⁴⁷ for instance, workers employed abroad may, at their request, receive

⁴⁵ For example, Security Industry Award, s. 25(b); Transport Workers General Award, s. 32(c); Metal Engineering Industry Award, s. 10(g); Clothing Industry Award, s. 23(a); Hospitals Award, s. 39(b).

⁴⁶ It may be recalled, in this connection, that an informal opinion along these lines was given by the Office in 1990 at the request of the Government of Czechoslovakia. On this point, reference may also be made to a 1992 decision of the Labour Arbitration Council of *Lebanon* on the question of the legality of a contractual clause providing for the payment of wages in foreign currency in light of the provision of the Labour Code prescribing the payment of wages in the official Lebanese currency. According to the terms of this decision, such a clause aiming at protecting workers' interests against the deterioration of their income on account of the collapse of the national currency would be consistent with the spirit of the Labour Code. The Labour Arbitration Council considered that, although the original intention behind section 47 of the Labour Code prescribing the payment of wages in the official Lebanese currency was to spare the employee the risk of deteriorating rates of exchange of the national currency against foreign currencies, the situation was now different to the extent that the agreement to pay wages in foreign currencies was motivated by the employees' best interests.

⁴⁷ (1), s. 4. Similarly, in the *Czech Republic* (1), s. 120(1); (2), ss. 11(1), 20(1); (4), ss. 17(1), 21; and *Slovakia* (1), s. 128, wages are paid in legal tender, or in Czech and Slovak

their wages, fully or in part, in the currency of the country in which they perform their duties. In *Uganda*,⁴⁸ the law specifically permits expatriate employees to receive part of their wages in foreign currency in accordance with the terms of their contracts. In other countries, however, the possibility of receiving the amount of wages due under the employment contract in a foreign currency is not limited to expatriates. This is the case, for instance, in Thailand,⁴⁹ where wages and other pecuniary benefits related to employment may be paid in a foreign currency with the written consent of the employee, and Qatar,⁵⁰ where wages may be paid in any currency other than the official national currency provided that payment is made in compliance with the Government's financial regulations and that the employer and worker have so agreed in writing. Similarly, in *Colombia*,⁵¹ if the wage is fixed in foreign currency, the employee may demand payment of the same amount in Colombian currency at the official rate of exchange on the date of payment. In *Uruguay*, according to the Government's report, wage payment in a foreign currency is in principle permitted and it is in fact common to pay technical and managerial staff in US dollars.

75. In contrast, in *Suriname*,⁵² money wages fixed in the currency of a foreign country are to be converted at the rate of exchange on the day and at the place of payment or, if there are no exchange facilities at the place in question, at the rate of exchange in the nearest place of business where exchange facilities are available. In almost identical terms, the law in Indonesia⁵³ provides that if a wage is specified in a foreign currency the payment has to be made according to its exchange rate on the day and at the place of payment. The legislation in Seychelles⁵⁴ recognizes implicitly the payment of wages in a foreign currency by providing that labour wages are payable in the currency of the country where payment is made.

1.2. Prohibition of payment in the form of promissory notes, vouchers or coupons

76. As a corollary of the obligation to pay labour wages only in legal tender, Article 3, paragraph 1, of the Convention further provides that the

crowns respectively, and only workers posted abroad may with their consent receive their wages, fully or in part, in foreign currency.

⁴⁸ (1), s. 29(1).

⁴⁹ (1), ss. 54, 77.

⁵⁰ (1), s. 29(1).

⁵¹ (1), s. 135.

⁵² (1), s. 1614H.

⁵³ (2), s. 13(2).

⁵⁴ (1), s. 32(1).

payment of wages in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender must be prohibited. The Committee considers that the implementation of this provision requires the existence of legislation, since practice alone would not be equivalent to a prohibition and would not be sufficient to ensure that payment by means other than legal tender is made only within the limits prescribed by this Article of the Convention.

77. In a certain number of countries, the legislation expressly prohibits the payment of wages in the form of vouchers, coupons or other tokens offered to workers in lieu of money. This is the case, for instance, in *Dominican Republic*,⁵⁵ *Ghana*,⁵⁶ *Hungary*,⁵⁷ *Republic of Moldova*⁵⁸ and *Venezuela*.⁵⁹ In *Kyrgyzstan*⁶⁰ and *Ukraine*,⁶¹ wages in the form of debt obligations, receipts, products or goods cards and other similar money substitutes are also prohibited. In the *Philippines*,⁶² no employer may pay wages by means of promissory notes, vouchers, coupons, tokens, tickets, chits or any object other than legal tender, even when expressly requested by the employee. In *Bolivia*,⁶³ it is prohibited to issue chips (*fichas*), stamps (*señales*) or vouchers (*vales*) for the advance or payment of day wages, but no similar prohibition exists regarding other types of wages. In the United States,⁶⁴ federal and state legislation provide that all scrip, vouchers, tokens, coupons, “dope checks”, store orders, or other acknowledgment of indebtedness payable or redeemable otherwise than in lawful money are not proper mediums of payment.

⁵⁵ (1), s. 196. This is also the case in *Colombia* (1), s. 136; *Ecuador* (2), s. 87; *El Salvador* (2), s. 30(9); *Honduras* (2), s. 365; *Mexico* (1), s. 123A(x); (2), s. 101; *Nicaragua* (2), s. 86; *Panama* (1), s. 151; *Paraguay* (1), s. 231; *United Kingdom: Jersey* (17), s. 3. Similarly, in *China* (1), s. 5, the payment of wages in the form of negotiable securities instead of currency is not permitted.

⁵⁶ (1), s. 53(1).

⁵⁷ (1), s. 154(1).

⁵⁸ (2), s. 18(1).

⁵⁹ (1), s. 147.

⁶⁰ (1), s. 234(2).

⁶¹ (2), s. 23.

⁶² (1), s. 102; (2), Bk. III, Rule VIII, s. 1.

⁶³ (3), s. 1.

⁶⁴ (2), s. 531.34. See also, *Arkansas* (8), s. 11-4-403(a); *California* (9), s. 212(a); *Colorado* (10), s. 8-4-102; *Nevada* (35), s. 608.130; *New Jersey* (37), s. 34:11-17; *Oklahoma* (44), s. 40-165.2; *Oregon* (45), s. 652.110; *Vermont* (53), s. 343. In contrast, under certain state laws it would appear that such devices are acceptable forms of payment, since employers are only prohibited from discounting any coupons, punch outs or other similar instruments issued for the payment of employees; see, for instance, *Mississippi* (31), ss. 71-1-37, 71-1-39, and *Tennessee* (50), s. 50-2-102.

78. The legislation in other countries, such as *Argentina*,⁶⁵ *Brazil*,⁶⁶ *Guinea*,⁶⁷ *Malta*,⁶⁸ *Netherlands*⁶⁹ and the *United Republic of Tanzania*,⁷⁰ makes no specific reference to promissory notes, vouchers or coupons, but stipulates that any contract which provides for the payment of the whole or any part of wages in any manner other than in legal tender is illegal, null and void. Similarly, in *Malaysia*,⁷¹ the entire amount of the wages earned by, or payable to, any employee must be paid in legal tender and every payment of any such wages in any other form is illegal, null and void, while in *Singapore*,⁷² every payment of any salary made in any form other than legal tender – but also any agreement to pay salary otherwise than in legal tender – is illegal, null and void. In *Australia*, under the state legislation of *New South Wales*⁷³ and *Queensland*,⁷⁴ as well as in the Canadian province of *Saskatchewan*,⁷⁵ a contract is void in so far as it provides for the payment of wages in a manner other than that specified in the law.

79. For a number of years the Committee expressed concern at reports that the Governments of *Iraq* and the *Philippines* might agree to a scheme whereby thousands of Filipino workers in *Iraq* would be paid partly in legal tender (40 per cent of their wages in Iraqi dinars) and partly in dollar-denominated promissory notes payable in two years. The Committee repeatedly requested the two governments not to take steps to give effect to such an agreement, since a proposal of this nature, if implemented, would directly contravene Article 3, paragraph 1, of the Convention (ratified by both countries). Even though the Committee received conflicting information for some time on the subject, it finally appeared that the payment of wages partly in cash and partly in promissory notes never took place and that the two governments agreed to

⁶⁵ (1), s. 124. Almost identical provisions are also found in *Barbados* (2), s. 3; *Botswana* (1), s. 83(1); *Burkina Faso* (1), s. 112; *Cameroon* (1), s. 67; *Dominica* (1), s. 3; *Germany* (1), s. 117(1); *Guyana* (1), s. 18(1); *Nigeria* (1), s. 1(1); *Swaziland* (1), s. 46(1); *United Kingdom: Montserrat* (21), s. 3.

⁶⁶ (2), s. 463.

⁶⁷ (1), s. 213.

⁶⁸ (1), s. 19(1).

⁶⁹ (1), s. 1638j(1).

⁷⁰ (1), s. 61(1).

⁷¹ (1), s. 25(1).

⁷² (1), ss. 54, 56.

⁷³ (5), s. 121(2).

⁷⁴ (7), s. 393(8).

⁷⁵ (17), s. 49(1).

develop a new agreement which better reflected the provisions of the Convention.⁷⁶

2.1. Prohibition of payment in the form of promissory notes, vouchers or coupons

A further question raised by the complaint relates to the negotiability of the wage tickets issued to cane-cutters to indicate the amount of cane which they have cut and loaded and the wages to which they are entitled as a result. The facts on this matter are clear. Wages are paid once a fortnight. On the state-owned plantations and on the plantations of the Casa Vicini workers use their tickets to make purchases or to obtain cash from shops on the plantations. The shopkeeper deducts a discount, generally of 10 per cent of the value of the ticket, sometimes more, and obtains payment from the plantation administration on the fortnightly pay days on presentation of the tickets concerned. The Commission was informed that the shops are operated not by the plantations themselves but by independent shopkeepers. The abovementioned practice of treating the wage tickets as negotiable instruments is contrary to Article 3 of the Protection of Wages Convention, according to which the payment of wages in the form of promissory notes, vouchers or coupons shall be prohibited. [...] It was alleged that workers suffered a loss of wages not only through the discount charged by plantation shops when accepting wage tickets in payment but also through the excessive prices charged in these shops. The representatives of the Government of Haiti at the Commission's second session stated that these practices were common and had given rise to many complaints; abuses were due to the isolation of certain of the villages where Haitian cane-cutters lived. [...] The Commission was informed by the Government of the Dominican Republic that on 12 January 1983 an agreement had been concluded between the State Sugar Board and the Price Stabilization Institute for the setting up on the 12 state plantations of shops for the sale of basic foodstuffs at officially controlled prices. [...] The abovementioned measures should improve the workers' position, and correspond to the action called for by Article 7, paragraph 2, of the Protection of Wages Convention.

Source: Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, *Official Bulletin*, Vol. 66, 1983, Special Supplement, paras. 487-492, pp. 144-145.

80. In the case of *Costa Rica*,⁷⁷ the Committee has been drawing attention to the inconsistency between the requirements of this Article of the Convention and section 165(3) of the Labour Code, which provides that coffee plantations may provide workers, in place of cash, with any representative token of the currency, provided that its conversion into cash is verified within a week of it

⁷⁶ See, for instance, RCE 1989, 256 (*Philippines*), and RCE 1990, 233 (*Philippines*). See also the discussions in the Conference Committee on the Application of Conventions and Recommendations in ILC, 76th Session, 1989, *Record of Proceedings*, p. 26/61 and ILC, 77th Session, 1990, *Record of Proceedings*, p. 27/47.

⁷⁷ (1), s. 165(3). See also RCE 2002, 327 (*Costa Rica*).

being issued. This also applies in the case of *Guatemala*,⁷⁸ where promissory notes, vouchers or any other similar means of payment of wages, are allowed provided that at the end of each pay period the employer exchanges the said tokens for the exact equivalent in legal currency.

81. According to the labour laws in force in *Islamic Republic of Iran*,⁷⁹ all workers are entitled to receive vouchers for essential commodities of a value ranging from 10,000 rials a month for married workers to 6,000 rials for single workers which are usable at the workers' cooperative stores. Based on the Government's statement that these vouchers are considered to be part of the worker's remuneration, the Committee has requested additional information on the practical use made of such vouchers, the type of exchangeable commodities and the conditions under which the workers' cooperative stores operate. Such a practice would appear to be contrary not only to Article 3, paragraph 1, of the Convention, but also to be inconsistent with Articles 6 and 7, paragraph 1, which seek to guarantee the freedom of workers to dispose of their wages.

82. Finally, a particularly worrying instance of the payment of workers' wages in forms other than legal tender is the current use in several provinces of *Argentina* of local government bonds, such as those known as *patacones*. In reality, the *patacon*, a one-year security with 7 per cent interest, was introduced in 2001 in the province of Buenos Aires to enable the municipal government to pay the wages of its employees.⁸⁰ Other provinces followed this practice by issuing similar bonds such as *LECOP*, *federales*, *quebrachos*. There are currently more than a dozen such "currencies" in circulation. These bonds, which are used to buy food and basic supplies, and to pay utility bills and taxes, are most often worthless outside of their province of issue. With respect to the local government bonds introduced as from 1995 in the province of Cordoba (*CECOR*), the Committee has taken the view that this measure is in violation of Article 3 of the Convention.⁸¹

⁷⁸ (2), s. 90. The Committee has addressed a direct request on this point to *Guatemala* in 2001. Similarly, in the United Kingdom (1), s. 27(5), the Employment Rights Act authorizes the use of vouchers, stamps or other similar documents provided that these are of a fixed value expressed in monetary terms, and capable of being exchanged (whether on their own or together with other vouchers, stamps, or documents, and whether immediately or only after a time) for money, goods or services. See also United Kingdom: Isle of Man (14), s. 19(4).

⁷⁹ (2), s. 3.

⁸⁰ For more, see www.patacon.com.ar/.

⁸¹ See RCE 1996, 178 (*Argentina*) and RCE 1997, 219 (*Argentina*). On the problem of the payment of wages in local government bonds, see also the discussion at the Conference Committee on the Application of Conventions and Recommendations in ILC, 83rd Session, 1996, *Record of Proceedings*, pp. 14/83-14/87.

1.3. Payment by cheque, money order and other non-cash methods of payment

83. In Article 3, paragraph 2, the Convention provides that the competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned.⁸²

84. This provision, in conjunction with the provision in Article 5, requires clarification in a number of respects. First, it raises the interesting question as to whether payment by electronic bank transfer is permitted under the Convention. Second, if it is permitted, under what conditions may such a form of payment be made. As to the first question, it would appear from the preparatory work preceding the adoption of the Convention that, at the time, the possibility of payment of wages by direct electronic transfer to a bank or postal account was not discussed and that a distinction was merely drawn between payment in cash and payment in the form of a cheque or money order. The effect of an electronic transfer to a bank account in the name of the worker is to place the sum transferred into the possession of the worker's agent, from whom the worker is able to obtain the sum in cash. In this way there is a similarity between the process of presentation of a bank cheque payable to the worker and an electronic transfer made to the worker's account. The Committee takes the view that such a method of payment is not excluded by the Convention and is compatible with its purpose.⁸³ It is payment which constitutes legal tender and is not an excluded payment under Article 3, paragraph 1, such as payment by promissory notes, vouchers or coupons. It is also not a bank cheque, postal cheque or money order, being the specific forms of payment of wages referred to in Article 3, paragraph 2. Therefore, the conditions applicable to payment by bank cheque, being the form of payment which most closely resembles a direct bank transfer,

⁸² The text initially proposed by the Office allowed for "payment, with the written consent of the worker, by cheque drawn on a bank". In the course of the first Conference discussion, this provision was replaced by the following text which was accepted by all the Members concerned: "payment by cheque drawn on a bank to be permitted by the competent authority where it is customary and necessary because of special circumstances, or where awards or collective agreements so provide, or where not provided by these means, with the consent of the worker"; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 460. During the second discussion, the Office text remained practically unchanged except for the insertion of the words "or prescribe" after the word "permit" in order to take account of the situation in some countries where legislation required the payment of wages in excess of a specified amount to be made in the form of a bank or postal cheque; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 503.

⁸³ It may be recalled, in this connection, that a similar view has been expressed by the Office in two informal opinions given in 1974 and 1981 at the request of the Governments of Japan and *Portugal* respectively.

do not apply. It is not therefore necessary for the competent authority to permit or prescribe the form of payment. The second question refers to the conditions under which payment by electronic bank transfer can be made. As indicated above, the conditions set out in Article 3, paragraph 2, do not apply. Article 5 provides that wages must be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary. Whilst payment of wages by means of an electronic bank transfer may be made directly to the worker's bank account (although sometimes the worker may request that it be directed to an account which may be in another name or in a joint account), this is not "paid directly to the worker". It is paid to the bank and is credited to the worker's account and the bank in turn is separately required to honour its payment to the worker. Therefore the provisions of Article 5 apply. The use of electronic bank transfer for payment of wages must be either: (i) provided for by national laws or regulations; or (ii) provided for in a collective agreement or arbitration award; or (iii) the worker may agree to this form of payment. In summary, the payment of wages by electronic bank transfer is compatible with the Convention so long as the provisions of Article 5 are fulfilled, which includes that such payment can be made if the worker expressly consents. This consent may be withdrawn by the worker at any time and should not be imposed on the worker by reason of the employer's preferred method of payment. In addition, the payment must also satisfy Article 10 as to attachment by creditors as discussed in Chapter IV below.

85. As to payment by bank cheque, postal cheque or money order, Article 3, paragraph 2, is expressed in permissive terms and indicates that payment of wages by those methods may be made if the competent authority either prescribes or permits such form of payment. The Article then refers to the circumstances under which such payments may be made and provides specifically for "cases in which payment in this manner is customary". Such wording reinforces that authorization by the competent authority may be either express or implied, such as where such methods of payment are widely used and enjoy the acquiescence of workers.⁸⁴ In addition, such forms of payment are also permitted if there are special circumstances, or where a collective agreement or arbitration award so provides, or, if there is no such provision, with the consent of the worker.

⁸⁴ An informal opinion to this effect was given by the Office in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. XXXVII, 1954, p. 388.

86. A certain number of countries, such as *Azerbaijan*,⁸⁵ *Republic of Moldova*,⁸⁶ *Ukraine*⁸⁷ and *Uruguay*,⁸⁸ authorize the payment of wages by cheque or by money or postal order. In *Panama*,⁸⁹ payment by cheque is allowed in the case of office staff, on condition that the cheque is handed over during the opening hours of the bank which issued the cheque and that the employees have an opportunity of cashing it during working hours. In the *Philippines*,⁹⁰ payment by cheque or money order is allowed when such manner of payment is customary or is necessary because of special circumstances, or as stipulated in a collective agreement. In other cases, this form of payment is used for sums exceeding a prescribed amount; for instance, in *France*⁹¹ wages not exceeding 10,000 francs may be paid in cash if the workers so request, whereas wages above this amount are to be paid by bank cheque or transfer to a bank or postal account. In contrast, in *Seychelles*,⁹² wages are payable by cheque or bank transfer, although the worker's consent has to be obtained where the wages are less than 2,000 rupees a month. In yet other cases, the payment of wages by cheque or money or postal order is only permitted where the worker's prior consent is obtained in writing. This is the case in *Barbados*,⁹³ *Mauritius*,⁹⁴ *Swaziland*⁹⁵ and *Uganda*.⁹⁶ Similarly, in *Thailand*,⁹⁷ remuneration may, subject to the employee's written consent, be paid by bill, whereas in *Viet Nam*,⁹⁸ the parties to an employment relationship may agree on the partial payment of wages by cheque or draft issued by the State, provided that the employee does not suffer any loss or inconvenience.

⁸⁵ (1), s. 154(1).

⁸⁶ (2), s. 18(2).

⁸⁷ (2), s. 23.

⁸⁸ (4), s. 1.

⁸⁹ (1), s. 151.

⁹⁰ (1), s. 102; (2), Bk. III, Rule VIII, s. 2.

⁹¹ (1), s. L.143-1.

⁹² (1), s. 32(1)(b).

⁹³ (2), s. 3. See also *Bahamas* (1), s. 3; (4), s. 14(2); *Dominica* (1), s. 5; *Islamic Republic of Iran* (1), s. 37; *Nigeria* (1), s. 1(3). In *Chile* (1), s. 54, upon the worker's request, wages may be paid by cheque or money order. In *Malta* (1), s. 19(1), and the United Kingdom: *Montserrat* (21), s. 5; *Virgin Islands* (22), s. C31(1), payment by cheque or by postal order is deemed to be payment in legal tender in cases in which payment in this manner is customary or necessary or is consented to by the employee concerned.

⁹⁴ (1), s. 10(2)(b).

⁹⁵ (1), s. 46(2).

⁹⁶ (1), s. 29(2).

⁹⁷ (1), ss. 54, 77.

⁹⁸ (1), s. 59(2). See also *Venezuela* (1), s. 145.

87. In contrast, in a number of countries, such as *Algeria, Benin, Burkina Faso, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Gabon, Ghana, Guyana, Indonesia, Jordan, Kuwait, Lebanon, Madagascar, Mali, Niger, Senegal, Syrian Arab Republic, Tajikistan, Togo, Tunisia* and the United Arab Emirates, the possibility of the payment of wages by cheque or money order is not regulated in labour legislation. The Government of the *Central African Republic* has reported that the payment of wages by bank cheque or postal order is very common in practice, even though there is no legislative or regulatory provision setting out the modalities for such payment. The Government of *Sri Lanka* has indicated that payment by cheque is adopted in recognized mercantile firms, even though there is no legal provision allowing such payment, while payment by postal order or money order is permitted in exceptional cases at the request of an employee who is proved to be suffering from disabilities, or prevented by sickness or lack of travel facilities from reaching the place of employment.

88. Among the methods of “cashless pay” not expressly provided for in the Convention, in many countries the payment of wages by direct transfer to a bank or postal account is tending to replace all other forms of payment, at least for certain categories of workers and in certain branches of activity. For instance, in *Argentina*,⁹⁹ *Botswana*,¹⁰⁰ *Malaysia*,¹⁰¹ and *Zambia*,¹⁰² in addition to the possibility of payment by cheque and postal or money order, the law authorizes payment into a personal or joint bank account of the person to whom the payment is due, provided that the employee so requests in writing or that a collective agreement applicable to the employee so

⁹⁹ (1), s. 124. In *Israel* (1), s. 6(a), wages may be paid through a banking institution only upon the worker's written instruction. Similarly, in *Belgium* (1), s. 5(2), (3); (3), ss. 1, 2, wages may be paid through the banks with the worker's written consent, in which case no bank charges may be deducted from the remuneration. The payment of wages by direct transfer into the employee's bank account or by cheque is also authorized in *Guinea-Bissau* (1), s. 102(5), *India* (1), s. 6, *Japan* (3), s. 7-2(1), *Kenya* (1), s. 4(1)(a), (b), *Mozambique* (1), s. 53(3), *Namibia* (1), s. 36(3)(b), *Qatar* (1), s. 29(3), *Singapore* (1), ss. 25(2), 63(1), *Slovenia* (1), s. 135(2), *Thailand* (1), s. 114 and *United Kingdom: Jersey* (18), s. 1(1). According to the information provided by the Government of *Bahrain*, the payment of workers' wages is effected in practice through the worker's regular bank, without, however, any express provision being made for such form of payment in the Labour Code. Similarly, the Government of *Saudi Arabia* has reported that there is nothing to prevent wages from being paid by direct bank transfer, although there are no specific legislative provisions in this regard.

¹⁰⁰ (1), s. 83(1)(b).

¹⁰¹ (1), s. 25A(1), (2). The consent may be withdrawn at any time by notice in writing, but does not take effect for four weeks.

¹⁰² (1), s. 44(1). In addition, the Government of *Romania* has reported that the new draft Labour Code currently under discussion provides that wages must be paid in cash, by cheque or by bank transfer, and that any other clause to the contrary is null and void.

provides. In *Spain*,¹⁰³ an employer may pay wages by cheque or through a credit institution subject to consultation with the works committee or the staff representatives. The Government of the *Philippines*¹⁰⁴ has authorized employers to adopt a system of payment through automated teller machines (ATMs) of banks, provided that certain conditions are met, for instance, that the employees concerned have given their written consent, that there is an ATM facility within a radius of 1 kilometre from the place of work or that the employees are given reasonable time to withdraw their wages from the bank facility.

89. Also, in *Brazil*,¹⁰⁵ *Bulgaria*,¹⁰⁶ *Hungary*,¹⁰⁷ *Russian Federation*¹⁰⁸ and *Slovakia*,¹⁰⁹ at the worker's request, labour wages may be fully or partially transferred to a bank account, whereas payment by cheque or money order is not provided for in the labour legislation. In *Azerbaijan*,¹¹⁰ wages may be deposited in the employee's bank account or sent to a specified address at his request. In the *Republic of Moldova*¹¹¹ and *Ukraine*¹¹² the payment may be effected with the worker's consent through banking institutions to an account indicated by him, the charges being obligatorily at the expense of the employer.

90. In some countries, payment by cheque, bank transfer or money order appears to be generalized in practice. For example, in *Norway*¹¹³ the law provides that salaries are paid in cash in the absence of any agreement concerning payment to a salary account, by cheque or by giro. In the United States,¹¹⁴ federal and state legislation permit the payment of wages by cheque

¹⁰³ (1), s. 29(4).

¹⁰⁴ See Labor Advisory of 25 November 1996 on the payment of salaries through automated teller machines (ATMs).

¹⁰⁵ (2), ss. 464, 465. This is also the case in *Belarus* (1), s. 75; *Czech Republic* (2), s. 11(5); (4), s. 17(6); *Estonia* (2), s. 31(3); *Kyrgyzstan* (1), s. 235(3).

¹⁰⁶ (1), s. 270(3).

¹⁰⁷ (1), s. 154(1).

¹⁰⁸ (1), s. 136.

¹⁰⁹ (1), s. 130(8).

¹¹⁰ (1), s. 174(2).

¹¹¹ (1), s. 102; (2), s. 19(4).

¹¹² (2), s. 24.

¹¹³ (1), s. 55(1). The situation is similar in *Finland* (1), Ch. 2, s. 16, where, as indicated by the Government, customarily the wages are paid into the employee's bank account. The Government of the *Netherlands* has reported that, as a matter of a long-standing tradition, wages are paid by money order, postal cheques or bank cheques, provided that the worker gives his consent. Similarly, the Government of *Switzerland* has stated that the payment of wages by means of bank or postal transfer is common practice today, unless the worker requests cash payment.

¹¹⁴ See *Arizona* (7), s. 23-351(C); *Delaware* (13), s. 1102(a); *Idaho* (17), s. 45-608; *Illinois* (18), s. 115/4; *Kansas* (21), s. 44-314; *Maryland* (26), s. 3-502(c); *Michigan* (28), s. 408.476; *Montana* (33), s. 39-3-204(1), (4); *New Hampshire* (36), s. 275:43(I); *New Jersey* (37), ss. 34:11-4.2 and 34:11-4.2a; *New York* (39), s. 192; *North Carolina* (41), s. 13-12.0309; *North Dakota* (42),

payable at face value in lawful money of the United States or, with the written consent of the employee, by electronic deposit into an account in the name of the employee at a financial institution designated by the employee. Similarly, in Canada,¹¹⁵ the legislation requires wages to be paid only in Canadian currency or by cheque drawn upon a chartered bank or deposited to the employee's account in a chartered bank. The Government has reported that, although the specific proportion is unknown, it is considered that a large number of Canadian workers take advantage of direct payment of wages into their own bank account and that this form of payment is acceptable in all Canadian jurisdictions.

91. In Australian states, wages may, with the employee's written consent or with authority conferred by an industrial instrument, be paid by cheque, by postal order or money order payable to the employee, or by electronic transfer of funds into an account in the name of the employee (whether or not held jointly with another person) in a financial institution. Regulations to this effect are found in New South Wales,¹¹⁶ South Australia¹¹⁷ and Western Australia.¹¹⁸ In Queensland,¹¹⁹ the legislation further provides that if wages are to be paid other than in cash, they must be paid without deduction of any charge made because of the form of payment; if an employee accepts payment of wages by cheque, draft or money order that is dishonoured, the employee may recover from the employer by action in a competent court as a debt payable to the employee not only the wages due, but also a reasonable amount for the damages suffered because of the dishonour. In Tasmania¹²⁰ many industrial awards stipulate that when an employer decides to pay employees by direct bank transfer, the employer must cover the cost of one deposit and one withdrawal per payment. In addition, at least three months' advance notice must be given of the introduction of pay by direct transfer. Similarly, in New Zealand,¹²¹ the law stipulates that an employer may, with the written consent of a worker or upon the written request

s. 34-14-02; Oregon (45), s. 652.110; South Carolina (48), s. 41-10-40(A), (B); South Dakota (49), s. 60-11-9; Texas (51), s. 61.016(a); Utah (52), s. 34-28-3(1)(e); Virginia (54), s. 40.1-29(B).

¹¹⁵ See, for instance, Alberta (4), s. 11(2); British Columbia (6), s. 20; Manitoba (7), s. 88; New Brunswick (8), s. 36(2); Newfoundland and Labrador (9), s. 34(2), (3); Nova Scotia (12), s. 80; Ontario (14), s. 11(2), (4); Quebec (16), s. 42. In Saskatchewan (17), s. 49(1), the law stipulates that where a contract between an employee and an employer contains a provision for payment in any other manner that provision is illegal and void.

¹¹⁶ (5), s. 117(2)(b), (c).

¹¹⁷ (8), s. 68(2)(b).

¹¹⁸ (10), s. 17C(1)(b), (c).

¹¹⁹ (7), s. 393(2)(b), (4), (7).

¹²⁰ See, for instance, Wholesale Trades Award, Part III, s. 4(d), (e); Insurance Award, s. 24(b); Medical Practitioners (Private Sector) Award, s. 24(a).

¹²¹ (1), ss. 8, 9(1), 10. A worker may withdraw his consent by giving the employer written notice to that effect and in that case the employer shall, within two weeks of receiving the notice, commence paying the worker in money or in some other manner as may be agreed upon.

of a worker, pay any wages that have become payable to a worker by postal order, money order, cheque or by direct credit to a bank account standing in the name of the worker, or which is held in the name of the worker and some other person or persons jointly. In *Mexico*, according to information supplied by the Government, the national laws and regulations have been interpreted by courts as not excluding payment by cheque, which is a generalized practice in the country, on condition that the worker gives his consent and suffers no loss.

2. Wage payment in kind

92. Article 4 of the Convention recognizes that various allowances in kind may be customary or desirable in particular industries and occupations and provides that such method of payment of wages is permissible where so authorized under national laws or regulations, collective agreements or arbitration awards, and subject to specific conditions seeking to guarantee that the worker is not totally deprived of cash remuneration, and that the allowances offered in lieu of money are fairly valued and meet the personal and family needs of the worker. The Convention lays down an absolute prohibition against the payment of wages in the form of liquor or drugs and therefore ratifying States have to take concrete measures for the implementation of this prohibition. The Committee will refer to each of these points in the following paragraphs, after providing a concise overview of past practices and present trends with respect to the payment of wages in kind.

93. The term “wages” is not confined to monetary payments, as workers frequently receive part of their remuneration “in kind” in the form of goods or services. In some cases, these payments in kind are provided in fixed quantities or in quantities corresponding to fixed exchange values (for instance, food and housing), in others they are limited in quantity or value but are not supplied unless the worker so requests (for example, free transport), while in yet other cases they are neither fixed nor limited in amount, but the worker may obtain them at reduced prices (for example, farm produce supplied to agricultural workers). Wages do not therefore only include the actual sums of money handed over to workers, but also the money-value of any other benefits they receive as the result of their employment. This economic and social reality is reflected in Article 1 of the Convention, which defines “wages” in sufficiently broad terms to ensure that all wage components, including benefits in kind, enjoy the protection afforded by the substantive provisions of the Convention.

2.1. Evolution of forms of payment in kind

2.1.1. The truck system and the origins of international regulation

94. In the earlier stages of industrial development, wages were paid in other media, such as food, clothing and shelter, or goods and merchandise, or

partly in money and partly in commodities. Historically, the payment of wages in kind has led to abuses. This method of wage payment, known as the “*truck system*”, or barter, as practised by employers who exploited the wretchedness and ignorance of their workers, kept those workers in a state of dependency bordering on slavery. The truck system mainly took two forms; first, workers could be given a portion of what they actually produced, whether those products were suitable to their needs or not, leaving them to exchange such products for whatever they might really need or desire, such as food, drink, clothing, fuel or shelter. Secondly, under the truck system, labourers might receive not what they produced, but what they were to consume, being paid in commodities supposed to be more or less suited to their needs, with the charges for those commodities being set against the wages due.¹²²

95. The usual method of applying the truck system was through the “*Tommy shop*”. This was a shop owned by the employer, where goods including foodstuffs, clothing and household articles, generally of inferior quality, were sold, often at prices well above market level. Wages were paid wholly or in part by means of tickets entitling the workman to goods of a certain value. The workman’s economic dependence upon the master’s “*Tommy shop*” was ensured by paying wages at long intervals, so that the only mode of procuring subsistence was through advances from the employer. These advances were made in the form of tickets bearing the name of the article required. An account was kept of what had been issued to each worker, who on payday received the balance due, which was soon dissipated; the same lack of means, the same necessity for advances, the same issue of tickets occurred once again so that, for all practical purposes, workers found that they could not get out of debt.¹²³

96. Recognizing the abusive practices associated with this method of truck payment, national legislatures sought to redress the situation by protecting the weakest party in the employment relationship. The English Truck Acts, the earliest of which bears the date of the year 1464, prohibited the truck system and established the obligation to pay the whole wage of labourers in the current coin of the realm. Contracts providing for payment of wages otherwise than in coin were void, and the employer could not impose conditions on the manner in

¹²² One of the most current forms of agricultural truck in England were the beer or cider allowances; in some places, it was estimated that agricultural labourers received from 20 to 50 per cent of their wages in cider; see, for instance, Francis A. Walker, *The wages question*, London, 1891, pp. 324-344.

¹²³ See F.E. Mostyn, *The Truck Acts and Industry*, London, 1950, pp. 1-7. The employers, having absolute control of the workers’ wages, ran no risk of unpaid debts, feared no loss of custom, due to the compulsion exercised on workers, even if prices were 15 per cent higher than at the ordinary retail stores, and made it practically impossible for their workers to migrate in search of better employment conditions. As has been noted, “if the simple truth respecting truck in England in the early days of this century could be written out, it would form one of the most painful chapters in the long and dreary story of man’s inhumanity to man”; see Walker, *op. cit.*, p. 332.

which the wages were spent. The Truck Acts were consolidated into one Act in 1831, which was subsequently amended in 1887 and 1896. Similar regulations were introduced in the labour laws of most European countries, for instance, in Switzerland in 1877, *Belgium* in 1887, Germany in 1891, *Austria* in 1897 and in *France* in 1909.

97. In the United States, in contrast, early enactments prohibiting the truck system, especially in manufacturing and mining, were declared unconstitutional by the courts. Instead of legitimate regulations aimed at protecting the income of wage earners, these enactments were often seen as an unjustified interference with the right of contract and they were long denounced by most state courts as discriminatory class legislation seeking to put labourers under legislative tutelage. However, the attitude of the courts towards regulating of the mode of wage payment evolved over time and statutes making it unlawful for any person to keep a truck store for profit or to pay employees other than in legal currency came to be recognized as constitutional in a number of landmark decisions delivered at the beginning of the twentieth century.¹²⁴

98. As regards international regulation, mention should be made of the resolution adopted at the 19th Session of the International Labour Conference in 1935 requesting the Governing Body to invite the Office to undertake an inquiry into the “various forms and manifestations of the truck system, into related practices involving deductions from the nominal amount of wages or salaries, and into the legislation concerning these matters in operation in the various countries”.¹²⁵ A similar resolution requesting the Governing Body to instruct the Office to prepare a draft text for a draft Convention or Recommendation on the truck system was adopted at the Labour Conference of the American States which are Members of the Organization at Santiago in 1936.¹²⁶ The inquiry undertaken by the Office in pursuance of these resolutions was suspended because of the outbreak of the Second World War, at a time when a number of the replies from governments had not yet been received.

99. At its 25th Session, in 1939, the Conference adopted the Contracts of Employment (Indigenous Workers) Convention (No. 64), which deals with the question of wage payment in kind only indirectly, by requiring in Article 5(2) that “the particulars to be contained in the contract shall in all cases include –

¹²⁴ It was acknowledged that such laws were passed with a view to eliminating opportunities for fraud and coercion and that the freedom of individual contract had to yield to due legislative restraint whenever necessary to conserve the public health, safety and morals, so that “statutes aimed at what is deemed an evil, and hitting it presumably, where experience shows it to be most felt”, may not be deemed discriminatory. The evolution of United States legislation and jurisprudence with regard to the truck system is reviewed in Robert Gildersleeve Paterson, “Wage-Payment Legislation in the United States”, United States Department of Labor, *Bulletin of the Bureau of Labor Statistics*, No. 229, 1918, pp. 96-117.

¹²⁵ See *Official Bulletin*, Vol. XX, 1935, pp. 101-102.

¹²⁶ See *Official Bulletin*, Vol. XXI, 1936, pp. 67-68.

[...] (e) the rate of wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances”. Finally, the Social Policy (Non-Metropolitan Territories) Convention (No. 82), adopted at the 30th Session of the Conference in 1947, contains certain provisions specifically addressing the question of payment of wages in kind. For instance, Article 15(4) of Convention No. 82 provides that “the substitution of alcohol or other spirituous beverages for all or any part of wages for services performed by the worker shall be prohibited”, while under Article 15(7) “where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed”.

2.1.2. Fringe benefits, advantages and incentives

100. In modern societies, payments in kind are part of so-called “fringe benefits”, that is additional forms of remuneration accrued to the employee over and above the basic pay levels, essentially to keep up with the cost of living, but also to provide rewards and incentives. Fringe benefits may take the form of monetary benefits, such as commissions, bonuses, tips, travel or relocation expenses, family, education or training allowances and profit-sharing, or non-monetary advantages, such as meals, housing, work clothing, holiday and convalescent homes, sports and recreation facilities, discount purchases, day-care centres and nursery schools. However, the distinction between payments in cash and payments in kind is not always obvious, since specific items such as work clothing, meals and housing may be provided in kind, but may also be expressed in the form of monetary allowances.¹²⁷

101. It is generally recognized that in most industrialized countries employee benefits tend to form an increasingly large part of employees’ total earnings and that the non-cash element has been growing over the past two decades.¹²⁸ Non-cash benefits vary enormously from firm to firm, in much the same way that laws and regulations respecting fringe benefits vary from one country to another. Even though free accommodation is normally provided to employees who are required to live on the premises (e.g. porters, school caretakers, hospital workers, hotel staff), businesses often offer company housing rent-free or at reduced rentals to certain employees. In many businesses, canteens provide meals at reduced (subsidized) prices, while in others employees are given meal vouchers or meal allowances. Many enterprises own holiday and

¹²⁷ For more on fringe benefits, see Michael Cunningham, *Non-wage benefits, fringe benefits: What they are and how to win them*, London, 1981, pp. 157-260; Richard Greenhill, *Employee remuneration and profit sharing*, Cambridge, 1980, pp. 75-154.

¹²⁸ According to some estimates, indirect remuneration may account for one-third or more of total labour costs; see ILO Meeting of Experts on Pay Systems (Geneva, 21-25 November 1983), RESR/1983/D.1, paras. 119-142.

convalescent homes, which are often available to their employees free of charge or for a small fee. Many businesses also own and operate large sports and leisure facilities, which may be used at a low cost. Membership of sports and social clubs is often open to spouses and children, as well as retired employees. Other non-monetary fringe benefits include training schools and seminars, the provision of a company car, financial assistance for the business use of a private car (e.g. insurance, maintenance, parking), the granting of free services (e.g. telephone, electricity, gas), free transport to work (e.g. company bus or public transport), summer camps for employees' children, discounts on company products (or discount arrangements made with other firms) and welfare initiatives (free tickets, company dinners, personal gifts). It should be noted, however, that many of the above benefits, such as cars or company mortgages, are exclusively available to senior employees, whereas the vast majority of manual workers are only entitled to low-cost benefits, such as subsidized meals or transport arrangements. By way of example, the Government of Australia has reported that there has recently been an increasing trend for the use of "salary sacrificing" or "salary packaging" schemes which involve converting an amount of an employee's wages into non-cash benefits, such as leasing a car, payment of children's school fees, private health insurance coverage or additional superannuation contributions, in the interest of reducing the taxes of high-income managers and professionals.

2.1.3. Profit-sharing and stock options

102. Profit-sharing is a method of industrial remuneration under which an employer, as an incentive or for any other reason, pays an employee a share in the net profits of the enterprise, in addition to regular wages. Profit-sharing usually takes one or more of the following forms: (1) cash payments are made to eligible workers at the end of specific periods; (2) participation is deferred by placing the profits which are to be divided in a savings account, provident fund or annuity fund for the benefit of the eligible workers; or (3) payment is made by the allotment of shares to eligible workers (labour co-partnership). The third type provides for the issue of shares to employees, in some instances without any payment by the employee, as a bonus, and sometimes at a price below the market rate. Profit-sharing and share option plans have developed rapidly in recent years. Although most schemes follow a similar pattern, significant differences exist particularly with regard to the eligibility criteria and the way in which payments are calculated. The major disadvantage of such pay schemes is that rewards are neither consistent from year to year nor guaranteed because they are tied to company profitability. Moreover, under certain plans, employees must wait a number of years, depending on the contract, before they can cash in their shares and receive tax exemption. The legal nature of stock options is a matter of

some controversy, and in many countries there is still need for detailed legal regulation.¹²⁹

103. With regard to the present survey, the question arises as to whether stock options may be deemed to amount to payment in kind within the meaning of Article 4 of the Convention, and consequently whether any of the specific requirements of this Article are applicable to such wage supplements. In view of the risk factor inherent in share ownership and the grave consequences that volatile stock market conditions may therefore have on employees' income, there are grounds for doubting whether stock option plans reflect the rationale of Article 4 of the Convention, which aims primarily at income security. Yet, on the other hand, stock option plans are often a selective form of remuneration limited to senior managers who, by definition, are less in need of wage protection and therefore not directly concerned by the requirements of the Convention regarding allowances in kind.

2.2. Conditions of application and safeguards respecting payment in kind

104. Paying remuneration in the form of allowances in kind, that is to say providing goods and services instead of freely exchangeable legal tender, tends to limit the financial income of workers and is therefore an objectionable practice. Even in those industries or occupations in which such a method of payment is long-established and well-received by the workers concerned, there is still a need for safeguards and legislative protection against the risk of abuse. Giving expression to this double consideration, the provisions of Article 4 of the Convention prevent payment in kind from fully replacing cash remuneration, and only tolerate it by way of exception in accordance with well-circumscribed and strictly enforced conditions. The Committee wishes to emphasize from the outset that the conditions set out in Article 4, paragraphs 1 and 2, of the Convention are cumulative in character and therefore imply on the part of ratifying States laws and regulations reflecting exhaustively, and not selectively, the provisions examined below.

¹²⁹ See, for instance, Gilles Béliet; Aurélie Cormier: "Stock options et droit du travail", in *Droit social*, Sep.-Oct. 2000, pp. 838-844, and Salvador del Rey Guanter; Juan Bonilla Blasco: "La naturaleza jurídica de las *stock options*: a propósito de la Sentencia del Tribunal Superior de Justicia de Madrid de 22 de febrero de 2001", in *Actualidad Laboral*, No. 31 (27 Aug.-2 Sep. 2001), pp. 637-658.

2.2.1. Authorization under national laws, collective agreements or arbitration awards

105. According to the text originally proposed by the Office, the partial payment of wages in the form of allowances in kind could, with the consent of the worker, be authorized by the competent authority. At the first Conference discussion, the text was amended, on the proposal of the Employer and Worker members, by deleting the words “with the consent of the worker” and adding the words “by awards or collective agreements or” after the word “authorised”.¹³⁰

106. In its final wording, the Convention therefore permits the authorization by national laws or regulations, collective agreements or arbitration awards of the partial payment of wages in the form of allowances in kind in certain circumstances. If recourse is had to this possibility, various methods of regulation may be adopted. The legislation itself may determine the types of allowances and/or the circumstances in which such payments in kind may be made. It may also, in addition or as an alternative to this, permit provision for payments in kind to be made in collective agreements or arbitration awards. What the Convention does not permit, however, is that the parties be left free, by individual agreement, to provide for any form whatsoever of payment in kind. Provisions in national legislation under which an employer may agree with a worker to grant the latter benefits in kind or privileges in addition to money wages, do not therefore meet the requirements of the Convention.¹³¹

107. It should also be made clear that allowances in kind should not be governed by the internal regulations of an enterprise, as these regulations may theoretically be changed at the will of the owner of the establishment, and they are not therefore sufficient to ensure the application of this Article of the Convention.¹³² The Convention therefore presupposes the existence of a general provision prohibiting any payments in kind not authorized by one of the means enumerated in Article 4, paragraph 1, and penalties or other remedies, in accordance with Article 15(c), also have to be prescribed in respect of any violation of that provision. Furthermore, it should be pointed out that the requirement to pay wages in legal tender, reflected in the legislation of practically all States, applies only to money wages and thus cannot be regarded in itself as either prohibiting or otherwise regulating the payment of wages in kind. In such cases, appropriate provisions are necessary either to regulate wage

¹³⁰ A further amendment proposed that the competent authority should be enabled to authorize the partial payment of wages in kind in emergency situations involving shortages of essential goods. A number of Worker members opposed this amendment as, in their view the Office text already provided the necessary latitude, and the amendment was rejected; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 460.

¹³¹ For instance, the Committee has addressed a direct request in this sense to *Tajikistan* in 2001.

¹³² On this point, see RCE 1991, 243 (*Egypt*).

payments in kind in accordance with the Convention or, if it is intended to permit the payment of wages solely in cash, this needs to be specified clearly in the legislation, in the form of an explicit prohibition of the payment of wages in kind. Similarly, where the regulation of payment in kind is limited to minimum wages, it is not considered adequate for the purposes of the Convention.¹³³

108. In a large number of countries, the national legislation contains a general authorization for payments in kind, in lieu of money wages, with the detailed conditions for such payments often being regulated through specific enactments, administrative regulations or collective bargaining. This is the case, for example, in *Argentina*,¹³⁴ *Azerbaijan*,¹³⁵ *Belgium*,¹³⁶ *Czech Republic*,¹³⁷ *Hungary*,¹³⁸ *Mauritius*,¹³⁹ *Mexico*,¹⁴⁰ *Panama*,¹⁴¹ *Spain*¹⁴² and *Tunisia*.¹⁴³

109. In some countries, the national legislation authorizes payment in kind only in respect of specific categories of workers, such as domestic workers. This is the case, for instance, in *Bolivia*,¹⁴⁴ *Dominican Republic*¹⁴⁵ and *Nicaragua*.¹⁴⁶ In other countries, specific allowances in kind are permitted for workers employed under special conditions by way of exception to the general prohibition of payment in kind. This is the case, for instance, in *Benin*,¹⁴⁷

¹³³ For instance, the Committee has addressed a direct request in this sense to *Uruguay* in 2001.

¹³⁴ (1), ss. 105, 107. See also *Brazil* (2), s. 458; *Bulgaria* (1), s. 269(2); *Colombia* (1), ss. 127, 129, 136; *Costa Rica* (1), ss. 164, 166; *Ecuador* (2), ss. 95, 274, 343; (1), s. 35(14); *Estonia* (2), s. 6(1); *Guatemala* (1), s. 102(d); (2), s. 90; *Honduras* (2), ss. 361, 366; *Islamic Republic of Iran* (1), ss. 34, 40; *Republic of Korea* (1), s. 42(1); *Libyan Arab Jamahiriya* (1), s. 31; *Paraguay* (1), s. 231; *Poland* (1), s. 86(2); *Saint Vincent and the Grenadines* (2), s. 13(2); *Slovakia* (1), s. 127(1); *Slovenia* (1), s. 126(1); *Swaziland* (1), s. 48; *Uruguay* (1), s. 56; (2), s. 18; (3), s. 5; *Venezuela* (1), s. 133.

¹³⁵ (1), s. 174(3).

¹³⁶ (1), s. 6(1).

¹³⁷ (1), s. 120(1); (2), s. 13.

¹³⁸ (1), s. 154(2).

¹³⁹ (1), s. 10(2).

¹⁴⁰ (2), s. 102.

¹⁴¹ (1), s. 144.

¹⁴² (1), s. 26(1).

¹⁴³ (1), s. 139.

¹⁴⁴ (4), s. 65; (5), s. 2(i). In *Chile* (1), s. 91, the labour remuneration of agricultural workers may be paid partly in money and partly in kind, while in *Switzerland* (2), s. 322, board and lodging is part of the employee's wages when the employee lives in the residence of the employer.

¹⁴⁵ (1), s. 260.

¹⁴⁶ (2), ss. 86, 146.

¹⁴⁷ (1), ss. 211(1), (3), 220(3). The situation is practically the same in *Burkina Faso* (1), ss. 105, 106, 112(3); *Central African Republic* (1), ss. 97, 98, 104(3); *Chad* (1), ss. 254, 257(3); *Comoros* (1), ss. 98, 103(3); *Côte d'Ivoire* (1), ss. 31.5, 32.1(3); *Djibouti* (1), ss. 92, 93, 99(3);

Cameroon,¹⁴⁸ *Cuba*,¹⁴⁹ *Democratic Republic of the Congo*,¹⁵⁰ *Mauritania*,¹⁵¹ *Niger*¹⁵² and *Togo*,¹⁵³ where employees engaged to fulfil a contract of employment in a place other than their normal place of residence and who are unable by their own efforts to obtain suitable accommodation for themselves and their families, or cannot by their own efforts procure for themselves and their families a regular supply of necessary foodstuffs, are entitled to receive appropriate housing and regular supplies of food from their employer. This also seems to be the position in New Zealand,¹⁵⁴ where the payment of wages in the form of allowances in kind is generally disallowed under the Wages Protection Act, which provides that wages are payable in money only and further allows for the employee to take action to recover any money wages if the employer pays those wages otherwise than in money, while the provision of food and accommodation are authorized under other statutory provisions, such as the Minimum Wage Act, which fixes limits for permissible deductions in respect of board and lodging when provided by the employer.

110. In certain countries, such as the *Republic of Moldova*,¹⁵⁵ *Romania*¹⁵⁶ and the *Russian Federation*,¹⁵⁷ the partial payment of wages in kind is authorized subject to the conditions and in accordance with the provisions set out in collective agreements.

111. In a limited number of countries, the national legislation in derogation of this Article of the Convention provides that the regulation of

Gabon (1), ss. 141, 142; *Mali* (1), ss. 96(2), 102(2); *Rwanda* (1), ss. 83, 84, 91; (3), s. 8; (5), ss. 1-7; *Senegal* (1), ss. 106, 107, 114(3); and *Yemen* (1), ss. 68, 70. Similarly, in *Sudan* (1), s. 35(1), the law authorizes payment in kind only in respect of allowances for food, fuel, housing, transport or clothing. In *Israel* (1), s. 3, authorized allowances include food or drink intended for consumption at the workplace, and housing. In *Germany* (1), s. 115(2), payment in kind may consist of groceries, household goods, clothing, accommodation and board, medicines or medical assistance and tools, while any other arrangement is null and void.

¹⁴⁸ (1), ss. 66(1), (3), 67. In contrast, the laws in *Dominica* (1), s. 13; *Guinea* (1), ss. 206, 212; *Guyana* (1), s. 22; *Malta* (1), s. 25; *Nigeria* (1), s. 1(2); *Philippines* (1), s. 97(f); *United Republic of Tanzania* (1), s. 65; *Uganda* (1), s. 30, refer principally to food and lodging, but do not exclude other allowances or privileges in addition to money wages. In *Malaysia* (1), s. 29(1) express reference is made to food, fuel, light, water and medical attendance, although other amenities or services may also be approved.

¹⁴⁹ (1), ss. 123, 129.

¹⁵⁰ (1), ss. 82, 117(1), (2).

¹⁵¹ (1), ss. 80, 81, 89(3).

¹⁵² (1), ss. 151, 158(3).

¹⁵³ (1), ss. 89(1), (3), 95(3).

¹⁵⁴ (1), ss. 7, 11(1)(b); (4), s. 7(1).

¹⁵⁵ (2), s. 18(3). See also *Poland* (1), s. 86(2) and *Ukraine* (2), s. 23(3).

¹⁵⁶ (3), s. 37.

¹⁵⁷ (1), s. 131(2).

payments in kind may be left to individual employment contracts, so that employers and workers are in principle free to agree upon the conditions and nature of such payments. This is the case, for instance, in *Barbados*,¹⁵⁸ *Belarus*¹⁵⁹ and *Tajikistan*.¹⁶⁰ The Government of New Zealand has reported that the terms under which any fringe benefits, such as a car, health insurance or membership of a superannuation scheme, that may be provided to an employee, are to be freely negotiated between the parties to the employment agreements as part of the overall employment package.

112. In some cases, national laws and regulations do not either directly authorize the partial payment of wages in kind or formally prohibit it, but simply leave this method of payment totally unregulated. The Government of Jordan, for instance, has reported that its Labour Code does not specify the industries or occupations in which the payment of wages in kind is not authorized, does not prohibit the payment in the form of specific goods or supplies, nor does it determine the proportion of the wages which may be paid in kind. In the same vein, the Government of Saudi Arabia has indicated that there is nothing in the laws in force to prevent wages from being paid in kind, such as in the form of accommodation or transportation, although the basic wage should be in cash. Similarly, in Bahrain¹⁶¹ and the United Arab Emirates,¹⁶² the national legislation expressly refers to benefits in kind as being part of the worker's wages or remuneration, without however establishing any limits or conditions for the provision of such benefits. Moreover, according to information supplied by the Government of Lithuania, national laws and regulations do not provide for the possibility to pay wages in benefits in kind, however, there are no legal acts formally prohibiting such practice.

113. Finally, in certain countries, such as *Algeria*,¹⁶³ *China*¹⁶⁴ and *Kyrgyzstan*,¹⁶⁵ the payment of wages in the form of allowances in kind is generally prohibited. The Governments of Croatia, El Salvador, Qatar and Thailand have also reported that wage payment in kind is not authorized under existing labour laws. In Viet Nam,¹⁶⁶ the national legislation requires the

¹⁵⁸ (1), s. 13(1). See also Kenya (1), s. 4(5); *Republic of Moldova* (2), s. 18(3); *Russian Federation* (1), s. 131(2). Moreover, the Government of Finland has reported that the employer and employee may freely agree on remuneration of financial worth in a form other than cash payment.

¹⁵⁹ (1), s. 74.

¹⁶⁰ (1), s. 101.

¹⁶¹ (1), s. 66.

¹⁶² (1), s. 1.

¹⁶³ (1), s. 85.

¹⁶⁴ (1), s. 5.

¹⁶⁵ (1), s. 234.

¹⁶⁶ (1), s. 59(2).

payment of wages to be effected by way of cash only and makes no provision for remuneration in kind. This is also the case in certain parts of Australia, where state laws in New South Wales,¹⁶⁷ South Australia¹⁶⁸ and Tasmania¹⁶⁹ provide that wages must be paid in money only.

2.2.2. Partial payment in kind

114. The preparatory work for the instruments shows that there was always a consensus among member States that the payment of wages in kind may only be additional to cash payment, and therefore partial. This principle found early expression in the Office questionnaire on law and practice, the preparatory reports as well as in the proposed text of the draft instruments, and received unanimous support during the Conference discussions. Some governments even suggested that international instruments should provide that national laws or regulations should fix the amount of wages which may be paid in kind, while others considered it desirable to limit the proportion of wages payable in kind so that it should not exceed 50 per cent of the total value of the wage.¹⁷⁰

115. In the great majority of member States, the principle that only a part of the worker's cash wages may be paid in goods and services is clearly affirmed in the general labour legislation. In many cases, the law provides for the payment of allowances "in addition to monetary wages".¹⁷¹ In other cases, the law exceptionally permits "part of the wages"¹⁷² or "a reasonable proportion of the cash amount"¹⁷³ to be paid in kind, or "partly in legal tender and partly in kind".¹⁷⁴ In yet other laws and regulations, reference is made to the "partial remittance of remuneration in a form other than cash",¹⁷⁵ or to an "eventual" or

¹⁶⁷ (5), s. 117(2).

¹⁶⁸ (8), s. 68(2).

¹⁶⁹ (9), s. 51(3).

¹⁷⁰ See ILC, 31st Session, 1948, Report VI(c)(2), pp. 97, 105.

¹⁷¹ This is the case, for instance, in *Barbados* (2), s. 6; *Dominica* (1), s. 13; *Dominican Republic* (1), s. 260; *Guyana* (1), s. 22(1); *Malaysia* (1), s. 29(1); *Malta* (1), s. 25; *Nicaragua* (2), s. 146; *Swaziland* (1), s. 48; United Kingdom: *Montserrat* (21), s. 13; *Virgin Islands* (22), s. C31(1); *United Republic of Tanzania* (1), s. 65; *Uganda* (1), s. 30.

¹⁷² This is the case, for example, in *Colombia* (1), s. 136; *Guinea-Bissau* (1), s. 102(1); *Israel* (1), s. 3; *Nigeria* (1), s. 1(2); *Syrian Arab Republic* (3), s. 2; *Tajikistan* (1), s. 101.

¹⁷³ See, for instance, *Mexico* (2), s. 102.

¹⁷⁴ See, for instance, *Mauritius* (1), s. 10(2).

¹⁷⁵ This is the case, for example, in the Republic of Korea (1), s. 42(1), *Poland* (1), s. 86(2) and *Ukraine* (2), s. 23(3).

“additional labour remuneration in kind”,¹⁷⁶ or to the possibility of a “cash payment supplemented by payments in kind”.¹⁷⁷

116. In an indirect manner, it is also ensured that wages are paid only partially in kind in those countries which solely authorize the provision of food and lodging, in addition to money wages, for certain workers employed under very specific conditions. The maximum chargeable amount for such allowances is often determined in specific decrees, which further attests to the nature of these benefits as a supplement, and not as a substitute for cash remuneration.¹⁷⁸

117. The labour laws in many countries specify the maximum proportion of the wages that may be paid in kind; this usually varies from 20 to 40 per cent, while in a few countries authorized payments in kind may account for as much as half the amount of money wages.¹⁷⁹ In some cases, the limit differs depending on the type of occupation or the nature of the allowance in kind. In *Belgium*,¹⁸⁰

¹⁷⁶ See, for instance, *Bulgaria* (1), s. 269(2), and *Slovenia* (1), ss. 126(1), 134(5).

¹⁷⁷ See, for instance, *Egypt* (1), s. 1.

¹⁷⁸ This is the case, for instance, in *Benin* (1), ss. 211, 220; *Burkina Faso* (1), ss. 105, 106, 112(3); *Cameroon* (1), ss. 66, 67; *Central African Republic* (1), ss. 97, 98, 104(3); *Chad* (1), ss. 254, 257(3); *Comoros* (1), ss. 98, 99, 103; *Côte d'Ivoire* (1), ss. 31.5, 32.1(3); *Democratic Republic of the Congo* (1), ss. 82, 117, 118; *Djibouti* (1), ss. 92, 93, 95, 99; *Gabon* (1), ss. 141, 142, 144; *Kenya* (2), s. 14(3), (4); *Mali* (1), ss. 96(2), 102(2); *Mauritania* (1), ss. 80, 81, 83, 89; *Niger* (1), ss. 151, 158; *Senegal* (1), ss. 106, 107, 114(3); *Togo* (1), ss. 89, 95 and *Yemen* (1), ss. 68, 70. This is also the case in *Canada* (2), ss. 21, 22, at the federal level but also in several jurisdictions, such as *Alberta* (5), s. 12(1); *Manitoba* (7), s. 39(4); *Newfoundland and Labrador* (9), s. 36(2); *Northwest Territories* (11), s. 2; *Ontario* (14), s. 23(2); *Quebec* (16), s. 51; *Saskatchewan* (18), s. 14. See also *Ghana* (1), s. 53(2); *Israel* (1), s. 3; *Singapore* (1), s. 59; *Sudan* (1), s. 35(1). See also *Bolivia* (5), s. 2(i) in respect of domestic workers.

¹⁷⁹ For example, in *Argentina* (1), s. 107, *Hungary* (1), s. 154(2), and *Panama* (1), s. 144, payment in kind may not represent more than 20 per cent of money wages, in *Ecuador* (2), s. 343, and *Indonesia* (2), s. 12(2) not more than 25 per cent, in *Guatemala* (1), s. 102(d); (2), s. 90, *Paraguay* (1), s. 231, *Romania* (3), s. 37, and *Spain* (1), s. 26(1) it may not exceed 30 per cent, while in *Botswana* (1), s. 85, it may account for up to 40 per cent. In contrast, in *Azerbaijan* (1), s. 174(3), the law provides that, subject to the employee's consent, up to 50 per cent of wages may be paid in goods produced by the company or in other consumer products, while in the *Republic of Moldova* (4), s. 62, the 1998 national collective agreement allows for the partial substitution not exceeding 50 per cent of money wages by equivalent remuneration in kind. A 50 per cent limit is also provided for in *Chile* (1), s. 91; *Costa Rica* (1), s. 166; *Dominican Republic* (1), s. 260; *Nicaragua* (2), s. 146. In addition, according to information supplied by the Federation of Trade Unions of Ukraine, by virtue of a new enactment which took effect in July 2002, partial payment in kind may not exceed 50 per cent of the monthly wage. Similarly, in *Cape Verde* (1), s. 119(3), and *Guinea-Bissau* (1), s. 102(3), the proportion of the wages to be paid in kind may not exceed that which is paid in money.

¹⁸⁰ (1), s. 6(1). See also *Brazil* (2), ss. 81, 82, 458(1), (3), 506.

for instance, the maximum permissible percentage of the wage which may be paid in kind is in principle set at 20 per cent of the gross amount of wages earned, but may rise to 40 per cent in the case of housing offered by the employer and 50 per cent in the case of domestic servants, caretakers, apprentices or interns who receive full board and lodging. In other cases, the maximum limit differs depending on the total amount of earnings. In *Colombia*,¹⁸¹ for instance, payment in kind may not exceed 50 per cent of the worker's wage except for workers earning the minimum statutory wage, in which case the value of allowances in kind may not exceed 30 per cent of the total wage.

118. In this connection, the Committee considers that a measure of doubt is justified as to whether it is appropriate to set the limit for authorized payments in kind at 50 per cent or more of money wages in view of the risk of unduly diminishing the cash remuneration necessary for the maintenance of workers and their families. While noting that the instruments under consideration do not indicate a specific limit or otherwise offer guidance on this point, the Committee considers that governments, before authorizing the payment in kind of such a high proportion of workers' wages, should carefully assess whether such a measure is reasonable based on its possible repercussions for the workers concerned, having regard to national circumstances and the interests of the working people.¹⁸²

119. In some countries, the ceiling for authorized payments in kind is determined not by reference to a maximum percentage of the cash wages, but by reference to the statutory minimum wage which should be paid exclusively in cash. In those cases, an employee may be granted goods or services in lieu of money, but only for the amount of wages exceeding the minimum wage. This is the case, for example, in the *Czech Republic*,¹⁸³ *Islamic Republic of Iran*,¹⁸⁴ *Slovakia*¹⁸⁵ and *Tunisia*.¹⁸⁶

¹⁸¹ (1), s. 129(2), (3).

¹⁸² On this point, see RCE 1991, 244 (*Libyan Arab Jamahiriya*).

¹⁸³ (2), s. 13(1).

¹⁸⁴ (1), s. 42.

¹⁸⁵ (1), s. 127(1).

¹⁸⁶ (1), s. 139(2).

120. In other countries such as *Belarus*,¹⁸⁷ *Cuba*,¹⁸⁸ *Peru*,¹⁸⁹ *Venezuela*¹⁹⁰ and *Yemen*,¹⁹¹ there is nothing in law to prevent the possibility, however theoretical, of labour wages being paid entirely in kind. With respect to the situation in these countries, it has often been reported that, in practice, cash wages are never fully replaced by payments in kind or that payments in kind are no longer relevant in any branch of economic activity. The Committee takes this opportunity to recall that the requirements of the Convention can hardly be satisfied with a mere statement that the situation contemplated in the Convention does not exist in practice or that implementing legislation is not deemed to be necessary. It should be remembered that, in order to comply with the letter of Article 4 of the Convention, which only permits the partial payment of wages in kind, national laws or regulations, collective agreements or arbitration awards should provide, as a minimum, that allowances in kind may be paid *in addition* to money wages.

121. Two cases of particular relevance should be mentioned in this respect. In the case of *Greece*, according to the Government's earlier reports, collective agreements sometimes provided for exclusive payment in kind, especially in threshing and olive oil pressing, whereas in recent years the practice would seem to be limited to agricultural work of a seasonal nature and does not concern salaried employees. Furthermore, the Government has stated on a number of occasions that the provisions of the Convention, including Article 4, are applicable by virtue of the Constitution, according to which upon ratification international labour Conventions become an integral part of domestic law. In this connection, the Committee has been emphasizing for many years that the Convention covers not only "salaried employees", but all those who receive payment, including seasonal agricultural workers, and also that Article 4 of the Convention is not self-executing, but requires specific measures by the competent authorities for its implementation.¹⁹² In the case of *Italy*, the Committee has been pointing out for several years that, despite the information supplied by the Government according to which the payment of wages in kind is in practice partial and marginal, being only relevant to certain employment contracts (e.g. domestic and agricultural work, fishing and portage), the requirements of Article 4 of the Convention cannot be considered to be met

¹⁸⁷ (1), s. 74. This is also the case in *Lebanon* (1), s. 47, *Libyan Arab Jamahiriya* (1), s. 31, *Oman* (1), s. 54, and *Suriname* (1), ss. 1613(P), 1614(I), 1614(T). In Finland, according to the Government's report, there is nothing to prevent the employer and employee from agreeing that remuneration is to be paid in some other form, in addition or in lieu of money wages, provided that such remuneration has financial value.

¹⁸⁸ (1), s. 129.

¹⁸⁹ (2), s. 15.

¹⁹⁰ (1), s. 133.

¹⁹¹ (1), ss. 2, 68, 70.

¹⁹² See, for instance, RCE 2002, 330; RCE 1996, 179; RCE 1977, 176.

while the Italian Civil Code continues to provide for the possibility of the payment of wages wholly in the form of allowances in kind.¹⁹³

122. Finally, reference should be made to those countries which explicitly permit remuneration to be paid in its totality in the form of allowances in kind. This is the case, for instance, in India,¹⁹⁴ where upon government authorization published in the *Official Gazette*, payment of minimum wages either wholly or partly in kind may be made where it has been the custom to pay wages in such a manner. In the United States,¹⁹⁵ some state laws provide that an employee may agree in writing to receive part or all of the wages in kind.

123. At this juncture, the Committee wishes to refer by way of illustration to a specific instance which shows the importance attached by the ILO to the principle that the partial payment of wages in kind may only be conceived as supplementary, and not as an alternative to cash remuneration. In the Committee's view, the position taken by the Office in its working relationship with the United Nations World Food Programme (WFP) with regard to the application of international labour standards concerning the protection of wages in the context of WFP food-for-work projects, i.e. development programmes under which food is provided as remuneration or an incentive for work, eloquently reaffirms the relevance and impact of that principle at the international level.

124. Since its establishment in 1963, the WFP has indicated that it would seek the observance of ILO Conventions relevant to its activities irrespective of whether or not the country concerned has ratified the Conventions in question. On the basis of this policy decision, it was agreed that in the case of WFP projects involving the employment of wage labour, the workers should receive, in addition to the food supplied, and in conformity with the principles set forth in Article 4, paragraph 1, of the Convention, a cash payment of not less than 50 per cent of the wage prevailing in the locality for the kind of work to be done. This requirement was intended to ensure that workers would be able to meet their essential non-food needs, and would not be led to sell or barter the WFP food received. It was also agreed that the Convention would apply only in those WFP projects in which there was an employer-employee relationship (including public works and works of general public interest), and not to self-help projects in the context of communal development works.

¹⁹³ See, for instance, RCE 2002, 330.

¹⁹⁴ (2), s. 11(2).

¹⁹⁵ See, for instance, Iowa (20), s. 91A.3(2), and Texas (51), s. 61.016(b).

2.2. Cash wages for workers employed on WFP food-assisted projects

To ensure the observance of the abovementioned principles [as regards the payment of wages in kind], it might be appropriate to provide, in agreements between the WFP and the governments, for projects under which food is to be used for normal paid labour within the scope of the Protection of Wages Convention: (a) that food should constitute only part of the remuneration not exceeding in quantity the amount of food, which the worker and his/her family would normally consume. In the case of WFP projects involving the employment of wage labour, the workers should receive a cash payment of not less than 50 per cent of the wage prevailing in the locality for the work done; (b) that for the purpose of computing the cash proportion of the remuneration, the food proportion should be valued at a price not exceeding the local price, which the workers would have to pay for the food; (c) that no worker should be obliged to accept a kind of food that he or his family do not wish to consume and that he would thus have to sell. [...] It may be of interest to examine the opportunity to insert, in the project document or in the plan of operation, a clause to define the scope and content of the obligation to pay a partial cash remuneration to workers participating in the project in the capacity of wage earners. This clause may read as follows: "The government undertakes that, in addition to the provision of WFP food rations, a cash wage of at least 50 per cent of the wage prevailing in the locality for the kind of work involved shall be paid to workers employed on projects from which they will not derive a direct benefit or which, because of the nature and scope of the works undertaken, constitute projects of general public interest rather than community development projects. These provisions shall apply in particular: in works of irrigation and soil preservation, to any workers other than landowners, farmers directly benefiting from such works; in afforestation, to any workers employed on government holdings or other holdings in which they do not have a direct interest; in construction of roads, extension housing, schools, health centres, wells or other community facilities, to workers employed outside their own community."

Source: Excerpts from an ILO paper on payment of wages in the framework of WFP-assisted (Food for Work) projects, presented at a joint WFP/ILO meeting held in Rome in February 1992.

125. Over the past 40 years, the Office has commented extensively on WFP projects, drawing attention to the need for a meaningful distinction to be made between self-help initiatives and public infrastructure works, so as not to deprive genuine wage labourers of cash remuneration. In cases where workers have an immediate interest in the implementation of a food-assisted project (e.g. landowners with respect to a project designed to improve the irrigation of their parcels of land, the construction of school buildings on a communal basis by local residents, etc.), food may be used as the sole incentive and no cash remuneration is required. In contrast, public works, such as large projects of canal digging, soil conservation or road construction, are commonly considered to represent the type of situation where WFP food assistance should be

construed as payment in kind for the workers employed and should only be provided subject to the conditions set out in Article 4 of the Convention.¹⁹⁶

126. Recently, the WFP has made it known that it intends to refocus its policy and operational imperatives so that 80 per cent of its activities now concentrate on emergency operations and only 20 per cent on development projects. It has also announced that the food-for-work policy will shift from providing budgetary support to governments, through the provision of food aid to government workers, towards encouraging the building of assets through community-based self-help schemes, with governments being expected to pay cash wages.¹⁹⁷ While it is true that the more WFP acts as a humanitarian rather than development agency, the less the question of the partial payment of wages in kind will arise in practice, the Committee considers it essential that the Office continues to offer its expertise in order to ensure that any WFP-delivered project involving wage labour activities conforms to international labour standards in respect of wage protection.

2.2.3. Customary or desirable benefits in kind

127. In some types of employment, the partial payment of wages in kind is a natural arrangement because of the circumstances of the occupation concerned. In agriculture, for example, employers often provide land to be cultivated by the workers for their own use, or supply products such as wheat, potatoes, etc., to workers for their own consumption. In other industries and occupations, employers provide workers with housing, food or other commodities. This is usually the case, for example, in the merchant marine, hotels and restaurants, hospitals or similar establishments, domestic services and, generally speaking, in any work carried out at a considerable distance from population centres, for example in road building or mining. Since in these cases

¹⁹⁶ It is of course true that the borderline between self-help and wage labour activities is not always clear, all the more as self-help workers and wage labourers may be involved in the same project. Under exceptional circumstances, cash remuneration may not be provided even though the projects involved may not qualify as self-help schemes. This is the case, for instance, of emergency situations where the security or well-being of large parts of the population is endangered (e.g. famine, post-war reconstruction, relief work in the wake of natural calamities). Such arrangements should nonetheless remain exceptional and therefore be kept within reasonable limits. For practical illustrations of ILO policy on food components of workers' remuneration, see David Tajzman and Jan de Veen, *Employment intensive infrastructure programmes: Labour policies and practices*, ILO, 1998, pp. 78-91, and Annex 3, pp. 232-234.

¹⁹⁷ See, for instance, *Report of the Technical Meeting on WFP/ILO Collaboration*, Geneva, Dec. 2000 and the *Guide on Food for Assets*, Aug. 2000.

allowances in kind normally offer certain advantages to the workers and are often equally beneficial to their families, they have been maintained by regulations authorizing exceptions to the principle of the payment of wages in cash.

128. In the Office questionnaire designed to ascertain the views of member States on this question, governments were asked whether payment in kind should be authorized only in industries or occupations in which such payments were customary or necessary. The rationale behind proposing custom and necessity as the main guiding criteria for the authorization by law of the payment of wages in kind was that in those branches payment in kind appeared to offer more advantages than disadvantages to the workers concerned, even though at the same time all the necessary measures should be taken to prevent any reappearance of the truck system.¹⁹⁸ At the second Conference discussion, an amendment was proposed to the effect that the partial payment of wages in kind should be permitted in all cases where this form of payment was customary or desirable, as well as in those in which laws, collective agreements or arbitration awards applied. The effect of this proposal would have been to authorize payment in kind wherever it was customary, without reference to, or control by, laws, agreements or awards and it therefore involved a substantial change in the conclusions adopted by the Conference at the first discussion. The amendment was opposed on the grounds that it offered too much latitude and would not therefore sufficiently restrict the conditions under which wages were paid in kind. The amendment was finally rejected.¹⁹⁹

129. In reviewing the law and practice relating to this provision of the Convention, it should be borne in mind that the Convention does not necessarily call for regulations enumerating all the industries or occupations in which the payment of wages in kind is customary or desirable. Nor does it involve a definition of the actual allowances in kind to be paid in each industry.²⁰⁰

¹⁹⁸ See ILC, 31st Session, 1948, Report VI(c)(1), pp. 17-18. While the great majority of the governments replied in the affirmative, some suggested that payments in kind should be permitted in cases in which they were “desirable”, as well as customary and necessary. The Office decided to adopt this suggestion and modified the proposed conclusion accordingly; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 70-71.

¹⁹⁹ See ILC, 32nd Session, 1949, *Record of Proceedings*, p. 504 and ILC, 32nd Session, 1949, Report VII(2), pp. 15-16.

²⁰⁰ On this point, see RCE 1993, 245 (*Egypt*).

130. In some countries, such as *Belgium*,²⁰¹ *Nigeria*²⁰² and *Uganda*,²⁰³ the legislation contains a specific provision limiting the partial payment of wages in kind to those trades or occupations where such a method of payment is customary or desirable. In *Brazil*,²⁰⁴ the law authorizes payments made in cash, board, lodging, clothing and other benefits in kind that the employer habitually supplies to the employee or in accordance with established custom. In *India*,²⁰⁵ in cases in which it has been the custom to pay wages wholly or partly in kind, and the appropriate government is of the opinion that it is necessary in the circumstances of the case, it may, by notification in the *Official Gazette*, authorize the payment of minimum wages either wholly or partly in kind. Similarly, in *Ghana*,²⁰⁶ the law provides that an employer may, with the approval of the Chief Labour Officer, provide allowances in kind in employment in which provision in the form of such allowances is customary or desirable because of the employment concerned. In the United States,²⁰⁷ federal and state laws permit the reasonable cost or fair value of board, lodging or other facilities to be considered as part of the wage paid an employee only where the employer customarily furnishes them to the employees or if they are customarily furnished to other employees engaged in the same or similar trade, business, or corporation in the same community. Moreover, not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced.

131. In other cases, the legislation recognizes the existence of a customary obligation for certain employers to provide workers with specific goods or supplies, without however limiting the possibility of the payment of wages in kind to such established usages. In *Jordan*,²⁰⁸ for instance, an employer is bound, under the terms of the Civil Code, to provide the worker with clothing or food if custom so requires, whether or not it is stipulated in the contract.

132. In certain countries, the customary or desirable character of allowances in kind is a result of the nature of such allowances, even though there is no specific requirement in the labour legislation for payment in kind to be of a

²⁰¹ (1), s. 6(1). See also *Guyana* (1), s. 22(1); *Rwanda* (1), s. 84; (3), s. 8; *Syrian Arab Republic* (3), s. 87; (4), s. 3(a); *Ukraine* (2), s. 23(3).

²⁰² (1), s. 1(2).

²⁰³ (1), s. 30.

²⁰⁴ (2), s. 458.

²⁰⁵ (2), s. 11(2).

²⁰⁶ (1), s. 53(6).

²⁰⁷ (1), s. 3(m); (2), ss. 531.30, 531.31. See also *Hawaii* (16), ss. 387-1, 388-1; *Kentucky* (23), s. 1:080(2); *Maryland* (26), s. 3-418(a); *Ohio* (43), s. 4111.01(A); *Pennsylvania* (46), s. 231.22(a), (b); *Texas* (51), s. 62.053.

²⁰⁸ (2), s. 824.

customary or desirable nature. This is the case, for instance, in *Burkina Faso*,²⁰⁹ *Cameroon*,²¹⁰ *Gabon*,²¹¹ *Senegal*²¹² and *Togo*,²¹³ where payment in kind is generally prohibited, with the sole exception of housing and food rations which the employer is bound to provide when workers are transferred outside their normal place of residence and are unable to provide for themselves. The customary character of this practice is further demonstrated by the fact that it was already provided for under the French Labour Code for Overseas Territories which applied to the above countries long before their independence. Similar is the situation in *Costa Rica*,²¹⁴ *Cuba*,²¹⁵ *Dominican Republic*,²¹⁶ *Ecuador*²¹⁷ and *Venezuela*,²¹⁸ where the law authorizes the payment of wages in kind only in the form of food, lodging and clothing. Similarly, under the Labour Act of Namibia,²¹⁹ when employees are required to live in the place of employment or to reside on any premises of their employer, such employer must provide housing, including sanitary and water facilities, as may comply with the reasonable requirements of the employees and their dependants. Moreover, in the case of employees who are required to live in or reside on agricultural land, the employer must permit such employees to keep livestock and to carry on cultivation on such land as may be necessary in order to cover their reasonable needs and those of their dependants.

²⁰⁹ (1), ss. 105, 106. The situation is the same in *Benin* (1), s. 211(1), (3); *Central African Republic* (1), ss. 97, 98; *Comoros* (1), s. 98; *Côte d'Ivoire* (1), s. 31.5; (5), s. 78; *Democratic Republic of the Congo* (1), s. 117; *Djibouti* (1), ss. 92, 93; *Mali* (1), s. 96(2); *Mauritania* (1), ss. 80, 81; *Niger* (1), s. 151; *Rwanda* (1), ss. 83, 84; (5), ss. 1 to 7. The laws in *Libyan Arab Jamahiriya* (1), ss. 31, 99, *Oman* (1), s. 38, and *Yemen* (1), ss. 2, 68, 70 also provide for the provision of housing facilities and meals to persons employed in remote areas, but these do not seem to be the only authorized allowances.

²¹⁰ (1), s. 66(1), (3). In *Sudan* (1), s. 35(1) the law only authorizes allowances for food, fuel, housing, transport or clothing.

²¹¹ (1), ss. 141, 142, 144.

²¹² (1), ss. 106, 107.

²¹³ (1), s. 89.

²¹⁴ (1), s. 166. This is also the case in *Colombia* (1), ss. 129, 136; *Nicaragua* (2), s. 146; *Panama* (1), s. 144; *Switzerland* (2), s. 322.

²¹⁵ (1), s. 129.

²¹⁶ (1), s. 260.

²¹⁷ (2), ss. 274, 343.

²¹⁸ (1), s. 133.

²¹⁹ (1), s. 38(1). It should be noted, however, that remuneration is defined as payment in money only and that according to the Government's report the payment of wages in kind is not specifically addressed under national laws.

133. A review of national law and practice reveals that the legislation in some countries, such as *Azerbaijan*,²²⁰ *Barbados*,²²¹ *Belarus*,²²² *Islamic Republic of Iran*²²³ and *Slovakia*,²²⁴ provides for the possibility of the payment of wages in kind with the worker's consent or pursuant to the terms and conditions as may be agreed between the employer and the worker. Such a practice is not only inconsistent with Article 4, paragraph 1, of the Convention, which requires payment in kind to be regulated by legislation, collective agreements or arbitration awards, and not left to individual agreements, but also falls short of the obligation to authorize payment in kind only in those industries or occupations customarily concerned by such methods of payment. It should also be noted that in certain countries, such as *Hungary*²²⁵ and *Tunisia*,²²⁶ provision is made for an administrative decision authorizing the payment of wages in kind, without any reference to the possible limitation of such authorization to those industries or occupations where partial payment in kind is customary or desirable.

2.2.4. The prohibition of the payment of wages in liquor or drugs

134. The legislative history of the clause prohibiting the partial payment of wages in alcohol or drugs is particularly eventful, although the preparatory work does not always shed much light on the drafters' real intention in adopting this clause in its final form. The initiative for inserting such a provision did not originate with the Office. The question was not raised at all in the questionnaire prior to the drafting of the instrument and, consequently, the text initially proposed by the Office made no reference to any prohibited allowances in kind. It was only during the first Conference discussion that the Worker members proposed to add a specific provision prohibiting the payment of wages in the form of alcoholic drinks or noxious drugs, even with the consent of the worker concerned. They considered that such a prohibition was necessary in view of the abuses existing in certain countries. The Employer members opposed the amendment, considering that such a provision would be inappropriate and unnecessary, in view of the fact that under the draft text payment in kind would be limited to allowances which were beneficial and useful to the workers and

²²⁰ (1), s. 174(3). In addition, the Government of Finland has reported that remuneration other than money in lieu of pay may be used in any sector on condition that such remuneration other than money is of some financial value.

²²¹ (1), s. 13(1).

²²² (1), s. 74.

²²³ (1), s. 40.

²²⁴ (1), s. 127(1).

²²⁵ (1), s. 154(2).

²²⁶ (1), s. 139.

their families. The amendment was rejected without much discussion. However, the Worker members made it clear that the issue would be raised again at a later stage.²²⁷

135. When the draft instrument was brought before the Conference for the second time, the Worker members reintroduced their proposal for a specific provision prohibiting the payment of wages in the form of alcoholic drinks or noxious drugs, even if the worker concerned agreed to such form of payment. It was argued that the practice should be actively prohibited and that no possibility of exemption from such a prohibition was desirable. It was further pointed out that the intention of the proposal was not to prohibit the supply of refreshments to workers in the form of beer, cider or wine, for example, but rather to prohibit the payment of wages in the form of alcoholic liquor. Some Government members considered that the proposed prohibition would run counter to a normal practice in their countries of the partial payment of wages in wine, which was not considered a strong alcoholic drink. The amendment was nevertheless adopted.²²⁸

136. Nevertheless, when the text, as revised by the Conference drafting committee, was considered by the Committee at its last sitting, a new vote was taken and a majority was found to be in favour of deleting the prohibition of payment in the form of alcoholic beverages. When the report of the Conference Committee came before the Conference for general discussion, a new amendment was submitted to reintroduce the idea of the prohibition of the payment of wages in kind in the form of “spirits”. This amendment tried to draw a distinction between various sorts of alcoholic beverages – on the one hand beer, wine, cider and other forms of light alcoholic refreshment, and on the other hand strong spirits such as whisky, etc.²²⁹ The amendment was finally adopted and the original reference to alcoholic drinks was replaced by a reference to “liquor of high alcoholic content”.

²²⁷ See ILC, 31st Session, 1948, *Record of Proceedings*, pp. 460-461.

²²⁸ See ILC, 32nd Session, 1949, *Record of Proceedings*, p. 504.

²²⁹ See ILC, 32nd Session, 1949, *Record of Proceedings*, p. 329. The Worker members who initiated the amendment considered that it would be profoundly immoral if, on the pretext of the payment of wages in kind and, above all, on the pretext of enabling the workers to have the use of a manufactured product at a reduced price, the abuse of alcohol among workers were to be encouraged. Some Government members argued that the word “spirits” had no definite legal meaning, while the term “spirituous liquors” included light beer and light wines, so that the proposed compromise was impracticable. In reply, other Government members stated that in French, “*spiritueux*” meant an alcoholic drink containing a certain percentage of alcohol, not including wine, and insisted that, with reservations as to any difference of meaning that might exist between the English and French interpretations of the word, the prohibition of spirits had its place in the text of the Convention.

137. As finally worded, Article 4, paragraph 1, of the Convention prohibits the provision of spirituous liquors or drugs as forms of payment in kind under any circumstances. Implementing legislation may therefore give effect to this requirement either by means of a specific prohibition or through an authorization clause excluding alcohol or drugs. While a specific prohibition may be the most effective manner of securing compliance with this provision, the Convention does not appear to go as far as requiring this. It would seem sufficient for any authorization for the payment of wages in kind contained in laws or regulations, collective agreements or arbitration awards to exclude the possibility of paying wages in the above forms, so that any practice of this kind attracts the penal or other sanctions applicable to unauthorized forms of payment in kind. As regards the payment of wages in the form of noxious drugs, these would in many countries be contrary to the drug control legislation and therefore in any case attract the penalties prescribed in that legislation.

138. In most countries, the general labour legislation formally prohibits the partial payment of wages in the form of liquors of high alcoholic content or noxious drugs. The terms used to denote such proscribed payments in kind are often those employed in the Convention, although similar terms, such as alcohol, intoxicating liquor, spirituous liquor, alcoholic beverages, narcotic substances, addictive substances, medicines or dangerous drugs, are also to be found in national laws and regulations. This is the case, for instance, in *Azerbaijan*,²³⁰ *Belarus*,²³¹ *Brazil*,²³² *Costa Rica*,²³³ *Dominica*,²³⁴ *Ghana*,²³⁵

²³⁰ (1), s. 174(3). See also *Barbados* (2), s. 13(2)(c); *Benin* (1), s. 220(2); *Botswana* (1), s. 85(1); *Burkina Faso* (1), s. 112(2); *Chad* (1), s. 257(2); *Côte d'Ivoire* (1), s. 32.1(2); *Czech Republic* (2), s. 13(2); *Djibouti* (1), s. 99(2); *Guinea* (1), s. 206(2); *Guinea-Bissau* (1), s. 102(4); *Guyana* (1), s. 22(1); *Kenya* (1), s. 4(5)(b); *Malta* (1), s. 25; *Nigeria* (1), s. 1(2); *Rwanda* (1), s. 91; *Slovakia* (1), s. 127(2); *Swaziland* (1), s. 48(c); *Ukraine* (2), s. 23(3); (4), s. 1; United Kingdom: *Gibraltar* (11), s. 18(1)(b); *Jersey* (17), s. 4(3); *Virgin Islands* (22), s. C31(1)(a).

²³¹ (1), s. 74; (4), s. 1, and appended list of goods. Among the goods prohibited as a means of payment in kind, reference is also made to tobacco products, oil derivatives, precious metals or stones and explosives.

²³² (2), s. 458.

²³³ (2), s. 1.

²³⁴ (1), s. 13. With respect to noxious drugs, the Government refers to existing laws on the control of dangerous drugs.

²³⁵ (1), s. 53(2), (3). The law specifies that, where in any contract it is stipulated that the employer shall provide the worker with intoxicating liquor or noxious drugs by way of remuneration for services, the contract, as regards that stipulation, shall be void.

Indonesia,²³⁶ Malaysia,²³⁷ Republic of Moldova,²³⁸ Russian Federation²³⁹ and Singapore.²⁴⁰

139. In some cases, the question is not directly addressed in the labour legislation, and the prohibition stems from specific laws and regulations dealing with the sale of dangerous substances and liquor. In Australia, in the State of South Australia, where the sale of liquor and a wide range of drugs, poisons and other substances is clearly prohibited under the Controlled Substances Act, 1984, and the Liquor Licensing Act, 1997, the definition of “sale” is sufficient to encompass the supply of liquor or noxious drugs by an employer to an employee in exchange for work under a contract of employment.

140. In other cases, the payment of wages in the form of alcohol or drugs is not explicitly forbidden, but may be inferred from the scope and purpose of the relevant provisions regulating payment in kind. In *Cameroon*²⁴¹ and the *Democratic Republic of the Congo*,²⁴² for example, benefits in kind are only permitted for certain categories of workers employed in specific regions and may only consist in housing accommodation and daily rations. Food, clothing and lodging are also the sole allowances in kind permitted under the laws and regulations of *Colombia*,²⁴³ *Nicaragua*²⁴⁴ and *Panama*.²⁴⁵ In *Mauritius*,²⁴⁶ remuneration may be paid partly in kind only with the consent of the Permanent Secretary, who is responsible for ascertaining whether the safeguards provided for under the Convention are fulfilled or not. In a more indirect manner, the legislation in *Lebanon*²⁴⁷ provides that no head of an establishment or manager

²³⁶ (2), s. 12(2).

²³⁷ (1), s. 29(1). As regards wage payment in the form of noxious drugs, the Government has referred to specific legislation dealing with dangerous drugs.

²³⁸ (2), s. 18(4). According to the Government’s report, however, cash wages are sometimes replaced by alcohol upon the workers’ written request on special family occasions, such as weddings or funerals.

²³⁹ (1), s. 131(3). It is also prohibited to offer by way of remuneration any toxic, poisonous and harmful substances, weapons, ammunition and other objects the use of which is banned or restricted.

²⁴⁰ (1), s. 59.

²⁴¹ (1), s. 66(1), (3). Similarly, in *Namibia* (1), s. 38(1), (2), *Philippines* (1), s. 97(f), and *Uganda* (1), s. 30(a), the law only authorizes board, lodging or such other facilities or privileges customarily furnished by the employer. See also *Germany* (1), s. 115(2).

²⁴² (1), ss. 117, 118.

²⁴³ (1), ss. 129, 136. See also *Cuba* (1), s. 129; *Dominican Republic* (1), s. 260; *Ecuador* (2), ss. 274, 343.

²⁴⁴ (2), s. 146.

²⁴⁵ (1), s. 144.

²⁴⁶ (1), s. 10(2).

²⁴⁷ (1), s. 65. Similarly, under the Labour Code of *Jordan* (1), s. 81, no employer or worker may authorize any kind of alcohol, illegal or dangerous drugs or psychotropic substances to be

may permit any alcoholic beverage to be introduced into or distributed at the workplace for consumption by the employees, nor may permit any person in a state of intoxication to enter or remain therein. Similarly, in *Guatemala*,²⁴⁸ the law prohibits the sale or introduction of intoxicating or narcotic drinks or drugs, cockfighting, games of chance and the exercise of prostitution within a radius of 3 kilometres from the workplace.

2.3. Conditions and limits for wage payment in kind and prohibited allowances

The Committee considers it essential to point out, in this respect, the exceptional nature of the practice provided for in Article 4 of the Convention, and to recall the strict requirements which such practice should meet: (a) specific *authorization* by means of national laws or regulations, collective agreement or arbitration award; (b) an authorization can only relate to *partial* payment of wages in the form of allowances in kind; (c) an authorization may only be envisaged for those industries or occupations in which wage payment in kind is *customary or desirable* because of the nature of the industry or occupation concerned; (d) once authorized, wage payment in kind has to be closely supervised with a view to ensuring that the allowances offered are *appropriate and useful* for the worker and his/her family as well as *reasonably valued*.

The Committee does not need to insist that Article 4 of the Convention may only be understood as laying down a comprehensive prohibition against replacing salaries and other contractual remuneration by harmful products such as alcoholic beverages, narcotic substances or tobacco. The Committee recalls, in this respect, that the Committee of Experts on the Application of Conventions and Recommendations has consistently read into the provision of Article 4, paragraph 1, of the Convention a clear proscription of wage payment in the form of alcoholic beverages or noxious drugs of any sort and in any circumstances. Moreover, the Committee is of the opinion that the exclusion of liquors and noxious drugs from permissible allowances in kind should be read in conjunction with the provision of Article 4, paragraph 2, of the Convention which limits payment in kind to those allowances which are appropriate and beneficial to the worker and his family. [...]

Source: Report of the Committee set up to examine the representation alleging non-observance by the Republic of Moldova of Convention No. 95 made under article 24 of the ILO Constitution by the General Federation of Trade Unions of Moldova, June 2000, GB.278/5/1, paras. 31-32.

141. In a number of countries, the national legislation expressly prohibits the payment of wages in kind in the form of alcohol or alcoholic drinks, but contains no specific provision forbidding the payment of wages in the form of

brought into the workplace, or display any such substances therein, and no person under the influence of alcohol or drugs may enter or stay on work premises for any reason whatsoever.

²⁴⁸ (2), s. 7.

noxious drugs. This is the case, for instance, in *Central African Republic*,²⁴⁹ *Israel*,²⁵⁰ *Mauritania*,²⁵¹ *Senegal*²⁵² and *Togo*.²⁵³ In most of these countries, however, payment in kind is only authorized as an exception and may be provided only in the form of lodging or food for those workers transferred outside their normal place of residence and who cannot procure a regular supply of foodstuffs themselves. It should therefore be clear that under the laws of those countries the payment of wages in the form of drugs is illegal and punishable. Similarly, in the *Netherlands*²⁵⁴ and *Suriname*,²⁵⁵ only alcoholic liquors are specifically excluded from the enumeration of authorized allowances in kind. However, it may be assumed that payment in the form of drugs is prohibited in those countries by virtue of the provisions of the Civil Code which authorize the partial payment of wages only in the form of articles of basic necessity for workers and their families, provided that requirements of health and public morals are observed. Mention may also be made of the legislation of *Belgium*²⁵⁶ and *Hungary*,²⁵⁷ which contains a general prohibition against any products or substances harmful to the health of workers and their families.

142. In a few countries, such as *Bulgaria*, *Greece*, *Madagascar*, *Paraguay*, *Romania*, *Saint Vincent and the Grenadines*, *Sri Lanka* and *Tajikistan*, there do not appear to exist any laws or regulations giving effect to the Convention with regard to the payment of wages in the form of alcohol or drugs.²⁵⁸ Nor is this point specifically regulated in a number of countries which are not bound by the provisions of the Convention, such as *India* and *Seychelles*. It should also be noted that in countries such as *Egypt*, *Islamic Republic of Iran*, *Libyan Arab Jamahiriya*, *Mali*, *Sudan*, *Syrian Arab Republic*, *Tunisia* and *Yemen*, the proscription of the payment of wages in the form of alcohol or drugs stems directly from the core principles of Islamic faith and tradition and no

²⁴⁹ (1), s. 104(2). See also *Comoros* (1), s. 103(2); *Niger* (1), s. 158(2); *United Republic of Tanzania* (1), s. 65.

²⁵⁰ (1), s. 3.

²⁵¹ (1), s. 89(2).

²⁵² (1), s. 114(2).

²⁵³ (1), s. 95.

²⁵⁴ (1), ss. 1637P, 1638T.

²⁵⁵ (1), ss. 1613P, 1614T.

²⁵⁶ (1), s. 6(2).

²⁵⁷ (1), s. 154(2).

²⁵⁸ For instance, the Committee has addressed direct requests in this sense to *Bulgaria* and *Kyrgyzstan* in 2001, *Portugal* and *Saint Lucia* in 2000, and *Paraguay* and *Sri Lanka* in 1995. The Government of *Bulgaria* has reported that it intends to include a formal prohibition of the partial payment of labour remuneration in the form of alcoholic beverages and drugs in the next amendment of the Labour Code in 2003.

formal legal prohibition is therefore to be found in national laws or regulations in this regard.

143. The question of the substitution of alcohol and other products prejudicial to the workers' health for cash payments was discussed recently in the context of a representation under article 24 of the Constitution alleging non-observance of the Convention by the *Republic of Moldova* on account of the allegedly widespread practice of paying wages in the form of alcohol and tobacco products. In adopting the conclusions and recommendations of the tripartite committee set up to examine the representation, the Governing Body considered that Article 4, paragraph 1, of the Convention should be understood as proscribing the supply of any harmful products, such as alcoholic drinks, narcotic substances or tobacco, by way of remuneration. It also recalled that this provision should not be read in isolation, but in the light of Article 4, paragraph 2, of the Convention, which authorizes only those allowances that are useful and suitable to the needs of the worker *and his family*. Moreover, referring to the possibility of a reported decline in wage arrears being due in part to the settlement of wage debts in the form of alcohol and tobacco products, the Governing Body emphasized that measures taken for the reimbursement of overdue wages should not result in the violation of other provisions of the Convention.²⁵⁹

2.2.5. Appropriate measures for ensuring adequate protection

2.2.5.1. Allowances appropriate for the personal use and benefit of the worker

144. At the early stages of the preparatory work which led to the adoption of the Convention, the governments of member States were asked whether the international regulations should provide that, where the partial payment of wages in kind was authorized, appropriate measures should be taken to ensure that "such allowances are of adequate quality and quantity".²⁶⁰ The original Office

²⁵⁹ See GB.278/5/1, paras. 31-32, 34. In accordance with the Governing Body's recommendation that the Government of the *Republic of Moldova* should report to the Committee of Experts all relevant information on the evolution of the situation, the Government reported that, according to the results of an inspection carried out in 99 establishments throughout the country, 14 enterprises were found to offer alcohol in lieu of cash wages, thereby affecting 2,500 workers. It also indicated that money wages are replaced by alcohol at the written request of workers on specific family occasions, such as weddings or funerals. The Committee expressed its concern at the continued violation of the requirements of the Convention, and urged the Government to do its utmost to eradicate such practices; see RCE 2002, 334-335 (*Republic of Moldova*).

²⁶⁰ See ILC, 31st Session, 1948, Report VI(c)(1), p. 18. In their replies, some governments objected to the use of the adjective "adequate" to qualify the quantity and quality of allowances in kind, because of the difficulties which would arise in interpreting this term in actual practice. In the light of these considerations, the Office concluded that this provision would raise obvious

questionnaire also invited the views of member States as to whether authorized allowances in kind should be “restricted to those which are necessary for the personal use of the worker and his family”. Following a suggestion that the term “appropriate” should be used instead of “necessary”, the Office incorporated this change, while retaining the clause as a safeguard provision with a view to eliminating possible abuses. During the Conference discussions on the draft instrument, the question of the payment of wages in kind was debated at some length. On the proposal of the Employer members, for instance, the words “and benefit” were added after the word “use”.²⁶¹ The Employer members also suggested substituting the word “or” for the word “and”, so that reference was made to the benefit of the worker or his family. In this connection, it was argued that in certain circumstances it might be necessary to consider the appropriateness of allowances in kind in relation to either the worker or his family, and it was therefore thought undesirable to link the two, as proposed in the Office text. The Worker members opposed the amendment, and stated that they could not accept a provision based on the view that the interests of a worker and his family might be separated. The amendment was finally rejected.²⁶²

145. The Committee wishes to emphasize that the obligation to ensure that any “allowances in kind are appropriate for the personal use and benefit of the worker and his family” – much like the need to ensure that “the value attributed to such allowances is fair and reasonable” – calls for concrete and targeted action which may include the adoption of legislative or administrative measures, as well as the provision of judicial remedies. The Committee recalls, in this connection, that the issue of the protection of workers against the substitution of manufactured products or unsold goods for cash remuneration, which is a clear violation of the requirements set out in Article 4, paragraph 2, of the Convention, has gained particular significance in recent years, especially in the light of the huge wage crises experienced in certain transition economies in Central and Eastern Europe, which are further discussed in Chapter VI below.²⁶³

difficulties in the assessment of the quality and quantity of allowances in kind as regards their adequacy. It was also noted that a sufficient measure of protection was afforded by the other suggested clauses, inasmuch as they would have the effect of ensuring that authorized allowances were suitable for the personal consumption of the worker and his family. The Office accordingly suggested deleting the reference to adequate quality and quantity as a prerequisite of wage payment in kind; see ILC, 31st Session, 1948, Report VI(c)(2), p. 71.

²⁶¹ See ILC, 31st Session, 1948, *Record of Proceedings*, p. 460.

²⁶² See ILC, 32nd Session, 1949, *Record of Proceedings*, pp. 504-505.

²⁶³ Reports abound, for instance, of hungry workers in transition economies who are paid everything from porcelain vases and precision instruments to pineapples, coffins and fertilizers, instead of their ordinary cash wages, and who are constrained to find a market for the manufactured goods in order to sell or barter them; see www.icem.org/campaigns/no_pay_cc/situation.html. The Committee has always taken the view that payments in kind may not be deemed to represent a solution to the problem of wage arrears, and has pointed out that measures taken to reimburse wage arrears should not result in the violation of other provisions of the

146. In light of these considerations, it is important to note that the requirements of the Convention may be considered as fully applied only by those States whose national laws or regulations provide safeguards which effectively ensure that authorized allowances in kind are appropriate for the personal use and benefit of workers and their families, except when payment consists of allowances such as food and lodging, the practical utility of which is self-evident. For instance, in several African countries where the labour legislation is modelled on French law, such as *Cameroon*,²⁶⁴ *Gabon*,²⁶⁵ *Mali*,²⁶⁶ *Niger*,²⁶⁷ *Senegal*²⁶⁸ and *Togo*,²⁶⁹ employers are bound to provide adequate and decent housing for any workers transferred outside their normal place of residence. Moreover, they are obliged to ensure a regular supply of foodstuffs for any workers and their families for whom they provide accommodation, where such workers cannot procure such foodstuffs themselves. In most cases, detailed regulations determine the minimum conditions with which the accommodation provided by employers must conform, for instance, in terms of sanitation, lighting, cooking facilities and water supply, as well as the nature and minimum quantities of foodstuffs to be provided daily by employers. The same holds true for *Colombia*,²⁷⁰ *Ecuador*²⁷¹ and *Nicaragua*,²⁷² where the law authorizes the partial substitution of cash wages only by food, clothing and lodging. In *Israel*,²⁷³ part of the wage may, with the employee's consent, be paid in the form of food or drink intended for consumption at the place of work, or in housing, while in New Zealand,²⁷⁴ board and lodging appear to be the only exceptions prescribed by law to the general prohibition against the payment of

Convention; on this point, see the direct requests addressed to *Algeria* in 2001 and *Kyrgyzstan* in 2000.

²⁶⁴ (1), s. 66(1), (3); (6), ss. 1 to 9. The situation is practically identical in *Benin* (1), s. 211(1), (3); *Burkina Faso* (1), ss. 105, 106; *Central African Republic* (3), ss. 1 to 9; (1), ss. 97, 98; *Chad* (1), s. 254; *Comoros* (1), s. 98; *Côte d'Ivoire* (1), s. 31.5; (2), ss. 2D.1 to 2D.12; (5), s. 78; *Democratic Republic of the Congo* (1), s. 117; *Djibouti* (1), ss. 92, 93; *Mauritania* (1), ss. 80, 81; *Rwanda* (1), ss. 83, 84; (3), ss. 1 to 9; (5), ss. 1 to 7; *Yemen* (1), ss. 68, 70. See also *Libyan Arab Jamahiriya* (1), ss. 99, 100.

²⁶⁵ (1), ss. 141, 142, 144.

²⁶⁶ (2), ss. D.96-2-1 to D.96-2-7, D.96-2-11.

²⁶⁷ (1), s. 151; (3), ss. 190 to 200.

²⁶⁸ (1), ss. 106, 107.

²⁶⁹ (1), s. 89.

²⁷⁰ (1), ss. 129, 136. See also *Cuba* (1), s. 129 and *Dominican Republic* (1), s. 260.

²⁷¹ (2), ss. 274, 343.

²⁷² (2), s. 146.

²⁷³ (1), s. 3.

²⁷⁴ (1), ss. 7, 11(1)(b); (4), s. 7(1).

wages in kind. In the *Philippines*,²⁷⁵ the law refers principally to board and lodging, but also authorizes other facilities provided that these are articles or services for the benefit of employees or their families excluding tools of the trade or articles or services primarily for the benefit of the employer or necessary for the conduct of the employer's business. In *Namibia*,²⁷⁶ the law makes explicit reference to the reasonable needs of workers and their dependants in requiring employers to provide housing and food, or to permit cattle-raising and farming for workers residing on agricultural land. In *Guatemala*²⁷⁷ and *Panama*,²⁷⁸ authorized allowances in kind may only take the form of groceries or food, housing and clothing for the immediate personal consumption or use by the worker or the members of his family.

147. In addition, in the *Netherlands*²⁷⁹ and *Suriname*,²⁸⁰ permissible payments in kind are exhaustively enumerated and include prepared meals and lighting materials, clothing, the use of a plot of land or the use of specified housing, free medical treatment, as well as company products, on condition that these are suited as regards both their nature and quantity to the essential needs of employees and of their families. The law further provides that any benefits in the form of board, lodging or other necessities must be provided subject to the requirements of hygiene and moral standards and that any agreement to remove or limit such obligation by the employer shall be null and void. Similarly, in *Belgium*,²⁸¹ authorized benefits in kind are limited to accommodation, foodstuffs for consumption at the workplace, electricity, water or heating and the use of land.

148. In the United States,²⁸² at the federal and state level, provision is made for the payment of wages in kind only in the form of board, lodging or

²⁷⁵ (1), s. 97(f); (2), Bk. III, Rule VII-A, s. 5. Similarly, in *Singapore* (1), ss. 27(1), 30, 59, the law permits the supply of food and quarters, while any other amenities or services may only be supplied with the authorization of the Labour Commissioner.

²⁷⁶ (1), s. 38(1), (2). Similarly, in *Oman* (1), s. 54, land for cultivation may be provided instead of wages provided that there exists a written agreement to this effect and that such agreement is approved by a responsible person.

²⁷⁷ (2), s. 90.

²⁷⁸ (1), s. 144.

²⁷⁹ (1), ss. 1637P, 1638T.

²⁸⁰ (1), ss. 1613P, 1614T. See also *Romania* (4), s. 1(1), where specific legislation provides for a subsistence allowance in the form of meal coupons.

²⁸¹ (1), s. 6(2).

²⁸² (1), s. 3(m); (2), ss. 531.27, 531.28, 531.32. See also *Hawaii* (16), ss. 387-1, 388-1; *Kentucky* (23), s. 1:080(3)(a); *Maryland* (26), s. 3-418(a); *North Carolina* (41), s. 13-12.0301(b). In *Connecticut* (12), s. 31-60-3(a), "board" is taken to mean food furnished in the form of meals on a regularly established schedule, while "lodging" is defined as housing facility available to the employee at all hours of the day wherein the employee sleeps, rests and may store clothing and personal belongings. In some cases, the legislation provides for specific requirements to ensure

other facilities, the reasonable cost of which may be either added to or deducted from cash wages. The term “other facilities” is deemed to include goods or services similar to board and lodging such as meals furnished at company restaurants or by hospitals, hotels or restaurants to their employees, dormitory rooms and tuition furnished by a college to its student employees, general merchandise furnished at company stores, fuel, electricity, water and gas furnished for the non-commercial personal use of the employee, and transportation furnished to employees between their homes and work.

149. In other countries, reference is made to the worker’s consent as a prerequisite for any payment in kind, the assumption probably being that by agreeing to the type and value of the allowances in kind in advance, workers can make sure that the allowances received in lieu of money are genuinely those suited to their needs and useful for their households. For example, in *Belarus*,²⁸³ the law permits money wages to be replaced in part by payments in kind, subject to the worker’s consent. In the *Czech Republic*²⁸⁴ and *Slovakia*,²⁸⁵ an employer may provide wages in kind only with the consent and under conditions agreed with the employee. Similarly, in *Guyana*,²⁸⁶ an employer is in principle prohibited from providing an employee any allowance in kind unless the employee so requests, while in *Swaziland*,²⁸⁷ labour remuneration may be paid in kind only in pursuance of a written agreement with an employee. The Convention, however, is clear in providing that the conditions governing payments in kind have to be regulated by legislation, collective agreement or arbitration award, and not left to individual agreements between employers and workers. As explained above, the rationale behind Article 4, paragraph 1, of the Convention is that whenever wage conditions, such as payment in kind, deductions or pay intervals, are left to be freely determined by the two parties in the employment relationship, there is a real risk of abuse, since the employee is generally in a weaker position and therefore often ready to accept the conditions offered by the employer, however onerous or unfavourable.

that board and lodging arrangements are of acceptable quality and quantity. For instance, in Pennsylvania (46), s. 231.22(b), a lodging allowance is permitted only when the facility affords the employee reasonable space, privacy, sanitation, heat, light and ventilation, while in Minnesota (30), s. 5200.0070(3), lodging must include exclusive, self-contained bathroom and kitchen facilities. Similarly, under the laws of Connecticut (12), s. 31-60-3(c), and Minnesota (30), s. 5200.0060, a meal allowance is permitted only when the employee is offered an adequate portion of a variety of wholesome, nutritious foods, including at least one food from each of the following four groups: fruits or vegetables; cereals, bread or potatoes; eggs, meat or fish; milk, tea or coffee.

²⁸³ (1), s. 74.

²⁸⁴ (2), s. 13(1).

²⁸⁵ (1), s. 127(1).

²⁸⁶ (1), s. 22(2)(a).

²⁸⁷ (1), s. 48(a).

150. Mention should also be made of those countries where the requirement of the prior approval of the benefits in kind by a government authority on a case-by-case basis is considered to protect workers adequately against inappropriate or worthless allowances in kind and, by the same token, satisfy the requirements of this provision of the Convention. In *Malaysia*,²⁸⁸ for instance, the law provides that any amenities or services other than food, lodging, fuel, light, water and medical assistance have to be approved by the Director-General of Labour before an employer may include such amenities or services in the terms of a contract of service with an employee. In Australia, state laws in Queensland²⁸⁹ authorize the payment of wages in the form of allowances in kind only if such payment is permitted by an industrial instrument. Such industrial instruments have to be approved by the Queensland Industrial Relations Commission, which must ensure that awards provide for secure, relevant and consistent wages and employment conditions. Similarly, in Western Australia,²⁹⁰ employees cannot be directly or indirectly compelled by an employer to accept goods, accommodation or services of any kind instead of money as any part of their wages, unless this is authorized or required under the workplace agreement or award.

151. In some countries, the legislation, while reflecting to the letter Article 4, paragraph 2(a), of the Convention in requiring that authorized allowances in kind be appropriate for the personal use and benefit of workers and their families, fails to specify any concrete measures for the practical implementation of this principle. This is the case, for instance, in *Barbados*,²⁹¹ *Guinea*,²⁹² *Mexico*,²⁹³ *Paraguay*,²⁹⁴ *Syrian Arab Republic*²⁹⁵ and *Uganda*.²⁹⁶

²⁸⁸ (1), s. 29. Similarly, in Ghana (1), s. 53(6), (7)(a), the Labour Code stipulates that the Chief Labour Officer may give his approval for wage payment in kind only if he is satisfied that the allowances in question are appropriate for the personal use and benefit of the worker and his family. See also *Mauritius* (1), s. 10(2).

²⁸⁹ (7), s. 393(1)(c). According to the Government's report, there is only one industrial instrument that permits the payment of wages in the form of an allowance in kind, that is the Station Hands' Award, which sets a rate for keep, the value of which is included in the employees' wages.

²⁹⁰ (10), s. 17B(1). According to the information supplied by the Government, the payment of wages in kind in Western Australia primarily occurs in the agriculture and hospitality industries, in which employees may opt to have a proportion of their wages deducted for the provision of board and lodging. In these industries, the relevant industrial awards generally regulate the maximum deduction allowable for board and lodging.

²⁹¹ (2), s. 6. See also United Kingdom: Jersey (17), s. 4(2).

²⁹² (1), ss. 206(2), 212; (2), ss. 3, 4.

²⁹³ (2), s. 102.

²⁹⁴ (1), s. 231.

²⁹⁵ (3), s. 87; (4), s. 3(a).

²⁹⁶ (1), s. 30(a).

The same statement of principle without any indication as to its practical application is also found in the legislation of Guinea-Bissau²⁹⁷ and Mozambique.²⁹⁸

2.2.5.2. *Fair and reasonable valuation of allowances in kind*

152. Based on an initial review of national laws and practices relating to the protection of wages during the preparatory work leading to the adoption of the instruments, the Office concluded that the value attributed to the goods to which workers were entitled under an arrangement for the partial payment of wages in kind, should be clearly defined. In the terms of the Office questionnaire, governments were therefore asked to indicate whether they were in favour of international regulations which would provide that “the value attributed to such allowances should not exceed their real value”.²⁹⁹ At the first Conference discussion, it was proposed to insert the words “is fair and reasonable” in place of the words “should not exceed their real value”. The view was expressed that the term “real value” was not sufficiently precise, whereas the concept of fair and reasonable value had been found useful in practice. The proposed terminology was also thought to be more appropriate in dealing with questions of interpretation. Despite some opposition from Government and Worker members, the amendment was finally adopted.³⁰⁰

153. Further to the point made in paragraph 145 above, the Committee recalls once again that Article 4, paragraph 2, of the Convention imposes an obligation as to the result to be achieved and therefore requires the adoption of practical measures to ensure that any allowances in kind which may be provided in partial settlement of the wages due are attributed a fair and reasonable value. This obligation may be met in a variety of ways, such as the inclusion in the

²⁹⁷ (1), s. 102(2).

²⁹⁸ (1), s. 53(2).

²⁹⁹ See ILC, 31st Session, 1948, Report VI(c)(1), p. 18. In their replies, most of the governments took the view that the wording “real value” was inexact and did not clearly indicate whether the maximum value attributable to such allowances was their “fair market value” or the “reasonable cost to the employer of providing them”. It was suggested that a more precise criterion, such as the normal market price of the goods provided or the cost price, would be preferable; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 18, 27, 97.

³⁰⁰ See ILC, 31st Session, 1948, *Record of Proceedings*, pp. 460-461. The same point was again debated during the second Conference discussion, when it was suggested replacing the words “is fair and reasonable” by the words “shall not exceed cost prices and in any case the local market price”. It was argued in favour of the proposal that the wording of the Office text was too general and would lead to difficulties of interpretation. The proposed amendment was opposed, however, on the grounds that it would impede the ratification of the Convention, such provisions being very difficult for a number of governments to enforce, and was finally rejected; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 505.

relevant laws, regulations, collective agreements or arbitration awards of corresponding general conditions and/or more specific rules respecting the types of benefits in kind which may be provided and the principles or methods of determining, supervising or, if necessary, adjudicating the value attributed to them.³⁰¹

154. Certain countries have enacted legislation seeking to guarantee the attribution of a fair and reasonable value to allowances in kind. The law frequently requires that the value attributed to allowances in kind should not exceed their ordinary market value. This is the case, for instance, in the *Czech Republic*,³⁰² *Israel*³⁰³ and *Slovakia*.³⁰⁴ In India,³⁰⁵ the retail prices at the nearest market are taken into account in computing the cash value of wages paid in kind, while this computation is to be made in accordance with such government instructions as may be issued from time to time. In Mozambique,³⁰⁶ allowances in kind must be calculated according to current prices in the region. The legislation in *Belgium*,³⁰⁷ while affirming that no employer may seek a profit by paying benefits in kind to employees, provides that payments in kind should normally be valued at cost prices, but may in no case exceed their market value. Moreover, in *Guatemala*,³⁰⁸ the law requires food and similar supplies to be provided to agricultural workers at cost price or less. Similarly, in *Uganda*,³⁰⁹ the value attributable to allowances or privileges in kind should not exceed the cost to the employer of their provision, while in *Ukraine*,³¹⁰ the law allows for

³⁰¹ This is one of the points that is raised most regularly in the Committee's individual comments to ratifying States; for instance, the Committee has addressed direct requests in this respect to *Botswana*, *Bulgaria*, *Guatemala*, *Sri Lanka* and *Tunisia* in 2001, the *Russian Federation* in 1998, *Costa Rica* in 1997 and *Grenada* in 1995. See also RCE 2002, 329 (*Egypt*), 339 (*Russian Federation*).

³⁰² (2), s. 13(3). Similarly, in Germany (1), s. 115(2), the price must not exceed the average cost price and/or the customary local price.

³⁰³ (1), s. 3.

³⁰⁴ (1), s. 127(3). The law refers to prices charged by the producer of the goods or the provider of the services in accordance with the price regulations in force.

³⁰⁵ (3), s. 20; (2), s. 11(3). The law further provides that if the appropriate government is of the opinion that provision should be made for the supply of essential commodities at concessional rates, it may, by notification in the *Official Gazette*, authorize the provision of such supplies at concessional rates.

³⁰⁶ (1), s. 53(1)(a). Similarly, in Guinea-Bissau (1), s. 102(2), the value placed upon non-pecuniary payments may not be higher than that prevailing in the region at the time.

³⁰⁷ (1), s. 6(3).

³⁰⁸ (2), s. 90.

³⁰⁹ (1), s. 30(b). See also *Swaziland* (1), s. 48(b), and United Kingdom: Virgin Islands (22), s. C31(1)(b).

³¹⁰ (2), s. 23(3). However, according to information supplied by the Federation of Trade Unions of Ukraine, new legislation was enacted in July 2002 requiring that the allowances in kind do not exceed cost prices.

the partial payment of wages in kind at prices not lower than their production cost. In Singapore,³¹¹ authorized deductions from the salary of an employee for food and accommodation supplied by the employer may not exceed the actual cost of meals and an amount equivalent to the value of the accommodation.

155. In some countries such as *Colombia*,³¹² *Guyana*³¹³ and *Peru*,³¹⁴ the law seeks to protect workers' earnings against unfair or excessive valuation of payments in kind by specifying that the value to be attributed to any allowances in kind must be agreed upon by the employer and employee. This is also the case in *Jordan*,³¹⁵ where the law authorizes deductions in respect of accommodation and other amenities and services provided by the employer, at such rates or percentages as agreed upon by the two parties.

156. In many countries, the cash value of certain goods or services, such as board and lodging, which may be deducted from wages, is fixed by law or by decision of the public authorities in order to ensure that payment in kind does not result in an unfair reduction of the worker's net income. For instance, in *Central African Republic*,³¹⁶ *Côte d'Ivoire*,³¹⁷ *Mali*³¹⁸ and *Niger*,³¹⁹ when housing is provided, the cash deduction for every working day may not exceed an amount corresponding to one half-hour of work calculated at the rate of the minimum interoccupational wage (SMIG), whereas in the case of food supplies, an amount equal to two-and-a-half times the hourly wage rate at the SMIG level may be deducted for every day of work. In *Chile*,³²⁰ the value of authorized allowances in kind with respect to agricultural workers is determined by the Minister of Labour having regard to the circumstances prevailing in the various regions of the country. In the *Democratic Republic of the Congo*,³²¹ the maximum deductible amounts for lodging are strictly regulated and vary

³¹¹ (1), ss. 27(1)(c), 30.

³¹² (1), s. 129(2). The value must be expressly stated in the contract of employment, failing which it will be determined by an expert. Similarly, in the United Kingdom: Gibraltar (11), s. 18(2), where any part of an employee's remuneration is given in kind, the value ascribed thereto must be entered in the contract of employment signed by the employee, the written contract required to be produced to the Director of Labour and Social Security, and the wages register kept by the employer.

³¹³ (1), s. 22(2).

³¹⁴ (2), ss. 13, 15. If there is no agreement, the market value of the goods should be followed, or the value fixed by the National Food Institute in respect of food supplies.

³¹⁵ (1), s. 47(e).

³¹⁶ (3), s. 10.

³¹⁷ (2), ss. 2D.17, 2D.18.

³¹⁸ (2), ss. D.96-2-8, D.96-2-12.

³¹⁹ (3), ss. 201, 205.

³²⁰ (1), s. 91.

³²¹ (5), s. 4.

according to the worker's income and the geographical region in which the work is performed, while in *Côte d'Ivoire*,³²² the scale of maximum monthly deductions for lodging is fixed by national collective agreement on the basis of the surface area and furnishing of the housing. In New Zealand,³²³ authorized deductions in respect of board and lodging may not exceed the cash value of those goods and services, as fixed by or under any Act, award, collective agreement or employment contract, or if it is not so fixed, the deduction may not exceed such amount as will reduce the worker's wage by more than 15 per cent for board or by more than 5 per cent for lodging.

157. In Seychelles,³²⁴ the law provides that the Minister of Labour may, after consultation with the trade unions and the employers' organizations, issue regulations authorizing benefits or advantages in kind and defining the value to be attached to them, as well as regulations prescribing the maximum sum which an employer may deduct from the worker's wages in respect of the cost of food or housing, or both food and housing provided by the employer. In the United States,³²⁵ under federal and state laws, the reasonable cost or fair value of board,

³²² (5), s. 79.

³²³ (4), s. 7(1). Similarly, in *Barbados* (4), s. 14(3)(b), *Saint Vincent and the Grenadines* (2), s. 13(2), and the *United Republic of Tanzania* (3), s. 11(2), authorized benefits or advantages in kind and the value at which any such benefits or advantages are to be reckoned have to be clearly specified in wages regulation orders. In Canada (2), ss. 21, 22, at the federal level and in certain jurisdictions, such as Alberta (5), s. 12(1), and Northwest Territories (11), s. 2, the legislation specifies the maximum amount by which the minimum hourly wage rate may be reduced for each meal or for lodging per day. In Quebec (16), s. 51, the cash value of board and living quarters furnished to employees as part of wages is to be fixed by government regulation, while in Saskatchewan (18), s. 14, the cash value is to be determined by the minimum wage board, failing which it may not exceed a specific monthly amount prescribed in the law. In *Guinea* (1), ss. 206(2), 212; (2), s. 3, an employer may not charge for accommodation more than 6 per cent of the worker's basic wage when the latter is remunerated at the SMIG level, while in all other cases the cash deduction may not exceed 20 per cent of the worker's basic wage. See also Japan (3), s. 2(2), (3).

³²⁴ (1), ss. 40(2)(d), (3)(d), 42(1). Where such a maximum amount has been prescribed, the employer may deduct from the worker's wages, if they are in excess of the national minimum wage, the maximum sum prescribed, or the actual cost of the food and housing, or the difference between the worker's wages and the national minimum wage, whichever is the less. See also *Benin* (1), s. 211, and *Kenya* (2), s. 14(4)(a), where the maximum amount which may be charged for the supply of daily rations of food and victuals is fixed by ministerial decision.

³²⁵ (1), s. 3(m); (2), ss. 531.27, 531.29. See also Alabama (4), s. 25-4-16(b); Kentucky (23), s. 1:080(1); Missouri (32), ss. 290.315, 290.512(2); Montana (33), s. 39-3-204(1); North Carolina (40), s. 95-25.2(16), and (41), ss. 13-12.0301(a), (c), 13-12.0302(a), (b); Pennsylvania (46), s. 231.22(a); Texas (51), s. 62.053. In some states, such as Connecticut (12), s. 31-60-3(e), (f), and Nevada (35), s. 608.155(1), the law specifies the maximum monthly or daily amount which may be deducted for a private room or full meal. In other states, such as Minnesota (30), ss. 5200.0060, 5200.0070(2), the maximum chargeable amounts for board and lodging are defined as a percentage of the minimum hourly wage rate. In Maryland (26), s. 3-418(d), regulations for the computation of the cost of board and lodging are to be adopted by labour authorities on the basis of actual cost

lodging or other facilities furnished to an employee as part of the wages is to be determined by the competent labour authority and may not include a profit to the employer or to any affiliated person, such as a spouse, child, parent or other close relative of the employer, a partner, officer or employee in the employer company, or an agent of the employer.

158. In other countries, the law provides for the intervention of high-level public officials in authorizing the type and value of payments in kind as a means of ensuring that the requirements set forth in the Convention are fulfilled. In *Malaysia*,³²⁶ for instance, the provision of housing, food, fuel, light, water, medical attendance, or any other amenity or service, in addition to money wages, is subject to the prior approval of the Director-General of Labour who, in granting such approval, may make such modifications or impose such conditions as he may deem proper and just. In the *Philippines*,³²⁷ the Secretary of Labor may from time to time fix in appropriate issuances the fair and reasonable value of board, lodging and other facilities customarily furnished by an employer to employees both in agricultural and non-agricultural enterprises. The fair and reasonable value of facilities is understood to mean the cost of operation and maintenance, including adequate depreciation, plus a reasonable allowance which may not exceed 5.5 per cent interest on the depreciated amount of capital invested by the employer.

159. Many governments seem to take the view that the fact that authorized allowances in kind may not exceed a maximum proportion of the worker's total remuneration suffices to ensure compliance with the requirements of the Convention. As analysed in greater detail above, such a ceiling often varies from 20 per cent, as in the case of *Hungary*, to 40 per cent, as for example in *Botswana*, while in some cases it is even fixed at as much as 50 per cent, for instance in *Azerbaijan* and the *Republic of Moldova*. However, the Committee has always considered that setting an overall limit on the proportion of the money wages which may be replaced by benefits in kind does not in itself

or reasonable cost for a defined class of employees in a defined area based on the average cost to groups of employers situated similarly, the average value to groups of employees, or any other appropriate measure of fair value.

³²⁶ (1), s. 29. In *Singapore* (1), ss. 27(1)(e), 30, the supply of amenities and services, other than food or housing, is subject to the prior authorization of the Labour Commissioner and to such conditions regarding permissible deductions as he may impose. Similarly, in *Ghana* (1), s. 53(7)(b), the Chief Labour Officer may not give his approval to any request for partial payment of wages in the form of allowances in kind unless he is satisfied that the value attributed to the allowances in question is fair and reasonable. See also *Mauritius* (1), s. 10(2), and *Oman* (1), s. 38.

³²⁷ (1), s. 97(f); (2), Bk. III, Rule VII-A, ss. 4, 6, 7. An employer may also provide subsidized meals up to an amount representing 30 per cent of the fair and reasonable value of such meals and subsequently deduct from the cash wages of employees not more than 70 per cent of the meal value. In any case, the acceptance of such facilities must be voluntary, so that the employer may not deduct the cost of any facilities without the written authorization of the employee concerned.

resolve the problem of the fair valuation of such benefits and offers little protection to workers from possible exploitative practices. Regulating the maximum proportion of money to consumer goods permissible in remuneration guarantees at most the partial character of the wage payment in kind, as required under Article 4, paragraph 1, of the Convention. Yet, such limits alone cannot ensure that the allowances in kind provided in any given case are in fact suitable for the needs and interests of the workers and their families, and even less that such allowances are not overvalued, to the detriment of real earnings of workers.³²⁸

160. Finally, in certain countries, such as the *Islamic Republic of Iran*,³²⁹ *Mexico*,³³⁰ *Paraguay*,³³¹ *Syrian Arab Republic*³³² and *Uganda*,³³³ the national legislation, while reflecting the requirement of the Convention concerning the fair valuation of benefits in kind, fails to prescribe concrete measures which would ensure the application of such requirements in practice. The Committee has on a number of occasions stressed the need for specific regulations respecting the evaluation of allowances in kind.³³⁴

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161. In conclusion, the Committee notes that most of the provisions which have been discussed in this chapter enjoy broad acceptance and are fully applied. However, while the requirement for the payment of wages in legal tender seems to pose no difficulty in all legal systems, the outright prohibition of the payment of wages in coupons, bonds and other currency substitutes continues to give rise to serious problems of compliance in certain countries. With regard to non-cash methods of payment, the Committee notes that their use is increasingly recognized in law and constantly expanding in practice in the interests of improving the security and efficiency of pay arrangements. Moreover, the Committee is satisfied that the payment of wages by electronic bank transfer, which is generally regarded as the most preferable form of cashless wage payment, subject to the conditions referred to in paragraph 84 hereof, is consonant with the scope and purpose of the relevant provisions of the Convention and cannot therefore stand as an obstacle to its future ratification.

³²⁸ For instance, the Committee has addressed a direct request in this sense to *Panama* in 2001.

³²⁹ (1), s. 40.

³³⁰ (2), s. 102.

³³¹ (1), s. 231.

³³² (3), s. 87.

³³³ (1), s. 30(b).

³³⁴ See, for instance, RCE 2001, 356 (*Costa Rica*).

162. The partial payment of wages in kind appears to remain an important aspect of working life in many countries, especially in the developing world. However, it has recently become particularly controversial in many transition countries, where this method of payment is often used as an easy response to the rising tide of wage arrears. The payment of wages in kind is specifically regulated by the legislation of the large majority of countries, although the problem still persists in certain instances that the determination of the precise conditions governing the payment of some part of wages in kind is left to the discretion of the parties to the employment relationship. The Committee notes with regret that, contrary to what might be expected, the problems of the payment of wages in alcohol and other prohibited goods is far from being definitely eliminated some 53 years after the adoption of the Convention. In this respect, the Committee wishes to add that the payment of part of wages in the form of liquors of high or low alcoholic content would seem to be totally out of place today, since the Convention may only be deemed to lay down a comprehensive prohibition against the substitution of money wages by alcohol and narcotic substances of all sorts and varieties.

163. The examination of national law and practice reveals that the principal requirements of the Convention, in particular the obligation to ensure that authorized allowances in kind are appropriate for the personal use and benefit of the workers and their families, are not always fully understood. While a considerable number of countries give effect to this provision by exhaustively enumerating the permitted allowances in kind, others would seem to have confined the measures that they have taken in this respect to giving legislative recognition to the provision, rather than securing its application in practice. In addition, the legislation of almost half the ratifying States still fails to reflect the principle that allowances in kind have to be valued in a fair and reasonable manner. It seems that there is still a measure of uncertainty as to how to ensure the application of this requirement in law and practice, as illustrated by the repeated comments of the Committee to the effect that the setting of a maximum proportion of the wages which may be paid in kind does not resolve in itself the problem of the fair and reasonable evaluation of the goods and services thus provided.

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