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**Report III
(Part 4 B)**

**Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations**

**General Survey of the Reports
on the Minimum Wage-Fixing Machinery
Convention (No. 26) and Recommendation
(No. 30), 1928; the Minimum Wage Fixing
Machinery (Agriculture) Convention (No. 99)
and Recommendation (No. 89), 1951; and the
Minimum Wage Fixing Convention (No. 131)
and Recommendation (No. 135), 1970**

**Report of the Committee of Experts on the Application of Conventions and
Recommendations (Articles 19, 22 and 35 of the Constitution)**

International Labour Office Geneva

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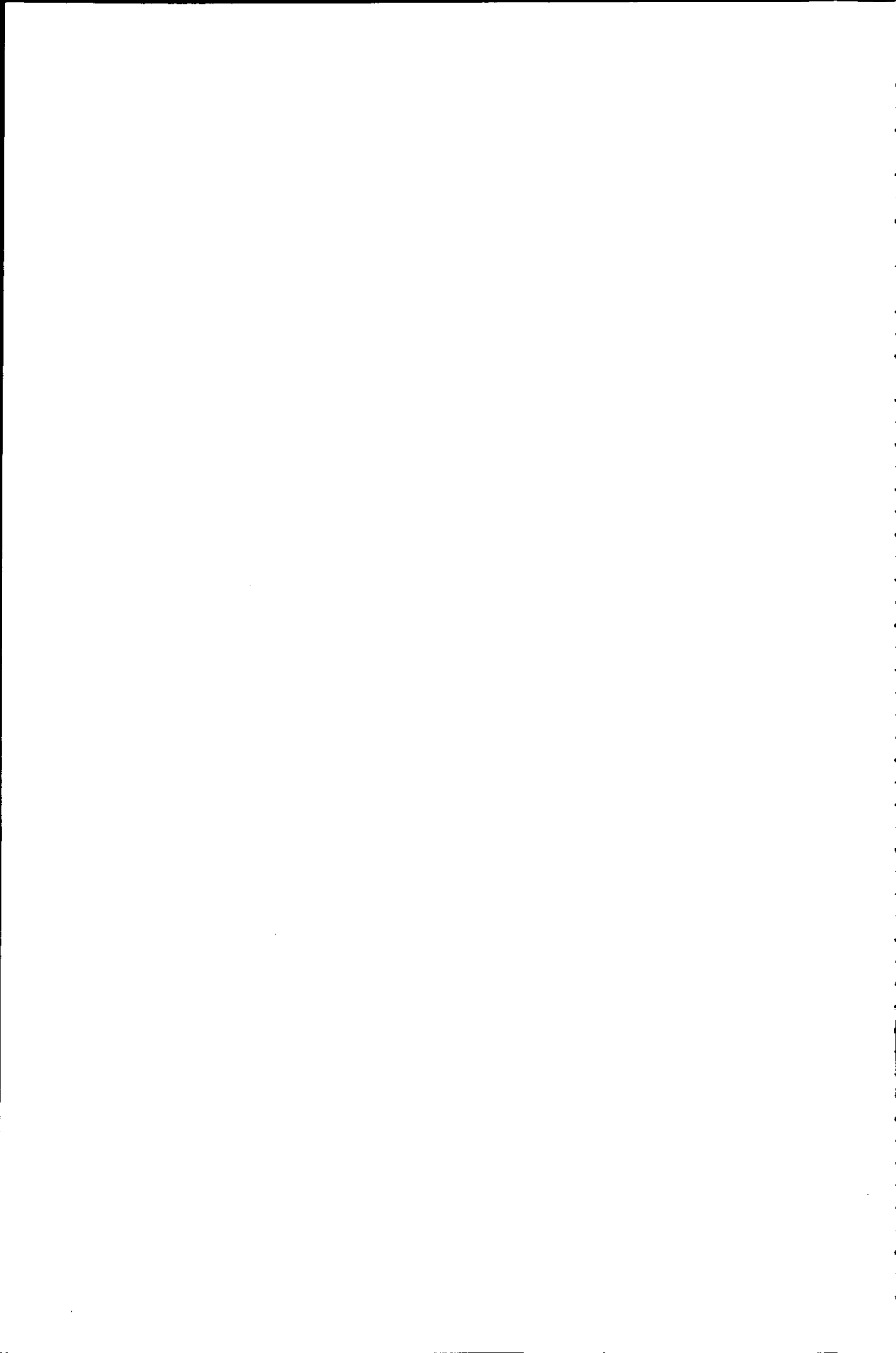
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Appendices



Introduction

1. In accordance with article 19 of the Constitution of the ILO, the Governing Body decided at its 244th Session (November 1989), to request States which have not ratified them to furnish reports on the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951 (No. 99), and the Minimum Wage Fixing Convention, 1970 (No. 131), and to request all member States to furnish reports on the Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30), the Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89), and the Minimum Wage Fixing Recommendation, 1970 (No. 135).

2. On the basis of these reports and of those submitted in accordance with articles 22 and 35 of the Constitution by States which have ratified some or all of the above-mentioned Conventions, the Committee of Experts was able, in accordance with its usual practice, to make a general survey of the situation in respect of national law and practice.

3. This is the second time the Committee has undertaken a general survey of the minimum wage fixing instruments.¹ Nevertheless, it must be emphasised that minimum wages have been the subject of close attention since the beginnings of the International Labour Organisation.

I. Historical development of the international labour standards on minimum wages

4. From the earliest days, the founding Members of the International Labour Organisation considered that one of the aspects that should be the subject of regulations on conditions of work was a wage that secured workers "a reasonable standard of life as this is understood in their time and country", thus responding to the concern expressed by those member States which had signed the Peace Treaty of Versailles and considered that there was an urgent need to improve conditions of work, inter alia, by "the provision of an adequate living wage".² These principles were set out in both the Preamble to Part XIII of the Peace Treaty and in Article 427 thereof; this Part was to become the Constitution of the ILO, and later on was included in the Preamble to the current Constitution as well as in article 41 of the ILO Constitution as it was adopted in 1946.

5. In 1921, in application of this principle, the Governing Body instructed the International Labour Office to carry out an inquiry into existing systems of minimum wage fixing, especially in industries in which the employers or workers

¹ The first time the Committee undertook a survey of this kind was in 1958. See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution), Report III (Part IV)*, 42nd Session, Geneva, 1958. Hereafter this will be referred to as the *General Survey of 1958*.

² ILO: *Constitution and Rules*, Geneva, Oct. 1921, pp. 4 and 17.

were unorganised or insufficiently organised. The results of this inquiry enabled the Governing Body to consider that this subject could usefully be examined by the Conference.³ The matter was discussed at the Tenth and Eleventh Sessions of the Conference, in 1928 and 1929, resulting in the adoption of the Minimum Wage-Fixing Machinery Convention (No. 26) and Recommendation (No. 30).

6. Subsequently, in 1944, the International Labour Conference reaffirmed its concern over workers' wages. The Declaration concerning the aims and purposes of the International Labour Organisation, known as the Declaration of Philadelphia, states, inter alia, that "the Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: ... a minimum living wage [for] all employed and in need of such protection."

7. In 1948, as a result of the resolutions adopted by the Permanent Agricultural Committee (in 1938 and 1947), the Governing Body decided, at its 107th Session (December 1948), to include in the agenda of the Conference in 1950 the subject of minimum wage fixing in agriculture. Following the relevant discussions, 1951 saw the adoption of the Minimum Wage-Fixing Machinery (Agriculture) Convention (No. 99) and Recommendation (No. 89). The adoption of these instruments filled the gap that had been left by Convention No. 26 and Recommendation No. 30.

8. On the basis of the recommendations of the Meeting of Experts⁴ convened by the Governing Body at its 168th and 169th Sessions (February-March 1967 and June 1967, respectively), the Governing Body decided, at its 170th Session (November 1967), to include in the agenda of the International Labour Conference an item on minimum wage fixing machinery and related problems, with special reference to developing countries. As a result of the discussions which took place during the 53rd and 54th Sessions of the Conference, in 1970 the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135) were adopted.

9. There are also other ILO instruments that refer to minimum wages. Among them special mention should be made of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117). In addition, throughout the ILO's standard-setting activities, the International Labour Conference has adopted other standards directly related to minimum wages; among these, as examples, mention should be made of the Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84) of 1949, the Protection of Wages Convention (No. 95) and Recommendation (No. 85), of 1949, the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), of 1951 and the Employment Promotion and Protection against Unemployment Convention (No. 168) and Recommendation (No. 176) of 1988.

10. The International Labour Conference has on various occasions adopted resolutions which refer directly or indirectly to minimum wages. Apart from the resolutions adopted between 1945 and 1949, to which the Committee

³ ILO: *Minimum wage fixing machinery* (Blue Report), item II on the agenda, ILC, Tenth Session, Geneva, 1927, pp. 7 and 8.

⁴ See: *Report of the Meeting of Experts on minimum wage fixing and related problems, with special reference to developing countries*, doc. GB.170.6/10, Geneva, 14-17 Nov. 1967, paras. 98 et seq. This report will be referred to hereafter as *Report of the Meeting of Experts, 1967*.

referred in its previous survey,⁵ the Conference has adopted other resolutions on the subject. Mention may be made, in particular, of the resolution concerning the relations between international trade and employment;⁶ the resolution concerning the convocation by the ILO of a tripartite World Conference on Employment, Income Distribution, Social Progress and the International Division of Labour;⁷ the resolution concerning industrialisation, the guarantee of employment and the protection of the incomes of workers;⁸ the resolution concerning development, foreign debt and the social objectives of the ILO;⁹ the resolution concerning rural employment promotion;¹⁰ and the resolution concerning structural adjustment, industrial relations and economic and social development.¹¹

11. The regional conferences too have adopted resolutions concerned directly or indirectly with minimum wages. Apart from those already mentioned by the Committee in its previous survey,¹² mention should be made of a resolution adopted by the Seventh African Regional Conference: resolution concerning economic development and social progress in Africa;¹³ the resolutions adopted by the Tenth and Twelfth Conferences of American States Members of the International Labour Organisation: resolution concerning social development and employment in the Americas;¹⁴ and the resolution concerning growth, development and foreign debt;¹⁵ the resolution and conclusions adopted by the Tenth and Eleventh Asian Regional Conferences: resolution concerning action of the International Labour Organisation in respect of restrictive trade policies and their effects on employment; and conclusions on growth and structural adjustment.¹⁶ Furthermore, minimum wages have also been the subject of a series of conclusions or resolutions adopted by Industrial Committees, joint committees or technical meetings.¹⁷

⁵ *General Survey of 1958*, para. 5.

⁶ *Official Bulletin*, Vol. LIV, 1971, Series A, No. 3, p. 269.

⁷ *Official Bulletin*, Vol. LVII, 1974, Series A, No. 1, pp. 42-43.

⁸ *Official Bulletin*, Vol. LVIII, 1975, Series A, No. 1, pp. 84-85.

⁹ *Official Bulletin*, Vol. LXIX, 1986, Series A, No. 2, pp. 102-105.

¹⁰ *Official Bulletin*, Vol. LXXI, 1988, Series A, No. 2, pp. 105-115.

¹¹ *Official Bulletin*, Vol. LXXIV, 1991, Series A, No. 2, pp. 77-80.

¹² *General Survey of 1958*, para. 6.

¹³ *Official Bulletin*, Vol. LXXII, 1989, Series A, No. 3, pp. 121-123.

¹⁴ *Official Bulletin*, Vol. LVIII, 1975, Series A, No. 2, pp. 169-170.

¹⁵ *Official Bulletin*, Vol. LXX, 1987, Series A, No. 1, pp. 57-58.

¹⁶ *Official Bulletin*, Vol. LXX, 1987, Series A, No. 1, p. 41, and GB.252/6/6, Geneva, (March) 1992, pp. 20 to 28.

¹⁷ See, for example: resolution concerning wages in the mining industry, 1988, adopted by the Coal Mines Committee; conclusions concerning the impact on employment and income of structural and technological changes in the leather and footwear industry, 1985, adopted by the Third Tripartite Technical Meeting for the Leather and Footwear Industry; conclusions concerning problems specific to employees in commerce and offices, 1985, adopted by the Advisory Committee on Salaried Employees and Professional Workers; conclusions concerning technological developments and their influence on the structure of remuneration, organisation of work, and safety in iron and steel plants, 1963; conclusions concerning wage protection and income security for workers in the iron and steel industry, 1969; and resolution concerning employment and income security in the iron and steel industry, adopted by the Iron and Steel Committee at its Seventh, Eighth and Ninth Sessions respectively; the resolution concerning minimum wages, 1983, and conclusions concerning conditions of work in the hotel, catering and tourism sector, such as hours of work, methods of remuneration, security of employment, 1989, adopted by the Hotel, Catering and Tourism Committee; the resolution on the minimum basic wage of able seamen, 1987, adopted by the Joint Maritime Commission; conclusions concerning the accel-

12. The International Labour Organisation has been dealing in recent years with the problem of minimum wages in so far as the issue is closely linked with the aspects of employment policy that are related to the problem of foreign debt and the achievement of the social aims of the ILO, as well as with the problem of structural adjustment and its connection with the protection of workers' rights – first of all, the protection of a minimum income for them.¹⁸

II. Minimum wages and other international standards

13. The ILO has not, however, been the only international body to concern itself with the question of minimum wages. The United Nations Organisation has dealt with the question on a number of occasions. This is reflected in the provisions contained in the international instruments it has adopted over the years. Mention may be made of the Universal Declaration of Human Rights,¹⁹ which provides, in Article 23, paragraph 3, that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity ...". Article 7 of the International Covenant on Economic, Social and Cultural Rights²⁰ makes provision for the right to "remuneration which provides all workers, as a minimum, with ... a decent living for themselves and their families in accordance with the provisions of the present Covenant".

14. Legal instruments adopted by regional organisations also refer directly or indirectly to minimum wages. For example, Article XIV of the American Declaration of the Rights and Duties of Man²¹ provides that "Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family." The African Charter on Human and Peoples' Rights²² establishes in Article 15 the right of every individual to work under equitable and satisfactory conditions and to receive equal pay for equal work. Lastly, the European Social Charter²³ states that the Contracting Parties accept as the aim of their policy, to

ation of technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the metal trades, 1962, conclusions concerning problems of adjustment and income maintenance arising from structural change and economic fluctuations in the metal trades, 1971, and resolution concerning income security in the metal trades, 1977, adopted by the Metal Trades Committee; conclusions concerning systems of remuneration and earnings, 1988, adopted by the Committee on Conditions of Work in the Fishing Industry; the resolution (No. 21) concerning the regulation of wages on plantations and the resolution (No. 44) concerning fixing of minimum wages, adopted by the Committee on Work on Plantations; the resolution concerning a study on wage policy and structure in the chemical industries, 1962, adopted by the Chemical Industries Committee; conclusions on employment, labour-management relations, remuneration, ethical problems, working time and occupational health and safety in health and medical services, 1985, adopted by the Joint Meeting on Employment and Conditions of Work in Health and Medical Services; and conclusions concerning pay structure in rail transport, 1966, adopted by the Inland Transport Committee.

¹⁸ See Chapter IV, paras. 327-341

¹⁹ Adopted and proclaimed by the General Assembly in resolution 217 A (III), of 10 December 1948.

²⁰ Adopted by the General Assembly on 16 December 1966 and which came into force on 3 January 1976.

²¹ Approved by the Ninth International Conference of American States in 1948.

²² Adopted by the 18th Assembly of Heads of States and Government in 1981.

²³ Adopted in 1961 and in force since 26 February 1965.

be pursued by all appropriate means, the attainment of conditions propitious to the effective realisation of a number of rights and principles, including the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families.²⁴ The right to a minimum wage is thus recognised by these instruments as a human right.

III. Practical activities of the ILO

15. The ILO has undertaken a series of programmes aimed at helping countries to implement the instruments examined in this survey or to reinforce existing machinery. To this end the ILO, at the request of the countries concerned, has prepared a series of studies on wage policies or on minimum wage fixing machinery, frequently including draft legislative texts. These studies – and only those postdating the adoption of Convention No. 131 are mentioned – have been undertaken for Angola (1989); Bangladesh (1977); Botswana (1982); Guinea (1987); Honduras (1979); Indonesia (1977 and 1980); Malawi (1987); Mauritius (1986); Mauritania (1984); Philippines (1987); and Tunisia (1985).

16. The ILO has also assisted and supported a number of seminars, symposia or meetings whose main aim was to discuss minimum wage questions, and others devoted to wider subjects but including that of minimum wages.²⁵

17. In addition, the ILO has undertaken a number of studies on minimum wages at the national, regional or international level which have been published.²⁶

IV. State of ratification of the Conventions

18. As at 25 March 1992, Convention No. 26, which came into force on 14 June 1930, has received 98 ratifications. Convention No. 99, which came into force on 23 August 1953, has been ratified by 49 countries. Convention No. 131, which came into force on 29 April 1972, has been ratified by 34 States. The list of States which have ratified the various Conventions under consideration is given in Appendix II to this survey.

²⁴ Part I, para. 4, and Article 4, para. 1.

²⁵ Mention may be made, inter alia, of the Regional Seminar for Asia and the Pacific on Wages and Salaries, held in Manila (Philippines) in 1980, the National Symposium on the Administration of Minimum Wages in Agriculture, New Delhi (India), 1984; the Tripartite Seminar for South-East Africa on Wage Determination, Lusaka (Zambia), 1985; the Regional Seminar for Asia and the Pacific on the Administration of Minimum Wage Laws and Policies, Pattaya (Thailand), 1990, and the National Conference of Wages Experts in the Philippines in 1991.

²⁶ For example: Gerald Starr: *Minimum wage fixing*, ILO, Geneva, 1981; *Assessing the impact of statutory minimum wages in developing countries: Four country studies*, Labour-Management Relations Series No. 67, ILO, Geneva, 1988; and *Government wage policy formulation in developing countries: Seven country studies*, Labour-Management Relations Series No. 73, ILO, Geneva, 1989.

V. Denunciation

19. One State, the *United Kingdom*, denounced Convention No. 26 on 25 July 1985. In its report under article 19 of the ILO Constitution, the Government of the United Kingdom stated that its concern was to maximise employment opportunities, particularly for young people, and that flexibility and freedom of action were essential in this field. The terms of Convention No. 26 were said to restrict flexibility in this area of vital public concern and, accordingly, its provisions were no longer appropriate. The Trades Union Congress (TUC) stated, in a letter dated 5 November 1985 to the Director-General of the ILO, that it had suggested to the Government in a meeting and through other direct representations that the system of wages councils might be reviewed to achieve change as long as essential measures of social protection were preserved. The TUC was deeply concerned about the damage being done by the Government to the authority of the ILO and to international labour standards concerning working conditions and employment generally by its third denunciation in the face of the strong opposition of the trade union movement. It added that the action of the Government would result in an increase in the number of hours worked by employees without overtime payment when the regulation by wages councils was removed, with the result that no additional jobs would be created. The TUC concluded by stating that in its view it had not been fully consulted by the Government of the United Kingdom despite the fact that the Government had been asked to do so by the Governing Body at its 148th Session. These problems led the Trades Union Congress to publish a booklet on the matter.²⁷

VI. Available information

20. The reports received on the application of Conventions Nos. 26, 99 and 131, communicated both by the States that have ratified them and by those which have not done so,²⁸ as well as on Recommendations Nos. 30, 89 and 135,²⁹ yielded information on 116 countries and 18 non-metropolitan territories. Appendix III gives details of the reports received.

21. The Committee was also able to examine the comments made by employers' and workers' organisations³⁰ concerning the instruments under consider-

²⁷ *Wages councils. TUC submission in response to the Government's Consultative Paper*, London, May 1985.

²⁸ 34 reports have been received on Convention No. 26, 61 on Convention No. 99 and 72 on Convention No. 131.

²⁹ 96 have been received on Recommendation No. 30, 96 on Recommendation No. 89 and 98 on Recommendation No. 135.

³⁰ *Austria*: Austrian Congress of Chambers of Labour; *Bangladesh*: Bangladesh Employers' Association; *Denmark*: Danish Employers' Confederation; *Finland*: Finnish Employers' Confederation (STK), Employers' Confederation of Service Industries (LTK), Central Organization of Finnish Trade Unions (SAK); *Gabon*: Gabonese Employers' Confederation; *Hungary*: National Federation of Hungarian Trade Unions; *India*: Bharatiya Mazdoor Sangh; *Portugal*: Confederation of Portuguese Industry, Portuguese Farmers' Confederation; *Spain*: General Union of Workers, Trade Union Confederation of Workers' Committees (CC.OO.); *Sri Lanka*: Lanka Jathika Estate Workers Union; *Sweden*: Swedish Trade Union Confederation (LO), Swedish Employers Confederation, Swedish Association of Local Authorities, Federation of Swedish Country Councils.

ation. These observations were in most cases forwarded by the governments together with their reports.

22. The Committee notes that a series of political, social and economic events and changes have recently taken place in many of the European countries with planned economies. These changes are taking these countries towards a market economy, which, according to the information communicated by the governments concerned, is bringing about major changes in their law and practice. Nevertheless, in examining the information communicated by the governments of these countries, the Committee has often noted that it is unclear whether these amendments have already been adopted or whether they are still in the process of adoption. In referring to the information which it has examined, the Committee has therefore followed the indications of the government concerned, citing the legislation which it has been possible to consult and where necessary remarking that it is unknown whether or not this legislation is still in force. The Committee takes this opportunity to urge the governments concerned to furnish as soon as possible any legislative texts that may have been adopted as a consequence of the current changes, or amended texts, with information respecting the new practices.

23. The Committee is gratified to note the large number of governments that reported on the instruments under study. At the same time, however, it should be stated that many of the reports furnished by governments do not contain the detailed information that might have been expected. The Committee has attempted to overcome these shortcomings but deems it appropriate to emphasise that governments should make greater efforts to communicate the information requested. Only in this way can the Committee comply as fully as possible with its mandate, having as broad a view as possible which, in the long term, will surely be of value to all those for whom this survey is intended.

VII. Plan of the survey

24. In Chapter I the Committee has outlined a series of concepts used in the instruments under consideration as well as certain principles derived from the text of these instruments, from the preparatory studies that preceded them or from the preliminary discussions that took place during the sessions of the Conference at which they were adopted. The definition of these concepts was necessary as they will be used throughout the survey. Nevertheless, other concepts are defined in the relevant chapter or chapters when this is deemed necessary. Chapter II seeks to give as detailed a description as possible, though at the same time a succinct one, of the various types of minimum wage fixing machinery that exist in the countries for which information was obtained. The description of this machinery is based on the information supplied by governments and on the provisions of the legal texts in force including those cases where, according to the governments, there is a discrepancy between the existing legal texts and actual practice. It is made clear when the machinery described is not in force or has not been operating for some time, either when the government has mentioned it or because an organisation of employers or workers has reported it. The same chapter describes, in accordance with the information available to the Committee, the coverage of the wage-fixing machinery and the categories of workers to whom the minimum wages apply.

25. Chapter III analyses the systems for consulting organisations of employers and workers in the process of establishing the machinery, defining its scope and fixing or adjusting minimum wages. The Committee has made as detailed an analysis as possible of this matter in view of the importance for the ILO of consulting the social partners, as is fully recognised in the instruments under consideration. Chapter IV describes the criteria followed in fixing and adjusting minimum wages and the time and frequency of the adjustments and investigations, surveys and statistics used for the purpose. The complexity of the various elements that have to be taken into account and the frequent mention by governments in their reports of the economic difficulties they are facing and which have repercussions on the fixing or adjustment of minimum wages, led the Committee to devote a certain number of paragraphs to the problems arising out of structural adjustment and affecting the application of the instruments under consideration. Chapter V analyses the machinery provided for in the instruments under consideration in order to guarantee the effective application of minimum wages. Once again, and in the particular case of information connected with the relevant provisions of the Conventions and Recommendations in question, the Committee regrets not having had fuller information, especially on the situation in practice, so as to be able to consider the extent to which the provisions of the instruments are applied, for example as regards the real coverage of minimum wages.

26. The last chapter of the Survey (Chapter VI) is devoted to certain general observations which the Committee has thought it appropriate to make concerning the importance of the system of minimum wages, the prospects for further ratifications, the difficulties encountered by various countries in applying these Conventions, the scope and coverage of their provisions, consultation and participation of the social partners in the establishment and operations of the minimum wage fixing machinery, the elements to be taken into consideration in fixing minimum wages, the relation of the objectives of minimum wages to economic reforms, the effect of minimum wages on employment, and measures to ensure that minimum wages, when fixed, are actually paid by employers.

Chapter I

Definitions, objectives and scope of the standards, and the binding force of minimum wages

I. Definitions

1.1. Minimum wages

27. None of the instruments covered by this survey define the term "minimum wage". These instruments use a series of different terms that seem to designate the same object. For example, Convention No. 26 uses the terms "minimum rates of wages" (Articles 1, paragraph 1; 3, paragraph 2(3); and 4, paragraph 1); likewise, Convention No. 99 uses the terms "minimum rates of wages" (Articles 1, paragraph 1; 3, paragraph 4; and 4, paragraph 1), and "minimum wage rates" (Article 2, paragraph 1), as well as "minimum rates" (Article 4, paragraph 2). In contrast, Convention No. 131 systematically uses the term "minimum wage". Terms "minimum wage", "minimum rates" and "minimum rates of wages" are found in the corresponding Recommendations Nos. 30, 89 and 135.

28. The concept of a wage is clearly inherent in the concept of minimum wage. The term "wage" has been used in other instruments adopted by the International Labour Conference, although it should be noted that the definitions of this term are specific to the individual Conventions and Recommendations. Thus, according to Article 1 of the Protection of Wages Convention, 1949 (No. 95), "... the term 'wages' means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered."

29. This definition evokes the concept of remuneration or income, which is broader than the concept of wages. Under Article 1(a), of the Equal Remuneration Convention, 1951 (No. 100), "the term 'remuneration' includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment." Concerning the general conditions of work of seafarers, Article 4(d) of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), stipulates that "the term 'basic pay or wages' means the remuneration of an officer or rating in cash exclusive of the cost of food, overtime, premiums or any other allowances either in cash or in kind."

30. None of the definitions quoted above covers the concept of a minimum wage as used in the instruments dealt with in the present survey. However, they do highlight certain elements which help to delimit the concept of "minimum wage". First of all, a wage, however designated, is the sum payable by an employer to a worker in virtue of a contract of employment, either for work done or to be done, or for services rendered or to be rendered. Secondly, the minimum or basic wage does not include certain bonuses or benefits, in cash or in kind, payable directly or indirectly by the employer to the worker for work performed by the latter.

31. In defining what is meant by "minimum wage", it may be useful to recall the conclusions of a meeting of experts convened by the Governing Body at its 168th Session (Geneva, February-March 1967). The purpose of the meeting was to examine: (a) problems of minimum wage fixing and related problems, with special reference to developing countries; and (b) ways in which the ILO's Conventions and Recommendations on minimum wage fixing machinery might be revised if revision were considered desirable. The experts stated in their report that the minimum wage "represents the lowest level of remuneration permitted, in law or fact, whatever the method of remuneration or the qualification of the worker; (...) is the wage which in each country has the force of law and which is enforceable under threat of penal or other appropriate sanctions. Minimum wages fixed by collective agreements made binding by public authorities are included in this definition."¹

32. These elements give a first indication of what is meant by "minimum wage": the minimum wage, whether calculated on the basis of time or output, constitutes a level which may not be undercut, and whose application is guaranteed by law. In this respect, the concept of the minimum wage, being related to work, is distinct from that of "minimum income", which is intended to guarantee minimum living conditions regardless of whether a person has an employment from which he gets a wage. This new concept of a guaranteed minimum income, which has its origins mainly in a social and economic situation arising from unemployment, underemployment and poverty, is related to the role which the State is expected to play in the field of social protection.²

33. The concept of a minimum wage level that cannot be abated implies the concept of a "minimum living wage". In this connection, it should be recalled that the establishment of a minimum wage system is often portrayed as a means for ensuring that workers (and in some cases, their families) will receive a basic minimum which will enable them to meet their needs (and those of their families); hence the frequent use of the term "minimum living wage". Efforts to implement such a concept imply an attitude or a policy which aims at improving the material situation of workers and guaranteeing them a basic minimum standard of living which is compatible with human dignity or is sufficient to cover the basic needs of workers. Such a policy is in line with the International Covenant on Economic, Social and Cultural Rights as regards every person's right to receive remuneration equivalent at least to a wage which makes it possible for workers and their families to lead a decent life. It should be recalled that

¹ *Report of the Meeting of Experts of 1967*, para. 100.

² On the concept of minimum income, see: "Les problèmes juridiques de la réglementation et de la mise en oeuvre d'un revenu minimum pour chacun", XIIIth World Congress of Labour Law and Social Security, Athens, 1991.

in the preparatory work leading up to the adoption of Convention No. 131, an analysis of the government replies to the questionnaire sent out by the International Labour Office, concerning the criteria to be used in setting minimum wage levels, revealed that although it was necessary to consider "the needs of workers and their families as a basic, or the basic, purpose of minimum wage fixing ... It would seem, however, appropriate at the same time to recall that minimum wage fixing alone cannot suffice for the overcoming of poverty and the satisfaction of the minimum needs of all workers, ... and that minimum wage fixing should form part of a comprehensive policy aimed at promoting a better life for the masses of the people."³

34. Recommendation No. 30 (Part III) states that in determining the minimum rates of wages, "the wage fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living." Convention No. 26, however, contains no similar provision. During the preparatory work leading to the adoption of Convention No. 99, the idea of "enabling the workers concerned to maintain a suitable standard of living" resurfaced, and the text submitted to the Conference Committee stipulated that the Convention should contain certain fundamental principles to be followed in determining the minimum wage. One of these principles was that "the minimum wage should not be fixed at a lower rate than one which would ensure the subsistence of the worker and his family."⁴ As the result of an amendment, and following a discussion within the Conference Committee,⁵ these principles were included in Recommendation No. 89 (Part I, Paragraph 1). Along similar lines, Part I, Paragraph 2, of this Recommendation stipulates that the cost of living should also be taken into account in fixing the minimum wage.

35. The 1967 meeting of experts stated in its report that: "(a) the minimum wage is the wage considered sufficient to satisfy the vital necessities of food, clothing, housing, education and recreation of the worker, taking into account the economic and cultural development of each country. In some cases the needs of the family are also taken into account in the same manner as those of the worker, and in other cases they are covered by family allowances and other measures of social security."⁶

36. This principle is reiterated in Article 3(a) of Convention No. 131, which states that "the needs of workers and their families", among other elements, should be taken into consideration in determining the level of minimum wages. This principle is also restated in Part II, Paragraph 3(a), of Recommendation No. 135. As can be seen, the elements to be taken into account in fixing the minimum wage also constitute elements in the definition of this concept.⁷

37. National legislation varies widely in the manner in which minimum wages are designated. Some legislation refers to the minimum wage as a base; it may, for example, speak of a "minimum living wage" (*Argentina*), a "basic mini-

³ ILO: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report VII(2), ILC, 53rd Session, Geneva, 1969, p. 111.

⁴ ILO: *Minimum wage fixing machinery in agriculture*, Report VII(2), ILC, 33rd Session, Geneva, 1950, p. 50.

⁵ ILO: *Minimum wage fixing machinery in agriculture*, Report VIII(1), ILC, 34th Session, Geneva, 1951, p. 8.

⁶ ILO: *Report of the Meeting of Experts of 1967*, para. 100.

⁷ See Chapter IV.

imum wage" (*Botswana*), a "basic wage" (*Gambia*), a "minimum regulatory remuneration" (*Myanmar*), or "guaranteed personal income" (*Yugoslavia*). Other designations refer to the social aspect of the minimum wage; this is the case of the "minimum income" (*Chile*), and the "minimum social wage" (*Luxembourg*). Or the designation may even refer to the objective of extending participation in the benefits of economic growth, as in the "minimum growth wage" (*France*).

38. Where national legislation defines the minimum wage under any of its designations, it may stipulate that "minimum wage" shall be understood to mean the minimum sum paid to the worker for work done, or which has been fixed as the "minimum wage",⁸ or the minimum sum payable in money to the worker for work done,⁹ which, in addition, shall meet the minimum needs of the worker in the light of prevailing standards of living,¹⁰ with the worker considered as the head of the household.¹¹ The French Labour Code, in defining the index-linked minimum growth wage (SMIC), refers to the needs of workers in stating the SMIC shall guarantee the purchasing power of the lowest-paid wage-earners, and introduces a new macroeconomic concept – participation in the country's economic development – in defining this wage.¹²

39. In other cases, reference to the minimum wage is made through reference to the wage regulated by legal provisions which establish minimum wages, or to rates which have been or are to be set for the minimum wage,¹³ and in yet other cases through a provision which prohibits the payment of wages below those set by law, regulation or ordinance.¹⁴

40. Lastly, minimum wages may be fixed through collective bargaining. Where this is the case, national legislation does not generally contain an explicit definition of a "contractual minimum wage". Nevertheless, wages fixed through collective bargaining may not, in principle, be lower than those paid in other similar activities, and their binding force is guaranteed by the State. This is the

⁸ *Barbados* (1), s. 2; *Botswana* (1), s. 2; *Czechoslovakia* (1), s. 111(3); *Dominica* (1), s. 27; *Dominican Republic* (1), s. 203; *Ecuador* (2), s. 134 as amended; *Gabon* (1), s. 93; *Gambia* (1), s. 3; *Lesotho* (1), s. 14(3); *Myanmar* (1), s. 2(3); *Uganda* (2), s. 1. In its report the Government of *Hungary* defines the minimum wage as the minimum amount payable in accordance with the law, even though such a definition does not exist in any legal text. *Explanatory Note*: The figure in brackets which follows the name of the country in this case refers to the number of the legal text which has been examined, the references, title and date, etc., of which are found in Appendix IV. Subsequently, in other cases, in order to illustrate certain points, the name of the country will be given, while the number of the legal text and the corresponding section or sections will be given in brackets in the footnote.

⁹ *Argentina* (2), s. 116; *Mexico* (2), s. 90; *Panama* (2), s. 173.

¹⁰ *Argentina* (2), s. 116; *Brazil* (1), s. 7(IV) and (2), s. 76; *Colombia* (2), s. 145; *Guatemala* (2), s. 113; *Honduras* (2), s. 381; *Italy* (1), s. 36: this provision of the national Constitution does not refer specifically to the minimum wage; however, the Government refers to it in its report; *Lebanon* (1), s. 44; *Mexico* (1), s. 123(VI) and (2), s. 90; *Nicaragua* (3), s. 2; *Panama* (1), s. 61, and (2), s. 172; *Peru* (1), s. 43.

¹¹ *Brazil* (1), s. 7(IV) and (2), s. 76; *Colombia* (2), s. 145; *Guatemala* (2), s. 113; *Honduras* (2), s. 381; *Italy* (1), s. 36; *Lebanon* (1), s. 44; *Mexico* (1), s. 123(VI) and (2), s. 90; *Panama* (1), s. 61, and (2), s. 172; *Peru* (1), s. 43.

¹² *France* (2), s. L.141-2.

¹³ *Australia*: New South Wales, Queensland, *Botswana*, *Burundi*, *Canada*: Provinces of Alberta, New Brunswick and Nova Scotia, *Chile*, *Egypt*, *Fiji*, *Guinea*, *Jamaica*, *Kenya*, *Luxembourg*, *Myanmar*, *Netherlands*, *Nigeria*, *Philippines*, *Seychelles*, *Solomon Islands*, *Sri Lanka*, *Swaziland*, *Turkey*, *Uganda*, *Yugoslavia*.

¹⁴ *Belarus*, *Czechoslovakia*, *Gabon*, *India*, *Islamic Republic of Iran*, *Japan*, *Luxembourg*, *Mauritania*, *Morocco*, *New Zealand*, *Pakistan*, *Qatar*, *Trinidad and Tobago*, *Uganda*, *Ukraine*.

case of a fair number of countries whose legislation stipulates that minimum wages are to be fixed by means of collective bargaining, complementing other minimum wages which the State may set through other machinery, or the case of countries which leave all decisions concerning minimum conditions of employment, including wages, to the social partners. The Committee will review these cases in greater detail in Chapter II.

41. The concept of a minimum wage, as it arises from the instruments examined by the Committee, combines three distinct aspects of wages. First, wages are the remuneration for work performed by the worker; secondly, as the worker's basic income, wages must ensure the worker's subsistence, and that of his or her family; lastly, wages are a production cost and a component of general consumer expenditure. Recommendations Nos. 30 (Part III) and 89 (Part I, Paragraph 2), as well as Convention No. 131 (Article 3), suggest that a combination of these three aspects should be taken into account in fixing minimum wage rates.

42. In the light of the foregoing, "minimum wage" may be understood to mean the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions.

1.2. Minimum wage fixing machinery or methods and minimum wage systems

43. The French version of Conventions Nos. 26 and 99, and of Recommendations Nos. 30 and 89, uses the expression "methods for fixing minimum wages", while the English versions of these instruments use the expression "minimum wage fixing machinery". Both versions of Convention No. 131 and its corresponding Recommendation use the terms "system of minimum wages" (Article 1, paragraph 1), and "minimum wage fixing machinery" (Article 4).

44. Nowhere in the preparatory work for Conventions Nos. 26 and 99, and Recommendations Nos. 30 and 89, is there an explanation of what is meant by "methods for fixing minimum wages" or "minimum wage fixing machinery". Nor is there an explanation of the terms used in Convention No. 131 and Recommendation No. 135.

45. The French version of the reports prepared by the International Labour Office concerning the instrument which was to become Convention No. 26, makes virtually no distinction between "method" or "system" for fixing minimum wages,¹⁵ while the English versions of these same reports systematically use the expression "minimum wage fixing machinery". One of the 1928 reports stated that the governments were practically unanimous in the view that the Conference should not indicate any specific methods or form of wage-fixing machinery.¹⁶ Similar comments are found in the preparatory work for Convention

¹⁵ ILO: *Méthodes de fixation des salaires minima*, Blue Report, ILC, Tenth Session, Geneva, 1927; and ILO: *Les méthodes de fixation des salaires minima*, ILC, Blue Report, 11th Session, Geneva, 1928.

¹⁶ ILO: Blue Report, ILC, 11th Session, Geneva, 1928, p. 110.

No. 99 and Recommendation No. 89,¹⁷ while the preparatory work for Convention No. 131 and Recommendation No. 135 indicated that a number of governments had stated in their replies to the questionnaire sent out by the International Labour Office that the instrument (some governments indicated their preference for a Recommendation) should give examples of types of machinery used for the fixing of minimum wages.¹⁸

46. In the preparatory work for Conventions Nos. 26 and 99, the term "system" was used as a virtual synonym for "machinery" or "method" for fixing minimum wages. Nevertheless, this term was not incorporated in the operative part of these Conventions. On the other hand, the expression "system of minimum wages" appears in Article 1 of Convention No. 131. Here again, however, the preparatory work sheds no light on the meaning of this expression. It should nevertheless be pointed out that when the preparatory work makes reference to the various possible forms in a State of national minimum wage fixing machinery, it is in terms of a "system", although strictly speaking, it is describing the procedures or machinery which exist in member States for the fixing of minimum wages.¹⁹

47. Consequently, even if nothing specific on this issue can be gleaned from the preparatory reports or the discussions held in the Conference, it is fair to say that the term "system of minimum wages" used in Article 1, paragraph 1, of Convention No. 131, refers to the overall minimum wage fixing machinery in a given State. As described below,²⁰ what matters in respect of States which have ratified this instrument is that they have one or more procedures for fixing minimum wages. Subsequent provisions of this Convention refer to these procedures as "machinery".

48. This may also appear to be taken to be the meaning of Paragraphs 5 and 6 of Recommendation No. 135. Paragraph 5 states that "the system of minimum wages may be applied ... either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers." Paragraph 6, in referring to "minimum wage fixing machinery" lists a series of instruments or means by which minimum wages are to be set: statute, decisions of the competent authority, decisions of wages boards or councils, court decisions or collective agreements.

49. An examination of the reports and the debates in the Conference with a view to adopting the instruments in question, lead to the conclusion that the terms "methods" and "machinery" refer to the same thing, in other words, the procedure or practical means used by States for fixing minimum wages or for recognising as such the minimum wages set in some other manner, in particular through collective bargaining.

50. The Committee will review in greater detail the various forms of minimum wage fixing machinery used in different countries in Chapter II of this survey.

¹⁷ ILO: Report VII(2), ILC, 33rd Session, Geneva, 1950, p. 51.

¹⁸ ILO: Report VII(2), ILC, 53rd Session, Geneva, 1969, p. 114.

¹⁹ ILO: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report VII(1), ILC, 53rd Session, Geneva, 1968, pp. 20 *et seq.*

²⁰ See para. 49.

1.3. Statutory minimum wage and contractual minimum wage

51. Minimum wages may be fixed by or in pursuance of legislation or regulations, or by or in pursuance of collective agreements. Convention No. 26 makes it clear that, where wages are effectively regulated by collective agreement, no necessity arises for the fixing of minimum rates in accordance with its provisions.²¹ Convention No. 99 is worded so as to permit its implementation through minimum wages set by collective agreement.²² As noted earlier, collective bargaining is explicitly recognised as a valid form of minimum wage fixing machinery by Recommendation No. 135 and, implicitly, by Convention No. 131.

52. Among the forms of minimum wage fixing machinery recognised in Paragraph 6 of Recommendation No. 135, mention is made of legislation, but also of other means which imply the decision of a previously constituted agency (the competent authority, wages boards or councils, court decisions), as well as collective agreements which have been given the force of law, in particular as regards clauses which set minimum wages.

53. The foregoing suggests that the instruments in question provide for the possibility for States when establishing minimum wage fixing machinery to choose between a legal instrument, regardless of the nature of the legal instrument utilised (statute, regulation, ordinance, etc.), which by its nature confers on such wages the status of legal minimum wages, or for them to rely on *ad hoc* bodies whose decisions would also have the force of law. These States may also opt for fixing minimum wages through collective bargaining. In this case, minimum wages fixed by collective bargaining may be extended and made binding for all enterprises in a given branch of industry or geographical region. Minimum wages thus set and thus extended would have the same binding force as minimum wages fixed directly through legislation.

54. The legislation of a considerable number of States provides for minimum wages to be set through collective *bargaining*, in collective agreements or contracts. Minimum wages thus set may, and do in fact, coexist with those set by an administrative or legislative authority.²³ Many of the collective agreements resulting from such bargaining do not necessarily require a formal act of "extension" to become binding. The force of the provisions of these collective agreements arises from the law itself, which may establish that such agreements are binding on the parties thereto, either at enterprise, branch or national level.

55. What should therefore be highlighted is that, to qualify as "minimum wages", contractual wages must have the same characteristics as statutory minimum wages, in other words, they must be binding, protected from abatement by any other individual or collective contract, and give rise to sanctions in the event of infraction. This coincides with the provisions of Article 2, paragraph 1, of Convention No. 131, which states that "minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions", and with the provisions of paragraph 2 of this same Article, which states

²¹ *General Survey of 1958*, para. 27.

²² *General Survey of 1958*, para. 33.

²³ See Chapter II.

that "subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected."

2. Objectives of the Conventions

56. In discussing the objectives of the instruments in question, the Committee will first refer to the obligations which they entail for ratifying member States; at the same time, it will consider the ends to be reached by implementing these obligations.

2.1. Objectives of Conventions Nos. 26 and 99

57. Article 1, paragraph 1, of Convention No. 26, defines this instrument's objective by stating that ratifying States "undertake to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or part of trades (and in particular in homeworking trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low." Paragraph 2 of the same Article states that "for the purposes of this Convention, the term 'trades' includes manufacture and commerce." This second provision, as emphasised by the Committee in its previous survey, makes it clear that agriculture is excluded from the scope of Convention No. 26.²⁴

58. The underlying objective of this Convention is to prevent the payment of very low wages in industry or in certain trades in which there is no effective arrangement for fixing minimum wages. But it must be pointed out that the existence of a minimum wage system is not enough; in the light of the objective mentioned above, the system must be effective in preventing exceptionally low wages. In his Report to the Eighth Session of the Conference, the Director-General stated: "The necessity for the payment of a minimum wage is primarily felt in those industries which, through the absence of organisation on the part of the workers, or for other reasons, pay wages lower than the normal wage in the sense of the average wage obtained in the same country by workers in organised industries."²⁵ The emphasis placed on homeworking trades, both in the preparatory reports and in the Conference's discussions, reflects the objective at which this Convention aimed.

59. Furthermore, in the drafting of Convention No. 26, in accordance with the trends of the legislation then in force, efforts were made to protect enterprises against unfair competition at the national and international levels.²⁶

60. Article 1, paragraph 1, of Convention No. 99, which sought to fill the gap left by the earlier Convention as regards agriculture, identifies the instrument's objective as requiring member States "to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations".

²⁴ *General Survey of 1958*, para. 19.

²⁵ ILC, Report of the Director-General, Annex IX, Vol. II, 8th Session, Geneva, 1926, p. 326.

²⁶ ILO: Blue Report, ILC, 10th Session, Geneva, 1927, pp. 11 *et seq.*; and ILO: Blue Report, ILC, 11th Session, Geneva, 1928, pp. 92 *et seq.*

61. The purpose of regulating minimum wages in agriculture is to prevent wages which are much lower than those paid in industry. As stated in the report prepared by the Office prior to the first discussion, "it is generally admitted that wages in agriculture are considerably lower than wages in industry".²⁷ Moreover, the Convention was also seen as a way of promoting economic and social conditions that would turn agriculture into a remunerative occupation, and lay the foundations of higher standards of living for all workers in agriculture.²⁸

62. From this it can be seen that Conventions Nos. 26 and 99 explicitly set forth a *double objective*. The first is the creation or maintenance by ratifying States of methods or machinery for fixing minimum wages in industry or in certain trades and in agricultural undertakings and related occupations. Nevertheless, the establishment of methods or machinery that do not guarantee the effective regulation of minimum wages is not enough to comply with the obligations arising from these Conventions. In addition to this objective, there is a *second, underlying, objective*, which is the effective regulation of minimum wages for industry or certain trades and for agricultural undertakings and related occupations which fall within the scope of machinery established for the purpose of fixing minimum wages.

63. To achieve these objectives, the Conventions give ratifying States not only full freedom to determine the nature of the methods they wish to establish for fixing minimum wages, but also the necessary latitude to determine which trades or parts of trades (especially homeworking trades), in the case of Convention No. 26, and which enterprises, occupations and categories of persons, in the case of Convention No. 99, will be subject to the minimum wages set in accordance with the provisions of these instruments.

2.2. Objectives of Convention No. 131

64. Convention No. 131 also aims at preventing the payment of exceptionally low wages. To this end, it defines two objectives.

65. The first objective of Convention No. 131 takes the form of an obligation on the part of ratifying States to establish a "system of minimum wages" (Article 1, paragraph 1), which implies the creation and maintenance of effective minimum wage fixing machinery (Article 4, paragraph 1). There is also a *second objective*, which reflects the philosophy underlying the adoption of this instrument. This second objective is to give wage-earners the necessary social protection in terms of minimum permissible levels of wages. This objective is clearly enunciated in Part I, Paragraph 2, of Recommendation No. 135, and can be deduced from the provisions of Article 3(a) and (b) of Convention No. 131. These provisions refer to the elements that should be taken into consideration in fixing minimum wages: the needs of workers and their families, and economic factors, including economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

66. It should also be noted that the obligation to establish a system of minimum wages and to establish and maintain machinery for fixing such wages, in accordance with the terms of Convention No. 131, covers all groups of wage-

²⁷ ILO: *Minimum wage fixing machinery in agriculture*, Report VII(1), ILC, 33rd Session, Geneva, 1949, p. 7.

²⁸ ILO: Report VII(2), ILC, 33rd Session, Geneva, 1950, p. 51.

earners whose terms of employment make such coverage appropriate (Article 1, paragraph 1), and thereby complements and strengthens the objective and obligation arising from the previous Conventions. This provision of Convention No. 131 reflects a general trend which had already been noted by the Committee in its previous survey. The Committee then noted that "the trend towards the generalisation of minimum wage protection may be seen also in the tendency of certain minimum wage authorities to issue general minimum wage orders instead of orders for particular occupations, in the establishment of a basic or living wage as a standard of reference for particular wage orders, and in the extension to male workers of legislation previously applicable to women and minors only. It is, however, to be noted that, according to several reports, it is principally among workers who are not organised that general minimum rates tend to become the actual wage rates, so that a general minimum wage may in practice provide precisely the marginal protection which is envisaged by Convention No. 26".²⁹

67. In addition, Convention No. 131 aims to strengthen the protection of workers, with respect to the protection provided for in previous Conventions,³⁰ and to make minimum wage fixing machinery an element of social policy,³¹ and therefore a contributing factor in the social and political development of the countries concerned.

68. Thus, Convention No. 131 gave effect to the proposal of the 1967 Meeting of Experts, which concluded that the new instruments should, inter alia, be drawn up from the perspective of a minimum wage fixing policy which is "regarded both as an effective instrument of social protection and as an element of a strategy of economic development".³² In this context, the experts stated that the criteria used in determining the minimum wage should, "in the case of developing countries, be related to the needs of economic development and to the characteristics of such countries"³³ outlined in the meeting's report (massive poverty, income inequality, and the inadequacy of average incomes).³⁴

3. Scope of the provisions of the Conventions

3.1. Conventions Nos. 26 and 99

69. In accordance with Article 1, paragraph 1, of Convention No. 26, ratifying States are required to create and maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in homeworking trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise, and in which wages are exceptionally low. Thus, this obligation is conditional on: (1) *the absence of arrangements for the effective regulation of wages* in the trades or parts of trades for which minimum wage fixing machinery

²⁹ *General Survey of 1958*, para. 89.

³⁰ ILO: Report VII(2), ILC, 53rd Session, Geneva, 1969, p. 108.

³¹ ILO: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report V(1), ILC, 54th Session, Geneva, 1970, p. 12.

³² ILO: *Meeting of Experts of 1967*, para. 98.

³³ *ibid.*, para. 99.

³⁴ *ibid.*, paras. 8 to 13.

is to be established or maintained, and (2) *the existence of exceptionally low wages.*

70. In this connection the Committee recalls that a minimum wage fixing system cannot be regarded as effective unless it eliminates the possibility of exceptionally low wages, while at the same time establishing measures to prevent a reduction in the income of workers.³⁵ Consequently, it is not enough to establish a minimum wage fixing system by means of legislative instruments; it is also necessary that such a system should effectively set wage rates that apply to the workers concerned.

71. Article 1, paragraph 1, of Convention No. 99, establishes a similar obligation to that contained in Convention No. 26, but specifies that this obligation is confined to workers employed in agricultural undertakings and related occupations. Moreover, it should be noted that while the obligation of ratifying States to establish and maintain minimum wage fixing machinery under Convention No. 26 is subject to two conditions, the provisions of Convention No. 99 establish no such conditions. It is generally understood, however, that wages in agriculture are generally lower than those in industry.³⁶

72. It should be noted that, in accordance with both Convention No. 26 and Convention No. 99, ratifying States must consult the organisations of employers and workers concerned. These consultations must be carried out before deciding the industries or trades to which the minimum wage fixing machinery will apply (Convention No. 26, Article 2), or the undertakings, occupations and categories of persons covered by the minimum wage fixing machinery (Convention No. 99, Article 1, paragraph 2). These provisions highlight the general principle of consultation contained in the instruments,³⁷ which the Committee will review in Chapter III.

73. In addition, these instruments³⁸ call for organisations of workers and employers to be consulted in other specific aspects of the overall minimum wages fixing process, and in the application of the minimum wage fixing system. The Committee will refer to this point also in greater detail in Chapter III.

3.2. Convention No. 131

74. The obligation for ratifying States arising from Convention No. 131 goes beyond the obligation established in Conventions Nos. 26 and 99; in fact, Article 1, paragraph 1, of Convention No. 131, provides that the system to be established shall cover "all groups of wage-earners whose terms of employment are such that coverage would be appropriate", thereby expanding its scope.

75. As noted earlier, the obligation to establish a minimum wage system, in accordance with the provisions of Convention No. 131, also implies the obligation to establish and maintain suitable and effective minimum wage fixing machinery. This obligation requires that such machinery be suited to national conditions and needs. In its *General Survey of 1958*, the Committee stated: "To ensure that a given minimum wage system is appropriate to national conditions,

³⁵ *General Survey of 1958*, para. 20.

³⁶ See para. 61.

³⁷ *General Survey of 1958*, para. 20.

³⁸ Article 3, para. 2(1) and (2), of Convention No. 26, and Article 3, paras. 2 and 3, of Convention No. 99.

careful preparation is ... required. It may be necessary to carry out extensive preliminary studies, to seek technical assistance, and to adopt a flexible and even an experimental approach.”³⁹ This aspect was formulated more explicitly in Convention No. 131. The Committee has on previous occasions referred to the meaning of “national conditions and needs”, an expression frequently used in international instruments.⁴⁰

76. As in the earlier Conventions, Convention No. 131 stipulates that a State’s right to decide which groups are to be covered by the minimum wage system is limited by the principle of consultation with representative organisations of employers and workers concerned, which the ratifying State must implement in determining the groups of wage-earners to whom the system will apply. Nevertheless, while Conventions Nos. 26 and 99 require ratifying States to consult the organisations concerned, Article 1, paragraph 2, of Convention No. 131 requires ratifying States to determine the groups of wage-earners to be covered “*in agreement or after full consultation*” with the organisations concerned, where they exist. The obligation for ratifying States to consult extends also to the establishment, application and modification of minimum wage fixing machinery. The Committee will return to this topic in Chapter III.

4. Scope of application

77. The fields covered by the Conventions in question vary. In the case of Convention No. 26, the minimum wage fixing machinery to be established by ratifying States shall cover workers employed in certain trades or parts of trades, in particular in homeworking trades (Article 1, paragraph 1, of the Convention). The same instrument stipulates that for the purposes of the Convention, the term “trades” refers to manufacture and commerce.

78. As regards the scope of Convention No. 99, Article 1 of this instrument states that the minimum wage fixing machinery to be created and maintained by ratifying States shall cover workers employed in agricultural undertakings and related occupations.

79. Lastly, Convention No. 131 encompasses and broadens the scope of the previous instruments. Article 1, paragraph 1, of this Convention stipulates that the system of minimum wages to be established by ratifying States shall cover all groups of wage-earners whose terms of employment are such that coverage would be appropriate, without referring to specific sectors of economic activity. Paragraph 4 of Recommendation No. 135 states that “the number and groups of wage-earners who are not covered in pursuance of Article 1 [of Convention No. 131] should be kept to a minimum.”

80. Recommendation No. 30 stipulates that in order to ensure that the information needed for a decision on the application of minimum wage fixing machinery is available, a survey should be conducted as regards wages actually paid and the arrangements, if any, for the regulation of wages, in any trade or

³⁹ Para. 94.

⁴⁰ See, for example, ILO: *Equality in employment and occupation, general survey of the reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, Report III (Part 4B), ILC, 75th Session, Geneva, 1988, para. 160.*

part of trade in which employers or workers have requested the application of the machinery, and have furnished information which shows *prima facie* that no arrangements exist for the effective regulation of wages and that wages are exceptionally low. In addition, without prejudice to the discretion left to States by the Convention in respect of this determination, they should give special consideration to trades or parts of trades in which women are ordinarily employed.

81. Nevertheless, in accordance with the provisions of the respective Conventions (Article 1 of Convention No. 26; Article 1 of Convention No. 99; and Articles 1 and 4, paragraph 1, of Convention No. 131), ratifying States are free to decide the trades or part of trades (Article 2 of Convention No. 26), undertakings, occupations and categories of persons, such as members of the employer's family (Article 1, paragraph 2, of Convention No. 99) and groups of wage-earners (Article 1, paragraph 2, of Convention No. 131) to which the machinery will apply.

82. This right, however, is conditional upon consultations with representative organisations of the employers and workers concerned.

83. The right to exclude certain enterprises or categories or groups of workers from the application of machinery established by the State in compliance with the obligations arising from ratification, is also subject to the obligation to report which enterprises or categories or groups of workers will not be covered by the system (Article 5 of Convention No. 26; Article 5 of Convention No. 99).

84. In accordance with Article 1, paragraph 2, of Convention No. 131, ratifying States shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, determine the groups of wage-earners to be covered. Paragraph 3 of this same Article states that this determination shall be made prior to the first report submitted under article 22 of the ILO Constitution. This report shall list any groups of wage-earners which may not have been covered, giving the reasons for not covering them. Subsequent reports shall state "the position of ... law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups". On the basis of information examined by the Committee, it appears that only a limited number of governments has furnished the information which governments are required to communicate in compliance with the obligations arising from these Conventions. The Committee will refer in greater detail to information communicated by governments in this respect in Chapter II.

85. The Committee wishes, therefore, to emphasise the importance it attaches to the obligation of States to submit reports regarding the scope of the minimum wage system, since the scope, in conjunction with the obligation to consult the organisations of employers and workers concerned, determines the extent to which ratifying States are free to exclude one or more categories of wage-earners from the protection of a minimum wage.

86. Since minimum wages constitute one of the more important elements which contribute to an improvement in the conditions of work and life of workers – one of the ILO's fundamental objectives – the Committee considers that ratifying States should take the necessary measures to broaden the coverage of their minimum wage fixing systems and thereby offer workers more adequate protection. The Committee has referred to this point on several occasions in the

comments it has formulated with respect to the application of Conventions.⁴¹ Certain States have in fact taken such measures.⁴²

87. In this connection, in 1985 the Committee formulated a general observation in relation to Convention No. 26 and No. 131 concerning the application of these Conventions to persons in homeworking trades. On that occasion, the Committee noted that several governments had indicated that they had not been able to fix minimum wages for some or all of these workers, most often because of the practical difficulties involved in implementation. The Committee recognised the practical difficulties involved; nevertheless, in view of the particular vulnerability of homeworkers and the attention consequently given them by Convention No. 26, it hoped that governments would make every effort to extend to these workers the protection afforded by a system of minimum wages, and that governments would include in their reports information on this situation.⁴³

5. The binding force of minimum wages

88. All three Conventions establish the binding force of minimum wages for employers as well as for workers, and stipulate that the minimum wage, once fixed, may not be abated. Conventions Nos. 26 and 99, however, provide for the possibility of certain exceptions to the binding force of minimum wages.

5.1. Conventions Nos. 26 and 99

89. Article 3, paragraph 3, of Convention No. 26, states that "minimum rates of wages which have been fixed shall be binding on the employers and workers concerned", and shall not be abated by means of individual contracts. However, where it is proposed to provide an exception to the minimum wage fixed in a collective agreement, the competent authority may grant a "general or particular authorisation" and thereby waive the binding force of such minimum rates.

90. The corresponding provision in Convention No. 99 is found in Article 3, paragraph 4, which provides that minimum rates of wages which have been fixed shall be binding on the employers and workers concerned. Nevertheless,

⁴¹ See, for example, *Belize* (Convention No. 99: direct request, 1986, regarding agricultural workers); *Chile* (Convention No. 26: direct request, 1989, regarding homeworkers, among others); *France* (New Caledonia) (Convention No. 131: direct request, 1989, regarding the minimum wage of apprentices and handicapped persons); *Iraq* (Convention No. 131: direct request, 1989, regarding young workers, apprentices and handicapped workers); *Lebanon* (Convention No. 131: direct request, 1991, regarding agricultural and domestic workers); *Nepal* (Convention No. 131: direct request, 1989, regarding workers in agriculture, transport and plantations); *Portugal* (Convention No. 26: observation, 1986; and Convention No. 131: direct request, 1989, regarding homeworkers); *Solomon Islands* (Convention No. 26: direct request, 1989, regarding domestic workers); *Syrian Arab Republic* (Convention No. 131: direct request, 1989, regarding homeworkers and domestic workers); *Turkey* (Convention No. 26: direct request, 1989, regarding homeworkers); *United Kingdom* (Convention No. 26: direct request, 1984, regarding homeworkers); *Yemen* (Convention No. 131: direct request, 1990, regarding different categories of workers who are excluded by the Labour Code).

⁴² For example, *Spain* (1985); *Uruguay* (1990).

⁴³ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), ILC, 71st Session, Geneva, 1985, pp. 74-75.

paragraph 5 of this same Article provides that the competent authority may permit exceptions to the minimum wage rates in individual cases "where necessary, to prevent curtailment of opportunities of employment of physically or mentally handicapped workers".

91. As the Committee already noted in its *General Survey of 1958*, the exceptions to the binding force of Conventions Nos. 26 and 99 differ in the sense that Convention No. 26 provides the possibility for exemptions from minimum wage rates fixed in collective agreements by means of a general or particular authorisation of the competent authority, while Convention No. 99 allows for exceptions to the fixed minimum rates only in individual cases, and where necessary "to prevent the curtailment of employment opportunities of physically and mentally handicapped workers".⁴⁴

92. Both Conventions provide that the governments of Members which ratify the Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that wages are not paid at less than the applicable minimum rates (Article 4, paragraph 1, of Convention No. 26, and Article 4 of Convention No. 99).

5.2. Convention No. 131

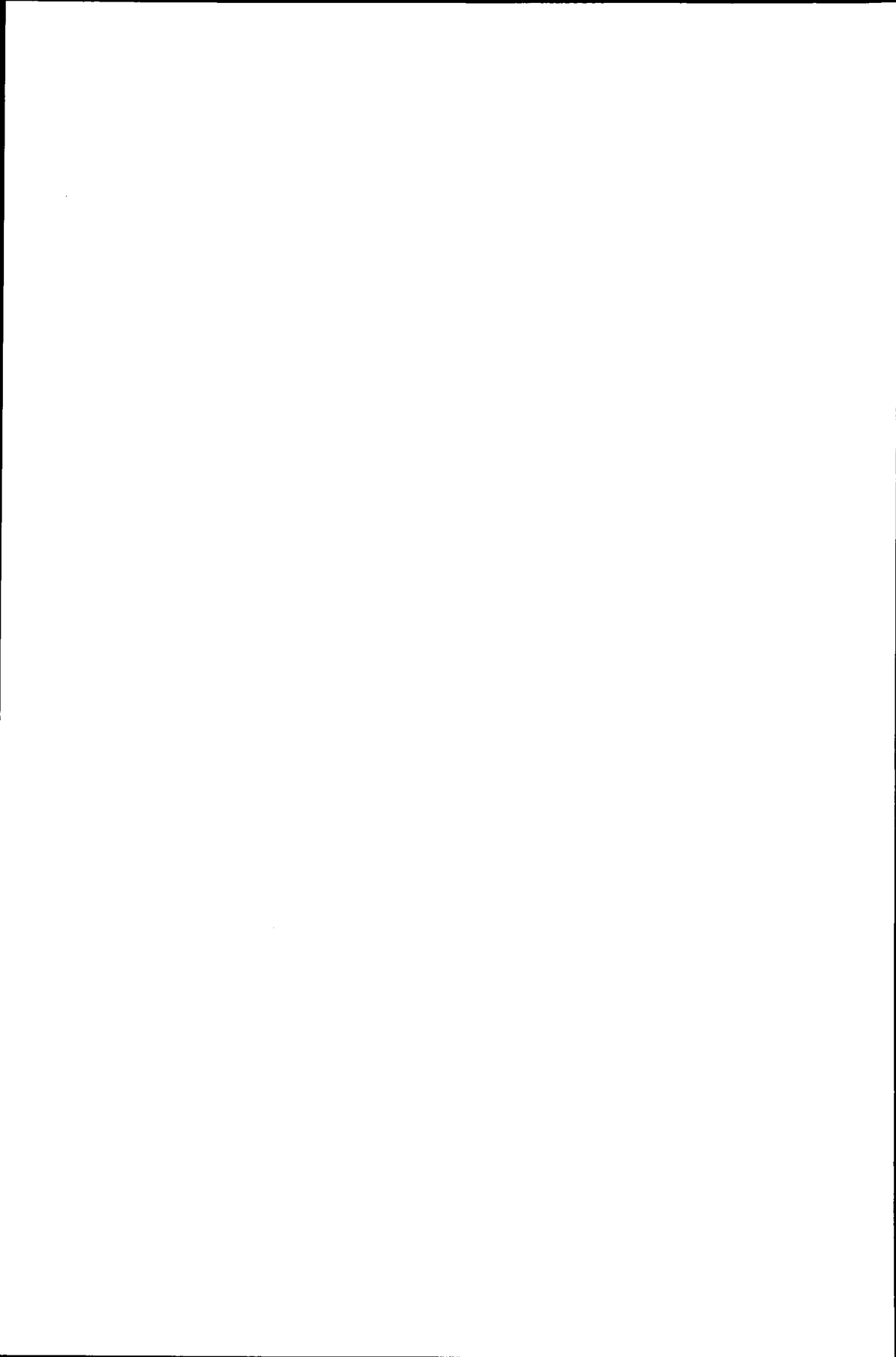
93. The corresponding provision in Convention No. 131 confirms and strengthens the principle of the binding force of minimum wages contained in the earlier instruments. Article 2, paragraph 1, of this Convention provides that minimum wages shall have the force of law and shall not be subject to abatement; without providing, as did the earlier instruments, for possible exceptions to this principle. This provision is considered by certain States, in particular by those which leave the determination of conditions of work and wages to collective agreement, as an obstacle to the ratification of this Convention.⁴⁵ In addition, when this same Article requires ratifying States to establish sanctions for the person or persons who fail to apply minimum wages in force, it calls for "appropriate penal or other sanctions". During the discussions concerning this part of the Convention, a number of Employers' representatives, in particular, opposed an explicit reference in the Convention to penal sanctions. However, the need to ensure the application of minimum wages led the Conference to adopt the text of the Convention with a clear reference to penal sanctions as a means of ensuring the payment of the minimum wages which have been set.⁴⁶

94. In general, States which have ratified one or all of the Conventions in question have provisions in their legislation to ensure compliance with the minimum wages set, through the application of either fines and penal sanctions for offenders, or fines which may increase in the event of recurring offences. The Committee will refer to the information supplied in this connection in Chapter V of this survey.

⁴⁴ Para. 59.

⁴⁵ See paras. 413 and 414.

⁴⁶ ILO: Report V(1), ILC, 54th Session, Geneva, 1969, p. 28; and ILO: *Record of Proceedings*, ILC, 54th Session, Geneva, 1970, p. 443.



Chapter II

Minimum wage fixing machinery

A. General observations

95. Conventions Nos. 26 and 99 stipulate that ratifying States undertake to create or maintain machinery whereby minimum wages can be fixed (Article 1, paragraph 1). To fulfil this obligation, the ratifying State must therefore take the necessary and appropriate measures to be able to intervene effectively when these wages are being fixed. However, these Conventions do not actually require the fixing of these wages; although, as mentioned above,¹ minimum wage fixing machinery is only effective if it actually allows minimum wage rates to be fixed. Furthermore, this obligation to create machinery is neither general nor absolute; it is dependent upon various conditions as to its scope² and limited as to its coverage.³

96. Convention No. 131 not only stipulates that States which ratify this instrument are bound to establish minimum wage fixing machinery, but that these wages must actually be fixed (Article 1, paragraph 1, and Article 4, paragraph 1). The scope and coverage of this provision is in general unlimited,⁴ and both include and go beyond what is provided in Conventions Nos. 26 and 99.

97. Article 1, paragraph 1, of Convention No. 26 clearly indicates that the ratifying State is under no obligation whatsoever to create or maintain minimum wage fixing machinery if wages may be effectively fixed by collective agreement. The question does not therefore arise as to whether collective agreements constitute minimum wage fixing machinery or not, given that the States having ratified this Convention do not undertake "to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or part of trades (and in particular in homeworking trades)" unless "no arrangements exist for the effective regulation of wages by *collective agreement* or otherwise, and wages are exceptionally low" (Article 1, paragraph 1) (emphasis added).

98. In the case of Convention No. 99, the obligation of States ratifying this instrument to create or maintain "adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations" (Article 1, paragraph 1) is not subject to any conditions. A State is therefore perfectly within its rights to fix minimum wages by means of collective agreement, especially since paragraph 1 of Article 2 specifically stipu-

¹ See para. 62.

² See paras. 69, 71 and 72.

³ See paras. 77 and 78.

⁴ See paras. 74 and 79.

late that collective agreements may authorise the partial payment of minimum wages in kind.

99. Between the adoption of Convention No. 99 and that of Convention No. 131, another Convention was adopted: the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), in which it is stipulated that "the fixing of minimum wages by collective agreements freely negotiated between trade unions which are representative of the workers concerned and employers or employers' organisations shall be encouraged" (Article 10, paragraph 1).

100. The instruments adopted in 1970 clearly permit the fixing of minimum wages by collective agreement. Article 2, paragraph 2, of Convention No. 131 states that, subject to certain provisions, freedom of collective bargaining must be fully respected. These provisions, contained in paragraph 1 of the same Article, are that minimum wages should have: (a) the force of law; (b) not be subject to abatement; and (c) that failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.⁵ Furthermore, Recommendation No. 135 states that minimum wages may be fixed by, among other things, giving the force of law to collective agreements (Paragraph 6).

101. In this respect, the Committee points out that the legislation of a number of countries specifically provides that the clauses of collective agreements are binding for the parties having signed them and that infringements will be penalised in all cases. Consequently, collective agreements may be said to constitute minimum wage fixing machinery in the sense of these Conventions. This clearly emerged from the discussions that took place in the Committee on Minimum Wage at the International Labour Conference in 1970.⁶

102. Now that the obligations are incumbent upon the ratifying States as regards the establishment of minimum wage fixing machinery and the actual fixing of these wages have been determined, it is time to examine how minimum wage fixing machinery has been established, the exclusions from their coverage, and the types of existing machinery.

B. Establishment of minimum wage fixing machinery

1. National constitutional provisions

103. National constitutional provisions are either limited to including the minimum wage among the rights of workers or provide as well for the way in which this wage should be fixed. In the first case, these provisions do not establish a minimum wage fixing machinery in the strict sense of the term; however, this machinery is normally the direct consequence of these provisions in so far as minimum wages are fixed as a result of this constitutional obligation. This is

⁵ See para. 55.

⁶ *Record of Proceedings*, ILC, 54th Session, Geneva, 1970, pp. 379-380, paras. 23 to 30. See also, ILO: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report V(2), ILC, 54th Session, Geneva, 1970, pp. 13 and 14.

the case, for example, in *Argentina*,⁷ *Bulgaria*,⁸ *Colombia*,⁹ *Guatemala*,¹⁰ *Panama*¹¹ and *Portugal*.¹² In other cases, the Constitution not only recognises the right of workers to a minimum wage (the composition of which is usually defined in the text of the constitution), but also describes the wage fixing machinery that should be used. This example may be found in *Brazil*,¹³ *Honduras*,¹⁴ *Mexico*¹⁵ and *Yugoslavia*.¹⁶ In all cases, the constitutional provisions relating to minimum wage fixing machinery are supplemented by other legislation.

104. Consequently, even if constitutions provide for a minimum wage and sometimes even define how it is to be fixed, no machinery should be considered as established unless appropriate legislation has been adopted to apply the constitutional provisions. The Committee does not feel that it has to insist here upon the distance which may exist between a constitutional principle and its application.

2. Legislative provisions

105. The establishment of minimum wage fixing machinery is often provided for in the Labour Code or other laws, either in the absence of any constitutional provision¹⁷ or in application of such a provision.¹⁸ In countries in which this machinery is established by legislation, one and the same legal text might regulate all matters concerning the fixation of minimum wages;¹⁹ or these matters might be subject to a series of legal texts with different coverage, even if two or more texts cover the establishment of the same machinery.²⁰ When these provisions are contained in the Labour Code, they are sometimes supplemented by regulations, decrees, legislative decrees and other regulations. This is due to the fact that the Labour Code does not always apply to all workers and sometimes excludes a number of them from its coverage; for example, agricultural workers, homeworkers and other categories of workers. There may be total exclusions, in which case there is no minimum wage fixing machinery at all,²¹ or other legal texts may define the machinery to be applied.

⁷ (1), new article of the Constitution, approved on 24 October 1957.

⁸ (2), article 48(5).

⁹ (1), article 53.

¹⁰ (1), article 102(f).

¹¹ (1), articles 60 and 61.

¹² (1), article 59(2)(a).

¹³ (1), article 7(IV).

¹⁴ (1), article 128(5).

¹⁵ (1), article 123(A)(VI).

¹⁶ (1), s. 22.

¹⁷ For example: *Algeria, Australia, Bangladesh, Benin, Burundi, Central African Republic, Chile, Comoros, Cuba, Fiji, Iceland, New Zealand, Rwanda, Trinidad and Tobago, United Kingdom, Zimbabwe.*

¹⁸ For example: *Argentina, Brazil, Colombia, Guatemala, Honduras, Mexico, Panama, Portugal.*

¹⁹ For example: *Algeria, Cameroon, Central African Republic, Chad, Comoros, Djibouti, Fiji, Guinea, Malta, Mauritius, Mauritania, Mexico, Rwanda, Togo, Trinidad and Tobago, Zimbabwe.*

²⁰ For example: *Argentina, Australia*, where the federal legislation is applied alongside that of the States, *Austria, New Zealand, Sri Lanka, United Kingdom.*

²¹ See paras. 77 to 87 on the subject of the possibility of such exclusions.

C. Exclusions

106. The Committee recalls that, as it has already pointed out in Chapter I, the coverage of the three instruments examined here is not the same.

1. Groups or categories of persons excluded

107. The available information shows that general legislation sometimes excludes certain groups or categories of persons from the application of minimum wages. In some cases this exclusion is not absolute. For instance, public servants or seafarers are usually covered by special legislation, but very few governments have provided any information on this.

108. Generally speaking, although the legislation relating to the fixing of minimum wages excludes certain groups or categories of persons from its coverage, this does not mean that they are not covered by other provisions. Given the wide range of exclusions provided for in the legislation of various countries, the Committee will only refer to a certain number of them. Furthermore, in some countries, the competent authorities may authorise other exceptions.²² It should also be noted that in States with a federal system, the exclusion of certain groups or categories at federal level does not necessarily imply that no minimum wage is applied to them; indeed, the legislation of constituent states or provinces in States with a federal system might fill the gap. In the *United States*, for example, some groups of workers are specifically excluded from the coverage of federal legislation on minimum wages; but the legislation of some constituent States or territories guarantees these workers protection in this area.

109. An examination of the legislation in various countries indicates that exclusions may apply to the following groups or categories of persons: older workers, for example in *Chile*²³ and the *Netherlands*;²⁴ disabled workers, for example in *Chile*²⁵ and *Japan*;²⁶ persons working in non-profit-making institutions, such as religious, philanthropic, political, patriotic or charity institutions or rehabilitation centres, for example in *Canada*²⁷ and the *United States*;²⁸ part-time workers, for example in *Nigeria*;²⁹ young workers or apprentices, for example in *Chile*,³⁰ *Ghana*,³¹ *Japan*,³² and the *United Kingdom*,³³ domestic workers, for exam-

²² For example, *Nigeria*, without specifying the nature of the exceptions authorised: (1), s. 2(2).

²³ (1), s. 43(4).

²⁴ (1), s. 7(1).

²⁵ Act No. 18.600/87, s. 16.

²⁶ (1), s. 8(1). The Committee does not possess information on whether other minimum wage rates fixed by the competent authorities are applied to them.

²⁷ In the Province of Manitoba.

²⁸ As regards the federal legislation, (1), s. 13(3).

²⁹ In agriculture, (1), s. 2(1)(d).

³⁰ (1), s. 80.

³¹ (4), s. 2(1)(a).

³² (1), s. 8(2) and (3). The Committee does not possess information on whether other minimum wage rates fixed by the competent authority are applied to them.

³³ For workers under 21 years of age in industry and trade, (1), s. 12(3), and (2), s. 13(3).

ple in *Botswana* and *Canada*,³⁴ *Chile*,³⁵ the *Dominican Republic*,³⁶ the *Philippines*,³⁷ *Qatar*,³⁸ *Syrian Arab Republic*³⁹ and *Turkey*;⁴⁰ employees, such as babysitters, companions for older persons or the sick, or drivers privately employed by individuals, for example in *Canada*⁴¹ and *Philippines*,⁴² and students undergoing training or working in summer and recreational camps or in charitable or community institutions, for example in *Canada*.⁴³

2. Industries, enterprises and occupations excluded

110. The information that has been received shows that legislation may exclude some industries, enterprises and occupations. As pointed out under the section on exclusions of groups or categories of persons,⁴⁴ the legislation in States with a federal system may exclude certain groups at the federal level; but this does not necessarily imply that these exclusions apply at the level of their constituent states or provinces. What is more, in a number of countries, the competent authorities are able to authorise other exclusions without this being specifically stipulated in the national legislation.⁴⁵ The Committee will only mention some industries, enterprises and occupations that are excluded, because these cases are as diverse as the coverage of the relevant national legislative texts. The following are examples: homeworkers;⁴⁶ certain categories of fishermen or workers employed in fishing in general, including persons employed in the fishing trade;⁴⁷ trappers;⁴⁸ certain categories of salesmen;⁴⁹ the agricultural sector or certain agricultural workers or enterprises;⁵⁰ workers in the con-

³⁴ In the Province of Saskatchewan in respect of certain domestic workers defined in the national legislation, and in the Northwest Territories.

³⁵ (1), s. 147.

³⁶ (12), s.1(j).

³⁷ (1), s. 4(c).

³⁸ (1), s. 6(5).

³⁹ (1), s. 5.

⁴⁰ (2), s. 5(4).

⁴¹ Manitoba.

⁴² (1), s. 4(c).

⁴³ In the Provinces of Ontario and Quebec.

⁴⁴ See para. 108 above.

⁴⁵ *Nigeria* (1), s. 2(2).

⁴⁶ In *Chile*, according to information provided by the Government, the Chilean legislation considers these workers as self-employed workers who may freely make agreements concerning their remuneration; (1), s. 8(3). The Committee recalls that it has made observations on this particular point on many occasions; see direct requests of 1979, 1985, 1988 and 1989. In *France*, according to the Government, although the wage paid to these workers is not supposed, on any account, to be lower than the minimum growth wage (SMIC), certain branches of economic activity, in some Departments, are not covered by a collective agreement or order of the prefect fixing the time for the completion of the work; so it is therefore impossible to know if the minimum wage is paid, given that the actual wage is based on the price of the piece-work job multiplied by the time in which it was completed; (2), s. L.721-9. *Portugal*; see direct requests of 1987, 1988 and 1989 concerning Convention No. 131.

⁴⁷ *Canada*, in the Provinces of Manitoba, Newfoundland and Ontario and the Northwest Territories; *Sri Lanka*.

⁴⁸ *Canada*, in the Northwest Territories.

⁴⁹ *Canada*, in the Provinces of Ontario and Prince Edward Island.

⁵⁰ *Botswana*; *Canada*, in the Provinces of Alberta, Manitoba, New Brunswick, Prince Edward Is-

struction industry, persons employed in logging or on an off-shore oil well drilling rig;⁵¹ establishments with a small number of workers;⁵² establishments employing part-time workers;⁵³ establishments employing persons working on piece-work or on a commission basis;⁵⁴ and poultry-keepers.⁵⁵ In the *Dominican Republic*, establishments, the value of whose equipment and capital does not exceed 10,000 gold pesos, have been excluded from the application of the minimum wages which are applicable to all sectors of activity.⁵⁶

D. Types of minimum wage fixing machinery

111. Recommendation No. 135 lists various forms of minimum wage fixing machinery, stipulating that minimum wages may be fixed by: (a) statute; (b) decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies; (c) decisions of wage boards or councils; (d) industrial or labour courts or tribunals; or (e) giving the force of law to provisions of collective agreements (Part IV, Paragraph 6). It should be recalled, however, that this list is not exhaustive and only serves as an illustration.⁵⁷

112. After examining the national law and practice, the Committee has been able to identify various types of minimum wage fixing machinery. Taking into consideration the way in which these minimum wages are fixed, it is possible to make the following classifications: (a) minimum wage fixing machinery based on a decision taken by the authorities or competent body; and (b) minimum wage fixing machinery by means of collective agreement. In the first of these categories, we may observe minimum wages fixed by: (i) statute; (ii) means of a government decision; (iii) wage committees, councils or boards; (iv) court rulings; and (v) arbitration awards. Furthermore, if minimum wage fixing machinery is considered from the standpoint of its coverage, the following may be observed minimum wages: (a) with overall coverage; (b) by regions or zones; (c) for branches of economic activity; and (d) for occupational categories.

113. In indicating this classification, it should not be overlooked that these various elements may be combined or may even be complementary. The fixing of overall minimum wages by statute or regulation, applicable at the national level, might be combined with machinery that fixes minimum wages at branch level by collective agreement for each step in the hierarchy. Collective agree-

land, Ontario, Quebec and Saskatchewan; *Dominican Republic*, agricultural, agro-industrial, livestock raising or forestry enterprises employing no more than ten workers on a continuous and permanent basis, (1), s. 265, and (2)(1)(j); *United States* at the federal level, (1), s. 13(6); *Guyana*; *Nepal*; the Government indicates that there is no minimum wage fixing machinery for agricultural workers, since most of them are employed in the informal sector; *Pakistan* and *Sri Lanka*.

⁵¹ *Canada*, in the Province of Newfoundland.

⁵² *Philippines*, retail service establishments with fewer than ten workers, which may be excluded from regional tripartite wages and productivity boards; (1), s. 4(c); *Nigeria*, establishments with fewer than 50 workers (1), s. 2(1)(a).

⁵³ *Nigeria*, (1), s. 2(1)(b).

⁵⁴ *Nigeria*, (1), s. 2(1)(c).

⁵⁵ *Sri Lanka*.

⁵⁶ (3), s. 1(IV).

⁵⁷ ILO: Report VII(2), ILC, 53rd Session, Geneva, 1969, pp. 52-55 and 114.

ments may be national or have more limited geographical coverage. Minimum wages fixed by collective agreement cannot be lower than the statutory minimum rate where such exists. Other possible combinations are possible, as will be seen later in the text.

114. The Committee will examine each of these types of minimum wage fixing machinery in the light of national law in force or practice. However, collective agreements will not be mentioned unless the national legislation specifically states that minimum wages shall be fixed in this way or when the government indicates that this is the case. The Committee also points out that in cases in which it does not have enough information on national practice, the description of the machinery is based solely on the texts of legislation available and that it is not then in a position to ascertain if these texts are effectively applied. Furthermore, in some States,⁵⁸ there are two or more types of machinery which are usually complementary.

1. Classification according to the kind of measures taken

1.1. Minimum wage fixing based on a decision taken by the authorities or competent body

1.1.1. Minimum wages fixed by a statute

115. The fixing of minimum wages by means of a statute implies that the legislature plays a vital role in this area. This is the case in *Brazil*, where, apart from the minimum wage fixed by law,⁵⁹ "wage levels" may be fixed also by statute in special cases; these are higher than the minimum wage for the occupational category in question.⁶⁰ In *Canada*, minimum wages applicable to workers employed in a federal enterprise or connected with a job at federal level are fixed by the Canadian Labour Code;⁶¹ in the Northwest Territories, minimum wages are also fixed by law.⁶² In *Chile*, the monthly minimum wage is fixed by law. The Government and the most representative employers' and workers' organisations participate in the machinery by negotiating on the amount and readjustment of this income; these negotiations result in a national agreement that precedes the bill submitted to Parliament. In the *United States*, in addition to the minimum wage is fixed by law at federal level,⁶³ the states may fix other minimum wages provided that they are not lower than the federal minimum wage. In 34 states⁶⁴ and in Guam, these minimum wages are fixed exclusively by statute. In five other states,⁶⁵ as well as in the District of Columbia, Puerto Rico and the Virgin Islands, minimum wages may be fixed not only by law but also

⁵⁸ For example, *Argentina, Canada, Colombia, Finland, India, Malta, Netherlands, New Zealand, Sri Lanka, United States, Zimbabwe.*

⁵⁹ (1), s. 7(IV).

⁶⁰ (1), s. 7(V). See, for example, Act No. 3, 999/61 concerning doctors and dental surgeons.

⁶¹ (1), s. 178(1).

⁶² (33), s. 13.

⁶³ (1), s. 6(a).

⁶⁴ Alaska, Arkansas, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wyoming.

⁶⁵ Connecticut, New Hampshire, New Jersey, New York and Oregon.

by orders adopted by the competent authority.⁶⁶ Minimum wages are also fixed by law in *Egypt*,⁶⁷ *Israel*, where national legislation provides that the minimum wage must be equivalent to 45 per cent of the average wage in the country⁶⁸, *Luxembourg*,⁶⁹ *Netherlands*,⁷⁰ *Nigeria*, where national minimum wages are established by law,⁷¹ and in *Yugoslavia*.⁷²

1.1.2. Minimum wages fixed by means of a government decision

116. In a number of countries, minimum wages are fixed by decrees or orders issued by the executive, without any other body being involved in the machinery. This is the case in *Algeria* for the fixing of the national minimum guaranteed wage (SNMG).⁷³ In *Argentina*, there are four cases in which the Government may intervene directly in the fixing of minimum wages. First, the Government determines the subsistence wage of agricultural workers.⁷⁴ Second, the Under-Secretariat of Labour determines the initial minimum wage and the sliding scale of wages of apprentices from 14 to 18 years of age.⁷⁵ Third, the legislation stipulates that the executive fixes the minimum wages of domestic workers;⁷⁶ however, the Committee does not have any information on the contents of these regulations. Finally, the minimum wages of homeworkers are fixed by orders issued by the Ministry of Labour and Social Security in the case of industries in which no wage committees have yet been set up.

117. In the federal jurisdiction in *Canada*, although the minimum wage is fixed by law, the Governor in Council may increase this wage by order. Furthermore, when the wage is neither calculated nor paid, either totally or partially, according to the amount of time worked, the Minister may fix a minimum wage rate by order which is considered equivalent to the rate fixed by statute. In five Canadian provinces minimum wages are fixed by government regulation without the intervention of any other body.⁷⁷

118. In *Cuba*, the monthly minimum wage is fixed by the Council of Ministers after it has sought the advice of the Confederation of Workers.⁷⁸ In *Chad*, the Council of Ministers, acting on a proposal from the Ministry of Labour and Social Welfare, fixes the minimum inter-occupational guaranteed wage (SMIG).⁷⁹ In *Mali*, the President fixes the minimum inter-occupational

⁶⁶ The Mayor in the federal district; the Commissioner in Connecticut, New Hampshire, New Jersey and New York; the Commission in Oregon; and the Minimum Wage Board in Puerto Rico.

⁶⁷ (1), s. 32.

⁶⁸ (1), ss. 1 and 2.

⁶⁹ (1), s. 2.

⁷⁰ (1), ss. 7 and 8.

⁷¹ (1), s. 1(1).

⁷² (1), s. 22; (2), s. 51.

⁷³ (1), s. 87.

⁷⁴ (10), s. 15.

⁷⁵ (5), s. 32.

⁷⁶ (8), s. 13.

⁷⁷ Alberta (3), s. 35(a); British Columbia (5), s. 105(2)(a); New Brunswick (11), s. 9(1); Ontario (20), s. 65(1)(a); and Quebec (26), s. 40.

⁷⁸ (2), s. 103.

⁷⁹ (1), s. 142.

guaranteed wage by decree.⁸⁰ In *New Zealand*, an order from the Governor-General, acting on behalf of the Executive Council, fixes a minimum wage that is applicable to all workers over 20 years of age.⁸¹ In the *Netherlands*, at the request of an employer or an employers' or workers' organisation with legal personality, the Minister of Social Affairs and Employment is empowered to fix a minimum wage for workers belonging to a specific category that it determines. This wage may, under certain conditions, be lower than the minimum statutory wage in force.⁸² In *Nigeria*, even though minimum wages are not normally fixed by decree, everything would seem to indicate that minimum wage rates fixed by the National Minimum Wages Act of 1981⁸³ have been revised by means of a decree amending this Act.⁸⁴ In *Spain*, the minimum inter-occupational guaranteed wage is established by Royal Decree after consultations with the most representative trade union organisations and employers' associations.⁸⁵

119. In *Sri Lanka*, there are two cases in which minimum wages are fixed by a governmental authority without an ad hoc body intervening in the process. In the first case, the competent minister may authorise the Labour Commissioner to fix the minimum wages of workers in branches of economic activity for which no wage council has been set up; or, if it has been set up, when no applicable minimum wage rates have been determined.⁸⁶ The second case concerns only workers in shops and offices. If considered appropriate or at the request of the workers or employers concerned or one or more of their trade unions, the Minister may ask the Labour Commissioner to fix the remuneration of these workers. This remuneration is only established and applied in the shops and offices in which the workers and employers concerned have given their consent.⁸⁷

120. Mention may also be made of the following countries, where minimum wages are fixed by an act of government without the intervention of an ad hoc body: *Angola*,⁸⁸ *China*, *Equatorial Guinea*, *Morocco*,⁸⁹ *Mozambique*,⁹⁰ *Qatar*⁹¹ and *Singapore*.⁹²

121. In some countries, minimum wages are fixed by regulation in the absence of competent bodies or if there is no agreement providing coverage. In *Colombia*, for instance, the new provisions in the Labour Code concerning minimum wage fixing stipulate that the Government should only intervene by decree

⁸⁰ (1), s. 86(1) and (5).

⁸¹ (3), s. 4.

⁸² (1), s. 10.

⁸³ See para. 115.

⁸⁴ (2), s. 1.

⁸⁵ (1), s. 27.

⁸⁶ (1), s. 33.

⁸⁷ (2), ss. 21 and 22.

⁸⁸ (1), s. 106, and (2), ss. 4 and 5.

⁸⁹ (1), s. 1. Moreover, the national legislation provides that a Central Prices and Wages Commission is to be consulted before any adjustment is made to wages in general: (11), ss. 1 and 2. Nevertheless, the Democratic Confederation of Labour and the General Union of Workers of Morocco state that this Commission has not existed since 1961 and that minimum wages are fixed at the initiative of the Government alone.

⁹⁰ (2), ss. 77 and 78; (3), ss. 6 to 8, 14 and 16.

⁹¹ (1), s. 28.

⁹² (1), s. 74(1).

when the National Labour Council is unable to fix these wages by consensus.⁹³ In this case, reference is made to the minimum statutory wage. This also applies in *Finland*; in the absence of a collective agreement covering them, domestic workers are entitled to the minimum wage rates fixed by the State Council.⁹⁴

122. In other countries, government decisions are preceded by consultations with ad hoc bodies.⁹⁵ In *Germany*, although the Government has stated that minimum wages are fixed exclusively by collective agreement, the Committee nevertheless points out the existence of legislation providing for other minimum wage fixing machinery. Under this legislation, the Federal Minister for Labour may set up a tripartite general committee for minimum conditions of employment, when: workers' or employers' associations for the industry or employment category exist or only embrace a minority of the employees or employers concerned; there are no collective agreements of general and binding application; or when the prescribing of minimum conditions of employment appears necessary for the satisfaction of the indispensable social and economic needs of the employees. This general committee is entitled to make proposals for prescribing, varying or revoking minimum conditions of employment. In addition, specialised committees (tripartite), set up by the Federal Minister for Labour, are responsible for establishing, in a resolution, minimum conditions of employment for the branches of economic activity and categories of employment for which they are competent, including minimum wages. However, these minimum conditions of employment must be approved by the Federal Minister for Labour.⁹⁶ Similar machinery exists for the establishment of homeworkers' wages, but the competent body in this matter is the Homework Committee which covers the corresponding branch of economic activity.⁹⁷ Nevertheless, according to the information supplied by the Government, it has not been necessary to establish minimum conditions of employment through these state procedures since 1952.

123. In *Canada*, in two provinces, the competent government authority fixes minimum wages by regulation after considering the recommendations of the wages boards.⁹⁸ In the *United States*, six states,⁹⁹ as well as the Virgin Islands, provide in their legislation for the convening of wage boards to fix minimum wages; in practice, however, according to information provided by the Government, these boards are not convened and wages are fixed by means of administrative decisions which revise rates previously fixed by decree or by administrative regulations preceded by public hearings. In certain states, the minimum wage fixing machinery provides for the convening of a wages board (California), council (Wisconsin) or committee (Puerto Rico and District of Columbia) which submits recommendations to the competent authorities so that they may establish minimum wages. Furthermore, there are usually public hearings on the subject of proposed minimum wage rates.¹⁰⁰

⁹³ (2), s. 147(2).

⁹⁴ (4), s. 12.

⁹⁵ See Chapter III on these consultations.

⁹⁶ (2), ss. 1-5.

⁹⁷ (2), s. 1(3), and (3), ss. 4 and 19.

⁹⁸ Manitoba (7), s. 27(1); and Newfoundland (15), s. 27(2).

⁹⁹ Colorado, Connecticut, New Hampshire, New Jersey, New York and North Dakota.

¹⁰⁰ California (7), ss. 1173 to 1179; Wisconsin (54), ss. 4-6; Puerto Rico (41), s. 245(i) to (l); District of Columbia (11), ss. 206 and 207.

124. In *Guatemala*, minimum wages are fixed by the Ministry of Labour on the basis of reports the National Wage Board submits to it after taking into account the reports prepared by the joint wage boards.¹⁰¹ In *Honduras*, minimum wages are fixed by an agreement adopted by a Minimum Wage Board, a tripartite body established for a particular branch of economic activity. However, the wage-fixing process includes surveys carried out by the General Directorate of Wages, consultations by means of the *Official Gazette* and approval of the final draft agreement by the Secretariat of Labour and Social Welfare; the latter may not refuse to give its approval if it has returned the draft agreement to the Minimum Wage Board for reconsideration.¹⁰² In *Japan*, in certain cases where workers are poorly paid, the Minister of Labour or the Director of the Prefectural Labour Standards Office may fix minimum wage rates following a decision by the Central Minimum Wages Council or the Prefectural Minimum Wages Council.¹⁰³ The minimum wages applicable in the case of the lowest paid homeworkers are fixed by the same bodies, but following a decision by the Prefectural Homework Council or the Prefectural Minimum Wages Advisory Council of the Prefectural Labour Standards Office in prefectures where there is no homework council.¹⁰⁴ Finally, where an inter-enterprise minimum wage agreement exists, the Minister and the Director of the Prefectural Labour Standards Office may, at the request of the parties concerned and taking account of these minimum wage rates, fix minimum wages that must be applied to their workers by the employers who are parties to the agreement or the members of the organisations that concluded it.¹⁰⁵ Under certain conditions these minimum wages may be declared applicable to all workers in the branch of activity and the region concerned.¹⁰⁶

125. In *Panama*, minimum wages are established by a decree issued by the Executive, on the recommendation of the National Minimum Wages Committee, a tripartite body. This Committee may appoint special boards for one or several industries or branches of activity in one or more areas or regions, to allow them to study their conditions and propose corresponding minimum wages.¹⁰⁷ In *Portugal*, the Government fixes the national minimum wage rate by legislative decree, after having sought the advice of the Standing Council for Social Dialogue (CPCS) and the Advisory Youth Council (CCJ).¹⁰⁸ Similar machinery is found in the following countries: *Saudi Arabia*;¹⁰⁹ *Ghana*;¹¹⁰ *Guyana*;¹¹¹ *India*.¹¹²

¹⁰¹ (2), ss. 111-113.

¹⁰² (3), ss. 10, 16, 18, 21(3) and (4), 26-30 and 75.

¹⁰³ (1), ss. 16 and 26.

¹⁰⁴ (2), s. 8(1).

¹⁰⁵ (1), s. 9.

¹⁰⁶ (1), s. 10.

¹⁰⁷ (2), ss. 174 and 179, and (4), s. 24.

¹⁰⁸ (5), ss. 1, 4 and 9.

¹⁰⁹ (1), s. 115. Nevertheless, according to information furnished by the Government, wages are normally fixed by collective agreement and no minimum wage rates have been fixed by decision of the Council of Ministers.

¹¹⁰ (3), ss. 15 and 16.

¹¹¹ (1), ss. 7 and 8, (2), s. 2, and (5), ss. 2, 3, 10(1)(a) and (4).

¹¹² (1), ss. 2(b)(1) and (II), 3(1)(a), 5(1) and (2), 7, 8(1) and (2), and 9.

126. In a number of countries, there are procedures in which wage councils or committees play an active part. The competent authority makes use of these procedures whenever they are required, in the absence of efficient wage-fixing machinery. At a first stage, the competent wage board or council makes inquiries or conducts any necessary research. Secondly, consultations are often organised through the official gazette or by other means. Finally, the board or council submits its recommendations on minimum wages to the competent authority, which actually fixes them. The authority may, when it considers it appropriate, ask for these recommendations to be re-examined and amended.

127. In *Bangladesh*, the Government decides minimum wage rates on the basis of recommendations submitted to it by the Minimum Wages Council.¹¹³ In *Botswana*, minimum wages are fixed, adjusted or abolished by ministerial order, on the basis of recommendations submitted by the Minimum Wages Advisory Board.¹¹⁴ In *Fiji*, the competent wages council submits its proposals on minimum wages to the responsible minister, who may exchange views with the council, and then fixes the minimum wage rates that will be finally applied.¹¹⁵ In *Kenya*, minimum wages are fixed by orders of the competent Minister, following consideration of the recommendations submitted by the General Wages Advisory Board or the Agricultural Wages Advisory Board, which may be assisted by an Area Agricultural Wages Committee; they may also be fixed by wages councils where these have been set up.¹¹⁶ The Minister is also empowered to fix minimum wages at his own initiative.¹¹⁷ In *Malta*, there are two types of machinery for fixing minimum wages by means of a government decision. In the first, the Minister of Labour fixes the national minimum wage, after having examined recommendations from the Labour Board, a tripartite body.¹¹⁸ In the second, the Minister fixes them by means of an order, once he has received proposals from the competent wages council, minimum wages to be applied to the workers included in the field of operation of the wages council in question.¹¹⁹ In *Sri Lanka*, minimum wages are fixed not only by government decision without the intervention of any ad hoc body; the minister concerned may also approve, by notification, the decision taken on minimum wages by the competent minimum wages board.¹²⁰ In *Swaziland*, the Advisory Wages Board submits its recommendations on minimum wage rates to the Commissioner and, if necessary, proposes the setting up of a wages council.¹²¹ The Commissioner fixes minimum wages by means of an order published in the *Gazette*. When a wages council is set up, minimum wages are only fixed once the recommendations of this body have been examined.¹²² Mention may also be made of the following countries, where minimum wages are fixed by the Government after consultation with the com-

¹¹³ (1), ss. 2(6), and 4 to 6.

¹¹⁴ (1), ss. 137 to 140 and 142.

¹¹⁵ (1), ss. 3, 4 and 8.

¹¹⁶ (1), ss. 5 to 8 and 11.

¹¹⁷ (1), s. 12.

¹¹⁸ (1), s. 4.

¹¹⁹ (1), ss. 7 and 8.

¹²⁰ (1), ss. 20 and 28 to 32.

¹²¹ (1), s. 5(1), (3) and (4).

¹²² (1), s. 5(1) and (3)-(5), ss. 6, 7 and 11(1) to (5).

petent bodies: *Dominican Republic*;¹²³ *Myanmar*;¹²⁴ *Nepal*;¹²⁵ *Pakistan*;¹²⁶ *Peru*;¹²⁷ *Sudan*; the *Syrian Arab Republic*, with respect to minimum wages for industrial workers;¹²⁸ *Tunisia*;¹²⁹ Turkey¹³⁰ and *Uganda*.¹³¹

128. In *Zambia*, the Ministry of Labour and Social Services fixes minimum wages after consulting, if they exist, the representative trade unions of the workers in question. Furthermore, national legislation stipulates that the Prices and Incomes Commission is authorised to recommend minimum wage rates to the Government. This body is also authorised to recommend maximum wage rates to the Government,¹³² but the Committee has no information at its disposal to determine whether these rates are actually fixed. In *Zimbabwe*, one of the types of minimum wage fixing machinery consists of notices issued by the Minister of Labour, Manpower Planning and Social Welfare, which specify the minimum wage in respect of any class of employees in any enterprise or industry.¹³³ However, before issuing this notice, the Minister may request and examine recommendations made by any competent advisory board or employment board or council.¹³⁴ Furthermore, according to the information provided by the Government, various regulations on employment promulgated by the Ministry of Labour, Manpower Planning and Social Welfare, under which minimum wages applicable to specific industries or enterprises are fixed, are still being applied. It should also be mentioned that this Ministry may, after consultation with the Minister responsible for finance, fix a maximum wage.¹³⁵ Consequently, although minimum wages may be fixed by means of collective agreement, collective bargaining is limited in this area to the maximum wage stipulated in the notice issued by the Minister, subject to an exemption provided for in this notice.¹³⁶

129. The Committee points out that the fixing of maximum wage rates by the competent authority is contrary to the principle of freedom of collective bargaining if it is not accompanied by certain guarantees and in particular if its period of application is not limited in time. In this respect, the Committee on Freedom of Association has pointed out that: "If, as part of its stabilisation policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reason-

¹²³ (1), ss. 428(f), (g), (h) and (i), 429, 430 and 431.

¹²⁴ (1), s. 10.

¹²⁵ (1), s. 37(1).

¹²⁶ (1), ss. 5 and 6.

¹²⁷ (3), s. 19, and (6), ss. 6(a) and 7(a).

¹²⁸ (1), ss. 156 to 159.

¹²⁹ (3), s. 1(3).

¹³⁰ (2), s. 33.

¹³¹ (1), ss. 3(1), 6, 7 and 9.

¹³² (1), s. 3; (2), s. 10(1)(c).

¹³³ (1), s. 20(1)(a).

¹³⁴ (1), s. 19(a).

¹³⁵ (1), s. 22(1).

¹³⁶ (1), s. 22(2).

able period, and it should be accompanied by adequate safeguards to protect workers' living standards".¹³⁷

130. However, in some of the countries that have adopted this minimum wage fixing machinery, it would seem that the competent authority is only entitled, after it has received recommendations reviewed by the relevant board or council, to approve or reject these recommendations but not to amend them. Consequently, the body that makes recommendations has as much power to fix minimum wages as the competent authority, although it is the latter that fixes them officially. This is the case in *Bahamas*,¹³⁸ *Mauritius*¹³⁹ and *Canada*, where the government authority only approves or rejects the minimum wage fixing order issued by the Wages Boards in the Provinces of Nova Scotia,¹⁴⁰ and Prince Edward Island,¹⁴¹ and in Yukon Territory.¹⁴² In the Province of Saskatchewan, the Minimum Wage Board fixes minimum wages by regulation which has to be approved by government authority.¹⁴³ In *Trinidad and Tobago*, minimum wage fixing orders must be submitted for approval to Parliament, which thus has the right to veto them.¹⁴⁴

131. In *France*, the Government fixes a minimum growth wage (SMIC) by decree adopted in the Council of Ministers, after the latter has consulted with the National Collective Bargaining Commission. A number of African countries have adopted the same machinery for fixing minimum inter-occupational wages¹⁴⁵ or wages corresponding to a specific occupational category. This applies in *Benin*,¹⁴⁶ *Burundi*,¹⁴⁷ *Madagascar*,¹⁴⁸ *Mauritania*,¹⁴⁹ *Zaire*,¹⁵⁰ where the National Labour Council is also involved in minimum wage fixing for occupational categories, in the absence of collective agreements. In the *Central African Republic*,¹⁵¹ *Côte d'Ivoire*,¹⁵² *Djibouti*,¹⁵³ *Guinea*¹⁵⁴ and *Rwanda*,¹⁵⁵ an advisory committee is consulted. In the *Comoros*, the Higher Labour Council¹⁵⁶ is consulted. In *Gabon*, the National Commission of Wage Studies and the Government

¹³⁷ ILO: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, 3rd edition, 1985, para. 641.

¹³⁸ (1), s. 11(1) to (3). However, according to the information furnished by the Government, no wages council is in activity and minimum wages are fixed by means of collective agreements.

¹³⁹ (1), ss. 94-96.

¹⁴⁰ (18), s. 50(1)(a) and (2).

¹⁴¹ (24), s. 69(1)(a), (b), (f) and (g).

¹⁴² (35), ss. 17(1)(a) and (7) and 96(1).

¹⁴³ (28), s. 15(4)(a) and (b).

¹⁴⁴ (1), s. 3(1) and (3).

¹⁴⁵ Sometimes referred to as minimum inter-occupational guaranteed wage (SMIG).

¹⁴⁶ (1), s. 82.

¹⁴⁷ (1), s. 66(a) and (d).

¹⁴⁸ (1), s. 73.

¹⁴⁹ (1), ss. 84 and 85.

¹⁵⁰ (1), s. 63.

¹⁵¹ (1), s. 100(1) and (6).

¹⁵² (1), s. 135; (2), s. 5 D 63(2).

¹⁵³ (1), s. 95(1).

¹⁵⁴ (1), ss. 211, 288(3) and 289.

¹⁵⁵ (1), s. 85.

¹⁵⁶ (1), s. 99.

Wages Commission is consulted,¹⁵⁷ in *Senegal*, the National Advisory Council for Labour and Social Security is consulted,¹⁵⁸ and in *Togo*, the National Council of Labour and Social Legislation is consulted.¹⁵⁹ In *Cameroon*, minimum wages are fixed by decree, after the National Labour Council has been consulted.¹⁶⁰

132. In *Namibia* the minimum wage fixing machinery at present in force is applied in the event of labour disputes. When a dispute is submitted to a conciliation board, the board may settle it by means of an agreement which will finally be declared binding on the parties under an ordinance of the Minister of Labour and Manpower Development.¹⁶¹ However, according to information supplied by the Government, new labour legislation is being drafted and will include wage-fixing machinery that is more appropriate to the new situation in the country.

133. In the countries of Central and Eastern Europe, subject to the comments made in the introduction to this survey,¹⁶² the Committee will refer to the information supplied by the governments and to the legislation that it has been able to examine. Generally speaking, wage-fixing machinery appears to be unchanged for the time being. Nevertheless, certain modifications have been or are being introduced. In *Belarus*, according to the information supplied by the Government, the minimum wage is fixed by the State.¹⁶³ In addition, a Bill on minimum wages and social guarantees is to be examined in Parliament. The Committee does not, however, possess any information on the action taken on this Bill. In *Bulgaria* the minimum wage is fixed by the Council of Ministers and the central leadership of the trade unions.¹⁶⁴ In *Czechoslovakia*, the minimum wage is fixed by the federal Government.¹⁶⁵ However, the amount of the minimum wage was the subject of a general agreement between the federal Government, those of the republics and the social partners.¹⁶⁶ In *Hungary*, according to information supplied by the Government, minimum wages are fixed by decree of the Minister of Labour, which gives the force of law to a decision by the Conciliation Council, a tripartite negotiating body. In *Poland* the minimum wage is fixed by decree of the Minister of Labour and Social Policy after consulting the national trade union organisations.¹⁶⁷ In *Romania*, the basic minimum wage is fixed by government order after consultation of the trade unions and employers'

¹⁵⁷ (1), s. 88.

¹⁵⁸ (1), s. 109.

¹⁵⁹ (1), s. 91.

¹⁶⁰ (1), s. 69(1) and (2)(a). However, the Labour Code (ss. 127(2)(c), (1) and (2) and s. 128) provides for setting up a National Joint Committee for Collective Agreements and Wages, with a view, inter alia, to fixing minimum wage rates applicable to the various occupational categories in the private sector.

¹⁶¹ (2), ss. 33, 34 and 46.

¹⁶² See para. 22.

¹⁶³ (1), s. 38, and (2).

¹⁶⁴ (2), ss. 244(1)(1) and 245, and (3), s. 91.

¹⁶⁵ (2), ss. 111(3), and 123(1)(e) and (3), s. 10.

¹⁶⁶ (3), s. 10(2).

¹⁶⁷ (1), s. 79.

organisations.¹⁶⁸ In *Ukraine*, according to information from the Government, the minimum wage is fixed by the Government.¹⁶⁹

1.1.3. Minimum wages fixed by wage committees, councils or boards

134. In a number of countries, the legislation provides for ad hoc bodies entrusted specifically with fixing minimum wages. In *Argentina*, minimum wages of workers in industry are fixed by resolutions adopted by the National Minimum Living Wage Board, an independent tripartite body working under the Ministry of Labour and Social Security.¹⁷⁰ The amount of the minimum living wage may be amended at the request of any of the sectors represented on this Board, provided that the cost of living index taken into account in determining the amount in question shows a variation of 15 per cent.¹⁷¹ As regards workers in the agricultural sector, the National Agricultural Labour Committee is responsible for declaring applicable the minimum wage in this area,¹⁷² which may not be lower than the minimum living wage fixed by the Government for this category of workers. Under the relevant legislation, wages of homeworkers are established, for each industry, by wage boards.¹⁷³ However, it would seem that wage boards of this type have not been set up and wages of this category of workers continue to be established by means of resolutions adopted by the Ministry of Labour and Social Security.¹⁷⁴ Although the Government of *Austria* states that minimum wages are fixed exclusively by means of collective agreement, legislation exists which provides for other wage-fixing machinery. Conciliation offices and the Central Conciliation Office, which are tripartite bodies, may establish minimum rates of remuneration for groups of workers, including apprentices, for which no collective agreements have been concluded for the branch of activity in question.¹⁷⁵ Furthermore, minimum wages of homeworkers, in the absence of collective agreements in this area, may be fixed by homework committees. These committees deal with matters in the field of homework and their powers usually extend to the whole of *Austria*. Furthermore, there are special homework committees dealing with business relating to branches of homework which are of particular importance.¹⁷⁶

135. In *Colombia*, the legislative decree amending the Labour Code authorises the National Labour Board to fix, by consensus, minimum wages of a general or limited nature.¹⁷⁷ This extends the functions of the Board, which is no longer restricted to making assessments and submitting recommendations on minimum wages.¹⁷⁸ It should be pointed out that the Board cooperates, on any matter concerning wages, with the Incomes, Prices and Wages Policy Commission; both bodies are tripartite.¹⁷⁹ The Board may propose that minimum wages

¹⁶⁸ (1), s. 5.

¹⁶⁹ (1), ss. 2 and 95, and (2).

¹⁷⁰ (3), ss. 5 and 6.

¹⁷¹ (3), s. 10.

¹⁷² (9), s. 28; (10), s. 15.

¹⁷³ (6), ss. 20, 22 and 26; (7), ss. 43, 44 and 52.

¹⁷⁴ See para. 116.

¹⁷⁵ (1), ss. 22(1) and (3), and 26(1).

¹⁷⁶ (3), ss. 28-30, 34 and 35.

¹⁷⁷ (2), s. 147(2).

¹⁷⁸ (3), s. 3.

¹⁷⁹ (3), ss. 4 and 7.

be readjusted.¹⁸⁰ The Committee notes that when the National Labour Board does not attain the necessary consensus to establish these wages, the Government assumes this function. In *Ecuador* a general minimum living wage is fixed by resolution of the National Wages Council, a tripartite technical body which advises the Ministry of Labour and Human Resources.¹⁸¹ There are also tripartite sectoral committees which, within the framework of an authorisation from the Minister, fix minimum wages for branches of economic and occupational activity selected by the Minimum Wage Department of the Ministry of Labour and Human Resources.¹⁸² The national legislation also provides for the fixing of minimum wages by labour commissions,¹⁸³ but the information supplied by the Government does not give details on the functioning of this machinery.

136. In the *Philippines*, minimum wages are fixed by regional tripartite wages and productivity boards which issue wage orders after carrying out surveys, conducting public hearings and consultations and notifying the persons concerned. Appeals against decisions taken by these boards may be brought before the National Wages and Productivity Commission.¹⁸⁴ In *Malta*, apart from minimum wage fixing by the Ministry of Labour, provision is made for a joint industrial council, if it exists, to fix the wages of workers under its specific jurisdiction to the exclusion of any other wage council.¹⁸⁵ In *Indonesia* it would appear that minimum wages are fixed by regional wages boards or a national wages board, but the information supplied by the Government does not indicate clearly what machinery is in force. In *Mexico*, minimum wages are fixed by a resolution adopted by the Council of Representatives of the National Minimum Wage Board. This tripartite council establishes minimum wages after having examined the report submitted to it by the technical directorate of the above-mentioned Wage Board. Furthermore, it should be pointed out that the National Minimum Wage Board may also be assisted by advisory committees that are also tripartite. Finally, the adjustment of these wages may also be initiated by the Department of Labour and Social Security, as well as by trade unions, workers' federations and confederations and employers' organisations.¹⁸⁶ Similar machinery is also provided for in the legislation of: *Egypt*;¹⁸⁷ the *Islamic Republic of Iran*;¹⁸⁸ *Nicaragua*¹⁸⁹ and the *Syrian Arab Republic*, with respect to agriculture.¹⁹⁰

137. In the *United Kingdom*, minimum wages are fixed either by wage councils or wage boards. Wage councils cover a specific industry or branch of economic activity. When they are establishing minimum wages for industry and trade, they carry out the preliminary inquiries they deem necessary and publish notices of the rate they propose. After having received any representations on the matter, the council makes an order giving effect to the proposals with such

¹⁸⁰ Internal agreement of the Ministry of Labour and Social Security, s. 9(b).

¹⁸¹ (2), ss. 121, 122 and 134.

¹⁸² (2), ss. 125 and 127.

¹⁸³ (2), ss. 133 and 275.

¹⁸⁴ Presidential Decree No. 442, s. 123, as amended by section 3 of (1).

¹⁸⁵ (1), s. 9.

¹⁸⁶ (2), ss. 94, 95 and 551, 554, 557, 570 and 571.

¹⁸⁷ (1), ss. 32 and 79.

¹⁸⁸ (1), s. 41.

¹⁸⁹ (3), ss. 7(1) and 9.

¹⁹⁰ (2), s. 81.

modifications as it thinks fit having regard to these representations.¹⁹¹ In the agricultural sector, minimum wages are fixed by the Agricultural Wages Board.¹⁹² This Board usually informs the persons concerned of the order it is proposing to issue. After examining any representations it receives on the draft order, the Board issues the order with any amendments it considers appropriate.¹⁹³

1.1.4. Minimum wages fixed by court rulings

138. In *India*, when a dispute over the wages payable to workers employed in an activity included in the Schedule to the Minimum Wages Act of 1948 is pending before a tribunal, or when an award is in operation, the minimum wage fixed or revised by the central or state Governments shall not be applicable to those workers, but the wage decided in the award shall be applied to them.¹⁹⁴ In *Italy*, where workers' remuneration is not the subject of an agreement between the parties, it shall be determined by the judge.¹⁹⁵ In *Sri Lanka*, the wages of workers employed in shops and offices may be fixed by a tripartite remuneration tribunal.¹⁹⁶ The Minister responsible may authorise a draft determination to be made by a remuneration tribunal specifying minimum rates of pay for any employees, whenever the Commissioner has not been able to make a determination with the consent of the workers and employers concerned, or when the Minister considers it expedient to do so. The same applies when a determination with consent is repudiated. Furthermore, in any case where the Minister considers it expedient that a determination with consent should be extended so as to be applicable to any other workers, he may authorise a draft determination, for the extension to such employees of the determination with consent, to be made by a remuneration tribunal.¹⁹⁷

1.1.5. Minimum wages fixed by arbitration awards and extension of these awards

139. In *Australia*, the labour tribunals are responsible for issuing wage awards. At federal level, the main tribunal is the Australian Industrial Relations Commission.¹⁹⁸ This Commission is competent for all industrial matters that extend beyond the limits of a state. Minimum wages are fixed in two ways: conciliation and arbitration. Conciliation consists of conferences between the parties or their representatives under the presidency of a member of the Australian Industrial Relations Commission, or without the presence of this member,¹⁹⁹ and is concluded when the parties have reached agreement for the settlement of the dispute or when it is considered that there is no likelihood of conciliation resulting in the settlement of the dispute or any matter in dispute within a reasonable

¹⁹¹ (1), Schedule 3, s. 1(1)(2); (2), Schedule 3, s. 1(1)(2).

¹⁹² Agricultural Wages Board for England and Wales; Agricultural Wages Board for Scotland; Agricultural Wages Board for Northern Ireland.

¹⁹³ (3), ss. 1(1), and 3(1)(a), and Schedule 1, s. 1, Schedule 3, s. 1, and Schedule 4, ss. 1-3; (4), ss. 1(1), and 3(1)(a), and Schedule 1, s. 1, Schedule 2, s. 1, and Schedule 3, ss. 1-3; (5), s. 4(1) and (8), and Schedule 1, s. 1.

¹⁹⁴ (1), s. 3(2-A).

¹⁹⁵ (5), s. 2099.

¹⁹⁶ (2), s. 25(1) and (7).

¹⁹⁷ (2), s. 26(1)-(3).

¹⁹⁸ (1), ss. 8 and 9.

¹⁹⁹ (1), s. 102(2).

time.²⁰⁰ When the parties to an industrial dispute reach an agreement, they may request the Australian Industrial Relations Commission to make an award giving effect to this agreement.²⁰¹ Furthermore, the parties may also prepare a memorandum of agreement and request the above-mentioned Commission to certify it.²⁰²

140. When a conciliation proceeding is completed but the industrial dispute has not been fully settled, the Australian Industrial Relations Commission deals with it by arbitration.²⁰³ In addition, the dispute may be referred to a local industrial board. This body carries out an investigation and submits a report, on the basis of which the above-mentioned Commission may make an award fixing minimum wage rates to be applied to the parties to the dispute.²⁰⁴ Furthermore, the Australian Industrial Relations Commission may, when it considers it necessary or expedient, declare that any term of an award be a common rule in a Territory for an industry in relation to which the dispute arose.²⁰⁵ The award given by the above-mentioned Commission takes precedence over a state law or an order, award, decision or determination of a state industrial authority dealing with the same matter.²⁰⁶ Finally, the Australian Industrial Relations Commission may make decisions – known as National Wage Cases – which fix wage increases applicable to the national economy as a whole. These decisions may also establish principles regulating the fixing and adjustment of minimum wages.

141. In Australian states, minimum wages are fixed by means of awards given by tribunals. In New South Wales, there is an industrial commission which functions as a higher appeals court²⁰⁷; it may exercise all the jurisdiction conferred on a conciliation committee or contract regulation tribunal to settle a labour dispute and amend or repeal an award or determination handed down by these bodies.²⁰⁸ Conciliation commissioners preside over conciliation committees and contract regulation tribunals.²⁰⁹ These commissioners may issue an award, order or contract determination connected with the labour dispute subject to conciliation.²¹⁰ These committees may fix, by means of orders or awards, wages paid to workers in general, with the exception of wages for aged, infirm or slow workers.²¹¹ The wages of these aged, infirm, or slow workers as well as those of outdoor workers are fixed by the registrar.²¹² Contract regulation tribunals are competent to make contract determinations²¹³ with respect to the minimum rates of commission applicable to contracts of bailment of a public vehicle²¹⁴ and to

²⁰⁰ (1), s. 103.

²⁰¹ (1), s. 112(1).

²⁰² (1), s. 115(1) and (3).

²⁰³ (1), s. 104(1).

²⁰⁴ (1), ss. 111(1)(b), and 130.

²⁰⁵ (1), s. 141(1).

²⁰⁶ (1), s. 152.

²⁰⁷ (3), ss. 14(1), and 24(8)(a).

²⁰⁸ (3), ss. 30(1) and (2), 30A(a) and (b), and 31.

²⁰⁹ (3), ss. 15(1B), 18(2) and 91(j), 2(a).

²¹⁰ (3), s. 25(4)(a)(i), and a(1)(i) and (ii).

²¹¹ (3), ss. 20(1)(a), 23A and 25(4)(b)(i).

²¹² (3), s. 89(1) and (2).

²¹³ (3), s. 25(4)(c)(i).

²¹⁴ (3), s. 91(k)(1).

remuneration paid to carriers under a contract of carriage.²¹⁵ As regards both the conciliation committees and the contract regulation tribunals, the dispute may be referred to the Industrial Relations Commission by these bodies.²¹⁶

142. In Queensland, the Industrial Relations Commission is competent to settle labour disputes, including those concerning wages, by means of awards.²¹⁷ The proceedings consist, first, of conciliation and, second, of arbitration.²¹⁸ In Tasmania, the Tasmanian Industrial Commission has jurisdiction to hear and determine industrial matters and to make an award or order.²¹⁹ These awards may specify the manner in which rates of remuneration for employees in the private sector should be fixed.²²⁰ Awards or any provision in an award made by the Industrial Commission may be extended temporarily, under regulations, to any worker who is not subject to another award.²²¹ However, the Commissioner's final decision in arbitration, which has been requested by the parties to a dispute, may not be applied as an award or order of the Industrial Commission, but may be incorporated in or form an industrial agreement.²²² Furthermore, the Industrial Commission may fix a minimum wage for adult workers, irrespective of the nature of their work or the branch of industry in which they are employed.²²³ In Victoria, minimum wages are fixed by Conciliation and Arbitration Boards which make awards applicable to trades, branches of a trade or group of trades.²²⁴ Any case submitted to a Conciliation and Arbitration Board may be referred to the Industrial Relations Commission of Victoria for a hearing or determination.²²⁵ If the Board is unable to settle the dispute by conciliation, the chairman determines the matter by arbitration.²²⁶ When a dispute is referred to the Industrial Relations Commission of Victoria, this body has the same powers as the Conciliation and Arbitration Boards to settle the dispute.²²⁷

143. In Western Australia, minimum wages are fixed by awards for workers employed in one or several specific industries, or by general orders applicable to adult workers made by the Western Australia Industrial Relations Commission.²²⁸ This Commission must first attempt to settle disputes first by conciliation and then by arbitration, unless the matter concerning minimum wage fixing, involves the ascertainment of an existing right or the parties request that it should first be submitted directly to arbitration.²²⁹ A Board of Reference must be set up in relation to any award in force, made up of a chairman and an equal number of employers' and workers' members appointed by the Chief Industrial Commissioner; this Board may allow, approve, fix, determine or

²¹⁵ (3), s. 91(1)(1).

²¹⁶ (3), s. 25(4)(a)(iii), and a(1)(iii)(b)(ii), and (c)(ii).

²¹⁷ (6), ss. 2.2(3)(a)(i), 4.13(b) to (e), and 4.15(a), (c) and (e).

²¹⁸ (6), s. 12.1(3).

²¹⁹ (7), s. 19(1) and (2)(a).

²²⁰ (7), ss. 32(2), and 33(1)(a).

²²¹ (7), s. 40.

²²² (7), s. 61(1) and (4).

²²³ (7), s. 35(1)(b).

²²⁴ (8), s. 34(1)(b) and (d).

²²⁵ (8), s. 37(8) and (9).

²²⁶ (8), s. 44(3).

²²⁷ (8), s. 44(4) and (7).

²²⁸ (9), ss. 7(1), 23(1) and (2), 25(1), and 50(2)(a) and (5)(a).

²²⁹ (9), 43(1) and (2), (a) and (b).

deal with any matter that, under the award, requires these measures and also deal with any other question, not involving the interpretation of a provision in the award, to which the Commission has entrusted it to take the necessary steps.²³⁰ Any union, association or employer affected by a decision of a Board of Reference may appeal against the decision to the above-mentioned Commission.²³¹ The Commission has to consider the national wage decisions of the Australian Labour Relations Commission and make a general order giving effect to those decisions unless there are good reasons for doing otherwise.²³²

144. In several Australian states, once an industrial agreement has been filed at the office of the registrar, it has force of law.²³³ In Western Australia, trade unions or workers' and employers' associations which are parties to an industrial dispute may conclude a memorandum of agreement on the basis of which the above-mentioned Commission makes a consent award fixing the minimum wages established in this agreement.²³⁴ This body may, in addition, declare this consent award to be a common rule of the industry or industries to which it applies.²³⁵

145. In *New Zealand*, in addition to the fixing of minimum wages by order of the Governor-General, there is machinery for the fixing of minimum wages by awards similar to that existing in Australia. This machinery includes the registration of agreements or awards by an Arbitration Commission, the setting up of conciliation boards to settle labour disputes and, when disputes cannot be settled in this manner, their solution by means of arbitration.²³⁶ In *Sri Lanka* the commissioner may settle labour disputes – or refer them to an officer for settlement – by conciliation. However, if this procedure is repudiated or fails, disputes may be referred to a person appointed by the parties or, where this is impossible, to the district judge for their settlement through arbitration.²³⁷

146. In *Colombia*, the Labour Code provides that minimum wages may be fixed by arbitration awards.²³⁸ The Committee does not however have information at its disposal to determine to what extent this type of machinery is actually used in fixing these wages. It points out that any extension of these judgements is excluded.²³⁹

1.2. Fixing of minimum wages by collective agreements and extension of these agreements

147. The Committee has examined the national law and practice in this area in the light of its previous comments on the possibility of fixing minimum wages by collective agreements and on the extent to which this machinery fulfils

²³⁰ (9), s. 48(1), (2) and (6).

²³¹ (9), s. 48(11).

²³² (9), s. 51(2).

²³³ New South Wales (3), s. 11(1); Queensland (6), ss. 10.4 and 10.6; Tasmania (7), ss. 55 to 60; Victoria (8), ss. 47(1) and (4), and 52.

²³⁴ (9), s. 41(1) and (2).

²³⁵ (9), s. 41(6).

²³⁶ (1), ss. 140, 141, 146, 147, 149 and 160.

²³⁷ (3), ss. 3 and 11 to 19.

²³⁸ (2), s. 147(1).

²³⁹ Ruling of 27 March 1981 by the Supreme Court of Justice.

the obligations contained in the Conventions under examination.²⁴⁰ The Committee refers only to cases in which the fixing of minimum wages by collective agreement is specified by law or when the government has stated that this is the practice in the country concerned, without examining the content of these agreements.

148. In a number of countries, wage fixing by means of collective agreement is clearly and specifically spelt out in the legislation. In *Colombia*, the Labour Code provides that minimum wages may also be fixed by means of social contracts or collective agreements.²⁴¹ In the first case, minimum wages are agreed upon between employers and workers not belonging to organisations; whereas, in the second case, they are fixed by one or more employers or employers' associations, and one or more trade union associations or federations.²⁴² In the latter case, the wage rates decided upon may be extended to third parties in two ways. Either the extension is "legal", that is, it is provided for in the Labour Code²⁴³ or the extension is carried out by means of a government ruling.²⁴⁴ In *France*, wages of workers in the private sector are fixed by collective agreements, which may be extended by the Minister responsible for labour when certain conditions are fulfilled; for instance, they must contain clauses concerning the national minimum occupational wage for unskilled workers and the scale of coefficients to be applied to various occupational skills.²⁴⁵ In *Guatemala*, minimum wages may also be fixed by collective agreement, in which case they may not be fixed in any other way.²⁴⁶ In *Guinea*, wages are, in practice, fixed only by collective agreement, although the legislation stipulates a minimum guaranteed wage may be fixed by decree.²⁴⁷ In *New Zealand*, minimum wages may also be fixed by collective agreement.²⁴⁸ In *Swaziland*, the legislation specifies that the Commissioner may extend collective agreements, by means of an order regulating wages, when he considers that these agreements substantially cover the vast majority of workers and employers in a given industry or branch of activity.²⁴⁹ In *Yugoslavia*, minimum wages are fixed through collective agreements and concurrently by the law.²⁵⁰

149. In other countries, minimum wage fixing machinery by means of collective agreement is not specifically stipulated by law, although it is applied in practice; indeed, the legislation provides rather for exceptions to this practice. In *Austria* and *Germany*, for example, minimum wages are basically fixed by collective agreements and their scope may be extended to cover other workers, regions or branches of activity.²⁵¹ In *Austria*, however, according to information provided by the Government as regards agriculture, collective bargaining may

²⁴⁰ See paras. 99-101.

²⁴¹ (2), s. 147(1).

²⁴² (2), ss. 467 and 481.

²⁴³ (2), s. 471(1) and (2).

²⁴⁴ (2), s. 421(1).

²⁴⁵ (2), s. L.133-5, (2)(a) and (b).

²⁴⁶ (2), s. 115.

²⁴⁷ (1), s. 211.

²⁴⁸ (1), ss. 170(1) and 177(1).

²⁴⁹ (1), s. 13.

²⁵⁰ (1), s. 22; (2), s. 51.

²⁵¹ *Austria* (1), ss. 18(1) and 22(3); (2), s. 50; (3), ss. 34, 35, 43 and 44; *Germany* (2), s. 1(2)(c), and (4), s. 5.

not take place without the approval of the Wages Subcommittee, a body under the Joint Wages and Prices Board. In *Sri Lanka*, minimum wage fixing by means of collective agreement is but one form of wage-fixing machinery. In *Switzerland*, although the national legislation does not specify this procedure, minimum wages are also fixed by means of collective agreements which may be extended.²⁵² However, there is no collective agreement in the agricultural sector. Furthermore, the relevant legislation stipulates that wages paid to homeworkers must comply with the rates applied for equivalent activities carried out within an enterprise. When no comparable wages exist in the enterprise, workers must receive the wage rate normally paid for similar work in the branch of economic activity in question and in the region.²⁵³ The same legislation further stipulates that foreign workers must receive the same wages as those normally paid to Swiss workers in the locality or occupation in question.²⁵⁴ Subcontractors are also bound to pay their employees the wage fixed by the collective agreement covering the sector to which they belong.²⁵⁵ Finally, there are rare cases in which labour contracts for agricultural workers and domestic workers contain provisions on minimum wages.

150. In the Nordic countries, minimum wage fixing by means of collective agreement is practically the only type of machinery.²⁵⁶ In some of these countries, the national legislation specifies the binding nature of these wage rates.²⁵⁷ In *Belgium*, minimum wages are fixed exclusively by means of collective agreement concluded by the National Labour Council or joint committees, which may be extended.²⁵⁸ Minimum wages are also fixed in this way in *Bahamas*, *Greece*,²⁵⁹ *Italy*, *Japan* (where it is possible to extend collective agreements fixing minimum wages to all workers in the branch of activity and region concerned),²⁶⁰ *San Marino*,²⁶¹ *Singapore* and *Suriname*.

151. In other countries, provisions stipulating that collective agreements must or may include minimum wages for occupational categories and specifying conditions for extending them are generally found in legislation pertaining to collective bargaining. This is the case in a number of African countries, for instance: *Algeria*;²⁶² *Benin*;²⁶³ *Burundi*;²⁶⁴ *Central African Republic*;²⁶⁵ *Comoros*;²⁶⁶

²⁵² (5), s. 1.

²⁵³ (3), s. 4(1).

²⁵⁴ (7), s. 9(1).

²⁵⁵ (6), s. 20.

²⁵⁶ *Denmark, Finland, Iceland, Norway, Sweden.*

²⁵⁷ *Finland*, (1), s. 17; *Iceland*, (3), s. 1.

²⁵⁸ (1), s. 28.

²⁵⁹ (1), s. 3(3) and 8(1).

²⁶⁰ (1), s. 11.

²⁶¹ (1), s. 10. Workers not directly covered by a collective agreement are covered by analogy.

²⁶² (1), s. 120(3).

²⁶³ (1), s. 61(2).

²⁶⁴ (1), s. 239.

²⁶⁵ (1), s. 79(2).

²⁶⁶ (1), s. 81(2).

Côte d'Ivoire;²⁶⁷ *Chad*;²⁶⁸ *Djibouti*;²⁶⁹ *Gabon*;²⁷⁰ *Madagascar* (where the possibility of establishing minimum wages by means of collective agreement arises from the general nature of the collective bargaining system laid down in the legislation);²⁷¹ *Mali*;²⁷² *Mauritania*;²⁷³ *Senegal*;²⁷⁴ *Togo*;²⁷⁵ and *Zaire*.²⁷⁶ In *Zimbabwe*, collective agreements may also make provision for minimum wages for different grades and types of occupation.²⁷⁷

2. Fixing of minimum wages according to coverage

152. No provision in any of the Conventions under examination establishes the geographical or occupational coverage of minimum wages. However, from the terms used in the various instruments, minimum wages must apply at least to "trades or part of trades" (Convention No. 26), to "agricultural undertakings and related occupations" (Convention No. 99), or to "groups of wage-earners" (Convention No. 131). Consequently, the implementation of machinery with a wider geographical or occupational coverage is in accordance with the Conventions. Coverage of fixed minimum wage rates may be general, or it may be established by region, by economic sector, by occupational categories or by a combination of two or several factors. In order therefore to obtain a clear idea of the national law and practice in this area in a specific country, it is necessary to consider all the relevant indicators, given that in one and the same country minimum wages of overall coverage may exist alongside others which are of limited geographical coverage or only apply to a specific sector or occupational category.

153. The Committee will not deal with cases in which minimum wages fixed by collective agreement are limited to an economic sector, zone, region or occupational category. Indeed, it would not seem useful to examine these cases, given that the Committee does not have enough information on all the forms that these agreements take in each country, and that in many cases the competent authorities are authorised to extend these agreements to other geographical areas or sectors of activity, as well as to other occupational groups. However, it will refer to a number of countries where, according to the information provided by the governments, minimum wages are fixed exclusively by collective agreements of overall coverage.

²⁶⁷ (1), s. 70(2).

²⁶⁸ (1), s. 146.

²⁶⁹ (1), s. 74(2).

²⁷⁰ (1), s. 70(2).

²⁷¹ (1), ss. 54 and 59.

²⁷² (1), s. 68(2).

²⁷³ (1), s. 63(2).

²⁷⁴ (1), s. 85(2).

²⁷⁵ (1), s. 71(2).

²⁷⁶ (1), s. 273.

²⁷⁷ (1), s. 79(3)(a).

2.1. Minimum wages of general coverage

154. Minimum wages are considered to be of overall coverage when they apply to all workers in a given country. An examination of national law and practice on this matter reveals that in some countries minimum wages are required always to be of overall coverage, whereas in other countries this form of coverage is one amongst several. Generally speaking, in countries in which minimum wages are fixed by law, these wages apply to all occupational categories in all branches of economic activity throughout the national territory.²⁷⁸ In *Brazil*, the Constitution specifically states that the minimum wage should be standardised throughout the country.²⁷⁹ In *Canada*²⁸⁰ and the *United States*, the minimum wage fixed by federal legislation is applicable to all workers covered by it, apart from certain authorised exceptions.²⁸¹

155. Wages fixed by the government or another competent body may also be of general application. In *Colombia*, minimum wages fixed by the National Labour Council may apply to all regions, economic sectors and occupational categories throughout the country.²⁸² This also applies to the "legal" minimum wage fixed by the Government. In *Spain*, there is only one minimum wage which is of general application, except for some groups of workers to which different wage rates are applied.²⁸³ In *France*, the Labour Code provides for a minimum growth wage (SMIC) for all the Metropolitan area and the territory of St. Pierre and Miquelon²⁸⁴ and various minimum growth wages for its Overseas Territories. However, some categories of workers may be paid rates lower than the SMIC. In *Malta*, the national minimum wage covers all workers.²⁸⁵ In *New Zealand*, the minimum wage, fixed by a decree of the Governor-General, applies to all workers of more than 20 years of age throughout the country.²⁸⁶ In *Portugal*, the monthly minimum wage applies to all persons throughout the country who work for another person.²⁸⁷ In *Trinidad and Tobago*, the legislation provides for the possibility of fixing a national minimum wage,²⁸⁸ but in practice it would seem that minimum wages are fixed only for economic sectors and occupational categories.²⁸⁹

156. Mention may also be made of the following countries, where minimum wages are of general coverage: *Saudi Arabia*;²⁹⁰ *Belarus*; *Belgium*;²⁹¹ *Benin*;

²⁷⁸ *Brazil, Canada, Chile, Netherlands, Nigeria, United States.*

²⁷⁹ (1), s. 7(IV).

²⁸⁰ (1), s. 167.

²⁸¹ For example, apprentices in *Canada* (2), s. 11.

²⁸² (2), s. 147(2).

²⁸³ (7), ss. 1 and 4.

²⁸⁴ (2), s. L.141-1.

²⁸⁵ (1), s. 4.

²⁸⁶ (3), s. 2.

²⁸⁷ (5), s. 1(1).

²⁸⁸ (1), s. 3(1).

²⁸⁹ See para. 166.

²⁹⁰ (1), s. 115.

²⁹¹ (1), s. 7.

Bulgaria;²⁹² *Czechoslovakia*;²⁹³ *China*; *Ecuador*;²⁹⁴ *Egypt*; *Ghana*;²⁹⁵ *Greece*;²⁹⁶ *Guinea*;²⁹⁷ *Hungary*; *India*;²⁹⁸ *Israel*;²⁹⁹ *Nepal*;³⁰⁰ *Poland*; *Romania*; *Turkey*; and *Ukraine*.

2.2. Minimum wages by region or area

157. In *Germany*, the minimum wage fixing machinery applicable in the absence of collective agreements and the ensuing minimum wage rates may apply to only one *Land*.³⁰¹ In *Australia*, at the federal level, the Australian Industrial Relations Commission is empowered to fix³⁰² a minimum wage whose rates are applicable to all adult workers, irrespective of the work they do or the branch of industry in which they are employed.³⁰³ The same possibility exists, at state level, in Western Australia, where the Western Australia Industrial Relations Commission may fix minimum wages applicable to all adult workers.³⁰⁴ In Queensland, there is a guaranteed minimum wage fixed by the Industrial Relations Commission and applicable to all adult workers.³⁰⁵ In Tasmania, a wage applicable to adult workers may be set, irrespective of the work they carry out or the industry employing them.³⁰⁶ In *Austria*, minimum wages fixed by the statutory machinery in the absence of collective agreements are only valid for the territory covered by this machinery, which never extends to the federal territory as a whole.³⁰⁷ In *Argentina*, minimum wages are only fixed by region in the case of domestic workers, whose wages vary from one area to another, depending on the economic strength of the area, the prevailing living conditions and the kinds of labour contracts prevalent in the area.³⁰⁸ In *Canada*, in the Province of Newfoundland, minimum wages may be fixed by area.³⁰⁹ In the legislation of the Northwest Territories³¹⁰ the minimum wage is fixed at a higher rate in certain communities listed in the regulations. In some African countries, the competent authority for establishing minimum inter-occupational guaranteed wages is sometimes also authorised to establish wage areas, and minimum wages thus might vary according to the area. Furthermore, in these countries, minimum wages fixed by means of collective agreement may also vary from one region to

²⁹² (2), s. 244(1)(1), (4), and (5), s. 2.

²⁹³ (2), s. 111(3), and (3), s. 10(1) and (2).

²⁹⁴ (2), s. 134.

²⁹⁵ (4), s. 1(1).

²⁹⁶ (1), s. 8(1).

²⁹⁷ (1), s. 297.

²⁹⁸ (1), s. 3(1)(a).

²⁹⁹ (1), ss. 1 and 2.

³⁰⁰ In *Nepal* there is a minimum wage for all workers in industry.

³⁰¹ (2), s. 10, and (4), s. 3.

³⁰² See para. 137 above in this respect.

³⁰³ (1), s. 106(1)(c).

³⁰⁴ (9), s. 50(2)(a).

³⁰⁵ (6), ss. 2.1(1), and 10.16(1).

³⁰⁶ (7), s. 35(1)(b).

³⁰⁷ (1), ss. 24(1) and 28(1); (3), s. 35(2).

³⁰⁸ See para. 116.

³⁰⁹ (15), s. 27(a) and (c). The same provision stipulates that minimum wages may also be applied to certain undertakings.

³¹⁰ (34), s. 4(1).

another depending on the coverage of the agreements in question. Examples of these countries include: *Benin*,³¹¹ *Burundi*,³¹² *Cameroon*,³¹³ *Central African Republic*,³¹⁴ *Chad*,³¹⁵ *Comoros*,³¹⁶ *Côte d'Ivoire*,³¹⁷ *Djibouti*,³¹⁸ *Gabon*,³¹⁹ *Guinea*,³²⁰ *Madagascar*,³²¹ *Mali*,³²² *Mauritania* (where the legislation provides for geographical areas in which the minimum inter-occupational guaranteed wage may be reduced);³²³ *Senegal*,³²⁴ *Togo*³²⁵ (but where, according to information provided by the Government, wage areas have been abolished); and *Zaire*.³²⁶

158. In the *United States*, apart from the federal minimum wage, minimum rates are also established at the level of each state or territory. In *Guatemala*, minimum wages may be established for parts of the country.³²⁷ The same procedure applies in *Honduras*, although the fixing of minimum wages may not be based solely on regional criteria.³²⁸ In *Mexico*, minimum wages may be general for one or more geographical zones, irrespective of the branch of industry, occupations, trades or special work (which may cover one or more federative units).³²⁹ In *Panama*, minimum wages are fixed by region, although minimum wages are sometimes fixed for specific economic activities within these regions.³³⁰

159. In the *United Kingdom*, minimum rates of wages for workers employed in agriculture, at least in Great Britain,³³¹ are fixed for each county or district, for which Agricultural Wages Boards have been set up.³³² Furthermore, these wages may also be fixed for a defined area in a county or district.³³³ In a number of countries, minimum wages may vary from one region to another, though they are usually fixed for specific sectors in the economy.³³⁴ In *Bangladesh*, for instance, the relevant legislation stipulates that, when minimum wages are being fixed for unskilled workers and young workers, the Minimum Wages Board must submit recommendations to the Government as to whether minimum wages should be applied throughout the country or whether they

³¹¹ (1), s. 82.

³¹² (1), ss. 66(d) and 239(4).

³¹³ (1), s. 69(1).

³¹⁴ (1), ss. 79(2) and 100(1).

³¹⁵ (1), s. 142.

³¹⁶ (1), ss. 81(2) and 99.

³¹⁷ (1), ss. 82 and 70(2).

³¹⁸ (1), ss. 74(2) and 95(1).

³¹⁹ (1), s. 64.

³²⁰ (1), s. 297.

³²¹ (1), s. 63.

³²² (1), ss. 68(2) and 86(1).

³²³ (1), ss. 55 and 84.

³²⁴ (1), s. 109.

³²⁵ (1), s. 64, and (2), s. 1.

³²⁶ (1), s. 73.

³²⁷ (2), ss. 105 and 113.

³²⁸ (3), ss. 23 and 25.

³²⁹ (2), ss. 91 and 92.

³³⁰ (2), s. 172.

³³¹ The Committee does not have any information on Northern Ireland.

³³² (3), ss. 1 and 2; (4), ss. 1 and 2.

³³³ (3), Schedule 4, s. 5; (4), Schedule 3, s. 5.

³³⁴ See para. 163.

should vary according to the specific area.³³⁵ In *Fiji*, wage councils recommend to the competent Minister minimum wage rates that should be adopted for a specific economic activity; although they are sometimes able to carry out their functions at the national level, at other times their competence is restricted to a region or certain parts of this region.³³⁶ In the *Philippines*, minimum wages are established by region, province or town.³³⁷ In *Swaziland*, although minimum wages are usually fixed by branch of economic activity rather than region, the Commissioner may decide, if he considers it appropriate, to fix minimum wages applicable to workers in only one area of the country.³³⁸

160. Mention should also be made of the following countries, where minimum wages can be fixed by regions or zones: *Saudi Arabia*;³³⁹ *China* (where provinces, autonomous regions and municipalities may provide for wage rates to supplement those fixed at the national level); *Dominican Republic*;³⁴⁰ *India*;³⁴¹ *Indonesia*; *Islamic Republic of Iran*;³⁴² *Japan*;³⁴³ *Kenya*;³⁴⁴ *Nicaragua*;³⁴⁵ *Peru*;³⁴⁶ the *Syrian Arab Republic*;³⁴⁷ and *Uganda*.³⁴⁸

2.3. Minimum wages by sector of economic activity

161. In *Germany*, minimum wages fixed by technical committees and approved by the Federal Minister for Labour vary according to the branch of activity covered by the technical committee in question.³⁴⁹ Furthermore, minimum wages of homeworkers are fixed, in the absence of relevant collective agreements, by homework committees set up for specific branches of trade or industry; consequently, minimum wages vary according to the branch of industry in question.³⁵⁰ The same applies in *Austria*, not only as concerns wages fixed by collective agreement, but also, in the absence of these agreements, as concerns minimum wages fixed by conciliation offices or the Central Conciliation Office or homework committees.³⁵¹ In *Argentina*, minimum wages in industry and in the agricultural sector may differ. Indeed, the wage-fixing machinery is different in each of these two sectors. Furthermore, as mentioned earlier, the relevant legislation stipulates that minimum wage rates for homeworkers are fixed, for each homework industry, by wage committees; however, these do not yet seem to have been established. In *Australia*, minimum wages are fixed by arbitration

³³⁵ (1), s. 4(2).

³³⁶ (1), s. 3(3).

³³⁷ (2), s. 124, as amended by s. 3 of (1).

³³⁸ (1), ss. 5(1) and (11).

³³⁹ (1), s. 115.

³⁴⁰ (1), ss. 423 and 427.

³⁴¹ (1), s. 3(1)(a) and (3)(a)(iv).

³⁴² (1), s. 41. Nevertheless, according to information supplied by the Government, minimum wage rates do not differ from one region to another.

³⁴³ (1), ss. 10, 11 and 16, and (2), s. 8(1).

³⁴⁴ (1), s. 12.

³⁴⁵ (2), s. 80, and (3), s. 4.

³⁴⁶ (3), s. 2, and (6), s. 12.

³⁴⁷ (1), s. 156, and (2), s. 81.

³⁴⁸ (1), s. 5(10)(c) and (f).

³⁴⁹ (2), s. 4.

³⁵⁰ (3), ss. 4 and 19.

³⁵¹ (1), ss. 24(1) and 28(1), and (3), s. 34(1).

awards as a function of economic sectors or the parties to labour disputes which submit the dispute for arbitration awards either at the federal or state level. A number of provinces in *Canada* provide for minimum wages for specific branches of the economy.³⁵² In *France*, minimum wages established by collective agreement vary according to the specific branch of economic activity. This also applies in a number of African countries – sometimes also for wages fixed by a government authority. This is the case, inter alia, in the following countries: *Benin*;³⁵³ *Burundi*;³⁵⁴ *Cameroon*;³⁵⁵ *Central African Republic*;³⁵⁶ *Comoros*;³⁵⁷ *Côte d'Ivoire*;³⁵⁸ *Chad* and *Djibouti*³⁵⁹ (where, in addition, minimum inter-occupational guaranteed wages are not the same for industry and the agricultural sector, although the machinery used to fix them is the same); *Guinea*;³⁶⁰ *Madagascar*;³⁶¹ *Mali*;³⁶² *Mauritania* (where minimum inter-occupational guaranteed wages differ in industry and the agricultural sector);³⁶³ *Senegal*;³⁶⁴ and *Togo*.³⁶⁵ In a number of countries in Latin America, minimum wages are fixed by branch of economic activity. This applies in *Guatemala*;³⁶⁶ *Honduras*;³⁶⁷ *Mexico*;³⁶⁸ and *Panama* (where there is a minimum wage for agricultural or livestock workers, inter alia).³⁶⁹

162. In the Nordic countries, where minimum wages are nearly always fixed by means of collective agreement, these are negotiated by economic sector.³⁷⁰ This also holds true for other countries in which minimum wages are established by collective agreement, although other types of machinery exist alongside.³⁷¹

163. In the *United Kingdom*, minimum wages for workers in industry and trade and in agriculture are established by different forms of machinery, and their rates vary accordingly. Furthermore, minimum wages for workers in industry and trade are fixed by wages councils which cover specific branches of economic activity. Wages are generally established by branch of economic activity

³⁵² In New Brunswick, for example, there are minimum wages for workers in the Crown Construction sector: (13), ss. 4-7.

³⁵³ (1), s. 60.

³⁵⁴ (1), s. 235.

³⁵⁵ (1), ss. 61 and 127(2)(c).

³⁵⁶ (1), s. 78.

³⁵⁷ (1), s. 80.

³⁵⁸ (1), s. 69.

³⁵⁹ (1), s. 73.

³⁶⁰ (1), s. 296.

³⁶¹ (1), s. 57.

³⁶² (1), s. 67.

³⁶³ (1), ss. 63 and 84.

³⁶⁴ (1), s. 85(2).

³⁶⁵ (1), s. 72.

³⁶⁶ (2), ss. 105 and 113.

³⁶⁷ (3), ss. 15, 16 and 23.

³⁶⁸ (2), ss. 91 and 93.

³⁶⁹ (2), s. 172.

³⁷⁰ *Denmark, Finland, Iceland, Norway, Sweden.*

³⁷¹ *Belgium, New Zealand, Singapore, Suriname, Switzerland.*

in the *Bahamas*; *Bangladesh*;³⁷² *Botswana*;³⁷³ *China*; *Dominican Republic*;³⁷⁴ *Ecuador*;³⁷⁵ *Fiji*;³⁷⁶ *India*;³⁷⁷ *Islamic Republic of Iran* (where the national legislation provides for the fixing of wages by different sectors of activity);³⁷⁸ *Italy*; *Japan* (where specific minimum wages are applicable to homeworkers);³⁷⁹ *Malta* (as regards minimum wages fixed by the Ministry of Labour on recommendations from the wages councils or joint industrial councils);³⁸⁰ *Mauritius*;³⁸¹ *Myanmar*; *Namibia*;³⁸² *Nicaragua*;³⁸³ *Pakistan*;³⁸⁴ *Peru*;³⁸⁵ *Philippines*;³⁸⁶ *San Marino* (where, although minimum wages may be fixed by economic sector, the social partners may fix a territorial minimum wage below which no other sectoral minimum wage may be fixed); *Sri Lanka*;³⁸⁷ *Swaziland*;³⁸⁸ *Trinidad and Tobago*;³⁸⁹ *Uganda*;³⁹⁰ *Yugoslavia* (where minimum wages fixed by collective agreement may be applied to an entire branch of the economy at the level of the Federation, a republic or an autonomous province);³⁹¹ and *Zimbabwe*.

164. Mention may also be made of other countries where one minimum wage is fixed for agriculture and another for industry. This is the case, for example, in *Equatorial Guinea*; *Kenya*;³⁹² *Morocco*; *Syrian Arab Republic*;³⁹³ and *Tunisia*.³⁹⁴

2.4. Minimum wages by occupational category

165. In *Germany*, specialised committees are entrusted with establishing minimum wages, in certain cases, not only for specific branches of the economy but also for categories of employment.³⁹⁵ This is also the case in *Austria* concerning minimum wages fixed by the conciliation offices or the Central Conciliation Office.³⁹⁶ In *Argentina*, minimum wages are not fixed by occupational

³⁷² (1), s. 5(1).

³⁷³ (1), s. 137(1), and (3), s. 2.

³⁷⁴ (1), ss. 423 and 427.

³⁷⁵ (2), s. 275.

³⁷⁶ (1), s. 3(3).

³⁷⁷ (1), s. 3(1)(a) and (3)(a)(i).

³⁷⁸ (1), s. 41. However, according to information supplied by the Government, wage rates do not differ according to the different branches of economic activity.

³⁷⁹ (1), ss. 10, 11 and 16, and (2), s. 8(1).

³⁸⁰ (1), ss. 7 to 9.

³⁸¹ (1), s. 95(1)(a).

³⁸² (2), ss. 33 and 46.

³⁸³ (3), ss. 4 and 7(4).

³⁸⁴ (1), s. 5(1).

³⁸⁵ (6), s. 12.

³⁸⁶ (2) s. 124, as amended by s. 3 of (1).

³⁸⁷ (1), ss. 27 and 33(2).

³⁸⁸ (1), s. 7(1).

³⁸⁹ (1), s. 3(1) and (2)(b).

³⁹⁰ (1), ss. 3(1), 6, 7(1) and 9.

³⁹¹ (2), s. 85.

³⁹² (1), ss. 11 and 12.

³⁹³ (1), s. 156, and (2), s. 81.

³⁹⁴ (3), s. 1(3).

³⁹⁵ (2), s. 4.

³⁹⁶ (1), ss. 24(1) and 28(1).

category as a general rule. However, domestic workers constitute a category on their own and their wages are fixed by the Government. In some provinces in *Canada*, the relevant legislation provides for minimum wages for different categories of workers.³⁹⁷ In *Colombia*, minimum wages are established by the National Labour Council and vary according to the occupational category in question.³⁹⁸ In *Cuba*, there is a general wage scale and corresponding wage rates for all occupational categories.³⁹⁹ However, the monthly minimum wage is not the same for manual workers and other occupational categories. In addition, the monthly minimum wage of these other categories varies according to whether the employees are administrative workers or workers in the services sector, technicians or managers.⁴⁰⁰ In *Spain*, although minimum inter-occupational guaranteed wages are not generally fixed for occupational categories, casual and temporary workers who are employed less than 120 days with the same enterprise and homeworkers have their own minimum wage rates.⁴⁰¹

166. In *France*, minimum wages fixed by collective agreement for various branches of economic activity and which may be extended, vary according to a scale of coefficients applied to the various degrees of occupational skill. This is also the case in a number of African countries where wages are fixed by collective agreement or, at times, decrees or orders: *Benin*;⁴⁰² *Burundi*;⁴⁰³ *Cameroon*;⁴⁰⁴ *Central African Republic*;⁴⁰⁵ *Chad* (where domestic workers have their own wage rates but not their own wage-fixing machinery);⁴⁰⁶ *Comoros*;⁴⁰⁷ *Côte d'Ivoire*; *Djibouti*;⁴⁰⁸ *Gabon*;⁴⁰⁹ *Madagascar*;⁴¹⁰ *Mali*;⁴¹¹ *Mauritania*;⁴¹² *Rwanda*;⁴¹³ *Senegal*;⁴¹⁴

³⁹⁷ In *Alberta* minimum wages are provided for in some categories such as salespersons under the respective regulations - (4), s. 2(c); in *British Columbia*, minimum wages are also provided for, amongst others, domestic workers, caretakers or various farmworkers - (6), s. 3(2), (3) and (4); in *New Brunswick*, there is a minimum wage for workers in summer camps - (14); the legislation in *Newfoundland* - (15), s. 27(2)(e), and (16), s. 8(2) - provides for minimum wages for, amongst other categories, domestic workers; in *Nova Scotia* the legislation stipulates that the competent authority may fix a minimum wage for employees in different employments or classes of employment - (18), s. 50(1)(a); a similar provision exists in the legislation of the *Province of Ontario* - (20), s. 65(1)(a) - where, in addition, corresponding regulations fix the minimum wages of certain categories of workers, including students under 18 years of age - (21), s. 9; in *Quebec* the legislation provides for a minimum wage for domestic workers - (27), s. 5; this also applies in *Saskatchewan* with respect to certain domestic workers defined in the legislation - (29), s. 17. In the *Northwest Territories*, provision is made for a minimum wage for domestic workers - (33), s. 16(h).

³⁹⁸ (2), s. 147(2).

³⁹⁹ (4), s. 1.

⁴⁰⁰ (4), ss. 2, 4, 6 and 7.

⁴⁰¹ (7), s. 4(1)(1) and (2), and (2)(1) and (2).

⁴⁰² (1), s. 82.

⁴⁰³ (1), s. 66(d).

⁴⁰⁴ (1), ss. 69(2)(a) and 127(2)(c).

⁴⁰⁵ (1), ss. 78 and 79(2).

⁴⁰⁶ (1), s. 146.

⁴⁰⁷ (1), ss. 81(2) and 99.

⁴⁰⁸ (1), ss. 74(2) and 95(1).

⁴⁰⁹ (1), ss. 70(2), 72 and 89.

⁴¹⁰ (1), s. 63.

⁴¹¹ (1), ss. 68(2) and 86(5).

⁴¹² (1), s. 85.

⁴¹³ (1), s. 85.

⁴¹⁴ (1), s. 109.

Togo,⁴¹⁵ and *Zaire*.⁴¹⁶ In *Guatemala*,⁴¹⁷ *Mexico*⁴¹⁸ and *Panama*⁴¹⁹ minimum wages may also be established by occupational category. In *Luxembourg* there are separate minimum social wages applicable to workers with and without family responsibilities.⁴²⁰ It should be noted that there is a minimum social reference wage for social security legislation or other legislation of a social nature.⁴²¹ Moreover, certain categories of persons are entitled to a guaranteed minimum wage.⁴²² In the *Netherlands*, minimum wages fixed by the Ministry of Social Affairs and Employment are established for specified categories of workers, including domestic workers.⁴²³

167. In the *United Kingdom*, minimum wages are not fixed only by branch of economic activity; indeed, a wage order may apply to only one occupational category or one group of workers. The same holds true for a number of countries, such as: *Botswana*,⁴²⁴ *Guyana*,⁴²⁵ *Kenya*,⁴²⁶ *Malta* (as regards minimum wages fixed by the Ministry of Labour upon recommendations from the wage councils);⁴²⁷ *Mauritius*,⁴²⁸ *Sri Lanka*,⁴²⁹ *Swaziland*,⁴³⁰ *Trinidad and Tobago*,⁴³¹ *Uganda*,⁴³² *Zambia*,⁴³³ and *Zimbabwe*.⁴³⁴

168. Mention may also be made of the following countries, where minimum wages are fixed by occupational category: *Angola*,⁴³⁵ *China* (where local labour departments fix minimum wages for attendants in small restaurants and family servants); *Dominican Republic*,⁴³⁶ *Ecuador*; *Equatorial Guinea*; *India*,⁴³⁷ *Mozambique*,⁴³⁸ *Myanmar*,⁴³⁹ *Namibia*,⁴⁴⁰ *Saudi Arabia*,⁴⁴¹ and the *Syrian Arab Republic*.⁴⁴²

⁴¹⁵ (1), ss. 71(2) and 91.

⁴¹⁶ (1), ss. 91 and 273.

⁴¹⁷ (2), ss. 105 and 113.

⁴¹⁸ (2), ss. 91 and 93.

⁴¹⁹ (2), s. 172.

⁴²⁰ (1), s. 14(1) and (2).

⁴²¹ (1), s. 13.

⁴²² (3), ss. 1 and 2.

⁴²³ (1), s. 10.

⁴²⁴ (1), s. 137(1).

⁴²⁵ (1), s. 7(1), and (5), s. 10(1)(a).

⁴²⁶ (1), ss. 5(1), 7(2), 11(1) and 12.

⁴²⁷ (1), s. 5.

⁴²⁸ (1), s. 95(1)(a).

⁴²⁹ (1), s. 27; (2), ss. 21(1) and 26(1) to (3).

⁴³⁰ (1), s. 7(1)(b).

⁴³¹ (1), s. 3(1).

⁴³² (1), ss. 3(1), 5(10)(d), 6, 7(1) and (3), and 9.

⁴³³ (1), s. 3(1).

⁴³⁴ (1), s. 20(1)(a).

⁴³⁵ (2), ss. 3 and 11.

⁴³⁶ (1), s. 427.

⁴³⁷ (1), s. 1(a) and (3)(a)(ii).

⁴³⁸ (3), ss. 7, 8 and 12.

⁴³⁹ (1), s. 3.

⁴⁴⁰ (2), ss. 33 and 46.

⁴⁴¹ (1), s. 115.

⁴⁴² (2), s. 84.

3. Fixing of minimum wages for particular categories of workers

169. The instruments under examination contain no provisions providing for the fixing of different minimum wage rates on the basis of criteria such as sex, age or disability. In this respect the general principles laid down in other instruments have to be observed, and particularly those contained in the Preamble of the Constitution of the ILO which specifically refers to the application of the principle of "equal remuneration for work of equal value".

170. As regards sex, any fixing of minimum wage rates on the basis of sex is discriminatory under the terms of the Equal Remuneration Convention, 1951 (No. 100). Where the State intervenes in the area of wage fixing it assumes, under paragraph 1 of Article 2 of Convention No. 100, the direct responsibility of guaranteeing the application of the principle of equal remuneration. An example is given in Paragraph 2(a) of Recommendation No. 90 which refers to "the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority". This also applies when the public authorities extend the binding nature of collective agreements.⁴⁴³

171. As regards age, the Minimum Age Recommendation, 1973 (No. 146) stipulates that special attention should be given to the provision of fair remuneration to young people, bearing in mind the principle of equal pay for equal work (Part IV, Paragraph 13(1)(a)). The quantity and quality of work carried out should be the decisive factor in determining the wage paid. The Older Workers Recommendation, 1980 (No. 162) stipulates, under Paragraph 5, that older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with other workers, in particular as regards remuneration for work of equal value.

172. As regards disabled workers, Article 4 of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) stipulates that any vocational rehabilitation and employment policies for disabled persons should be based on the principle of equal opportunity. One of the objectives contained in the preambular paragraphs of the Convention is to take account of the need to ensure equality of opportunity and treatment to all categories of disabled persons for employment and integration into the community.

173. Paragraph 5 of Article 3 of Convention No. 99 stipulates that the competent authority may permit exceptions to the minimum wage rates in individual cases "to prevent curtailment of the opportunities of employment of physically or mentally handicapped workers". Thus, without excluding *a priori* all handicapped workers from the application of minimum wage fixing machinery, in accordance with paragraph 3 of Article 1, the competent authority may permit the payment of a reduced minimum wage to these workers on the basis of individual decisions with reference to paragraph 5 of Article 3. Moreover, it should be stressed that the Conventions under study do not rule out the possibility of fixing either a single, generally applicable minimum wage or a series of minimum wages applicable to specific groups of workers,⁴⁴⁴ such as workers with reduced physical or mental capacity.

⁴⁴³ See General Survey of reports concerning Convention No. 100, 1986, para. 27.

⁴⁴⁴ Such possibilities are explicitly provided for in Paragraph 5(1) of Recommendation No. 135.

174. Paragraph 3 of Article 1 of Convention No. 99 states that the competent authority may exclude from the application of the Convention categories of persons whose conditions of employment render such provisions inapplicable to them, such as members of a farmer's family employed by him. No government stated that it had used the provisions of Article 1, paragraph 3, to exclude old or young workers or apprentices from the application of the Convention.

175. By referring to groups of wage-earners and not to trades or parts of trades, Convention No. 131 does not preclude the fixing of different minimum wage rates for specific groups on account of their age, or for workers whose capacity to work is reduced on account of a handicap. In accordance with paragraph 2 of Article 1, these groups should be determined in agreement with or after full consultation with the representative organisations of employers and workers concerned.

176. The reasons that prompted the adoption of lower minimum wage rates for groups of workers on account of their age and disabilities should be regularly re-examined in the light of the principle of equal remuneration for work of equal value. The Committee feels that it is necessary to have fuller information on the grounds for the fixing of lower minimum wage rates on account of workers' characteristics, such as age or reduced ability to work arising from a handicap.

3.1. Young workers and apprentices

177. The Committee would like to draw a distinction between the concepts of young worker and apprentice. The first refers to young persons who are of minimum age to enter the labour market,⁴⁴⁵ but who have not yet attained their legal majority which would allow them to participate fully in this labour market. As regards the second concept, this refers to persons who, irrespective of their age, are being trained at their place of work. In some countries, there are minimum wages that apply only to young workers and apprentices. In some cases, the national legislation merely stipulates that young workers or apprentices may receive wages that are lower than the minimum wage normally applied. This applies to apprentices in *Guatemala*,⁴⁴⁶ *Honduras*,⁴⁴⁷ *India*⁴⁴⁸ and *Nicaragua*,⁴⁴⁹ and to young workers in *Australia*,⁴⁵⁰ *India*⁴⁵¹ and *Mauritania*.⁴⁵² In others, the national legislation either specifies the amount of these wages or the percentage of minimum wages normally paid to this category of workers, or leaves it up to the competent authority or body to determine these rates. In the latter case, the legislation usually fixes a limit or the maximum percentage of reductions that may be made to minimum wages paid to workers carrying out similar or equivalent work. Furthermore, these cuts may be the same for all young workers or apprentices, or be determined on an individual basis.

⁴⁴⁵ See, in this respect, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum wage, Report III(Part 4B), ILC, 67th Session, 1981.

⁴⁴⁶ (2), s. 170.

⁴⁴⁷ (3), s. 33.

⁴⁴⁸ (1), s. 3(3)(a)(iii)

⁴⁴⁹ (2), s. 147.

⁴⁵⁰ Queensland (6), ss. 2.1(1), 2.2(3)(c)(i) and 4.15(e).

⁴⁵¹ (1), s. 3(3)(a)(iii).

⁴⁵² For young people under 18 years of age, (1), s. 84.

178. Amongst the countries whose legislation provides for special minimum wage rates or minimum percentages of wages normally paid, mention should be made of *Colombia*, where an apprentice's initial salary may not be less than 50 per cent of that paid to workers carrying out the same job or a job similar or comparable to that for which he is undergoing vocational training under the national apprenticeship system.⁴⁵³ In some provinces in *Canada*, minors, usually those under 18 years of age, may work in accordance with the conditions provided for in the legislation; in these cases there is a minimum wage rate lower than that established for workers of 18 years of age and above.⁴⁵⁴ There are also provinces in which a minimum wage is established for apprentices.⁴⁵⁵ Other examples include: *Côte d'Ivoire*, where workers under 18 years of age may be paid minimum wages lower than those paid to adults; however, young workers are guaranteed a minimum percentage of minimum wages paid to adult workers, which varies according to their age;⁴⁵⁶ *Dominican Republic*, where the remuneration of young apprentices may in no case be less than 40 per cent of the minimum wage legally established for the enterprise or occupation where the apprenticeship is carried out. When the apprentice comes of age his wage may not be less than 50 per cent of this minimum wage;⁴⁵⁷ *Ecuador*, where the national legislation provides that apprentices shall receive remuneration equal to at least 75 per cent of the minimum living wage;⁴⁵⁸ *France*, where young people under 17 years of age are paid a minimum growth wage (SMIC) which is reduced by 20 per cent, compared with young people who are between 17 and 18 years of age who are paid a SMIC reduced by 10 per cent; an exception is made for young workers – but not apprentices – who have an experience of more than six months in the same branch of activity;⁴⁵⁹ *Equatorial Guinea*, where national legislation provides that the minimum remuneration of an apprentice shall be equal to half of that applicable to workers who know the trade;⁴⁶⁰ *Luxembourg*, where workers aged between 15 and 18 may receive a reduced social minimum wage which varies according to age;⁴⁶¹ *Peru*, where an apprentice is entitled to a monthly stipend which may not be less than 50 per cent of the minimum living wage;⁴⁶² *Portugal*, where workers under 18 years of age are paid 25 per cent less than the normal minimum rate, whereas apprentices, trainees and other persons undergoing practical training are paid 20 per cent less than the normal rate;⁴⁶³ *Spain*, where workers under 18 years of age receive a minimum inter-occupational guaranteed wage lower than that paid to workers over 18 years of age.⁴⁶⁴ The cases of *Benin* and *Chad* can also be mentioned, where general collective agreements regulating minimum wages of occupational categories may determine the percentages of minimum wages paid to young persons

⁴⁵³ Decree No. 2375/74, s. 7.

⁴⁵⁴ Alberta (4), s. 2(b); British Columbia (6), s. 3(a); Nova Scotia (19), s. 5; Ontario (21), s. 9(1)(1), and (23), s. 3(a).

⁴⁵⁵ New Brunswick (11), s. 9(e); Newfoundland (15), s. 27(2)(e).

⁴⁵⁶ (3), s. 49.

⁴⁵⁷ (1), s. 238(2).

⁴⁵⁸ (3), s. 28.

⁴⁵⁹ (2), ss. R.141-1 and R.141-2.

⁴⁶⁰ (1), s. 12(2).

⁴⁶¹ (1), s. 5.

⁴⁶² (5), s. 5.

⁴⁶³ (5), s. 4(1)(a) and (b).

⁴⁶⁴ (7), ss. 1(1) and (2), and 4(1) and (2), and 2(1) and (2).

from 14 to 18 years of age; these vary according to whether the young persons concerned are under or over 16 years of age.⁴⁶⁵

179. As regards countries in which the legislation provides for a specific body to establish minimum wages for young workers or apprentices, those who do not place any limits or percentages on these wages compared with those normally applicable should be mentioned. This holds true in the following countries: *Austria*, in the case of apprentices when their remuneration is not established in the corresponding collective agreement;⁴⁶⁶ *Bangladesh*, as regards young workers;⁴⁶⁷ *Canada*;⁴⁶⁸ *Czechoslovakia*, where the national legislation provides that apprentices received a remuneration to be fixed by the Ministry of Education and Culture in agreement with the competent central authorities and the Central Council of Trade Unions, in conformity with principles approved by the Government or the authority empowered by it to do so;⁴⁶⁹ *Israel*, where the Ministry of Labour may, with the approval of the Labour and Social Affairs Committee of the Knesset, prescribe wage rates lower than the minimum for workers aged under 18, either for all workers or for occupational categories or by categories of employers;⁴⁷⁰ *Pakistan*;⁴⁷¹ *Peru*, where minimum rates lower than the general minimum rate may be fixed for persons aged 14 to 18;⁴⁷² *United Kingdom*, where young agricultural workers receive a wage which varies in rate according to age, and in addition persons receiving instruction in agriculture in Great Britain may receive authorisation from the competent agricultural wages committee excluding them from the application of the minimum wage normally paid and imposing on them other conditions and conditions of employment it deems appropriate;⁴⁷³ *Singapore*, where the Minister of Labour may fix minimum wage rates for workers aged 12 to 16;⁴⁷⁴ *Sri Lanka*, as regards apprentices or those starting out on their career⁴⁷⁵ and *Uganda*, where specific minimum wage rates may be fixed for employees who are learning an occupation.⁴⁷⁶

180. In other countries where the national legislation authorises the competent authority to fix the minimum wages of young workers and apprentices, the rates of these wages must comply with a number of legally established limits. In *Argentina*, an apprentice aged from 14 to 18 years of age is entitled to an initial minimum wage, fixed by the Under-Secretariat of Labour. Although it is authorised to cut the minimum subsistence wage, established according to a sliding scale, of young persons and apprentices,⁴⁷⁷ it is also stipulated that wages

⁴⁶⁵ General collective agreements in force in *Benin*, s. 35, and in *Chad*, s. 27.

⁴⁶⁶ (1), s. 26(1).

⁴⁶⁷ (1), s. 4.

⁴⁶⁸ At the federal level, the legislation stipulates that it is forbidden to recruit young people under 17 years of age, although a number of exemptions are provided for in the case of apprentices - (1), s. 179. In the latter case, the employer must pay a minimum wage in conformity with the rates fixed by the Ministry - (2), s. 11.

⁴⁶⁹ (2), s. 230(2).

⁴⁷⁰ (1), s. 16.

⁴⁷¹ (1), s. 4(1).

⁴⁷² (8), s. 15(a).

⁴⁷³ (3), s. 6(1) and (2); and (4), s. 6(1) and (2).

⁴⁷⁴ (1), s. 74(1).

⁴⁷⁵ (1), s. 40.

⁴⁷⁶ (1), ss. 5(2) and 7(3).

⁴⁷⁷ (2), s. 119.

of apprentices may not be lower than those of adult workers if the work they are carrying out is equal in quality and quantity.⁴⁷⁸ In *Spain*, there is a training contract making it possible to reduce hours of work and the corresponding pay of young people between 16 and 18 years of age.⁴⁷⁹ According to comments made by the General Union of Workers in this respect, this type of contract allows any enterprise, even the smallest, to recruit young workers for any type of activity, even jobs demanding considerable physical effort but no further preparations or training; and that these young workers carry out a full day's work and receive less than the minimum wage. In the *United States*, students and apprentices may, upon authorisation from the Labor Department, be paid wages lower than the minimum amount stipulated by the federal legislation for all workers; but these must never be lower than a minimum threshold established by law.⁴⁸⁰ In the states and territories, it is also possible to establish these wages at a level below that normally applicable. In *France*, apprentices are paid a minimum growth wage (SMIC), reduced by 25 to 85 per cent according to the age of the apprentice and the time he has worked since the beginning of his apprenticeship.⁴⁸¹ In the *Netherlands*, the minimum wage for young workers is based on the statutory minimum wage rate according to a sliding scale. In *Turkey*, workers aged under 16 are covered by a minimum wage rate lower than that applicable to workers above this age.

181. In *Norway*, where wages are almost exclusively established by collective agreement, minimum wage rates may also be fixed for young workers, who normally receive two-thirds of the wage paid to adult workers.

3.2. Disabled workers

182. In a number of countries, the legislation fixes or provides for the fixing of minimum wages applicable to disabled workers.

183. In some countries in which the legislation relating to minimum wages has not established actual rates, either the employer is authorised to fix these rates, sometimes within certain limits, or the competent authority may fix these rates for all disabled workers as a whole or on an individual basis. In *Argentina*, for instance, the minimum subsistence wage, established according to a sliding scale, may be reduced for workers whose faculties are grossly impaired.⁴⁸² In *Australia*, at the federal level, workers incapable of earning the minimum wage established by an award may be paid a wage less than the normal minimum, which is also established in the same award.⁴⁸³ In some provinces in *Canada*, the competent authority may authorise that handicapped persons be paid a wage lower than the statutory minimum wage.⁴⁸⁴ In *Chad*, the General Collective Agreement which fixes minimum wages of occupational categories may stipulate that workers whose performance is impaired because of an accident or illness,

⁴⁷⁸ (5), s. 32(c).

⁴⁷⁹ (1), s. 11(5).

⁴⁸⁰ (1), s. 14.

⁴⁸¹ (2), s. L.117-10.

⁴⁸² (2), s. 119.

⁴⁸³ (1), s. 123; New South Wales (3), s. 89(1); Queensland (6), s. 2.2(3)(c)(ii); Tasmania (7), s. 79(1); Victoria (8), s. 39(2).

⁴⁸⁴ Alberta (3), s. 36; British Columbia (5), s. 105(3)(c); Manitoba (8), s. 4(1); Newfoundland (3), s. 27(2)(e) and s. 29; Prince Edward Island (25), s. 8.

duly noted by a doctor, may be paid less than the minimum wage normally applicable to the occupational category to which they belong. In *Côte d'Ivoire*, physically handicapped workers may receive a wage that is lower than the minimum wage paid in the occupational category, although this should never drop below less than 90 per cent of the statutory amount.⁴⁸⁵ In *Czechoslovakia*, according to information supplied by the Government, the minimum wage fixed for disabled workers under 18 is lower than the normal statutory minimum. In *France*, wage-earners whose physical faculties are impaired, are paid a reduced minimum growth wage determined by the technical committee for vocational guidance and rehabilitation (COTOREP). In *Honduras*, the General Wages Directorate may issue a special permit to disabled workers stating the percentage of the statutory minimum wage they must be paid and the period during which they should be paid this reduced rate.⁴⁸⁶ In *Israel*, the Minister of Labour and Social Affairs may prescribe, with the approval of the Labour and Social Affairs Committee of the Knesset, wage rates lower than the minimum wage for physically or mentally handicapped workers.⁴⁸⁷ In the *United States*, disabled workers may, with authorisation from the Department of Labor, be paid less than the minimum wage established by federal legislation for workers generally. The same reduction may also be made under the legislation of states or territories.

184. In *Luxembourg*, the director of the Labour and Mining Inspectorate may authorise an employer to pay a reduced minimum social wage, which he shall determine, to a worker whose output is below normal owing to physical or mental incapacity. The duration of such authorisation must be limited.⁴⁸⁸ In *New Zealand*, any arbitration award or agreement may contain a provision allowing an employer to pay a worker unable to earn the minimum wage fixed by arbitration award or agreement, a wage lower than that established by the arbitration award or agreement.⁴⁸⁹ In *Peru*, remuneration lower than the minimum wage normally payable may be fixed for persons whose performance, owing to sickness, invalidity or other reasons, is reduced below that considered normal either permanently or for long periods.⁴⁹⁰ In *Portugal*, workers whose ability to work is impaired may have their minimum wage reduced by up to 50 per cent.⁴⁹¹ In the *United Kingdom*, any worker affected by any physical injury or mental deficiency, or any infirmity due to age or to any cause, may be exempted by the competent Agricultural Wages Committee (in Great Britain) or the Agricultural Wages Board (in Northern Ireland) from the order stipulating the minimum rate that is normally applied. This permit may also specify other conditions of work, including the amount of wages to be paid to the handicapped worker in question.⁴⁹² In certain other countries, the competent authority may also authorise exceptions to the application of the standard minimum wage and establish other minimum wage rates for disabled workers. This is the case in the following

⁴⁸⁵ (3), s. 50.

⁴⁸⁶ (3), s. 32.

⁴⁸⁷ (1), s. 17.

⁴⁸⁸ (1), s. 6.

⁴⁸⁹ (1), s. 177(1).

⁴⁹⁰ (8), s. 15(e).

⁴⁹¹ (5), s. 4(1)(c).

⁴⁹² (3), s. 5; (4), s. 5; (5), s. 6.

countries: *Bahamas*;⁴⁹³ *Botswana*;⁴⁹⁴ *Fiji*;⁴⁹⁵ *Ghana*;⁴⁹⁶ *Guyana*;⁴⁹⁷ *Kenya*;⁴⁹⁸ *Malta*;⁴⁹⁹ *Mauritius*;⁵⁰⁰ *Myanmar*;⁵⁰¹ *Sri Lanka* (in the case of workers employed in shops and offices);⁵⁰² and *Swaziland*.⁵⁰³ In the case of *Zambia*, the competent authority may authorise exceptions to the payment of minimum wages for disabled workers.⁵⁰⁴

3.3. Other categories of workers

185. In *Australia*, in the States of New South Wales⁵⁰⁵ and Tasmania,⁵⁰⁶ aged and slow workers may receive wages lower than the normal minimum wage; in Queensland, aged workers may receive wages that differ from the minimum wage normally paid.⁵⁰⁷ In *Canada*, in the Province of New Brunswick, a minimum wage is established for employees whose hours of work cannot be verified and who are not employed strictly on a commission basis.⁵⁰⁸ In the Province of Ontario, the legislation provides for a minimum wage for students under 18 years of age working in accordance with the statutory provisions applicable to them.⁵⁰⁹ Similar provisions exist in the Province of Prince Edward Island.⁵¹⁰ In *India*, minimum wages may be fixed for children.⁵¹¹ In *Luxembourg*, when the economic and financial situation of an enterprise does not permit the employer to pay the social minimum wage immediately and in full, the Ministers of the National Economy and Labour may authorise him to temporarily apply a lower wage rate.⁵¹² In *Malta*, older workers may also be paid a wage specified in a permit which is lower than the minimum wage normally applied to the occupational category to which they belong.⁵¹³ In *Norway*, collective agreements usually lay down the minimum wage rates for new recruits. In *Peru* remuneration lower than the minimum wage normally payable may be fixed for workers aged over 60 whose loss of capacity is proven.⁵¹⁴ In the *United States*, workers whose productive or earning power is reduced on account of their age, may, with

493 (1), s. 13(1).

494 (1), s. 144.

495 (1), s. 10.

496 (3), s. 18(3).

497 (1), s. 11, and (5), s. 12(1).

498 (1), s. 18.

499 (1), s. 13.

500 (1), s. 98.

501 (1), s. 12.

502 (2), s. 36.

503 (1), s. 16.

504 (1), s. 7.

505 (3), s. 89(1).

506 (7), s. 79(1).

507 (6), s. 2.2(3)(c)(ii).

508 (12), s. 5.

509 (21), s. 9(1)(1), and (23), s. 3(a).

510 (25), s. 7.

511 (1), s.3(3)(a)(iii).

512 (1), s. 7.

513 (1), s. 13.

514 (8), s. 15(c).

authorisation from the Department of Labor, be paid a wage lower than the minimum wage stipulated in federal legislation for workers as a whole.⁵¹⁵

⁵¹⁵ (1), s. 14.

Chapter III

Consultation and participation of employers' and workers' organisations

186. One of the essential obligations of the minimum wage instruments is that the minimum wage fixing machinery must be set up and operated in consultation with organisations of employers and workers who must participate on an equal footing.

A. General considerations concerning consultation and participation

187. The instruments examined here use the terms "consultation" and "participation" to refer to the manner in which organisations of employers and workers participate in the procedure for establishing, operating and modifying minimum wage fixing machinery. One of the reports leading to the adoption of Convention No. 131 indicated the difference between "consultation" and "participation".¹ The Committee will examine each of these terms in the following paragraphs.

1. Consultation of organisations of employers and workers

188. The consultation of organisations of employers and workers stems from the tripartite structure that characterises the International Labour Organisation. The Committee of Experts referred to this question in its 1982 General Survey on Tripartite Consultation.²

189. As the Committee pointed out in its previous survey on the instruments connected with minimum wages,³ one of the principles established in Conventions Nos. 26 and 99 is that concerning the consultation of the organisations of employers and workers concerned. This principle is confirmed and consolidated in Convention No. 131.

¹ ILC, 53rd Session, 1969, Report VII(1), p. 32.

² ILO: *General Survey of the Reports relating to Convention No. 144 and Recommendation No. 152*, ILC, 68th Session, 1982, Report III (Part 4B), paras. 3-7. Likewise, in the *Report of the Committee set up to examine the representation made by the Confederation of Private Employers of Bolivia under article 24 of the Constitution alleging non-observance by Bolivia of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and of the Minimum Wage Fixing Convention, 1970 (No. 131)*, *Official Bulletin*, Vol. LXVIII, Series B, Special Supplement 1/1985, it is recalled that "tripartism and tripartite consultation on matters of mutual interest are fundamental principles of the International Labour Organisation", p. 6, para. 21.

³ *General Survey of 1958*, paras. 20 and 43.

190. The instruments under examination provide that the obligation to consult the organisations of employers and workers concerned should be carried out at different times. Initially, it should be done at the time of determining the scope of the minimum wage system to be established.⁴ Second, it should be applied during the operation of the minimum wage fixing machinery.⁵

191. In its 1982 General Survey of the reports relating to Convention No. 144 and Recommendation No. 152 on tripartite consultation, the Committee considered the meaning of the term "consultation". It stated that "consultation" has a different connotation from mere "information" and from "co-determination". It also pointed out that the views expressed in the course of consultations were not a form of participation in decision-making but simply one stage in the process of reaching a decision. It went on to say that "consultation must be able to have some influence on the decision".⁶

2. Participation of organisations of employers and workers

192. "Participation", which also stems from the tripartite structure of the ILO, implies a greater role on the part of organisations of employers and workers or of their representatives in decision-making than does "consultation".

193. The term "participation", in the instruments under consideration, implies direct collaboration with the responsible authorities in the application of the provisions of the minimum wage fixing instruments.

194. Article 3, paragraph 2, of Convention No. 26 provides that the employers and workers concerned shall be associated in the operation of the minimum wage fixing machinery, leaving to national laws and regulations the determination of the manner and extent of this association. Part II, Paragraph 2, of Recommendation No. 30 proposes that employers and workers should jointly take a direct part in the deliberations and decisions of the wage-fixing body. Article 3, paragraph 3, of Convention No. 99 qualifies the obligation to take part by providing that the employers and workers shall take part in the operation of the minimum wage fixing machinery, or be consulted or have the right to be heard, likewise leaving the manner and extent thereof to be determined by national laws and regulations. In contrast, Recommendation No. 89 states that the representatives of the employers and workers should participate directly and on an equal footing in the operation of the minimum wage fixing machinery (Part II, Paragraph 4). Lastly, Article 4, paragraph 3, of Convention No. 131 stipulates that ratifying States should make provision, wherever it is appropriate to the nature of the minimum wage fixing machinery, for the direct participation in its operation of representatives of the organisations of employers and workers concerned, on a basis of equality. Recommendation No. 135

⁴ Convention No. 26, Article 2; Convention No. 99, Article 1, and Convention No. 131, Article 1. The same principle is recognised in Recommendation No. 30, Part II, Para. 1, in Recommendation No. 89, Part II, Para. 3, and in Recommendation No. 135, Part IV.

⁵ Convention No. 26, Article 3, para. 1; Convention No. 99, Article 3, para. 3, and Convention No. 131, Article 4, para. 2. Likewise, this principle appears in Recommendations Nos. 30, 89 and 135, although the latter instrument speaks essentially of participation and not of consultation, which reflects the concern that was expressed throughout the preparation and discussion of each of these instruments.

⁶ *op. cit.*, paras. 42 and 44.

even provides that the participation of representatives of organisations of employers and workers concerned in the operation of minimum wage fixing machinery referred to in paragraph 3 of Article 4 of Convention No. 131 should include membership of such bodies (Part IV, Paragraph 8).

195. Thus, these instruments establish the general principle of consultation of representatives of employers or workers or of representatives of their organisations. Likewise, the consultation referred to in the instruments under consideration implies that employers and workers, their representatives or those of their organisations be able to have a real influence on the decisions to be taken.

196. These instruments also establish the principle of the participation of the representatives of employers or workers or of their respective organisations in the operation of the minimum wage fixing methods or machinery.

197. The form in which this consultation and/or participation is to be carried out is left to be determined by national laws and regulations and, in the case of participation, it is specified that this must be appropriate to the minimum wage fixing machinery. Nevertheless, the fact that the consultation and/or participation of employers and workers, of their organisations or their representatives, is provided for in laws and regulations does not ensure that this principle will be respected in practice. The question of this possible discrepancy between law and practice has sometimes been raised by employers' and workers' organisations and has been the subject of comments by the Committee, or has caused the constitutional procedures for the supervision of the ILO's international standards to be set in motion, for instance in *Bolivia*,⁷ *Spain*,⁸ *Sri Lanka*⁹ and *Uruguay*.¹⁰

198. In view of its importance, the Committee has always insisted that this fundamental principle of consultation and participation of organisations of employers and workers or their representatives should be respected in the operation of minimum wage fixing machinery. Furthermore, as has been pointed out, it is not only up to States to guarantee this principle; its observance also involves the willingness of the parties concerned to collaborate in the consultation and participation procedures.¹¹

⁷ RCE 1989, p. 447. See also the *Report of the Committee set up to examine the representation made against Bolivia*, in *O.B.*, Vol. LXVIII, Series B, Special Supplement 1 1985.

⁸ RCE 1989, pp. 448-449. See also *Report of the Committee set up to examine the representation made by the Trade Union Confederation of Workers' Commissions under article 24 of the Constitution of the ILO alleging non-observance by Spain of the Minimum Wage Fixing Convention, 1970 (No. 131)*, doc. GB.243 6 22, Geneva, 1989.

⁹ RCE 1991, pp. 443-444.

¹⁰ RCE 1991, p. 444.

¹¹ See the *Report of the Committee set up to examine the representation made against Bolivia* in *O.B.*, Vol. LXVIII, 1985, Series B, Special Supplement 1/1985, para. 21.

B. Persons or organisations consulted or participating in the minimum wage fixing machinery

199. The procedures for the consultation and participation of employers and workers, of their organisations or of their representatives in minimum wage fixing machinery can vary considerably, depending on the nature of the machinery.

200. The instruments under consideration specify the characteristics of the employers and workers or their organisations that are to be consulted or participate in the minimum wage fixing machinery, as well as the characteristics of the independent persons who, in accordance with the instruments under consideration, are also to be consulted. When minimum wage fixing bodies have been set up, these instruments also refer to the manner in which the representatives of the employers and workers or of their respective organisations, are to be appointed to such bodies.

1. Employers and workers or their organisations to be consulted or to participate in minimum wage fixing machinery

1.1. Interest and representativeness

201. The instruments under consideration indicate in some cases that the consultation process must be carried out with the organisations of employers and workers concerned;¹² in other cases they specify that such organisations must be the most representative.¹³ Convention No. 26 states that consultations shall take place with representatives of the employers and workers concerned, including representatives of their respective organisations.¹⁴ Reference is also made to consultations with employers and workers in two of the Recommendations on minimum wage fixing.¹⁵

202. As regards participation, the instruments under consideration provide for the participation in the operation of the minimum wage fixing machinery of the employers and workers concerned,¹⁶ or of representatives of organisations of employers and workers concerned.¹⁷

203. The instruments under consideration, in referring to the employers or workers who are to be consulted or to participate in the minimum wage fixing machinery, speak on the one hand of "employers or workers concerned" or "organisations of employers and workers concerned" and, on the other, of "representative organisations of employers and workers". The early instruments refer to representatives of employers and workers, as one of the reasons advanced for the adoption of Conventions Nos. 26 and 99 was the lack of organisation of

¹² Convention No. 26, Article 2, and Article 3, para. 2(1).

¹³ Convention No. 99, Article 1, paragraph 2, and Article 3, paragraph 2, Convention No. 131, Article 1, paragraph 2, and Article 4, paragraph 2.

¹⁴ Convention No. 26, Article 3, paragraph 2(1).

¹⁵ Recommendation No. 30, Part II, Para. 1 and Recommendation No. 89, Part II, Para. 3.

¹⁶ Convention No. 26, Article 3, para. 2, and Convention No. 99, Article 3, para. 3, Recommendation No. 30, Part II, Para. 2 and Recommendation No. 89, Part II, Para. 4.

¹⁷ Convention No. 131, Article 4, para. 3(a).

workers or the weakness of their organisations, even though it might seem clear that where organisations exist which represent workers or employers, these would be the organisations to be consulted. This question was dealt with in one of the reports which led to the adoption of Convention No. 26 and which referred to the terms in which the Governing Body had framed the question that would be dealt with by the Conference. The Governing Body had stated that the subject to be submitted to the Conference was: Minimum wage fixing machinery in trades in which organisation of employers and workers is defective, and where wages are exceptionally low, with special reference to the homeworking trades.¹⁸

204. The reference to “employers and workers concerned” is particularly relevant when minimum wage fixing machinery is being established or set in motion for a particular group of employers and workers. A number of countries make provision in their laws and regulations for the direct participation of employers and workers who would be affected by the establishment of the body responsible for fixing minimum wages.

205. As regards the terms used by these instruments, “most representative organisations of employers and workers”, it should be pointed out that nothing is specified on the subject in the deliberations leading to the adoption of these instruments. As is the case when this term is used in other ILO Conventions and Recommendations, the expression “most representative organisation” refers to organisations that would be so considered in accordance with the terms of article 3, paragraph 5, of the ILO Constitution. This provision refers to the nomination that member States are required to make of non-governmental delegates and advisers to attend the Conference. Furthermore, the representativity should meet objective criteria established by the relevant laws and regulations of the member States. The Committee has referred to this question in its *General Survey on Freedom of Association and Collective Bargaining*.¹⁹

206. Furthermore, the Committee recalls that the fact that, as frequently occurs, certain countries recognise a certain number of rights in respect of the most representative organisations (including the right to be consulted) does not, however, mean that minority organisations have no rights whatsoever. Recognition should at least be given to the right of minority organisations to make representations on behalf of their members and, where applicable, to defend the individual interests of these members.²⁰

207. It should also be pointed out that, in accordance with the provisions of Recommendation No. 30, Part II, Paragraph 2(d), one of the workers’ representatives taking part in the fixing of minimum wages should, as far as possible, be a woman wherever the trade or part of the trade concerned employs a large number of women. Likewise, among the independent persons taking part in this minimum wage fixing process, one or more women should be appointed.

208. Although there may well be different examples in practice of the application of this principle, at the level of legislation mention may be made of the case of *Canada*, Province of Saskatchewan, where the law specifically provides

¹⁸ See ILO: Blue Report, ILC, 10th Session, Geneva, 1927, pp. 138-142. See also on this point ILO: Report VII(2), ILC, 33rd Session, Geneva, 1950, pp. 51-55.

¹⁹ ILC, 69th Session, Geneva, 1983, para. 141. See also: ILO: *Freedom of association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 3rd edition, Geneva, 1985, paras. 234 *et seq.* and 262 *et seq.*

²⁰ See *General Survey on Freedom of Association and Collective Bargaining*, para. 141.

that two members of the Minimum Wage Board must be women,²¹ and of the *United Kingdom* where it is provided that, in the agricultural sector in England and Wales, at least one of the representatives of employers and workers on the Agricultural Wages Board must be a woman²² and in Scotland where it is provided that at least one of the members of the Scottish Agricultural Wages Board must be a woman.²³

1.2. Appointment of representatives of employers and workers or of their organisations

209. As regards the appointment of representatives of employers' and workers' organisations or of employers and workers on bodies responsible for fixing minimum wages, Conventions Nos. 26 (Article 3, paragraph 2), and 99 (Article 3, paragraph 3), provide for these appointments to be made in such manner and to such extent as may be determined by national laws or regulations. Nevertheless, Recommendations Nos. 30 (Part II, Paragraph 2(b)), and 89 (Part II, Paragraph 5) propose, as regards the appointment of the representatives of the parties concerned, that the employers and workers concerned should have the right to participate in the nomination of their representatives; in any case existing organisations of employers and workers should be requested to propose names of persons recommended by them for appointment to wage-fixing bodies. In the reports leading to the adoption of Conventions Nos. 26 and 99 and of Recommendations Nos. 30 and 89 it was stated that it was necessary to ensure the participation of employers' and workers' organisations or, when there were no such organisations, of the employers and workers concerned, in so far as this ensured the confidence of those they represented and secured greater authority for the minimum wages fixed.²⁴

210. The principle of the participation of the organisations concerned in the appointment of their representatives on the bodies responsible for fixing minimum wages is guaranteed by Convention No. 131, Article 4, paragraph 3(a), which stipulates that provision shall be made for the direct participation in the operation of the minimum wage fixing machinery of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers.

211. In accordance with the law and practice of certain countries, it is left to the employers and workers concerned or their organisations to appoint their representatives on the bodies that in one way or another take part in the fixing of minimum wages. This does not prevent the competent authorities, in certain cases where the organisations concerned have made no appointment, from designating representatives of the said organisations on the minimum wage fixing bodies. In *Argentina* the members of the National Minimum Wage Board are appointed by the relevant representative organisations.²⁵ See also *Côte d'Ivoire*.²⁶ In *Djibouti*, the provision relating to the appointment of representatives on these bodies also provides that, when there are no employers' or workers'

²¹ (28), s. 15(1).

²² (3), First Schedule, s. 1(a) and (b).

²³ (4), First Schedule, s. 1(a).

²⁴ See ILO: Blue Report, ILC, 11th Session, Geneva, 1928, pp. 114-120. See also ILO: Report VII(2), ILC, 33rd Session, Geneva, 1950, p. 54.

²⁵ (3), s. 7.

²⁶ (2), s. 5D 64.

organisations that can be considered representative in accordance with s. 73 of the Labour Code, the appointment will be made by the chief officer of the territory;²⁷ this is also the case in the *Islamic Republic of Iran*,²⁸ *Jamaica*,²⁹ *Malta*,³⁰ *Mexico* (the legislation specifies that if the workers or employers do not appoint their representatives, this appointment will be made by the Secretary for Labour),³¹ *Namibia*,³² the *Netherlands* (according to the applicable laws and regulations, the organisations of employers and workers that appoint their representatives on the competent body (Economic and Social Council) are only the ones that have been previously recognised),³³ *Nicaragua*,³⁴ *Peru*³⁵ and *Portugal*.³⁶ In the *United Kingdom* (England, Wales and Scotland – industry and commerce), it is stated that, if the competent authority considers that a representative organisation of employers does not exist, the said authority shall, following consultation with the employers concerned, make the appointment.³⁷ Similar provisions are to be found in the laws and regulations of Northern Ireland (industry and commerce).³⁸ In England and Wales (agriculture), the relevant provisions do not specify whether the appointment of employers' or workers' representatives on the Agricultural Wages Board will be made directly by the organisations concerned. It is stated that these representatives will be "nominated in the prescribed manner or elected in the prescribed manner". It may be supposed, in view of the practice of the country, that the appointment will be made directly by the organisations concerned;³⁹ see also Scotland (agriculture).⁴⁰ According to information furnished by the Government in connection with Northern Ireland, employers' and workers' representatives on the Agricultural Wages Board are elected directly by the organisations concerned. Other illustrations are *Rwanda* (where the legislation provides for the setting up of a labour advisory committee whose membership includes employers' and workers' representatives to be appointed by their respective organisations,⁴¹ although, as the Government indicates in its report, the workers' organisation does not exist and the employers' organisation is "in a state of lethargy"); *Syrian Arab Republic*;⁴² *Trinidad and Tobago*;⁴³ and *Zambia*.⁴⁴

²⁷ (1), s. 162, and (2), s.1.

²⁸ (1), s. 167(c) and (d).

²⁹ (1), Schedule 2, s. 2(4).

³⁰ (1), s. 3(2)(b) and (c) in the case of the Labour Board.

³¹ (2), ss. 554, (II), and 667 to 681.

³² (11), s. 35(2) and (3).

³³ (2), s. 4(2).

³⁴ (3), s. 10.

³⁵ (4), s. 3, and (3), s. 7.

³⁶ (9), s. 5(5).

³⁷ (1), Schedule 2, ss. 1(a), 2 and 5.

³⁸ (2), Schedule 2, ss. 1(a), 2 and 5.

³⁹ (3), Schedule 1, s. 1(a).

⁴⁰ (4), Schedule 1, s. 1(a), and Schedule 2, ss. 1 and 2 (the observation made in respect of England and Wales applies also to Scotland).

⁴¹ (1), s. 85.

⁴² (1), s. 156(3) and (4), for the case of joint committees and special committees for the various economic sectors other than agriculture; (2), s. 81(d) and (e), for the case of the agricultural sector.

⁴³ (1), s. 5(a) and (b).

⁴⁴ (2), s. 20(1)(b) in respect of the Consultative Council on Prices and Incomes.

212. In other cases the appointment of these representatives is undertaken by the competent authority on the proposal of the organisations of employers or workers concerned. In *Germany*, the law provides for the Federal Minister for Labour to appoint the titular and substitute members of the general committee on minimum conditions of employment on the nomination of the workers' and employers' associations.⁴⁵ The members of specialised committees, made up of assessors representing the workers and employers concerned, are appointed by the Federal Minister for Labour on the nomination of the workers' and employers' associations.⁴⁶ In *Argentina*, in the agricultural sector, when appointing the employers' and workers' members of the National Committee for Agricultural Labour, the organisations concerned propose lists of three candidates from which the Minister of Labour chooses the representatives who will be appointed by the executive authority.⁴⁷ If no organisations exist, the appointment is made by the minister.⁴⁸ In *Austria*, the law provides that members of the conciliation office are appointed by the Federal Minister for Social Administration on the recommendation of the employers' and workers' organisations concerned.⁴⁹ The members of the homework committee are appointed by the Federal Ministry for Social Administration on the proposal of the Austrian Congress of Chambers of Labour, in agreement with the Austrian Federation of Trade Unions, and by the Federal Chamber of Trade.⁵⁰ Similar procedures are found in the *Bahamas*,⁵¹ *Bangladesh*⁵² and *Benin*.⁵³ In *Burundi*, the relevant provision states that if there are no sufficiently representative organisations, the appointment will be made directly by the Ministry of Labour on the proposal of the Director of Labour.⁵⁴ This is also the case in *Cameroon*⁵⁵ and the *Central African Republic*.⁵⁶ In *Colombia* the members of the National Labour Board and of the Commission on Wages, Prices and Incomes Policy are appointed by the Government from lists of three candidates presented by the employers' and workers' organisations concerned.⁵⁷ The procedure is similar in the *Dominican Republic*,⁵⁸ *France*⁵⁹ and *Ghana*.⁶⁰ In *Guatemala*, according to the relevant provision, if no proposals are made by the organisations concerned the appointment is made by the Minister

⁴⁵ (2), s. 2(2) and (3).

⁴⁶ (2), ss. 5(1) and 6(1).

⁴⁷ (10), s. 37.

⁴⁸ (10), s. 40.

⁴⁹ (1), s. 136(1) and (3).

⁵⁰ (3), s. 30(5).

⁵¹ (1), s. 9(1)(c) and (d).

⁵² (1), s. 3(3) and (4).

⁵³ (1), s. 148.

⁵⁴ (1), s. 265.

⁵⁵ (1), s. 126(d).

⁵⁶ (1), s. 161; but the employers' and workers' organisations themselves appoint their own representatives on regional consultative committees, unless there are no representative organisations, in which case the appointment is made by the Prefect.

⁵⁷ (3), s. 4, and (4), s. 8.

⁵⁸ (1), s. 425, I and III. In this respect it is indicated that if the organisations concerned make no recommendations for the appointment of their representatives on the National Wages Committee, the chairman of the Committee may repeat his request to those organisations to make recommendations or he himself may make such appointments from among the members of employers' or workers' organisations.

⁵⁹ (2), ss. R.136-2 and R.136-3.

⁶⁰ (3), ss. 4 and 5, for members of wages councils.

of Labour and Social Welfare.⁶¹ This is also the case in *Guinea*,⁶² *Honduras*,⁶³, *Mauritania*,⁶⁴ *Morocco*,⁶⁵ *New Zealand*,⁶⁶ *Pakistan*,⁶⁷ *Panama*,⁶⁸ *Philippines*,⁶⁹ *Togo*⁷⁰ and *Tunisia*.⁷¹

213. In some States, governments consult organisations of employers and workers regarding the appointment of the representative or representatives of these organisations on the relevant bodies:⁷²

214. Finally, according to the information furnished by certain governments, the appointment of representatives of employers and workers or of persons representing their interests is undertaken by the competent authority, or it is stated that such representatives form part of the bodies responsible for fixing minimum wages, without it being expressly indicated whether or not the organisations or the employers or workers concerned have been consulted, such as in *Australia*, at the federal level,⁷³ and *Western Australia*⁷⁴ and *Victoria*,⁷⁵ this

⁶¹ (1), art. 105, and (3), ss. 6 and 7.

⁶² (1), s. 290(a).

⁶³ (2), s. 383(d) and (e).

⁶⁴ (1), s. 2.

⁶⁵ (2), s. 2.

⁶⁶ (1), s. 261(b), in connection with the Arbitration Commission.

⁶⁷ (1), s. 3(3) and (4).

⁶⁸ (4), ss. 16 and 22.

⁶⁹ (1), ss. 121(i) and 122(f).

⁷⁰ (1), s. 170(a).

⁷¹ (3), s. 2 for the National Commission on the Guaranteed Minimum Wage, and (4), s. 1, for the National Agricultural Commission.

⁷² *Fiji*, (1), Schedule 1, s. 1(3); *Guyana*, (4), Schedule 1, ss. 1(b) and (c) and 3; *Kenya*, (1), first schedule, s. 1(2), for advisory boards, second schedule, s. 3, for wages councils and third schedule, s. 3, for area agricultural wages committees; *Lesotho*, (1), Schedule 1, s. 3, in respect of employers' and workers' representatives on the wages advisory board; and (1), Schedule 2, s. 3, in respect of employers' and workers' representatives on wages councils; *Malawi*, (1), Schedule 1, s. 3, in respect of the wages advisory board, and Schedule 2, s. 3, in respect of wages advisory councils; *Malta*, (1), s. 6(3), in respect of the members of wages councils; *Mauritius*, (1), s. 45(4)(a) and (b); *Myanmar*, (1), Schedule 1, s. 3, in respect of minimum wage councils, and Schedule 2, s. 3, in respect of commissions of inquiry; *Nigeria*, (3), Schedule 1, ss. 1(3), 9 and 15; *Swaziland*, (1), Schedule 1(3), in respect of the membership of the Wages Advisory Board, and (1), Schedule 2, para. 3, concerning the membership of wages councils; *Uganda*, Schedule 1, ss. 1 and 3, in connection with minimum wages advisory boards, and Schedule 2, ss. 1(b) and (c) and (3), in respect of wages councils.

⁷³ (1), s. 130(3), in respect of local industrial boards that intervene in wage fixing, whose members are appointed by the Australian Industrial Relations Commission.

⁷⁴ (9), s. 48(1) and (2) where it is indicated that employers' and workers' members of the boards are to be appointed in the prescribed manner.

⁷⁵ (8), s. 25(3)(a) and (b), in respect of the General Board, where it is stipulated that members representing the employers and the workers are to be proposed by the organisations mentioned in that provision, and s. 27(1) and (2), in respect of conciliation and arbitration boards; although in accordance with the provisions of s. 27(5), it would appear that the employers' and workers' representatives on the conciliation and arbitration boards may be proposed by the appropriate organisations of employers or workers concerned. Moreover, it is provided that if, beyond a certain period after the notice of convening of the board, or on the expiry of the term of office of one of its members, no qualified employer or worker can be found to occupy the vacancy, the Industrial Relations Commission of Victoria may appoint any person connected with the branch of industry concerned; s. 27(6).

is also the case in *Barbados*⁷⁶ and in certain provinces of *Canada*: Manitoba;⁷⁷ Newfoundland;⁷⁸ Prince Edward Island.⁷⁹ According to information supplied by the Government, the Minimum Wages Board for the Province of Saskatchewan, referred to in the relevant legislation⁸⁰ is made up of representatives of employers and workers although this is not actually specified, and in the Yukon Territory.⁸¹ Similar situations are to be found in *Chad*,⁸² *Dominica*,⁸³ *Ecuador*⁸⁴ and *Egypt*.⁸⁵

215. The laws and regulations of certain states and territories of the *United States* contain similar provisions: California;⁸⁶ Puerto Rico;⁸⁷ Wisconsin;⁸⁸ and the District of Columbia.⁸⁹ Such provisions are also found in other countries, such as in *Gabon*,⁹⁰ *Ghana*,⁹¹ *Guatemala*,⁹² *India*,⁹³ *Japan*, where legislation provides for integrated minimum wages councils, one central council and others at the level of each prefecture, and of special committees that may be established by them, it being specified that their members shall be appointed by the Ministry of Labour or by the heads of the Prefectural Labour Standards Office,⁹⁴ and where the Government indicates that the appointments of representatives of workers and employers are made on the basis of the recommendations of the organisations concerned, citing the sections of the Act (however, these sections make no provision in this respect, at least in the version available to the Committee for examination; a similar provision exists in the case of councils and special committees set up to fix the minimum wage of homeworkers),⁹⁵ and *Papua New Guinea*, where it is stated in the legislation⁹⁶ that the representatives of employers or employees shall be appointed in such a way as to ensure equal numbers on the Minimum Wages Board; *Sri Lanka*, in respect of members of wage boards;⁹⁷ the members of district wage boards are appointed by the na-

⁷⁶ (1), s. 4(2) and (5) and s. 25(2)(b), although the law specifies that the manner in which representatives of employers and workers shall be specified by regulation.

⁷⁷ (7), s. 25(b) and (c).

⁷⁸ (15), s. 55(2).

⁷⁹ (24), s. 3(2), in respect of the Labour Relations Board.

⁸⁰ (28), s. 15(1).

⁸¹ (35), s. 85(2)(b) and (c).

⁸² (1), s. 116, in respect of the joint committee set up to prepare the general collective agreement.

⁸³ (1), s. 6(3).

⁸⁴ (2), s. 121(e) and (f), in connection with the National Wages Council, and s. 125(b) and (c), in connection with the sectoral commissions. In both cases the manner of the appointment will be governed by regulations.

⁸⁵ (1), s. 79.

⁸⁶ (7), ss. 1173-1179.

⁸⁷ (41), s. 245(i).

⁸⁸ (54), s. 104.06.

⁸⁹ (11), s. 36-206.

⁹⁰ (1), s. 162 and (2), s. 1.

⁹¹ (1), s. 35(2), in the case of the National Labour Advisory Board.

⁹² (1), s. 105 and (3), s. 14 in the case of members of joint minimum wage committees.

⁹³ (1), ss. 8, in the case of the Central Advisory Board, and s. 9 in the case of the committees and subcommittees.

⁹⁴ (1), s. 29(1) and (4), and s. 31(1) and (3).

⁹⁵ (2), s. 21(1) and (3).

⁹⁶ (2), s. 12A(3).

⁹⁷ (1), s. 9(2).

tional wage boards.⁹⁸ In the case of the remuneration tribunals that determine wages for certain workers in shops or offices or certain categories of such workers, the employers' and workers' representatives who make up the tribunals are appointed by the minister.⁹⁹ In *Turkey*, according to information supplied by the Government, there is a minimum wage commission for industry and commerce, which must be consulted in the manner provided for by law,¹⁰⁰ whose membership shall include representatives of employers and workers; a similar commission exists for the agricultural sector; however, the available legal texts do not specify the manner in which it is appointed. This is also the case in *Zimbabwe* in respect of advisory boards¹⁰¹ and in respect of the representatives on employment boards; in the latter case it is specified that in constituting an employment board, the minister shall have due regard to the interests of employers and workers in the undertaking or industry concerned.¹⁰² Finally, in respect of employment councils, the law specifies that the minister may request any certified employers' organisation or federation of such organisations and any certified trade union or federation of such trade unions to form an employment council; if within three months they have not done so, the minister may appoint such number of persons as he considers will represent the employers and employees concerned to form an employment council.¹⁰³

216. According to information supplied by the Government of *Hungary*, the conciliation board is made up of representatives of employers and workers but it is not stated who appoints these representatives. For its part, the Government of *Indonesia* states that employers and workers can cooperate with minimum wage fixing bodies.

2. Independent persons

2.1. Characteristics and role of independent persons

217. The instruments under consideration provide for the consultation of other persons on the application of minimum wages, as well as the employers and workers concerned, their organisations or their representatives. These are individuals whose experience or specialisation gives them the necessary qualifications to take part in the operation of the minimum wage fixing machinery.¹⁰⁴ The corresponding Recommendations also refer to independent persons who should participate in the operation of the minimum wage fixing machinery according to their special qualifications.¹⁰⁵

218. Apart from the specific competence they must have, under Article 4, paragraph (3)(b), of Convention No. 131, these independent persons must repre-

⁹⁸ (1), s. 18(2)(a).

⁹⁹ (2), s. 25, (1)(b) and (c).

¹⁰⁰ (2), s. 33.

¹⁰¹ (1), s. 19.

¹⁰² (1), s. 72.

¹⁰³ (1), s. 63.

¹⁰⁴ Convention No. 26, Art. 3, para. 2(1); Convention No. 99, Art. 3, para. 2, and Convention No. 131, Art. 3, para. 3(b).

¹⁰⁵ Recommendation No. 30, Part II, Para. 2(a); Recommendation No. 89, Part II, Para. 6, and Recommendation No. 135, Part IV, Para. 9

sent the general interests of the country. This is repeated in Recommendation No. 135, Part IV, Paragraph 9, where it is further specified that “[these persons] may ... be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making”.

219. Recommendation No. 30 (Part II, Paragraph 2(a)) attributes a special function to the independent persons who are to participate in the minimum wage fixing process. This consists in having a casting vote which “can ensure effective decisions being reached in the event of the votes of the employers’ and workers’ representatives being equally divided”. As a corollary to this, both Recommendation No. 30 and Recommendation No. 89 stipulate that the independent persons should be dissociated from any interest which might be calculated to put their impartiality in question.¹⁰⁶

2.2. Appointment of the independent persons

220. As regards the appointment of the independent persons to be included in the minimum wage fixing bodies, Conventions Nos. 26 and 99 contain no provisions on the method of this appointment. However, Recommendation No. 30, Part II, Paragraph 2(a), provides that these persons should, as far as possible, be selected in agreement with or after consultation with the employers’ and workers’ representatives on the wage-fixing body. This principle is reaffirmed in Convention No. 131, Article 4, paragraph 3(b), which provides that the private individuals who participate in the minimum wage fixing machinery are to be appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law and practice.

221. The Committee wishes to emphasise the importance of full consultation with representative organisations of employers and workers before these independent persons are appointed. When Article 4, paragraph 3(b), of the draft Convention was under discussion, a lengthy debate took place as to whether or not this requirement should be deleted from the proposed text. Both the Employers’ and the Workers’ members, together with a number of Government representatives, were against the deletion of this requirement because they considered that the proposed text was flexible enough and ensured the promotion of good industrial relations.¹⁰⁷

222. Nevertheless, the consultation must be carried out in accordance with national law or practice, for when an attempt was made to delete the words “where such exist, and such consultation is in accordance with national law or practice”, from Article 4, paragraph 3(b), of the proposed text of Convention, this was totally rejected by a number of Government members and by the Employers’ group on the grounds that the relevant amendment “reduced the flexibility of the proposed Convention”. In view of this situation, the amendment was withdrawn by its authors, thus leaving the Office text which had been the subject of a number of comments by governments on this specific aspect.¹⁰⁸

¹⁰⁶ Part II, Para. 2(c), and Part II, Para. 6, respectively.

¹⁰⁷ *Record of Proceedings*, ILC, 54th Session, p. 381.

¹⁰⁸ *Record of Proceedings*, ILC, 54th Session, p. 381.

223. Some countries make provision in their laws and regulations or in practice for employers' or workers' organisations to be consulted before the said independent persons are appointed.¹⁰⁹

224. In other cases, it is stated only that the appointment will be made by the competent authority. In *Germany* the legislation in force provides that, apart from the representatives of the workers and employers on the specialised committees, the Federal Minister for Labour may appoint other persons as experts but without the right to vote.¹¹⁰ On the subject of homework, the relevant Act also provides that the homework committee that may be set up will comprise additional persons with expert knowledge but without the right to vote.¹¹¹ In *Saudi Arabia* the appointment of two other members, in addition to the high-ranking officials on the committee referred to in the Labour Code, is left to the Minister of Labour.¹¹² Similar cases are to be found in the legislation of *Bahamas*,¹¹³ *Bangladesh*,¹¹⁴ *Barbados*,¹¹⁵ *Benin*,¹¹⁶ *Cameroon*,¹¹⁷ *Canada*: Province of Newfoundland,¹¹⁸ *Central African Republic*,¹¹⁹ *Egypt*,¹²⁰ *Fiji*,¹²¹ *Ghana*,¹²² *Islamic Republic of Iran*,¹²³ *Jamaica*,¹²⁴ *Japan*,¹²⁵ *Kenya*,¹²⁶ *Lesotho*,¹²⁷ *Malawi*,¹²⁸ *Malta*,¹²⁹

¹⁰⁹ *Austria*, (3), s. 30(3) and (5) in respect of the experts on the homework committee; *Equatorial Guinea*, (1), s. 57(1); *Mauritius*, (1), s. 45(4)(b).

¹¹⁰ (2), s. 5(1).

¹¹¹ (3), s. 4(2).

¹¹² (1), s. 115.

¹¹³ (1), s. 9(1)(a) and (b).

¹¹⁴ (1), s. 3(1).

¹¹⁵ (1), s. 4(5).

¹¹⁶ (1), s. 148.

¹¹⁷ (1), s. 126(a).

¹¹⁸ (15), s. 55(4)(a).

¹¹⁹ (1), s. 161.

¹²⁰ (1), s. 79.

¹²¹ (1), Schedule 1, s. 1(2).

¹²² (3), ss. 4 and 6, in respect of labour councils.

¹²³ (1), s. 167(b).

¹²⁴ (1), Schedule 2, s. 1(2).

¹²⁵ (1), s. 28(1), in the case of the central and prefectural councils, and (2), s. 21(1), in the case of the councils that must be consulted before the fixing of the minimum wage for homeworkers. The legislation stipulates that special counsellors shall be appointed from among the administrative bodies concerned, (1), 29(4). In all the cases mentioned it is specified that these counsellors represent the public interest.

¹²⁶ (1), first schedule, s. 1(1)(a), in the case of wages advisory boards, and second schedule, s. 1(i), in the case of wages councils, and third schedule, s. 1(a), in the case of area agricultural wages committees.

¹²⁷ (1), Schedules 1 and 2, ss. 1(a) and 2, in respect of the independent persons appointed to the wages advisory board and the wages councils. In addition, in the case of the wages advisory board, the minister may appoint a number of persons with expert knowledge as advisers, Schedule 1, s. 4(a).

¹²⁸ (1), Schedule 1, ss. 1(a) and 2, in the case of the wages advisory board, and Schedule 2, ss. 1(a) and 2 in the case of the wages advisory councils.

¹²⁹ (1), s. 3(2)(d) in the case of the labour board, and s. 6(1)(a) and (2) in the case of the wages boards.

Mauritania,¹³⁰ *Myanmar*,¹³¹ *Pakistan*,¹³² *Papua New Guinea*,¹³³ *Rwanda*,¹³⁴ *Sri Lanka*,¹³⁵ *Swaziland*,¹³⁶ *United Kingdom*: England, Wales and Scotland (industry and commerce),¹³⁷ Northern Ireland (industry and commerce),¹³⁸ England and Wales (agriculture),¹³⁹ Scotland (agriculture),¹⁴⁰ *United States*: Puerto Rico,¹⁴¹ and Wisconsin,¹⁴² as well as in the District of Columbia,¹⁴³ *Uganda*,¹⁴⁴ *Zambia*,¹⁴⁵ and *Zimbabwe*.¹⁴⁶

225. In other countries it is simply stated that the bodies taking part in the fixing of minimum wages shall also include independent persons, as for example in *Egypt*,¹⁴⁷ *India*,¹⁴⁸ and *Nigeria*.¹⁴⁹ In other cases it is the minimum wage fixing bodies themselves that call in experts, as in *Colombia*, where government officials, advisers to the employers' and workers' sectors and spokesmen of employers' and workers' organisations that are not represented on the National Labour Council, may be invited to attend its discussions with the right to be heard,¹⁵⁰ and *Panama*, where the National Commission on Minimum Wages may invite experts or other persons to participate in meetings in order to give advice or clarify specific aspects.¹⁵¹ The legislation in force in *Tunisia* provides that the President of the National Minimum Wage Commission may seek the advice of any other person whose collaboration he considers useful in the examination of the matters under study.¹⁵² In *Uganda*, in the minimum wages advisory boards, the chairman of the board may invite advisers who are experts in matters con-

¹³⁰ (1), s. 2(3).

¹³¹ (1), Schedules 1 and 2, ss. 1(a) and 2, and in the case of commissions of inquiry a number of persons may be appointed as advisers who are considered to have an expert knowledge of the matters with which the inquiry is concerned.

¹³² (1), s. 3(1) and (2).

¹³³ (2), s. 12A, 2(b).

¹³⁴ (1), s. 85.

¹³⁵ (2), s. 25(d), in the case of tribunals which fix wages by "determinations", where these persons are called "nominated members".

¹³⁶ (1), Schedule 1, para. 1(a), in respect of the composition of the Wages Advisory Board, and Schedule 2, para. 1(a), in respect of the membership of wages councils. Furthermore, the legislation provides that the bodies which participate in the fixing of minimum wages may include a certain number of experts appointed by the competent authority (the Commissioner) as advisers; Schedule 1, para. 4, in respect of the Wages Advisory Board.

¹³⁷ (1), Schedule 2, s. 1(b).

¹³⁸ (2), Schedule 2, s. 1(b).

¹³⁹ (3), Schedule 1, s. 1(b).

¹⁴⁰ (4), Schedule 1, s. 1(b), and Schedule 2, s. 1.

¹⁴¹ (41), s. 245(i).

¹⁴² (54), s. 104.06.

¹⁴³ (11), s. 36-206.

¹⁴⁴ (1), Schedule 2, ss. 1(a) and 2.

¹⁴⁵ (2), s. 20(1)(a)(iii), in respect of the Prices and Wages Advisory Council.

¹⁴⁶ (1), s. 72(c), in respect of the employment boards.

¹⁴⁷ (1), s. 79.

¹⁴⁸ (1), s. 8 in respect of the Central Advisory Board, and s. 9 in respect of the committees and subcommittees.

¹⁴⁹ (3), Schedule 1, ss. 1(a), 6(a) and 13(a).

¹⁵⁰ (3), s. 4.

¹⁵¹ (4), s. 23.

¹⁵² (3), s. 2.

nected with the investigations to be made by the board with a view to the fixing of wages. Such persons are entitled to speak, but not to vote.¹⁵³

226. The Committee observes that, in its comments attached to the report sent by the Government of *Hungary*, the National Federation of Hungarian Trade Unions has indicated that the provision for the consultation of competent persons in the regulation of minimum wages is not applied in national practice.

C. Process of consultation and participation

1. Process of consultation

227. Various provisions of the instruments under consideration establish the methods of consultation and participation. First of all it may be observed that in accordance with the terms of Conventions Nos. 26 and 99, ratifying States must undertake *preliminary consultation* of employers' and workers' representative organisations. This preliminary consultation may aim at determining the coverage of the minimum wage fixing machinery to be set up and its application.¹⁵⁴ It is to be noted that Convention No. 99 refers to "*full preliminary consultation*" (Article 3, paragraph 2), which confers greater importance on the consultation to be carried out.

228. The obligation to consult employers' and workers' organisations takes on a different complexion in the case of Convention No. 131 which, in Article 1, paragraph 2, and Article 4, paragraph 2, establishes that decisions as to the groups of wage-earners to be covered by the minimum wage fixing system, or in connection with the operation and modification of the machinery, are to be reached "in agreement or after full consultation with the representative organisations of employers and workers concerned".

229. *Preliminary consultation* signifies in this case that ratifying States have the obligation to consult before adopting decisions on the various questions related to minimum wages (the establishment of minimum wage fixing machinery, the scope of such machinery, the application of the wage-fixing system or machinery), since otherwise, as the Committee has pointed out in the past¹⁵⁵ if the procedure is not to be a mere formality, the consultation must be carried out before the proposed measures are decided upon. In other words, in the case of the minimum wage Conventions, the obligation to carry out a "*preliminary consultation*" implies affording employers' and workers' organisations or their representatives, or the representatives of the employers and workers concerned, an opportunity to express their views on any preliminary question and on the application of the minimum wage fixing machinery to a particular trade or part of a trade, or to enterprises, occupations and categories of persons, as well as on the implementation of such machinery. On various occasions the Committee has made comments on the application of these Conventions, emphasising the need

¹⁵³ (1), first schedule, s. 4(1) and (2).

¹⁵⁴ Convention No. 26, Arts. 2 and 3(2)(1), and Convention No. 99, Arts. 1, para. 2, and 3, para. 2.

¹⁵⁵ See *General Survey on Tripartite Consultation*, para. 44.

to consult employers' and workers' organisations before the adoption of legislation setting up minimum wage fixing machinery.

230. The *full consultation* referred to in Article 3, paragraph 2, of Convention No. 99 appears to imply that in the determination of the minimum wage fixing machinery and its methods of operation in agriculture, there is an obligation not only to give the social partners concerned the opportunity to express their view on these questions before a decision is adopted, but, furthermore, that full information will be given to the employers' and workers' organisations and that the authorities who have to undertake the consultation must accord particular attention to the opinions expressed by the parties concerned. This idea is reinforced by Paragraph 3 of Part II of Recommendation No. 89, which states: "Whatever form it may assume, the minimum wage fixing machinery in agriculture should operate by way of ... consultation with the parties who are primarily and principally concerned, namely employers and workers, or their most representative organisations ... [and] the opinion of both parties should be sought on all questions concerning minimum wage fixing and full and equal consideration given to their opinion."

231. Convention No. 131 provides for the obligation of ratifying States to undertake "full consultation" in determining the groups of wage-earners to whom the minimum wage fixing system should apply, in connection with the establishment, operation and modification of the machinery whereby minimum wages may be fixed and adjusted and, finally, in appointing the persons having recognised competence for representing the general interests of the country who are to participate in the application of the established wage-fixing machinery (Article 1, paragraph 2, and Article 4, paragraphs 2 and 3(b)).

232. When the proposed Convention was under discussion at the Conference, the Workers' members proposed an amendment to insert "full" before "consultation". The Workers' Vice-Chairman stated that "too often consultation by governments with employers' organisations and trade unions was perfunctory". When the Conference adopted paragraph 2 of Article 4 of Convention No. 131, it wished to guarantee that the consultation of the parties concerned would be carried out, in both form and substance, in such a way as to ensure that the opinion of the parties concerned was really taken into consideration at the time of adopting a decision related to the various subjects concerning the fixing of minimum wages.¹⁵⁶ The Workers' amendment was also supported by various Government members, who found it consistent with Article 1, paragraph 2, of the proposed Convention No. 131, which also employed the words "full consultation". Furthermore, the Government member of Australia asked for assurance from the Office that in a country in which minimum wages were fixed by means of a judicial process the requirements of this Article would be satisfied by giving opportunities to employers' and workers' representatives to give evidence before the wage-fixing tribunal. A representative of the Office replied that this interpretation appeared to be in accordance with the established usage.

233. The Committee of Experts notes that a committee set up by the Governing Body to examine a representation made under article 24 of the Constitution of the ILO stated that the consultation referred to in Convention No. 131, Article 4, paragraph 2, should be aimed at more than just obtaining the opinion

¹⁵⁶ *Record of Proceedings*, I.L.C., 54th Session, Geneva, 1970, p. 381.

of the organisations concerned, and that in fact the party responsible for carrying out the consultation should take into consideration what is stated or proposed by the party it consults, without this meaning that the government has to comply with all the requests of the organisation consulted, still less that it should enter into negotiations.¹⁵⁷

234. Although States are free to choose the means whereby consultation is carried out, the consultation must take place before decisions are taken and must be effective, that is to say, as the Committee previously stated¹⁵⁸ that it must "enable employers' and workers' organisations to have a useful say" in matters that are the subject of consultation – in this case matters relating to minimum wages.

235. Furthermore, it should be pointed out that the initiative regarding consultation is not the sole prerogative of governments; the possibility might exist – and indeed does exist in practice – for employers or workers, their representatives or their respective organisations to be able to set the consultation procedure in motion. Recommendation No. 30 (Part I, Paragraph 1) is fully in line with this idea as is the spirit of the other instruments.

236. Finally, the Committee stresses the fundamental importance it attaches to the consultation procedure and the attention it has always paid to the observations made in this respect by the social partners.¹⁵⁹

2. Process of participation

237. Convention No. 26 (Article 3, paragraph 2) stipulates that the employers and workers concerned shall be associated in the operation of the machinery in such manner and to such extent as may be determined by national laws or regulations. This principle is developed and reinforced in Recommendation No. 30, which states in Part II, Paragraph 2(a), that the employers and workers concerned should jointly take a direct part in the deliberations and decisions of the wage-fixing body. In Convention No. 99 the principle of participation is set out in a more flexible manner. Paragraph 3 of Article 3 provides that the employers and workers shall take part in the operation of the minimum wage fixing machinery, or be consulted or have the right to be heard, in such manner and to such extent as may be determined by national laws or regulations. Nevertheless, Recommendation No. 89 states that the employers and workers concerned should be enabled to participate directly and on an equal footing in the operation of the minimum wage fixing machinery.

238. Convention No. 131 takes up and consolidates the principle of participation. In paragraph 3(a) of Article 4 it states that wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made

¹⁵⁷ *Report of the Committee set up to examine the representation against Spain*, doc. GB.243/6/22 (Geneva), 1989, para. 38.

¹⁵⁸ *General Survey on tripartite consultation*, para. 44.

¹⁵⁹ In this respect the Committee refers to the observations made by the Workers' Commissions, communicated by the Government of Spain with its report under article 19, stating that "although the Government complies normally with the consultation procedure, this is no more than a formality". For its part, the General Union of Workers states that the consultations undertaken by the Government "do not allow for the analysis and detailed discussion of the aspects referred to" in the provisions of the relevant Conventions.

for the direct participation in its operation of representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of the employers and workers concerned. Recommendation No. 135 specifies that the participation referred to in paragraph 3(a) of Article 4 of the Convention should also include membership of bodies that have been set up to advise the competent authority on minimum wage questions or to which the government has delegated responsibility for decisions on these wages (Part IV, Paragraph 8).

239. Furthermore, although these instruments use different terms, they provide that the participation in question must take place on an equal footing.¹⁶⁰ Apart from the different terms used such as “on an equal footing”, “on a basis of equality” or other similar terms, the notion of “equal footing” should not be interpreted as implying strict numerical equality between employers and workers but the attribution of equal weight to the opinions and interests of either side.¹⁶¹

240. The Committee has referred to this problem on a number of occasions through its comments, insisting, for example, on the need to include provisions in national laws and regulations guaranteeing equal representation of employers and workers on the bodies responsible for minimum wage fixing.¹⁶² In this respect it is of interest to mention procedures especially set up by law in certain countries to achieve equality of representation when the employers’ or workers’ representatives on the relevant body are not all present. In *Sri Lanka* provision is made, in respect of remuneration tribunals which are made up of an equal number of employers’ and workers’ representatives, that when there is an unequal number of these representatives at a meeting the group that has a majority of representatives must decide which of those present will abstain from voting to ensure equality between the groups.¹⁶³ Another case is that of legislation which does not explicitly mention equal representation but establishes the bases to ensure this equality, as for example in *Equatorial Guinea*, where the legislation provides that consultations shall be held “on a footing of equality” with the representatives of employers’ and workers’ organisations, or, where no such organisations exist, with the representatives of the employers and workers concerned;¹⁶⁴ in *Papua New Guinea*, where the legislation provides for the representative or representatives of employers or employees to be appointed in such a way as to ensure equal numbers;¹⁶⁵ or in *Zimbabwe*, where the law provides that in constituting an employment board, endeavours shall be made to achieve equality of representation in the interests of employers and employees concerned.¹⁶⁶ In addition to these cases in which equality of representation is sought among the employers’ and workers’ representatives on the bodies that participate in minimum wage fixing, the case of *Colombia*, mentioned above, may be recalled, in which representatives of employers’ and workers’ organisations not

¹⁶⁰ Convention No. 26, Art. 3, para. 2; Convention No. 99, Art. 3, para. 3; and Convention No. 131, Art. 4, para. 3(a); Recommendation No. 30, Part II, Para. 2(a) and Recommendation No. 89, Part II, Para. 4.

¹⁶¹ The Committee referred to this matter in its *General Survey on Tripartite Consultation*, para. 62.

¹⁶² See RCE, 1990: *Mauritius*, Convention No. 26, p. 80.

¹⁶³ (2), s. 25, 9(A).

¹⁶⁴ (1), s. 57(1).

¹⁶⁵ (2), s. 12A, (3).

¹⁶⁶ (1), s. 72, (2).

represented on the National Labour Council can be invited to participate. The aim here is not merely equal representation, which is ensured by the law, but the fullest and most comprehensive representation possible.¹⁶⁷

241. The Committee emphasises therefore that the participation of employers and workers, of their organisations or their representatives, must be direct, including the possibility that the parties concerned form part of the relevant bodies, that their participation is effective – that is to say that the opinions reached by the parties concerned should be duly taken into consideration – and that the participation should take place on an *equal footing*.

D. Content of the consultation and participation

242. Conventions Nos. 26 and 99 contain provisions on the content of consultation and participation. First, the consultation should relate to preliminary questions including the determination of the trades or parts of trades, undertakings, occupations or categories of persons to which the minimum wage fixing machinery should be applied to.¹⁶⁸ Second, the content of the consultation and participation refers to the operation of the minimum wage fixing machinery,¹⁶⁹ which is designed to “enable the wage-fixing body to take into consideration the views of the employers and workers concerned and of independent experts in deciding the actual terms of their determinations.”¹⁷⁰ The corresponding Recommendations clarify the provisions of the above-mentioned Conventions. Recommendation No. 30, Part II, Paragraph 1, and Recommendation No. 89, Part II, Paragraph 3, state that the opinion of the employers and workers concerned should be sought on all questions concerning minimum wage fixing, including investigation into conditions in the trade or part of trade concerned or in agriculture, and that full and equal consideration should be given to their opinion.

243. Convention No. 131 also refers to these two possibilities for the contents of consultations. Article 1, paragraph 2, refers to the determination of the groups of wage-earners to be covered by the minimum wage fixing system, while Article 4, paragraph 2, provides that the consultation and participation should refer to the establishment, operation and modification of the minimum wage fixing machinery. In other words, this provision implies that the opinion of the employers and workers concerned should be duly taken into consideration at the time of actually fixing and modifying the minimum wages. This is clarified in Recommendation No. 135 which, in Part IV, Paragraph 7, states that “the consultation provided for in paragraph 2 of Article 4 of the Convention should include, in particular, consultation in regard to the following matters: (a) the selection and application of the criteria for determining the level of minimum wages; (b) the rate or rates of minimum wages to be fixed; (c) the adjustment from time to time of the rate or rates of minimum wages; (d) problems encountered in the enforcement of minimum wage legislation; (e) the collection of data

¹⁶⁷ (3), s. 4.

¹⁶⁸ Convention No. 26, Article 2, and Convention No. 99, Article 1, para. 2.

¹⁶⁹ Convention No. 26, Article 3, para. 2(1), and Convention No. 99, Article 3, para. 2.

¹⁷⁰ *General Survey of 1958*, para. 43.

and the carrying out of studies for the information of minimum wage fixing authorities”.

1. Consultation relating to the scope of wage-fixing methods

244. The Conventions under consideration provide that ratifying States are free to decide on the trades or parts of trades (Convention No. 26), undertakings, occupations and categories of persons (Convention No. 99) or groups of persons (Convention No. 131) to which the minimum wage fixing machinery is to be applied, after consultation with the organisations of employers and workers.

245. As the Committee stated in a previous survey,¹⁷¹ the problem of this type of consultation does not exist when the legislation that applies this provision of the Convention or Conventions is applied indiscriminately to all workers. The situation is different when certain trades or categories of workers have been or are to be excluded from the application of the minimum wage fixing system.

246. In a large number of countries the minimum wage fixing system applies to all workers. Nevertheless, in some States the machinery that has been or is to be set up covers only certain enterprises or trades or a certain category of workers.¹⁷² In these cases, in accordance with the legislation in force, the competent authority undertakes consultations with the employers and workers concerned, with their organisations or with the persons who may be affected or concerned, so as to define the coverage of the minimum wage fixing machinery that is to be set up. Nevertheless, it should be mentioned that on occasions this consultation is confused with that concerning the actual creation of the minimum wage fixing body. According to the information available, this kind of consultation is carried out in a number of countries. In *Germany*, under the legislation in force, the Federal Minister for Labour, in agreement with the general committee for minimum conditions of employment, determines the industries or employment categories in respect of which minimum conditions of employment shall be established or revoked;¹⁷³ in *India*, where under the legislation in force the competent authority either appoints committees or subcommittees to hold inquiries and advise it on the fixing of wages in respect of any scheduled employment, or publishes its proposals in the Official Gazette for the information of persons likely to be affected thereby, specifying a period during which representations will be taken into consideration.¹⁷⁴

247. In the *United States*, according to the information supplied by the Government, the exceptions provided by law (see Chapter II) are the result of the legislative process and were adopted after congressional committee hearings to which representatives of all the parties concerned were invited in order to express their views on the inclusion or exclusion of the groups they represented; in *Sri Lanka*, where, when the competent minister decides to set up a wages board he must give notice of his intention in the Gazette and in other newspa-

¹⁷¹ *General Survey of 1958*, para. 37.

¹⁷² See Chapter II.

¹⁷³ (2), s. 3(1).

¹⁷⁴ (1), s. 5.

pers, in the languages stipulated by law, specifying a period within which to receive from the parties concerned any objections to the proposed Order setting up the relevant board.¹⁷⁵ The employers' and workers' organisations may make representations regarding the decision to apply the provisions on wages boards and, consequently, their establishment in respect of certain trades;¹⁷⁶ and in *Zimbabwe*, where the competent minister may, either on his own initiative or on the recommendation of any employer or employee, or of any association representing employers or employees, appoint advisory boards to make recommendations to him on, inter alia, the fixing of minimum wages.¹⁷⁷ Similar provisions are also found in the legislation of *Botswana*,¹⁷⁸ *Fiji*,¹⁷⁹ *Lesotho*,¹⁸⁰ *Malawi*,¹⁸¹ *Myanmar*¹⁸² and *Nigeria*.¹⁸³

248. Recommendation No. 30, Part I, Paragraph 1, provides that employers or workers may request the application of minimum wage fixing machinery and furnish information which shows, *prima facie*, that no arrangements exist for the effective regulation of wages and that wages are exceptionally low. In this case it is stated that the wages actually paid and the arrangements, if any, for the regulation of wages should be ascertained for any trade or part of trade in respect of which the request has been made. According to the information supplied, investigations of this kind are carried out in a number of countries, whether at the request of the employers or of the workers, for example, in *Zimbabwe*,¹⁸⁴ and in the *Netherlands*, where the legislation¹⁸⁵ provides that an employer or an organisation of employers or workers may apply to the Minister to fix the minimum wage for certain categories of workers employed in an undertaking, branch of industry or occupation at a lesser amount than is prescribed by law. In such a case no decision shall be taken until it is clear that the applicant has discussed the problem with the organisations of employers or workers that the Minister considers representative. In the *Dominican Republic*, according to information communicated by the Government, bipartite discussions have been held at the request of the workers' organisations with a view to obtaining wage increases. In *Nicaragua*, the legislation provides¹⁸⁶ that employers or workers may request a review of minimum wages under the conditions established by law.

249. Finally, Recommendation No. 30, Part I, Paragraph 2, states that, without prejudice to the discretion left to member States by Convention No. 26, special regard might usefully be had to trades or parts of trades in which women are ordinarily employed. In this connection it should be recalled that certain countries initially set up a minimum wage system for women and young work-

¹⁷⁵ (1), s. 8.

¹⁷⁶ (1), s. 7.

¹⁷⁷ (1), s. 19.

¹⁷⁸ (1), ss. 137 and 138.

¹⁷⁹ (1), s. 3(1) and (2).

¹⁸⁰ (1), ss. 7-10.

¹⁸¹ (1), s. 9.

¹⁸² (1), ss. 4-7.

¹⁸³ (3), s. 1(3).

¹⁸⁴ (1), s. 19.

¹⁸⁵ (1), s. 10(1).

¹⁸⁶ (3), s. 7(4).

ers,¹⁸⁷ although subsequently they extended the system to all workers. At present, practically all States with a minimum wage system afford equal coverage to women and young workers and to men.¹⁸⁸

2. Consultation prior to the establishment or modification of the minimum wage fixing system and machinery

250. Once the coverage of the minimum wage fixing machinery that is to be set up has been determined, the next stage, according to the Conventions under consideration, is the consultation of the organisations of employers and workers or their representatives, or the employers and workers concerned, on the establishment and modification of the minimum wage fixing machinery.

251. In a certain number of States the minimum wage fixing machinery is established in the constitution (see paragraph 103). Frequently, especially in the case of recent constitutions, the social partners have intervened in the preliminary or parliamentary discussions preceding their adoption. Although the governments do not say so, it is known that representatives of employers and workers have had the opportunity to express their views on this matter.¹⁸⁹ In other cases, where provision is made for the machinery (in so far as this has already been established in the constitution of the country in question) in the labour code or other law of general scope (see paragraph 105), consultations have also been carried out with the employers' and workers' sectors respectively, although it should be pointed out that few governments have specifically said so. The Government of *Algeria* states that full consultations were held with the representatives of the employers and workers at the time of devising the minimum wage fixing system that is in force. The Government of *Australia* states that consultations have been held at both federal and state level when minimum wage fixing machinery has been established or modified. In this respect it mentions the existence of the tripartite National Labour Consultative Council, established in 1977, which acts as the consultative body to the Government on all matters related to labour;¹⁹⁰ in Western Australia, a Tripartite Labour Consultative Council was established in 1983 to advise the Minister on all matters related to labour,¹⁹¹ whose members are representatives of employers' and workers' organisations and are appointed by the Minister on the proposal of the organisations specified by the Act;¹⁹² in Queensland, according to information supplied by the Government, the Committee of Inquiry with a tripartite membership was set up under the Industrial Conciliation and Arbitration Act 1961-1987. The work of this committee enabled the legislative changes to be made resulting in the current Industrial Relations Act of 1990. Furthermore, this Act provides for the setting up of an Industrial Relations Consultative Committee, whose members are to include representatives of organisations of

¹⁸⁷ *Australia, Canada, New Zealand, United States.*

¹⁸⁸ The Committee examined the problem of equal remuneration in its 1986 General Survey. See: *General Survey of the reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, Report III (Part 4B), ILC, 72nd Session, Geneva, 1986.*

¹⁸⁹ For example, *Brazil, Colombia.*

¹⁹⁰ (4), s. 5(1).

¹⁹¹ Western Australian Tripartite Labour Consultative Council Act of 1983, s. 5(1)(a) and (b).

¹⁹² *idem*, ss. 8(1)(c) and 10(3).

employers and workers. The representatives of these organisations will be appointed by the Minister on the proposal of the organisations concerned. It is also provided that the Minister shall directly appoint two other representatives of employers and workers. If the organisations that have been requested to propose candidates for appointment by the Minister fail to do so, the latter may propose to the Government the names of persons to be appointed for this purpose.¹⁹³ The advisory functions of this committee are laid down in the Act.¹⁹⁴

252. The Government of *Austria* states that organisations of employers and workers were consulted on the adoption of the laws relating in one way or another to minimum wage fixing. In *Botswana*, according to the information supplied by the governments, organisations of employers and workers were consulted when the current minimum wage fixing machinery was being established. The Government of *Canada* has stated that at federal level the relevant consultations have been carried out, in accordance with the policy established, in amending the Labour Code and the regulations issued thereunder. In the Province of British Columbia, likewise, consultations have been held with the parties concerned in carrying out reforms on wage policy and establishing minimum wages for agricultural workers. In the Yukon Territory, according to the information supplied by the Government, the parties concerned were consulted during the preparation of the Employment Standards Act. The Government of the *United States* reports that at federal level the adoption and subsequent amendment of the Fair Labor Standards Act were carried out at the end of a legislative process which entailed hearing all sectors of the economy as well as representatives of employers' and workers' organisations. These hearings took place in both the Senate and the House of Representatives. The Government of *Ghana* states that when the current machinery was set up consultations were held with the Tripartite National Advisory Committee on Labour, on which employers and workers are represented. According to information given by the Government of *Israel*, the representatives of employers' and workers' organisations participated in the discussions that took place in the Labour and Social Affairs Committee of Parliament (Knesset), when the Minimum Wage Law was being prepared. The Government of *Japan* states that when the Minimum Wages Law was adopted in 1959 and when it was revised in 1968 formal consultations were held with the competent bodies, the Central Wage Council and the Central Minimum Wage Council, and by this channel consultation with workers' and employers' organisations was assured. Similarly, when the minimum wage provisions of the Industrial Homework Law were adopted, the appropriate body was consulted, thus guaranteeing consultation of the organisations concerned. In *Colombia* and in *Mexico* consultations also took place when the relevant labour legislation was adopted. The Government of *Namibia* states that when it prepared the draft Labour Code, which provides for the establishment of minimum wage fixing machinery, representatives of employers and workers were consulted.

253. Mention should be made of the countries that formerly had planned economies, which are now in transition to a market economy. These changes imply reforms in the minimum wage system and in the minimum wage fixing machinery. According to information communicated by the governments con-

¹⁹³ (6), s. 19.1, 19.2 and 19.4.

¹⁹⁴ (6), s. 19.9.

cerned, the social partners are participating in the definition of new minimum wage fixing machinery. This is the case, for instance, in *Bulgaria*; a Tripartite Federal Council has been set up in *Czechoslovakia*, where the General Agreement of 1991 was negotiated. This participation has established the basis for minimum wage fixing; in *Hungary* a Conciliation Council has been set up, on which organisations of employers and workers are represented; in *Romania* a Government-Trade Union Commission has been set up, together with a committee on social protection and labour affairs.

254. In other cases, it is the actual establishment of the body that will fix or help to fix the minimum wage that is the subject of consultation. This situation is common in countries where the competent authority, whether the minister or otherwise, having decided that the wages of certain categories of workers or in certain regions are very low, carries out an investigation by means of a body created for the purpose by law before deciding whether or not to establish the body for which statutory provision has been made to determine or propose the minimum wages to be fixed for the group of workers or the region or regions in question. In *Botswana*, when the minister decides to fix a minimum wage in any enterprise or trade or industry, he must publish his decision and specify a period during which the persons concerned may make observations, which must be taken into consideration by the relevant Minimum Wages Advisory Board.¹⁹⁵ The Board has to take into consideration the points raised by the employers or workers whose interests are involved, or their registered organisations, and must make the necessary arrangements for these to be heard by the relevant Advisory Board.¹⁹⁶ In *Fiji* it is reported that the competent authority must consult the Labour Advisory Board before establishing or abolishing a wages council board.¹⁹⁷ In *Ghana*, a public consultation is held before labour boards are established.¹⁹⁸ In *Kenya*, before deciding whether a wage council should be established, the Minister must consult the General Wages Advisory Board and the Agricultural Wages Advisory Board. Once the opinion of these bodies has been received the Minister will publicise his intention, receive and examine objections and make a wages councils order.¹⁹⁹ In *Lesotho*, when making a wages council establishment order, the minister consults the Wages Advisory Board, or opens a public consultation by publishing in the *Gazette* a notice of his intention, specifying a period within which any objection may be made by those concerned.²⁰⁰

255. In *Malawi* the minister is required, before making a wages advisory council establishment order, to take into account any recommendation of the Wages Advisory Board or, if there is no such recommendation, publish a notice of his intention in the *Gazette*, specifying a period within which any objection may be submitted; nevertheless, the law specifies that the minister is not bound by such recommendations or objections.²⁰¹ In *Malta* an order establishing a wages council may be made by the minister if he is of the opinion that no adequate machinery exists for the effective regulation of the conditions of employ-

¹⁹⁵ (1), s. 137.

¹⁹⁶ (1), s. 138.

¹⁹⁷ (1), s. 3(1) and (2).

¹⁹⁸ (3), ss. 1 to 3.

¹⁹⁹ (1), ss. 5 to 10.

²⁰⁰ (1), ss. 7-10.

²⁰¹ (1), s. 9.

ment of a particular category of workers; notice of his intention must be published so that he may receive any objections from interested parties. Once the decision has been made, the wages council order must be published in the *Government Gazette*.²⁰² In *Myanmar*, consultations may be held with a commission of inquiry before a minimum wages council is set up.²⁰³ In *Nigeria*, if the Commissioner considers that wages are very low or that no adequate system exists for fixing minimum wages, he may refer to a commission of inquiry the question whether or not to set up an industrial wages board in respect of certain workers and their employers.²⁰⁴ Similar measures are found in *Sri Lanka*,²⁰⁵ *Swaziland*²⁰⁶ and *Uganda*.²⁰⁷

3. Participation in the operation of minimum wage fixing machinery

256. The instruments under consideration provide for the participation of organisations of employers and workers, or their representatives, or of the employers and workers concerned in the operation of minimum wage fixing machinery. The instruments also provide for the participation of independent persons or persons who represent the general interest of the country.

257. On the whole, the participation of the organisations of employers and workers, their representatives or the employers and workers concerned in the operation of the machinery for minimum wage fixing is ensured. This is the case regardless of whether the wages are fixed by a law or a decision of the competent authority, whether an ad hoc body is consulted or its recommendations taken into consideration, whether the wages are fixed by an ad hoc body known as a board, council or committee, and whether they are fixed by a labour tribunal or other similar body or by means of collective bargaining, the outcome of which – the collective agreement – carries force of law.

258. It would seem that the participation of employers and workers, their representatives or their respective organisations is better facilitated when an ad hoc body exists that fixes minimum wages or intervenes in their fixing, than when this takes place without there being any such body. Consequently, it is important to consider the composition of such bodies before referring to the procedures guaranteeing the participation of employers and workers, their organisations or their representatives on such bodies.

3.1. Composition of minimum wage fixing bodies

259. The instruments under consideration provide for the representatives of organisations of employers and workers to form part of the bodies established for minimum wage fixing. The terms of Recommendations Nos. 30 and 89 and of Convention No. 131 leave no room for doubt that it is in the spirit of these instruments that representatives of organisations of employers and workers, or representatives of the employers and workers concerned, should participate in

²⁰² (1), s. 5.

²⁰³ (1), ss. 3-7.

²⁰⁴ (3), s. 3.

²⁰⁵ (1), ss. 7 and 8.

²⁰⁶ (1), Schedule 2, s. 6(1).

²⁰⁷ (1), ss. 7 and 8.

such bodies. The corollary to this is found in Recommendation No. 135, Part IV, Paragraph 8, which states that the participation referred to in paragraph 3 of Article 4 of Convention No. 131 should include membership of minimum wage fixing bodies. It may be said that these provisions do no more than reflect the situation prevailing in the various States over time, as indicated in the various reports leading up to the adoption of the instruments in question.

260. Generally speaking, when such bodies exist they are usually tripartite. This is the case in *Austria*,²⁰⁸ *Bahamas*,²⁰⁹ *Bangladesh*,²¹⁰ *Barbados*,²¹¹ *Benin*,²¹² *Botswana*,²¹³ *Burundi*,²¹⁴ *Cameroon*,²¹⁵ *Canada*: Provinces of *Manitoba*,²¹⁶ *Newfoundland*,²¹⁷ *Prince Edward Island*,²¹⁸ and *Yukon Territory*,²¹⁹ *Central African Republic*,²²⁰ *Chad*,²²¹ *Colombia*,²²² *Côte d'Ivoire*,²²³ *Djibouti*,²²⁴ *Dominican Republic*,²²⁵ *Ecuador*,²²⁶ *Egypt*,²²⁷ *Fiji*,²²⁸ *France*,²²⁹ *Germany*,²³⁰ *Ghana*,²³¹ *Guatemala*,²³² *Guinea*,²³³ *Equatorial Guinea*,²³⁴ *Guyana*,²³⁵ *Honduras*,²³⁶ *India*,²³⁷

²⁰⁸ (1), s. 136(1) and (3), s. 30(1).

²⁰⁹ (1), s. 9(1)(c) and (d).

²¹⁰ (1), s. 3.

²¹¹ (1), s. 4(1).

²¹² (1), s. 148.

²¹³ (1), Schedule 3, s. 1(1).

²¹⁴ (1), s. 264.

²¹⁵ (1), s. 126.

²¹⁶ (7), s. 25(1)(b).

²¹⁷ (15), s. 55(2).

²¹⁸ (24), s. 3(2).

²¹⁹ (35), s. 85(1)(b) and (c).

²²⁰ (1), s. 161 as concerns the National Labour Advisory Commission, and s. 162 as concerns regional advisory committees.

²²¹ (1), s. 116.

²²² (3), s. 4, and (4), s. 8.

²²³ (2), 5D-64.

²²⁴ (1), s. 162, and (2), s. 3.

²²⁵ (1), s. 420.

²²⁶ (2), ss. 121 and 125.

²²⁷ (1), s. 79.

²²⁸ (1), Schedule 1, s. 1(a), (b) and (c), in respect of wages councils; (2), s. 3, as regards the Labour Advisory Board.

²²⁹ (2), s. L.136-1.

²³⁰ (1), s. 2(2) and s. 5(1).

²³¹ (3), s. 4.

²³² (2), s. 105.

²³³ (1), s. 290.

²³⁴ (1), s. 57(1).

²³⁵ (1), s. 7(2).

²³⁶ (3), s. 15.

²³⁷ (1), ss. 8 and 9.

*Indonesia, Islamic Republic of Iran,*²³⁸ *Jamaica,*²³⁹ *Japan,*²⁴⁰ *Kenya,*²⁴¹ *Lesotho,*²⁴² *Malawi,*²⁴³ *Malta,*²⁴⁴ *Morocco,*²⁴⁵ *Mauritania,*²⁴⁶ *Mauritius,*²⁴⁷ *Mexico,*²⁴⁸ *Myanmar,*²⁴⁹ *Namibia,*²⁵⁰ *Nicaragua,*²⁵¹ *Nigeria,*²⁵² *Pakistan,*²⁵³ *Panama,*²⁵⁴ *Papua New Guinea,*²⁵⁵ *Peru,*²⁵⁶ *Philippines,*²⁵⁷ *Portugal,*²⁵⁸ *Swaziland,*²⁵⁹ *Syrian Arab Republic,*²⁶⁰ *Togo,*²⁶¹ *Trinidad and Tobago,*²⁶² *Tunisia,*²⁶³ *Uganda,*²⁶⁴ *United Kingdom,*²⁶⁵ *United States: California,*²⁶⁶ *Puerto Rico,*²⁶⁷ *Wisconsin,*²⁶⁸ *and the District of Columbia.*²⁶⁹ *and Zambia.*²⁷⁰

261. In the *Netherlands* two-thirds of the members of the Economic and Social Council, which must be consulted at least every three years to modify established rates of minimum wages, are appointed by organisations of employers and workers designated by the competent authority from among recognised organisations²⁷¹. However, it is not stated expressly that an equal number of members will be appointed by the organisations of employers and of workers respectively. In *Zimbabwe* section 19 of the relevant Act does not specify

²³⁸ (1), s. 41.

²³⁹ (1), Schedule 2, s. 1(1) and (2).

²⁴⁰ (1), s. 28(1) and (2), s. 21(3) and s. 22(2).

²⁴¹ (1), first schedule, s. 1(1)(a), (b) and (c), in the case of the wages advisory boards; second schedule, s. 1, in the case of wages councils, and third schedule, s. 1(a) and (b), in the case of the regional agricultural wages committees.

²⁴² (1), Schedules 1 and 2, s. 1.

²⁴³ (1), Schedules 1 and 2, s. 1.

²⁴⁴ (1), s. 6.

²⁴⁵ (1), s. 2.

²⁴⁶ (1), s. 2.

²⁴⁷ (1), s. 45(2).

²⁴⁸ (2), ss. 554, 558 and 562.

²⁴⁹ (1), Schedules 1 and 2, s. 1.

²⁵⁰ (1), s. 35.

²⁵¹ (3), s. 10.

²⁵² (3), Schedule 1, ss. 1(b) and (c), 6(b) and (c) and 13(c) and (d).

²⁵³ (1), s. 3(1).

²⁵⁴ (2), s. 179, and (4), s. 20.

²⁵⁵ (2), s. 12A.

²⁵⁶ (2), s. 16, (3), s. 3, and (4), s. 2.

²⁵⁷ (1), ss. 120-122.

²⁵⁸ (9), s. 5.

²⁵⁹ (1), Schedule 1, para. 1, and Schedule 2, para. 1.

²⁶⁰ (1), s. 156, and (2), s. 81.

²⁶¹ (1), s. 170.

²⁶² (1), s. 5.

²⁶³ (3), s. 2, and (4), s. 1.

²⁶⁴ (1), Schedule 1, s. 1, and Schedule 2, s. 1.

²⁶⁵ Industry and commerce: Great Britain (1), s. 12; Northern Ireland (2), s. 134. Agricultural sector: England and Wales (3), s. 1; Scotland (4), s. 1.

²⁶⁶ (7), ss. 1173-1179.

²⁶⁷ (41), ss. 245(j) to 245(l).

²⁶⁸ (54), s. 104.06.

²⁶⁹ (11), ss. 36-206.

²⁷⁰ (2), s. 20.

²⁷¹ (2), s. 4(2) and 4(b).

whether advisory boards are tripartite in composition; employment councils, however, are made up of representatives of the organisations of employers and workers concerned;²⁷² finally, in respect of employment boards, the relevant Act provides that the Minister shall endeavour to achieve, as far as practicable in the circumstances, an equality of representation of the interests of employers and employees concerned.²⁷³

262. The minimum wage fixing bodies are also composed of independent persons. This is the case in *Germany*²⁷⁴ and *Saudi Arabia*.²⁷⁵ In *Austria* the Homework Committee includes, apart from the chairman and representatives of employers and workers, experts "having the necessary experience and knowledge in the relevant branches of homework";²⁷⁶ see also *Bahamas*,²⁷⁷ *Bangladesh*,²⁷⁸ *Barbados*,²⁷⁹ *Benin*,²⁸⁰ *Botswana*,²⁸¹ *Cameroon*,²⁸² *Canada* (Province of Newfoundland)²⁸³ and *Central African Republic*.²⁸⁴ In *Côte d'Ivoire*, according to the information supplied by the Government, in addition to the members of the Advisory Labour Committee provided for in the legislation²⁸⁵ the Committee may include qualified officials or persons with competence on certain matters in an advisory capacity. See also *United States*: in California, the independent person would represent the commission and act as chairman of the wage board;²⁸⁶ see also the case of Puerto Rico,²⁸⁷ Wisconsin²⁸⁸ and the District of Columbia.²⁸⁹

263. This is also the situation in other countries: *Ghana*,²⁹⁰ *Guinea*,²⁹¹ *Equatorial Guinea*,²⁹² *Honduras*,²⁹³ *India*,²⁹⁴ *Islamic Republic of Iran*,²⁹⁵ *Jamaica*,²⁹⁶

²⁷² (1), ss. 62 and 63.

²⁷³ (1), ss. 72, (2).

²⁷⁴ (1), s. 5(1).

²⁷⁵ The committee referred to in s. 115 of the Labour Code is made up of high-ranking officials, as indicated in the Labour Code, and of two other members selected for their experience and knowledge.

²⁷⁶ (3), s. 33.

²⁷⁷ (1), s. 9(1)(a) and (b).

²⁷⁸ (1), s. 3(b).

²⁷⁹ (1), s. 4(1) and (5); however, the legislation does not specify either the qualification (expert, for example) or the function of the persons who may be appointed to the wages boards.

²⁸⁰ (1), s. 148.

²⁸¹ (1), Schedule 3, s. 1(1)(a).

²⁸² (1), s. 126(e).

²⁸³ (15), s. 55(4)(a).

²⁸⁴ (1), s. 161 as concerns the National Labour Advisory Council.

²⁸⁵ (4), s. 5D-64.

²⁸⁶ (7), ss. 1173-1179.

²⁸⁷ (41), ss. 245(j) to 245(l).

²⁸⁸ (54), s. 104.06.

²⁸⁹ (11), s. 36-206.

²⁹⁰ (3), ss. 4 and 6.

²⁹¹ (1), s. 290.

²⁹² (1), s. 57(1).

²⁹³ (3), s. 15.

²⁹⁴ (1), ss. 8 and 9.

²⁹⁵ (1), s. 167(b).

²⁹⁶ (1), Schedule 2, s. 1(2).

Japan,²⁹⁷ *Kenya*,²⁹⁸ *Lesotho*,²⁹⁹ *Malawi*,³⁰⁰ *Malta*,³⁰¹ *Mauritius*,³⁰² *Mexico*,³⁰³ *Myanmar*,³⁰⁴ *Nigeria*,³⁰⁵ *Pakistan*,³⁰⁶ *Panama*,³⁰⁷ *Papua New Guinea*,³⁰⁸ *Swaziland*,³⁰⁹ *Tunisia*³¹⁰ *Uganda*,³¹¹ *United Kingdom*,³¹² and *Zimbabwe*.³¹³

3.2. Participation machinery in an ad hoc body

264. When the legislation or practice of a country provides for a minimum wage fixing body, the participation of representatives of employers and workers is, in general, assured. Nevertheless, the extent of this participation will vary according to whether the body in question is empowered to fix minimum wages directly or to adjust them, or whether this body is empowered only to express its opinions or to make counterproposals to draft orders on minimum wages proposed by the competent authority. Furthermore, the consultations carried out through the minimum wage fixing bodies imply, in one way or another, consultation related to the investigations that have to be carried out for the fixing or adjustment of minimum wages as referred to, in particular, in Recommendations Nos. 30 and 89.³¹⁴ Nevertheless, not all countries make specific provision in their legislation for this type of consultation, referring solely to consultation in connection with the actual rates of minimum wages proposed to the bodies that intervene in minimum wage fixing. The Committee has had the occasion to refer to this problem, stressing the need for the social partners to be exhaustively consulted, for all available documentation that has been taken into account in determining or adjusting minimum wages to be provided, and for the proposals of the social partners to be thoroughly studied.³¹⁵

265. Nevertheless, the fact that an ad hoc body exists or that provision is made in national laws or regulations for participation does not ensure in practice that this participation is fully respected by the competent authority. In such cases the Committee has found it necessary to make comments.

²⁹⁷ (1), ss. 28(2) and (3) and 31(1) and (3); and (2), s. 21(1) and (3) and s. 22(2).

²⁹⁸ (1), First Schedule, s. 1(a), in the case of wages advisory boards; Second Schedule, s. 1, in the case of wages councils, and Third Schedule, s. 1(a), in the case of area agricultural wages committees.

²⁹⁹ (1), Schedule 1, ss. 1(a) and 4(a).

³⁰⁰ (1), Schedules 1 and 2, s. 1.

³⁰¹ (1), s. 6(1)(a).

³⁰² (1), s. 45(4).

³⁰³ (2), ss. 554, 558 (III), 562 and 565.

³⁰⁴ (1), Schedules 1 and 2, ss. 1(a) and 2.

³⁰⁵ (3), Schedule 1, ss. 1(a), 6(a) and 13(a).

³⁰⁶ (1), s. 3(1)(b).

³⁰⁷ (4), s. 23.

³⁰⁸ (2), s. 12A 2(b).

³⁰⁹ (1), Schedule 1, para. 1(a), and Schedule 2, para. 1(a).

³¹⁰ (3), s. 2.

³¹¹ (1), Schedule 1, s. 4, and Schedule 2, s. 1(a).

³¹² Industrial and commercial sector: Great Britain: (1), Schedule 2, ss. 1(b) and 3 to 7; for Northern Ireland: (2), Schedule 2, ss. 1(b) and 3. Agricultural sector: Great Britain and Northern Ireland: (3), Schedule 1, ss. 1(b) and 2; for Scotland: (4), Schedule 1, ss. 1(b) and 2.

³¹³ (1), s. 72(c).

³¹⁴ Part II, Para. 1, and Part II, Para. 3, respectively.

³¹⁵ See: RCE, Spain, 1990, pp. 407-409.

266. In some countries ad hoc bodies are empowered to fix minimum wages directly. In this case there is a better guarantee of the participation of the parties concerned to the extent that the duties of such bodies include making the necessary investigations, compiling data, and discussing the elements to be taken into account in fixing minimum wages. The powers and duties of these bodies are often laid down in legal provisions. This is the case in *Germany*, in respect of the fixing of minimum conditions of employment,³¹⁶ as well as in the case of the fixing of homework conditions;³¹⁷ *Argentina*,³¹⁸ *Austria*,³¹⁹ *Barbados*,³²⁰ *Colombia*,³²¹ *Ecuador*,³²² *Guinea*,³²³ *Guyana*,³²⁴ *India*,³²⁵ *Islamic Republic of Iran*,³²⁶ *Mexico*,³²⁷ *Mozambique*,³²⁸ *Nicaragua*,³²⁹ *Philippines*,³³⁰ *Sri Lanka*,³³¹ *Syrian Arab Republic*,³³² *Uganda*³³³ and *United Kingdom*.³³⁴

267. In other States, the fixing of minimum wages is a matter for the competent authority which must, for this purpose, consult the relevant ad hoc body. A draft is submitted to this body and it is requested either to give its opinion or to make recommendations on the fixing of minimum wages. The participation of employers and workers, their organisations or their representatives is assured in certain countries. These include *Bangladesh*,³³⁵ *Benin*,³³⁶ *Botswana*,³³⁷ *Burundi*,³³⁸ *Cameroon*,³³⁹ *Canada*: Province of Newfoundland,³⁴⁰ *Central African Republic*,³⁴¹

³¹⁶ (2), s. 4(2) and (3).

³¹⁷ (3), ss. 18(c) and 19(1) and (2).

³¹⁸ (3), s. 5, (7), s. 43, and (9), s. 28.

³¹⁹ (1), s. 25(1), in respect of work in general, and (3), s. 29, in respect of homework.

³²⁰ (1), s. 10.

³²¹ (2), s. 147(2).

³²² (2), ss. 122 and 275.

³²³ (1), ss. 288 and 290.

³²⁴ (1), ss. 7 and 8, and (4), s. 10.

³²⁵ Concerning the various bodies participating in minimum wage fixing, (1), ss. 5-9.

³²⁶ (1), s. 41.

³²⁷ (2), ss. 94 and 557 (VIII).

³²⁸ (3), s. 1(a).

³²⁹ (3), s. 7(1).

³³⁰ (1), ss. 120 and 121, concerning the body set up to advise the Government and Congress on matters including wages and to enforce minimum wages adopted by regional boards, and s. 122, concerning tripartite regional boards for wages and productivity.

³³¹ (1), ss. 20 and 27-30, in respect of wages boards; (2), ss. 21 and 22, in respect of wage fixing by determinations with consent, and (2), s. 25, subsection (1)(b) and (c), in respect of wage fixing by determinations by tribunals.

³³² (2), s. 81, in the case of minimum wages in agriculture.

³³³ (1), ss. 3(1), 7(1) and 11.

³³⁴ Industrial and commercial section: Great Britain (1), s. 12; Northern Ireland: (2), s. 13. Agricultural sector: England and Wales (3), s. 1; Scotland (4), s. 1.

³³⁵ (1), ss. 3, 4 and 5.

³³⁶ (1), ss. 82, 147 and 148.

³³⁷ (1), s. 136(1) and (4), s. 138(2) and s. 140.

³³⁸ (1), ss. 66, 264 and 266.

³³⁹ (1), ss. 69 and 125.

³⁴⁰ (15), s. 27(2).

³⁴¹ (1), ss. 100, 161 and 162.

Côte d'Ivoire,³⁴² *Djibouti*,³⁴³ *Dominican Republic*,³⁴⁴ *Egypt*,³⁴⁵ *Fiji*³⁴⁶ and *Germany*.³⁴⁷ In a number of states in the *United States*, the law requires consultations to take place with the relevant wages boards,³⁴⁸ although according to the information supplied by the Government these consultations do not actually take place in practice. In other states minimum wage fixing follows the consultations referred to with the bodies prescribed by law.³⁴⁹ See also *France*,³⁵⁰ *Ghana*,³⁵¹ *Honduras*,³⁵² *Hungary*,³⁵³ *India*,³⁵⁴ *Indonesia*, *Jamaica*,³⁵⁵ *Japan*,³⁵⁶ *Kenya*,³⁵⁷ *Lesotho*,³⁵⁸ *Malawi*,³⁵⁹ *Malta*,³⁶⁰ *Mauritius*,³⁶¹ *Mauritania*,³⁶² *Morocco*,³⁶³ *Myanmar*,³⁶⁴

³⁴² (1), s. 135, and (2), ss. 64-73.

³⁴³ (1), s. 163, and (2), s. 2.

³⁴⁴ (1), ss. 423 and 428(f), (g) and (i).

³⁴⁵ (1), ss. 37 and 79.

³⁴⁶ (1), s. 8(a).

³⁴⁷ (2), s. 3(2), in respect of the general committee for minimum conditions of employment, and (2), s. 4(2), in respect of the specialised committee.

³⁴⁸ Colorado, Connecticut, New Hampshire, New Jersey, New York and North Dakota.

³⁴⁹ California, (7), ss. 1173-1179; Wisconsin, (54), ss. 4-6; Puerto Rico, (41), s. 245(i) to (l), and District of Columbia, (11), ss. 206 and 207, as well as the island of American Samoa.

³⁵⁰ In respect of the Central Collective Agreements Committee, (2), ss. L.141-3, L.141-4 and L.141-7. In respect of homeworkers, (2), s. L.721-11.

³⁵¹ (3), ss. 15 and 16.

³⁵² (2), s. 383.

³⁵³ According to information communicated by the Government; however, under the Labour Code, the Council of Ministers consults the National Council of Trade Unions before adopting labour regulations, (1), s. 12; it is not known whether this provision remains in force.

³⁵⁴ (1), s. 5(2).

³⁵⁵ (1), s. 3(3), and s. 4A(a).

³⁵⁶ (1), ss. 27 and 31(1) and (2). In addition to participation by employers' and workers' representatives in the bodies which the competent authority must consult, it is stipulated that minimum wages councils may seek the opinion of the employers and workers concerned and of any other interested party, (1), s. 31(6). As regards homework, see (2), s. 20(1). Provision is also made for the competent bodies to examine the views expressed by homeworkers and any other interested party.

³⁵⁷ (1), s. 11(3)(a) and (b).

³⁵⁸ (1), ss. 4 and 8.

³⁵⁹ (1), s. 11(2).

³⁶⁰ (1), s. 7(1)(a) and (2).

³⁶¹ (1), ss. 45, 94 and 95.

³⁶² (1), s. 84.

³⁶³ (1), s. 1, as amended by Dahir No. 1-59-352 of 31 Oct. 1959, Dahir No. 1-61-352 of 2 Dec. 1961 and Dahir No. 1-75-211 of 30 Oct. 1975. See in this connection the comments made to the International Labour Office by the General Union of Workers of Morocco, on 5 March 1991, in connection with the application of Conventions Nos. 26 and 99, according to which consultations with the Central Prices and Wages Committee have not been held since 1961, which indicates that wages are fixed unilaterally by the Government.

³⁶⁴ (1), s. 10(4).

Nepal,³⁶⁵ *Netherlands*,³⁶⁶ *Nigeria*,³⁶⁷ *Pakistan*,³⁶⁸ *Panama*,³⁶⁹ *Peru*,³⁷⁰ *Portugal*,³⁷¹ *Rwanda*,³⁷² *Sudan*,³⁷³ *Swaziland*,³⁷⁴ *Syrian Arab Republic*,³⁷⁵ *Togo*,³⁷⁶ *Trinidad and Tobago*,³⁷⁷ *Tunisia*,³⁷⁸ *Turkey*,³⁷⁹ and *Zimbabwe*.³⁸⁰

3.3. Participation of organisations of employers and workers where ad hoc bodies do not exist

268. Ensuring the participation of organisations of employers and workers, their representatives or those of the employers and workers concerned in the minimum wage fixing machinery, when there is no ad hoc body, would appear more problematic. Nevertheless, a certain number of countries have ensured this participation either through established practice or by means of explicit provisions in their laws and regulations.

269. In some countries the participation of employers and workers is assured by established practice. This is the case in *Belarus*, where, according to information communicated by the Government, the Central Council of Trade Unions participates in wage fixing. No mention is, however, made of employers. In *Brazil*, according to the information supplied by the Government, representatives of employers and workers play an active role in the discussions in the National Congress when the subject is being debated. In *Bulgaria*, according to information from the Government, consultations have begun through the National Commission for the Harmonisation of Interests, in which trade unions and certain employers' organisations participate, for the purpose of modifying the practice laid down by law according to which only the central trade union

³⁶⁵ According to information supplied by the Government, the Government consults the National Tripartite Labour Advisory Board. The legislation in force does not make explicit reference to this body, although it refers to the establishment of a committee or committees to assist the Government in investigations necessary for minimum wage fixing. The Government had earlier indicated the existence of a Minimum Wage Board, but the legislation does not mention this either.

³⁶⁶ (1), s. 8(1) and s. 14(3) and (4).

³⁶⁷ (3), ss. 8(1), 16(2)(c) and 17(1).

³⁶⁸ (1), ss. 4 to 6.

³⁶⁹ (2), s. 174, and (4), s. 20, as concerns the National Minimum Wages Committee, and (2), s. 179, and (4), s. 24, in connection with the special boards for one or more industries or activities in one or more work centres or regions.

³⁷⁰ (6), s. 6.

³⁷¹ Legislative Decree No. 69-A 87.

³⁷² (1), s. 85 and (5), s. 1. The Government states that in practice only an employers' committee has been consulted, since the employers' organisation is in a "state of lethargy" and the workers' organisation does not exist.

³⁷³ According to information supplied by the Government, when minimum wages are fixed the newly-established Higher Wages Council is consulted. However, there are no indications regarding its composition or its legal status.

³⁷⁴ (1), s. 5.

³⁷⁵ (1), s. 159, for industry and commerce.

³⁷⁶ (1), s. 91.

³⁷⁷ (1), s. 6.

³⁷⁸ (1), s. 134, and (3), s. 1(3); as regards the minimum wage of agricultural workers, see (1), s. 137, and (2), s. 1(3).

³⁷⁹ (2), s. 33.

³⁸⁰ (1), s. 19.

organisation was consulted.³⁸¹ In *Canada*, at the federal level, according to the information from the Government, the parties concerned are consulted when the minimum wage fixing machinery is set in motion. Similar information was given for the Province of Ontario, this method being applied in particular for the annual review of minimum wages. In the Northwest Territories, according to the Government, minimum wage rates are fixed by the Legislative Assembly, and public hearings are held for this purpose. The parties concerned may also express their views through the Labour Standards Law Review Panel. In *China*, according to information from the Government, minimum wages are regulated by means of intense consultations between representatives of workers' organisations and heads of undertakings. In *Czechoslovakia*, the Government reports that a General Agreement for 1991 was reached as part of the reforms that are being carried out, according to which the Federal Government will be required to adopt the necessary Orders to fix the minimum wage prescribed in section 111 of the amended Labour Code. The Agreement was the subject of discussion with the representatives of organisations of employers and workers. Nevertheless, neither the Code nor the information supplied by the Government states whether the organisations concerned are consulted when the orders prescribed in the aforementioned section 111 were adopted. In *Luxembourg*, according to information from the Government, once a Bill has been prepared on the basis of a report prepared by a working party set up by the Minister of Labour, the Bill is submitted to the employers' and workers' organisations in the country for purposes of consultation. These consultations are noted in the parliamentary records. In *Ukraine* the information supplied by the Government does not say whether employers' and workers' organisations are consulted when the Government fixes the minimum wage. In the *United States*, according to the information supplied by the Government, public hearings are held in the Senate and the House of Representatives when laws fixing the minimum wage at the federal level are being adopted. In some states the minimum wages are also fixed by law, in which case public hearings are also held as well as when minimum wages are fixed by order or notification.

270. In other countries, though more rarely, minimum wages have been fixed without consulting organisations of employers and workers or their representatives, or at least one of them, as for example in the Province of Alberta, in *Canada*, where the Government states that more than 85 per cent of workers in the private sector are not organised and that for this reason there is no effective method of consultation. In *Qatar*, according to the information communicated by the Government and the legislation in force, neither employers' nor workers' organisations are consulted when minimum wages are fixed. In *Romania*, the legislation provides that there shall be consultations only with trade union organisations,³⁸² but the Government states that a Government-Trade Union Commission has been set up with a committee responsible for labour problems and social protection. In *Rwanda*, according to the information supplied by the Government, only the employers were consulted when minimum wages were fixed. In *Yugoslavia*, when minimum wages are not fixed by collective agreement but by the State, there appears to be no consultation.

³⁸¹ (2), ss. 36(1), 37(1) and 244(1).

³⁸² (2), ss. 5 and 6.

271. Among the States that have made provision for the participation of employers and workers in minimum wage fixing, in the absence of ad hoc bodies, but under statutory provisions, mention may be made of the following countries, where the legislation provides only for consultation with workers' organisations: *Algeria*,³⁸³ *Angola*,³⁸⁴ and *Cuba*.³⁸⁵ In *Chile*, the most representative organisations of employers and workers are consulted before draft legislation fixing the minimum monthly income is prepared; this corresponds to the statutory provisions.³⁸⁶ See also *Equatorial Guinea*,³⁸⁷ *Guyana*,³⁸⁸ and *Spain*.³⁸⁹ In *Mozambique*, according to information communicated by the Government, employers' and workers' organisations are consulted before minimum wage rates are fixed, as are other interested parties. It should, however, be mentioned that according to the provisions of the Labour Code, section 75(4), the organisation, orientation and control of wages are the responsibility of the State, with the participation of trade union bodies. See also *Poland*.³⁹⁰ In *Zambia* the provisions in force provide for consultation with unions of the workers concerned when such unions exist.³⁹¹ The Government has stated that employers' and workers' organisations have been consulted. However, even if this does occur in practice, the Committee has made various comments on this point, requesting that the law be brought into line with practice.³⁹²

272. Lastly, the full participation of the social partners is assured in those countries in which the determination of wages is generally left entirely to collective bargaining (*Austria, Belgium, Denmark, Finland, Germany, Iceland, Italy, Norway, San Marino, Suriname*,³⁹³ *Sweden, Switzerland and Yugoslavia*). In some countries the result of collective bargaining must be submitted to a state body either to endorse the agreement or, in the event of a dispute, to settle the dispute by means of a binding decision. The state body which intervenes in such cases may itself have a tripartite composition.³⁹⁴ In another country this body is responsible for making the necessary investigations leading to a settlement of the dispute, which will be finally decided by another state body³⁹⁵ or will solve the dispute itself.³⁹⁶

³⁸³ (1), s. 87.

³⁸⁴ (1), s. 104, and (6), ss. 6 to 9. In this respect the Committee has sent comments directly to the Government, inviting it to take the necessary steps to ensure consultation and participation of employers' representatives in equal numbers and on a footing of equality with the workers' representatives. Direct request, 1989, relating to Convention No. 26.

³⁸⁵ (2), s. 103.

³⁸⁶ According to information communicated by the Government.

³⁸⁷ (1), s. 57(1); however, the Government states that these consultations take place through the Ministerial Advisory Council responsible for wages without indicating whether this Council is provided for or regulated by any current legal text.

³⁸⁸ (2), s. 10A, and (5), s. 9A.

³⁸⁹ (1), s. 27(1).

³⁹⁰ (1), s. 79. There is no indication concerning the consultation of organisations of employers, but this is understandable given the period of change the country is going through.

³⁹¹ (1), s. 3.

³⁹² Direct request of 1985, in respect of Convention No. 131.

³⁹³ According to a report prepared for the Government with ILO cooperation, about 80 per cent of workers are covered by collective agreements.

³⁹⁴ *New Zealand* (1), s. 147(2), *Sri Lanka* (2), s. 25(1).

³⁹⁵ *Australia*, at federal level, (1), s. 130.

³⁹⁶ *Australia*: Western Australia, (9), s. 48(6) and Victoria, (8), s. 34(1)(b).

273. In other cases wages are determined by the free play of supply and demand on the labour market, for example in agriculture in *Switzerland*; nevertheless, some guidelines may be established in connection with wage increases, whether by the State or by a tripartite body. This occurs, for example, in *New Zealand*, where there exists a Tripartite Wage Conference composed of representatives of employers' and workers' organisations designated by the organisations themselves, and which conducts annual consultations on the economic situation and establishes principles relating to wage policies in the light of various economic factors³⁹⁷ and in *Singapore* where, according to the information supplied by the Government, apart from the wage fixing that takes place through collective bargaining and as a result of individual contracts of employment, the Tripartite National Wages Council, on which the Government, employers and workers are represented at the highest level, establishes annual wage increase guidelines. In *Greece*, according to information supplied by the Government, the wages fixed for agriculture must be in conformity with the minimum standards laid down in the General Labour Agreement.

³⁹⁷ (1), ss. 121 and 127 to 131.



Chapter IV

Criteria for fixing and adjusting minimum wages

274. Minimum wages are fixed and adjusted on the basis of certain criteria. The conclusions of the Meeting of Experts convened by the Governing Body to examine the problem of minimum wage fixing identified four basic criteria which should be taken into account: (a) the needs of the worker; (b) the employers' capacity to pay, in relation to the national economy as a whole; (c) a comparison of the standard of living of various social groups; and (d) the requirements of economic development.¹ These four criteria are mentioned in more recent studies as basic elements used in fixing minimum wage rates.² The first three of the criteria mentioned above may be considered as traditional principles used in fixing the levels of minimum wages.³ As regards the requirements of economic development, the importance of this criterion in fixing minimum wage rates came to be emphasised subsequently as a social and economic framework for the fixing of minimum wages.⁴ In addition, other criteria can be useful; the Meeting of Experts also mentioned the general level of wages paid for work of comparable character, the wages fixed by collective agreements for identical or similar work, and the value of the service rendered.⁵ It is also interesting to note that the experts who met to examine the question of minimum wage fixing did not draw any distinction between the criteria used for fixing minimum wages and the criteria used for adjusting them.⁶ Nevertheless, it is generally not feasible to take all these criteria into account each time minimum wage rates are adjusted; consequently, simplified criteria are widely used for this purpose.⁷

275. The Committee will examine first the criteria related to the needs of workers and their families, and secondly, the criteria related to the economy, indicating, as appropriate, where the criteria used in adjusting minimum wage rates differ from those used in fixing them. Nevertheless, the following examination of criteria used in fixing and adjusting minimum wages is not limited to the content of such criteria, but also analyses when and how minimum wages are adjusted in the event that adjustment procedures differ from those for fixing minimum wages, as noted in Chapter II; and the difficulties encountered in fixing or adjusting minimum wages owing to changes in the national and international economic situation.

¹ ILO: *Meeting of Experts of 1967*, paras. 105 to 110.

² See, for example, Gerald Starr: *Minimum wage fixing: An international review of practices and problems* (Geneva, ILO, 1981), p. 95.

³ See ILO: *Blue Report, ILC, Tenth Session, Geneva, 1927*, p. 27.

⁴ ILO: *Meeting of Experts of 1967*, paras. 45 and 69.

⁵ *ibid.*, para. 111.

⁶ *ibid.*, paras. 105 to 112.

⁷ See Starr, *op. cit.*, p. 127.

A. Criteria related to the needs of workers and their families

1. Definition of the criteria contained in the instruments

276. Although Conventions Nos. 26 and 99 contain no provisions concerning the criteria to be taken into account in fixing minimum wages, Recommendations Nos. 30 and 89 both envisage that in fixing the minimum rates of wages the wage-fixing body should in any case take account of *the necessity of enabling the workers concerned to maintain a suitable standard of living* (Recommendation No. 30, Part III, and Recommendation No. 89, Part I, Paragraph 1). This is the only criterion which the Conference was able to adopt; from the outset, it was envisaged as a provision to be included in a Recommendation, and was not viewed as a sufficiently specific or satisfactory basis for guaranteeing minimum wage protection.⁸ Given the difficulty of determining objectively and generally what such a suitable standard of living should be, the instruments also identify factors which may be used in such a determination. Recommendation No. 30 provides that: "For this purpose regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organised and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality" (Part III). As can be seen, two different factors are recommended, but the instrument specifies that the first one (i.e. a comparison with rates of wages paid for similar work in trades where effective collective agreements exist) will be sufficient where such a comparison is possible, while the second factor should be used only in the absence of the first one. The wording of this provision of Recommendation No. 30 acknowledges the relative nature of the concept of a "suitable standard of living"; this standard must be assessed in the light of the standard of living of the general population, from the standpoint of both equity and overall economic and social policy.⁹

277. Recommendation No. 89, which refers also to the necessity of guaranteeing a suitable standard of living for agricultural workers, stipulates that "Among the factors which should be taken into consideration in the fixing of minimum wage rates are the following: the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements in agriculture, and the general level of wages for work of a comparable skill in other industries in the area where the workers are sufficiently organised" (Part I, Paragraph 2). Unlike Recommendation No. 30, Recommendation No. 89 does not set priorities among these criteria. Moreover, it adds two additional factors, namely the cost of living, and the fair and reasonable value of services rendered.

278. Convention No. 131 contains provisions on the criteria to be used in determining the level of minimum wages. It provides that the needs of workers

⁸ ILO: Blue Report, ILC, Eleventh Session, Geneva, 1928, pp. 104-108; and ILO: Reports VII(2), ILC, 33rd Session, Geneva, 1950, p. 49; and VIII(1), ILC, 34th Session, Geneva, 1951, p. 7.

⁹ Article 427 of Part XIII of the Versailles Peace Treaty, which subsequently became the ILO's first Constitution, advocated "the payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country".

and their families, together with economic factors, shall be taken into account in determining the level of minimum wages, in so far as possible and appropriate in relation to national practice and conditions, and in the light of the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups (Article 3(a)). Social security benefits, which must be taken into account when considering the needs of workers and their families, are introduced as a new criterion, not mentioned in earlier Recommendations. In addition, the instrument insists on the need to consider the relative living standards of other social groups. On the other hand, this Convention drops any reference to the fair and reasonable value of services rendered, and to the wages paid for similar or comparable work under collective bargaining agreements. Recommendation No. 135 adds only a reference to changes in the cost of living (Part II, Paragraph 3) to the criteria listed in Convention No. 131.

279. The Committee draws attention to the fact that the consideration of social criteria, such as the needs of workers and their families, cannot be independent of certain economic conditions. Therefore, these criteria must be taken into account in close association with the economic factors mentioned in Convention No. 131 and Recommendation No. 135 (respectively, Article 3(b), and Part III, clause (f)). In this connection the Committee recalls that it has had occasion, in comments addressed to governments, to point out that, when determining minimum wage levels, consideration must be given to social as well as economic criteria, and to the close relationship between the two.¹⁰

280. Moreover, Recommendation No. 135 states that "Minimum wage rates should be adjusted from time to time *to take account of changes in the cost of living and other economic conditions*" (Part V, Paragraph 11), and that "To this end a review *might be carried out of minimum wage rates in relation to the cost of living and other economic conditions*, either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-living index" (Part V, Paragraph 12). The Committee will review the question of the timing of minimum wage rate adjustments below; here, it will limit itself to examining the criteria to be used for the purposes of such adjustments. The criteria for fixing minimum wages may be identical to those used for adjusting them, although it may not always be feasible to examine all criteria each time minimum wage rates are to be adjusted. The provisions of Recommendation No. 135 concerning the adjustment of minimum wage rates seem to suggest the advisability of adopting criteria which, if not simple, are at least dynamic in nature and easier to evaluate. A more detailed study of this issue stated that: "Criteria such as the needs of workers and their families, capacity to pay and comparable wage and income levels are essentially ways of determining the most appropriate relative position for minimum wages in the wage and income hierarchy. Once fixed at this level the two dynamic criteria are a simplified means of ensuring that they remain at it with the passage of time."¹¹ Thus, an examination of the criteria adopted in the national legislation and practice of different countries should draw a distinction based on when such criteria are applied, namely, in fixing or in adjusting minimum wages.

¹⁰ For example, *Iraq*, Convention No. 131, direct request, 1989; *Sri Lanka*, Convention No. 131, direct request, 1989.

¹¹ Starr, *op. cit.*, p. 127.

281. Finally, the Committee recalls that the minimum wage implies that such a wage must be sufficient for the subsistence needs of workers and their families. Thus, the meeting of subsistence needs are both a criterion of minimum wage fixing and one of the objectives of the Convention. Nevertheless, the needs of workers and their families cannot be considered in a vacuum; they must be viewed in relation to the country's level of economic and social development.¹² Moreover, it is important to remember that the practical application of this criterion implies an evaluation which requires taking into account other elements, such as those listed in Recommendation No. 135 (Part I, Paragraph 3(b) to (e)).

282. The minimum wage fixing criteria specified in the various instruments in question do not represent precise models; nor do they pretend to give final and unequivocal answers to questions on how suitable minimum wage levels should be determined in a given situation to contribute as effectively as possible to the general welfare. The relative weight given to these elements, and to the anticipated impact of their interaction, is a subjective choice. Consequently, it is indispensable that information concerning these various elements be as complete and reliable as possible, and that it be fully accessible to all parties concerned, and especially to organisations of employers and workers in the context of minimum wage fixing and adjustment, thereby enabling them to make their observations which will surely contribute to clarifying the question.

2. Application of criteria

283. An analysis of available information shows that the criteria used in fixing minimum wage rates are in some cases identified in the relevant legislative texts, while in other cases they are determined by governments in the apparent absence of specific legislative provisions. The Committee will review all such criteria independently of whether they are contained in legislative texts or have simply been reported in the information communicated by governments.

284. National legislation or information furnished by the governments of some countries merely indicates that the social and economic needs of workers and their families are taken into consideration in the fixing, adjustment or review of minimum wages.¹³

285. In other countries these needs are defined in greater detail. In the following countries, they may refer to material, social, moral or cultural needs, and concern housing, food, education, health, leisure, clothing, hygiene, transport, social security or the practice of sports. This is the case in *Brazil*,¹⁴ *Canada*, Province of New Brunswick;¹⁵ *Chad*; *Dominican Republic*;¹⁶ *Guatemala*;¹⁷

¹² In this connection, see Meeting of Experts of 1967, para. 106.

¹³ *Chile*; *China*; *Côte d'Ivoire* (2), s. 5D 63(2); *Cuba*; *Germany* (2), art. 1, 2(a); *Islamic Republic of Iran* (1), s. 41(2); *Mauritania*; *Mauritius*; *Namibia* (1), s. 95(i); *Peru* (1), s. 43.; *Romania*; *Spain*; *Ukraine* (3), s. 19; *Zambia*.

¹⁴ (1), s. 7(IV), and (5), s. 7.

¹⁵ (1), s. 10(3)(a).

¹⁶ (1), s. 426(f).

¹⁷ (2), s. 103.

Honduras;¹⁸ *Mexico*;¹⁹ *Nicaragua*;²⁰ *Panama*;²¹ *Poland*; *Portugal*;²² *Romania*; *Syrian Arab Republic*;²³ *Turkey*; *United Kingdom*, as regards agriculture in Northern Ireland;²⁴ *United States* (in the States of Arizona,²⁵ California,²⁶ Colorado,²⁷ Kansas,²⁸ New Jersey,²⁹ New York,³⁰ North Dakota³¹ and Wisconsin),³² and *Yugoslavia*.³³

286. Moreover, as regards these needs, the legislation of some countries, or the information on national practice furnished by governments, states that some or all of the elements mentioned in Convention No. 131 (especially the cost of living and changes in the same, and average wages) are taken into account. This is the case in *Algeria*;³⁴ *Austria*; *Bangladesh*;³⁵ *Belgium*; *Benin*; *Botswana*;³⁶ *Brazil*; *Bulgaria*; *Burundi*; *Canada*, as regards federal practice and the Provinces of Newfoundland, Ontario, Quebec and Saskatchewan; *Chile*; *Colombia*; *Czechoslovakia*; *Dominican Republic*;³⁷ *Ecuador*; *Egypt*; *Fiji*; *France*;³⁸ *Gabon*;³⁹ *Ghana*; *Guatemala*;⁴⁰ *Guinea*; *Equatorial Guinea*;⁴¹ *Guyana*; *Honduras*;⁴² *Hungary*; *India*; *Islamic Republic of Iran*; *Israel*; *Japan*;⁴³ *Kenya*; *Luxembourg*; *Morocco*; *Mozambique*; *Myanmar*; *Nepal*; *Netherlands*; *New Zealand*; *Nicaragua*;⁴⁴ *Nigeria*; *Pakistan*;⁴⁵ *Panama*; *Peru*;⁴⁶ *Philippines*;⁴⁷ *Portugal*;⁴⁸ *Qatar*; *Saudi Arabia*; *Spain*;⁴⁹

¹⁸ (1), s. 128, (5), and (2), s. 381.

¹⁹ (1), s. 123(VI), and (2), ss. 90 and 562(II)(a).

²⁰ (3), s. 2.

²¹ (1), s. 61, and (2), s. 172.

²² (1), s. 59(2)(a).

²³ (2), s. 86.

²⁴ (5), s. 4(6).

²⁵ (5), ss. 23-213 and 23-316.

²⁶ (7), s. 1182.

²⁷ (8), ss. 8-6-104, 8-6-106 and 8-6-110.

²⁸ (17), s. 44-645.

²⁹ (32), ss. 34:11-56a 1(k) and 34:11-56a(7).

³⁰ (33), s. 655(5).

³¹ (56), s. 34-06-03.

³² (54), s. 104.01(5).

³³ (1), s. 22, and (3), s. 38.

³⁴ (1), s. 87.

³⁵ (1), s. 7.

³⁶ (1), s. 138(2)(a) and (c).

³⁷ (1), s. 426(f).

³⁸ (2), ss. L.141-3 and L.141-5.

³⁹ (1), s. 161.

⁴⁰ (2), s. 111.

⁴¹ (1), s. 57(2)(a) and (b).

⁴² (1), s. 128(5), and (2), s. 382.

⁴³ (1), s. 3.

⁴⁴ (2), s. 77, and (3), s. 7(1).

⁴⁵ (1), s. 7.

⁴⁶ (3), s. 15(a) and (c).

⁴⁷ (1), s. 124.

⁴⁸ (1), s. 59(2)(a).

⁴⁹ (1), s. 27(1)(a).

*Sri Lanka; Swaziland; Syrian Arab Republic;*⁵⁰ *Trinidad and Tobago;*⁵¹ *Tunisia; Turkey; United Kingdom*, as regards agriculture in Scotland; *United States* (at federal level and in the States of California,⁵² North Dakota,⁵³ Illinois,⁵⁴ Michigan,⁵⁵ New Hampshire,⁵⁶ New Jersey⁵⁷ and Washington);⁵⁸ *Yugoslavia; Zambia; and Zimbabwe.*

287. In other countries the various needs of workers which serve as parameters in fixing minimum wages are expressed in the form of a "basic family basket". This is the case in *Argentina; Belarus; Ecuador; Nicaragua;*⁵⁹ *Panama and Yugoslavia.* In *Honduras* this "basket" refers only to basic food needs.

288. Other criteria stipulated in legislation or used in national practice in the fixing of minimum wages include forms of work,⁶⁰ the facilities made available to agricultural workers and the specific conditions of their work,⁶¹ the fact that some employers may be required to provide their workers with food and housing,⁶² the particular conditions of each region,⁶³ the financial situation of enterprises,⁶⁴ and the impact and effects of the minimum wage on the progression of other wages,⁶⁵ the value of the materials and tools needed by the worker for his work,⁶⁶ the mobility of labour in the different sectors of the economy,⁶⁷ the fact that the minimum wage must guarantee social protection to vulnerable groups of workers such as domestic workers, workers in the informal sector and workers in rural areas,⁶⁸ the average number of (adult) members of the family who are working.⁶⁹

289. The Committee draws attention to the fact that the information supplied by governments does not always specify whether the needs of the workers' entire family are taken into account. In the case of *Czechoslovakia*, according to information supplied by the Government, the minimum wage must guarantee only the satisfaction of the basic needs of the worker, but not those of his family. The satisfaction of the needs of family is assured by means of supplementary incomes, which, if they are insufficient, are increased with the aid of social assistance bodies. In *Poland*, according to information provided by the Govern-

⁵⁰ (1), s. 158, and (2), s. 86.

⁵¹ (1), s. 14(a) to (d).

⁵² (7), s. 44-645.

⁵³ (56), s. 34-06-03.

⁵⁴ (15), s. 198.1.

⁵⁵ (24), s. 408.384(2).

⁵⁶ (31), s. 279:1.

⁵⁷ (32), ss. 34:11-56a 1(k) and 34:11-56a(7).

⁵⁸ (50), s. 49-12-091.

⁵⁹ (3), s. 7(1).

⁶⁰ *Colombia; Dominican Republic* (1), s. 426(b); *Ecuador; and Peru* (3), s. 15(a) and (b).

⁶¹ *Colombia; Guatemala* (2), s. 111; *Honduras* (2), s. 382; and *Mexico* (1), s. 123(VI).

⁶² *Colombia* (2), s. 146; *Honduras* (2), s. 382.

⁶³ *Argentina* (3), s. 8(c); *Colombia* (2), s. 146; *Dominican Republic* (1), s. 426(g); *Equatorial Guinea* (1), s. 57(2)(c); *Honduras; Panama* (1), s. 61, and (2), s. 172.

⁶⁴ *Dominican Republic* (1), s. 426(e); *Ecuador; Honduras.*

⁶⁵ *Canada*, in the Province of Quebec.

⁶⁶ *Ecuador* (2), s. 276.

⁶⁷ *Egypt.*

⁶⁸ *Ghana.*

⁶⁹ *Peru* (3), s. 15(d).

ment, the changes in the conditions of economic development in the country should enable not only the needs of workers to be taken into account, but also those of their families.

290. Finally, in some countries the body responsible for fixing minimum wages is free to decide which elements are taken into consideration in fixing the minimum wage⁷⁰ or which elements are considered in addition to those established by law.⁷¹

B. Criteria related to economic factors

1. Criteria contained in Convention No. 131 and in Recommendation No. 135

291. Convention No. 131 and Recommendation No. 135 provide that in determining the level of minimum wages, "economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment" should be taken into consideration so far as possible and appropriate in relation to national practice and conditions (Article 3(b), and Part II, Paragraph 3(f), respectively). In the texts proposed by the Office for the second discussion of the question at the 54th Session of the Conference, the provisions of the proposed Convention did not coincide with those of the proposed Recommendation. The former mentioned only the desirability of attaining and maintaining a high level of employment, while the latter called for account to be taken of economic development plans, the levels of employment, unemployment and underemployment, the capacity of employers in general to pay, the balance of payments and the rate of increase in productivity.⁷² Thus, although neither of the instruments in its final form mentions any of the other criteria which had been proposed, it should be noted that there is nothing to prevent these factors from being considered in fixing minimum wage levels; likewise, other economic factors may be taken into account. Nevertheless, the three factors specifically mentioned in Convention No. 131 and in Recommendation No. 135 must be taken into account to the extent possible and appropriate, in accordance with national practice and conditions.

292. In its conclusions, the Meeting of Experts of 1967 emphasised that, without ignoring the elements linked to the needs of workers and their families, "minimum wages cannot be set without taking account of the total social and economic context, including the amount of unemployment, the size of the peasant population and the existing relationship between peasant incomes and wages, both rural and urban (...) the process of wage determination must take into account the proper role of wages in creating markets for mass production of consumer goods, as well as the likely impact of wage changes on the volume of employment".⁷³

⁷⁰ *Belgium.*

⁷¹ *United Kingdom, as regards industry and trade, (1), s. 14(6)(b), and (2), s. 15(6)(b).*

⁷² *ILO: Report V(2), ILC, 54th Session, Geneva, 1970, pp. 38 and 42.*

⁷³ *ILO: Meeting of Experts of 1967, paras. 69 and 70.*

2. Application of the criteria

293. The above-mentioned criteria are sometimes mentioned in national legislation, but in other cases are simply applied in practice, without a basis in law. The Committee will review both kinds of application of the criteria without distinction, reflecting the information communicated by governments.

294. In certain countries national legislation or national practice, as reported by the governments, calls for the criteria listed in Convention No. 131 and Recommendation No. 135 to be taken into account.⁷⁴ In other cases, countries indicate in general that they take into consideration the situation or level of the country's economic and social development, including the requirements of such development, at national level, and at regional or provincial level where appropriate. This is the case in *Australia*, where the Australian Industrial Relations Commission, when issuing a minimum wage award, takes account of the public interest and the situation of the national economy as well as the likely effects of the minimum wage rates on the level of employment and inflation.⁷⁵ Economic difficulties led to the introduction in 1987 of a new system of wage adjustment and revision. In the states, the public interest⁷⁶ and economic factors⁷⁷ are also taken into account by the minimum wage fixing bodies. Criteria related to the general economic situation of the country are also taken into account in *Bangladesh*,⁷⁸ *Bulgaria*, *Canada*, in the Provinces of New Brunswick⁷⁹ and Saskatchewan, *Colombia*,⁸⁰ *Cuba*,⁸¹ *Guinea*, *Mexico*, *Morocco*, *Pakistan*,⁸² *Panama*, *Peru*,⁸³ *Portugal*, *Romania*, *Spain*, *Syrian Arab Republic*, *Turkey*,⁸⁴ and *Yugoslavia* (in respect of each republic). Moreover, the following countries also report that, in general, consideration is given to the economic situation of the economic sector in question, the capacity of the industry to pay, or market conditions: *Austria*, *Colombia*,⁸⁵ *Honduras*, *Mexico*, *Netherlands*, *Panama* and *United Kingdom*.⁸⁶

295. The following countries indicated, with reference to the provisions of the instruments under examination, that they take account, in the determination of minimum wage levels, of employment-related criteria: *Canada* (in the Provinces of New Brunswick,⁸⁷ Ontario and Quebec⁸⁸), *Chile*, *Czechoslovakia*, *Guinea*,

⁷⁴ As regards the countries which take all these criteria into account, see para. 286 above.

⁷⁵ (1), ss. 90(b), and 106(1)(b) and (c).

⁷⁶ Queensland, (6), s. 4.21(1)(b)(ii); Tasmania, (7), s. 36(1) and (2)(c); Victoria, (8), s. 16(8).

⁷⁷ Western Australia; New South Wales, (3), ss. 11(4)(a), 23B and 57; Tasmania, (7), s. 36(2)(a) and (b).

⁷⁸ (1), s. 7.

⁷⁹ (11), s. 10(3)(b).

⁸⁰ (2), s. 146.

⁸¹ (2), s. 103.

⁸² (1), s. 7.

⁸³ (3), s. 15(c).

⁸⁴ (1), s. 55.

⁸⁵ (2), s. 146.

⁸⁶ As regards agriculture in Northern Ireland.

⁸⁷ (11), s. 10(3)(b).

⁸⁸ Especially as regards the employment of young persons.

*Honduras, Hungary, Mexico, Netherlands, New Zealand, Panama, Philippines, Portugal, Syrian Arab Republic, United States,⁸⁹ and *Zimbabwe*.*

296. In *Bulgaria, Cuba,*⁹⁰ *Guinea, Honduras, Hungary, Portugal, Romania, Spain, Yugoslavia*⁹¹ and *Zimbabwe* productivity levels or trends are taken into account as criteria in fixing minimum wages.

297. In addition, certain countries take into account such specific factors as: the level of government and European Community subsidies in *United Kingdom*;⁹² income redistribution and investment policy in *Panama*; or the concept of a reasonable return on private investment in *Canada*⁹³ and the *Philippines*;⁹⁴ the suitability of minimum wages to income and price policies in *Portugal*; the increase in workers' participation in national income in *Spain*.

C. Minimum wage adjustments

1. The timing and frequency of adjustments

298. The instruments examined here establish various criteria as regards the timing and frequency of the adjustment of minimum wages. In this connection, the Committee points out that these instruments seem to use the terms "adjustment", "review" and "revision" interchangeably. Recommendations Nos. 30 and 89 use the terms "review" and "revise" (Part III and Paragraph 7, respectively), while Convention No. 131 and Recommendation No. 135 use the term "adjust"/"ajuster" in the English and French versions (Article 4(1), and Part II, Paragraph 11, respectively); the Recommendation, however, also uses the term "review" in the English version (Part V, Paragraph 12).

299. The Committee has observed that the legislation of certain States draws a distinction between adjustment and review. The term "adjustment" should be understood to refer to operations undertaken with a view to adapting minimum wage rates to economic changes, in order to maintain the purchasing power of workers' wages. The term "review" should be understood to denote operations which modify minimum wage rates, independently of their adjustment, with a view to increasing the purchasing power of the workers concerned. In this case, economic factors are not taken into account to adapt minimum wage rates to a new economic situation, but rather to make it possible to determine the extent to which the national economy allows or requires a real increase in minimum wages and, consequently, in the purchasing power of workers earning the minimum wage.

300. As the Committee has noted, the legislation of some States draws this distinction, while others do not, and use the term "review" to designate what are in fact "adjustment" operations, or vice versa. For present purposes, the Committee will in each case use the terminology employed in national legis-

⁸⁹ At the federal level.

⁹⁰ (2), s. 103.

⁹¹ (1), s. 22, and (3), s. 38.

⁹² As regards Scotland.

⁹³ In New Brunswick, (11), s. 10(3)(b).

⁹⁴ (1), s. 124(h).

lation; where the terms "adjustment" and "review" are not explicitly used, the Committee will use the term that corresponds to the operation in question.

301. The Committee will refer separately to each of the criteria concerning the timing and frequency of adjustment or review operations stipulated in the instruments in question.

1.1. Review at the request of workers and employers or their organisations

302. Recommendation No. 30 stipulates that "Provision should be made for the review of the minimum rates of wages fixed by the wage fixing bodies when this is desired by the workers or employers who are members of such bodies" (Part III). This provision seeks to ensure that measures will be taken to proceed with a review, not automatically or periodically, but rather at the request of workers or employers who are members of minimum wage fixing bodies.⁹⁵

303. Though not stated explicitly in the Recommendation, a review of minimum wage rates may be undertaken at the request of workers' or employers' organisations, even if they are not members of the bodies responsible for fixing such rates.

1.2. Review at appropriate intervals

304. Recommendation No. 89 states that "Provision should be made for a procedure for revising minimum wage rates at appropriate intervals" (Part III, Paragraph 7). This provision leaves great leeway for setting the timing of minimum wage adjustments, for it specifies no frequency or procedures for initiating such adjustments, but leaves it to the competent authorities to undertake a review of minimum wage rates at intervals they judge to be appropriate.

1.3. Review from time to time

305. Convention No. 131 provides that "Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements, whereby minimum wages ... can be fixed and adjusted from time to time" (Article 4, paragraph 1). Recommendation No. 135 also stipulates that "Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions" (Part V, Paragraph 11). These two provisions, and especially the latter one, reflect the conclusions of the Meeting of Experts convened by the Governing Body to examine the question of minimum wage fixing machinery.⁹⁶ In addition, there is clearly a link between the need to take into account certain criteria for the adjustment of minimum wage rates and the time at which such adjustments should take place. In this connection, Recommendation No. 135 suggests that "... a review might be carried out of minimum wage rates in relation to the cost of living and other economic conditions, either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-

⁹⁵ ILO: *Final Record*, ILC, 11th Session, 1928, Appendix V, Report of the Minimum Wage Committee, p. 642.

⁹⁶ ILO: *Meeting of Experts of 1967*, para. 82.

living index" (Part V, Paragraph 12). At any rate, none of the above-mentioned provisions call for automatic adjustments.

1.4. National legislation and practice

306. An analysis of available information again leads to a distinction between countries in which the adjustment or review of minimum wages is expressly provided for in their legislation, and other countries in which such adjustment or review is carried out independently of any legal provision. In this section the Committee will refer to the manner in which member States proceed with such operations, independently of whether or not there is legislation on the subject.

307. In *Angola*, according to information supplied by the Government, wages are not adjusted periodically, but about one year after the entry into force of the current wage scale wage rates were adjusted by up to 20 per cent in conformity with the national legislation.⁹⁷ In *Algeria* the national guaranteed minimum wage is adjusted whenever account has to be taken of changes in the cost of living and of other economic circumstances in the country. In *Argentina* national legislation calls for the basic minimum wage to be set periodically, and also provides for the possibility of modifying the minimum wage prior to the expiry of the period during which it is to be in force, at the request of any of the sectors represented on the National Basic Minimum Wage Board, whenever there is a variation of 15 per cent in the cost-of-living index. Nevertheless, such modifications may not be carried out at intervals of less than 180 days.⁹⁸ In *Australia*, at the federal level, minimum wages are adjusted by decisions of the Australian Industrial Relations Committee, known as "National Wage Cases"; this is normally done once a year. In its 1987 decision, the Commission established the framework within which minimum wage rates are to be fixed and adjusted: a two-tier wage system was introduced under which an overall increase in wages was decided during a first phase and, during a second phase, additional increments were granted on the basis of certain principles established by the Commission. Under this system, at the first level, wages are not adjusted all at once, but intervals may be fixed between the adjustments. In its decision of April 1991 the Commission decided that adjustments should be made at four intervals of six months. From the second to the fourth interval, however, the adjustments would not be automatic, but it would be necessary to request the amendment of the relevant award.⁹⁹ At a second level a "structural efficiency adjustment" was approved, to which parties meeting certain conditions established by the Commission are entitled.¹⁰⁰ In the states of Australia wage adjustments are made taking into account National Wage Cases of the Australian Industrial Relations Commission.

308. In *Austria*, according to information furnished by the Government, the collective agreements which fix wages remain in force for a period ranging from 12 to 14 months. Negotiations cannot take place without the approval of the Wages Subcommittee, an agency of the Joint Wages and Prices Committee, are normally held in the spring and autumn. In *Bangladesh*, the Minimum

⁹⁷ (4).

⁹⁸ (3), s. 10.

⁹⁹ National Wage Case, April 1991, Appendix A, "Wage Adjustments", 2, (a).

¹⁰⁰ National Wage Case, April 1991, Appendix A, "Wage Adjustments", 1, (a).

Wages Board must review its minimum wage recommendations whenever there are changes in the economic situation or the cost of living, or as required by other relevant developments. However, minimum wage reviews may not take place earlier than one year or later than three years after the date of the last review, except where special circumstances so require.¹⁰¹ In *Pakistan* wage reviews are conducted in the same fashion.¹⁰² In *Belgium* wages in general, and in particular the average minimum monthly wage fixed by the National Labour Council, are adjusted automatically to reflect changes in the cost of living. The amount of the minimum guaranteed monthly wage is adjusted on the basis of the arithmetic average of the consumer price index for the last four months, unless a collective agreement, negotiated within the framework of a joint committee, provides otherwise.¹⁰³ The frequency of modifications depends on the form of wage adjustment. Depending on the branch of the economy in question, the frequency may be monthly, bi-monthly, quarterly or other, or may be tied to the consumer price index. In general, the joint committees negotiate remuneration every two years. In *Botswana* the national legislation provides that minimum wages may be adjusted when the Minister of Labour and Home Affairs considers this necessary in the light of changes in the cost of living or of any other relevant change.¹⁰⁴ According to information supplied by the Government these adjustments are made annually.

309. In *Brazil*, the Constitution stipulates that the minimum wage shall be adjusted periodically to safeguard its purchasing power.¹⁰⁵ The relevant national legislation calls for a Technical Committee to define the basic needs of workers and their families as regards housing, food, education, health, leisure, clothing, hygiene, transport and social welfare, as well as the methodology to be used monthly in measuring the cost of these products and services. On the basis of proposals prepared by the Committee, the Executive branch submits to Congress a Bill which sets forth the applicable rules regarding the adjustment and gradual increase of the minimum wage.¹⁰⁶ In *Bulgaria*, according to information supplied by the Government, the minimum wage is revised when there are changes in all the factors which were taken into account in fixing it. However, a decision still needs to be taken on a policy for the indexation of wages following consultation of the representative organisations of the employers and workers concerned. In *Canada*, according to information furnished by the Government, the minimum federal wage is adjusted sporadically in the light of social and economic factors. Nor is there a specific frequency in the provinces.¹⁰⁷

¹⁰¹ (1), s. 7(1).

¹⁰² (1), s. 7.

¹⁰³ (4), ss. 3 and 4.

¹⁰⁴ (1), s. 142(1).

¹⁰⁵ (1), s. 7(IV).

¹⁰⁶ (5), s. 9.

¹⁰⁷ For example, in British Columbia adjustments have been made annually over the last three years; in New Brunswick, adjustments have taken place four, three, and two times, respectively, since the adoption of the Employment Standards Act, the Annex of the Crown Construction Work Regulation, and the Residential Summer Camp Regulation; in Newfoundland, minimum wages are reviewed every two years, and real increases are granted when the provincial government considers them economically justified; in Ontario and Quebec the minimum wage has been reviewed annually since 1986; the same frequency is found in the Yukon. Finally, in Saskatchewan minimum wages are adjusted sporadically.

310. In *Chile*, according to information furnished by the Government, the amount of the minimum income is adjusted by law at least once a year, in the light of economic and social conditions. National legislation also stipulates that statutory readjustments shall not apply to the remuneration and benefits stipulated in collective labour agreements, or in arbitration awards in connection with collective bargaining.¹⁰⁸ In *Colombia*, according to information furnished by the Government, the statutory minimum wage is decreed annually. In *Côte d'Ivoire*, the occupational organisations may ask the Minister of Employment and the Civil Service to convene an advisory labour committee to submit conclusions to the Government with a view to deciding whether the guaranteed minimum inter-occupational wage should be increased. If it is decided to revise the wage rates, the Government will also revise the minimum wages of workers in occupations not governed by collective agreements, such as agricultural workers. In *Cuba*, the Government has indicated that minimum wages are not adjusted with any pre-established frequency. In practice, the minimum wage is adjusted as needed, according to studies carried out for that purpose, taking into account the possibilities afforded by the country's level of economic and social development. In the *Dominican Republic* the national legislation provides that minimum wage rates for each economic activity are to be revised *ex officio* by the National Wages Committee at least once every three years, and that the Committee may in no case consider any request for revision by employers or workers before the rates have been in force for one year.¹⁰⁹ However, if either of the parties demonstrates that the application of a wage rate is prejudicial to it and that this prejudice is affecting the national economy, the National Wages Committee may revise the rate before this period has elapsed, changing it at the request of either or both of the parties concerned. According to information supplied by the Government, in practice the Committee has found it necessary to establish two minimum wage rates in one year at the request of the different social partners or of any of its members (employer, worker or government sector).

311. In *France* the frequency of minimum wage (SMIC) adjustments is linked to trends in the national consumer price index. The index is approved by decree of the Council of Ministers, acting on the recommendations of the National Collective Bargaining Committee. The SMIC is adjusted whenever the index shows a variance of 2 per cent or more with respect to its level on the occasion when the SMIC was last adjusted. In such a case, the minimum wage is adjusted automatically and in proportion to the real price increase.¹¹⁰ In addition, in order to ensure that lowest income wage-earners share in the benefits of the country's economic growth, the Government may, after consulting the National Collective Bargaining Committee, make additional annual adjustments (on 1 July) to the SMIC.¹¹¹ Lastly, during the course of the year or in connection with the annual balance, and after consulting the above-mentioned Committee, the Government may set the SMIC at a higher rate than would result from the straightforward application of the adjustment machinery described above.¹¹² It should be mentioned that legislation prohibits the inclusion

¹⁰⁸ (1), s. 42.

¹⁰⁹ (1), s. 424.

¹¹⁰ (2), s. L.141-3.

¹¹¹ (2), s. L.141-4.

¹¹² (2), s. L.141-7.

in collective agreements of clauses which call for the adjustment of wages as a function of or by reference to changes in the SMIC.¹¹³ It would seem that this prohibition aims at ensuring the effectiveness of the policy of increasing low wages, and at avoiding a destabilisation of automatic adjustments.¹¹⁴ In *Spain* the minimum inter-occupational wage is normally reviewed each year.¹¹⁵ In addition, minimum wage rates must be reviewed semi-annually where the forecasts for the consumer price index prove to be inaccurate.¹¹⁶ In this connection, the Trade Union Confederation of Workers' Committees (CCOO) states in its observations on the situation of national law and practice regarding minimum wages, that the Government has been failing to comply with its obligation to undertake such semi-annual reviews whenever its consumer price index forecasts prove inaccurate. Similarly, the General Union of Workers (UGT) states that the Government has failed to proceed with semi-annual reviews in any of the recent years in which official estimates of price increases have underestimated actual increases.

312. In *Guatemala* national legislation provides for the periodic fixing of the minimum wage, but does not specify the frequency.¹¹⁷ According to information furnished by the Government, the minimum wage must be reviewed every six months. In addition, workers and employers in a given intellectual, industrial, agricultural, livestock or commercial activity, representing at least 10 employers and 25 workers, may request the competent joint minimum wage committee to review the minimum wage specified in a current agreement.¹¹⁸ In *Honduras* national legislation provides that minimum wages shall be reviewed at least once every three years from the date they were fixed or last revised.¹¹⁹ However, according to information furnished by the Government, in practice these wages have been revised at intervals ranging from six months,¹²⁰ to eight years and six months¹²¹ between the first revision to the sixth. In *India*, the national legislation provides that the appropriate government shall review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages and revise them if necessary.¹²² However, according to the information supplied by the Government, the central Government and most of the states follow the recommendations of the Labour Ministers' Conference of 1980, according to which minimum wage rates should be reviewed every two years or when the consumer price index reaches 50 points.

313. In *Israel* the minimum wage is adjusted once each year so as to ensure that it corresponds to 45 per cent of the average of wages in the country, and also during the year to take account of changes in the cost of living.¹²³ In

¹¹³ (2), s. L.141-9.

¹¹⁴ Starr, *op. cit.* p. 126.

¹¹⁵ (1), s. 27(1). Since 1969, according to information furnished by the Government, inflation has made it necessary only four times to revise the minimum wage twice in one year (from 1976 to 1979).

¹¹⁶ (1), s. 27(1).

¹¹⁷ (2), s. 103.

¹¹⁸ (2), s. 110(c).

¹¹⁹ (3), s. 35.

¹²⁰ Between the fifth and sixth revisions.

¹²¹ Between the fourth and fifth revisions.

¹²² (1), s. 3(1)(b).

¹²³ (1), ss. 4 and 5.

Italy the national legislation stipulates the method of calculation to be applied for national collective agreements providing for machinery for the automatic adjustment of wages with reference to the cost of living.¹²⁴ In *Luxembourg* minimum wages are increased every two years and adapted periodically with reference to variations in the cost of living. A two-and-half point increase or decrease in the cost-of-living index within the past six months entails a corresponding change in these wage rates.¹²⁵

314. In *Mexico* minimum wages are fixed every year and enter into force on 1 January of the following year. The minimum wages may be revised at any time during the time they are in force, provided that the revision is justified by economic circumstances. This revision may come at the initiative or request of the Secretary of Labour and Social Welfare, addressed to the President of the National Minimum Wage Commission, or at the request of trade unions and federations and confederations of workers or of employers, subject to compliance with certain statutory requirements.¹²⁶ In *Nicaragua* the minimum wage is fixed periodically and may be reviewed on the request of at least ten employers or 25 workers or two trade union organisations in the same economic activity. The National Minimum Wages Commission adjusts the minimum wage in line with changes in the exchange rate or in the economic and social conditions prevailing at the time the rate was fixed.¹²⁷ In *Panama* the legislation provides that the minimum wage shall be fixed periodically, at least once every two years.¹²⁸ In addition, during the life of the decree which fixes the minimum wage, requests for adjustments to the minimum wage may be addressed to the National Minimum Wage Commission.¹²⁹ In *Peru* the Constitution provides that the minimum living wage is to be adjusted periodically by the State with the participation of the representative organisations of workers and employers when circumstances require.¹³⁰ When there are substantial changes in the factors used as a basis for its determination, the National Committee on the Minimum Living Wage decides on new levels at which this wage is to be fixed.¹³¹

315. In the *Netherlands*, according to information furnished by the Government, minimum wages are adjusted two times a year, on 1 January and 1 July, based on changes in the wage rates of private sector collective agreements. In addition, every three years consideration is given to the need for a real increase in minimum wages, based on general wage trends and in the light of special reasons which would justify such an increase. Nevertheless, the Government reports that it has submitted a Bill to Parliament which would modify this wage adjustment machinery without, however, explaining the reason for the proposal or describing its substance. In *Norway*, collective agreements in which minimum wages are fixed are negotiated annually. In *Portugal* the guaranteed minimum wage must be reviewed annually.¹³² In the *United Kingdom*, as regards industry and trade, according to information furnished by the Government with respect

¹²⁴ (3) and (4).

¹²⁵ (1), s. 3, and (2), s. 11.

¹²⁶ (2), s. 570.

¹²⁷ (3), ss. 4 and 7(4) and (5).

¹²⁸ (2), s. 174.

¹²⁹ (4), s. 20(b).

¹³⁰ (1), s. 43(1).

¹³¹ (3), s. 21.

¹³² (5), s. 9(1).

to Great Britain, most wage councils meet once or twice a year. The first meeting is held to formulate proposals on minimum wage rates, while the second is held to examine any comments received in this connection. As regards agriculture, according to information furnished by the Government, the competent agricultural wage boards for England and Wales, Scotland and Northern Ireland meet once a year to fix minimum wages.

316. In the *Philippines* wages are not generally reviewed until a year after they have been in force. However, under special conditions such as an increase in the price of petroleum products and basic goods and services, it may be necessary to review the wage before this period has elapsed. In *Sri Lanka*, according to information supplied by the Government, minimum wages are adjusted with reference to increases in the cost of living; this may be done every year or every two years. The private sector generally follows the Government's decisions on wage increases. The rates of minimum wages payable to workers in shops and offices may not be reviewed before one year has elapsed since the date on which they were last fixed.¹³³ In *Suriname* a collective agreement may not be made for more than three years at a time, but it may be extended on condition, however, that the parties do not remain bound by the agreement for more than three consecutive years from the date on which the extension was granted.¹³⁴ In the *Syrian Arab Republic* the national legislation provides that minimum wages in the agricultural sector are to be adjusted each year; where necessary, extraordinary sessions of the competent committees are convened by the Minister or *muhafez*.¹³⁵ Minimum wages in industry and commerce are normally adjusted each year.¹³⁶ In exceptional circumstances, such as an economic crisis, monetary inflation or a considerable rise in the cost of living, the Minister may convene all the committees to a general assembly to discuss changes in wages.¹³⁷

317. In *Czechoslovakia* the general agreement provides that minimum wages shall be adjusted in the same proportion as the average increase in the cost of living whenever this increase is greater than 5 per cent.¹³⁸ The Government also states that the question of indexing the minimum wage will be re-examined with the social partners. In *Ukraine*, according to information supplied by the Government, wages, including the minimum wage, are adjusted with reference to the increase in retail prices. The Government also states that draft legal texts are being prepared governing minimum wages and the indexation of incomes with reference to rates of inflation in the prices of goods and services. In *Yugoslavia*, according to information supplied by the Government, all general collective agreements concluded at the level of the republics provided for a wage increase of 0.5 per cent per annum. Moreover, in the event of economic difficulties, it is possible to pay a wage lower than the level fixed in the collective agreement, but not less than 80 per cent of this level.

318. Mention may also be made of other cases in which the information supplied by governments or national legislation is limited to indicating that minimum wages are reviewed or adjusted from time to time, either regularly or

¹³³ (2), s. 26(1).

¹³⁴ (1), s. 19.

¹³⁵ (2), s. 84.

¹³⁶ (1), s. 158.

¹³⁷ (1), s. 159.

¹³⁸ (3), s. 10(5)(b).

whenever the competent authority deems it necessary;¹³⁹ that these reviews or adjustments may be made every three months;¹⁴⁰ every six months;¹⁴¹ each year;¹⁴² every two years;¹⁴³ every three years;¹⁴⁴ or with no periodicity.¹⁴⁵

2. Research, surveys and statistics

2.1. Provisions of the instruments

319. The fixing or adjustment of minimum wage rates must be based on certain specific economic and social criteria. Consequently, it is essential to have reliable information, particularly as regards national economic conditions. The report of the Meeting of Experts on minimum wage fixing and related problems highlighted the importance of undertaking surveys as regards such conditions to show when a rise in minimum wage rates would be compatible with development objectives.¹⁴⁶ It is not sufficient to define the factors or elements which are to serve as the basis for fixing or adjusting minimum wages if specific and current information on such factors and elements is not available.

320. Unlike the Conventions, the three Recommendations under consideration provide, each in its own way, for research and surveys. Recommendation No. 30 provides that, whatever form minimum wage fixing machinery may take, it should operate "... by way of investigation into the relevant conditions in the trade or part of trade concerned and consultation with the interests primarily and principally affected, that is to say, the employers and workers in the trade or part of trade ..." (Part II, Paragraph 1). Recommendation No. 89 contains a similar provision which states that "minimum wage fixing machinery in agriculture should operate by way of investigation into conditions in agriculture and related occupations, and consultation with the parties who are primarily and principally concerned, namely employers and workers, or their most representative organisations, where such exist" (Part II, Paragraph 3). Finally, Recommendation No. 135 provides that "in order to assist in the application of Paragraph 11 of this Recommendation, periodical surveys of national economic conditions, including trends in income per head, in productivity and in employment, unemployment and underemployment, should be made to the extent that national resources permit", and that "the frequency of such surveys should be determined in the light of national conditions" (Part V, Paragraph 13). In addition, it recommends that "to the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those mentioned in Paragraph 3 of this Recommendation, and their probable evolution" (Part IV, Paragraph 10).

¹³⁹ *Egypt; Ghana; Guyana; Mozambique; Trinidad and Tobago* (1), s. 11.

¹⁴⁰ *Poland; Romania*, when the increase in prices is higher than 5 per cent.

¹⁴¹ *Ecuador*, with respect to the minimum living wage, (2), s. 134.

¹⁴² *Burundi; Ecuador*, with respect to sectoral minimum wages, (2), s. 130; *Islamic Republic of Iran* (1), s. 41; *Japan; Mauritius; Morocco; New Zealand* (2), s. 3; *Swaziland; Tunisia*.

¹⁴³ *Equatorial Guinea* (1), s. 57(1); *Indonesia* (1); *Japan*, with respect to wages of homeworkers; *Turkey* (2), s. 33; *Zambia; Zimbabwe*.

¹⁴⁴ *San Marino*, with respect to the negotiation of collective agreements.

¹⁴⁵ *Mauritania*.

¹⁴⁶ ILO: *Meeting of Experts of 1967*, para. 85.

321. These instruments therefore contain recommendations concerning the fixing of minimum wages. However, only Recommendation No. 135 expressly advocates that surveys should be undertaken for the purpose of adjusting minimum wages. The Committee considers that surveys, research and the collection of statistical and other data should, in principle, be carried out whenever minimum wages are to be adjusted, with such adaptations as may be needed in connection with the fixing of minimum wage rates. In this connection, the Committee recalls that the Labour Statistics Convention, 1985 (No. 160), calls for the compilation and publication of data which are indispensable for the fixing of wages. The Committee takes this opportunity to call on governments to ratify this Convention.

2.2. National law and practice

322. Many States have legislation on the compilation of labour statistics, whether in application of the relevant international instruments,¹⁴⁷ or for the State's own purposes. The Committee will refer exclusively to the information furnished by governments on this subject. Some governments mention legislative provisions concerning research, surveys and statistics in connection with minimum wages, while others merely refer to existing practice. The Committee will refer to both law and practice.

323. Surveys and studies and the compilation of statistical data on economic and social conditions are generally carried out by one or more administrative bodies, which may or may not be exclusively competent for such matters as statistical, economic, wage or labour matters in general. In *Angola*, the competent body is the Ministry of Planning; in *Argentina*, the National Basic Minimum Wages Board¹⁴⁸ and the National Institute of Statistics and the Census; in *Australia*, the Australian Bureau of Statistics; in *Belgium*, the secretariat of the Central Economic Council; in *Botswana*, the Central Statistical Office and the Employment Policy Unit; in *Brazil*, the Brazilian Geography and Statistics Institute (IBGE);¹⁴⁹ in *Bulgaria*, the National Statistical Service; in *Chad*, the Services of the Labour Inspectorate, Economic Affairs and Trade Unions; in *Chile*, the National Statistics Institute; in *Côte d'Ivoire*, the Directorate of Statistics and National Accounts; in *Cuba*, the State Statistics Committee; in *Czechoslovakia*, the Federal Statistical Bureau, the Czech Statistical Bureau and the Slovak Statistical Bureau;¹⁵⁰ in *Ecuador*, the Central Bank, the National Institute of Statistics and the Census (INEC) and the National Institute of Employment (INEM); in *Equatorial Guinea*, the General Directorate of Statistics of the Ministry of the Economy, Commerce and Planning; in *France*, the Ministry of Labour and the INSEE; in *Gabon*, the Directorate of Statistics of the Ministry of Planning; in *Germany*, the Federal Statistics Office and the statistical offices of the various *Länder*; in *Ghana*, the Statistical Service; in *Guatemala*, the National Wage Department's economic studies section; in *Guinea*, the National Statistical Service of the Ministry of Planning and International Co-operation, the National Directorate of Labour and Social Legislation and the National Employment and

¹⁴⁷ The Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63), and the Labour Statistics Convention, 1985 (No. 160).

¹⁴⁸ (3), s. 8(c).

¹⁴⁹ (5), s. 9(II).

¹⁵⁰ (3), s. 10(6).

Manpower Bureau; in *Honduras*, the General Directorate for Wages;¹⁵¹ in *India*, the Labour Bureau; in *Israel*, the Central Bureau of Statistics; in *Japan*, the Prefectural Labour Standards Office; in *Luxembourg*, the Common Social Security Centre; in *Mexico*, the Technical Office of the National Minimum Wage Committee;¹⁵² in *Myanmar*, the Central Statistical Organisation; in the *Netherlands*, the Central Statistics Office; in *Nicaragua*, the National Commission on the Cost of Living, the Directorate of Wages and Employment of the Ministry of Labour, the Nicaraguan Institute of Statistics and the Census (INEC), the Department of Social Welfare of the General Inspectorate of Labour and other similar bodies;¹⁵³ in *Pakistan*, the Federal Bureau of Statistics; in *Peru*, the National Institute of Statistics and Computer Science;¹⁵⁴ in the *Philippines*, the National Statistics Office and the Bureau of Labor and Employment Statistics; in *Poland*, the Central Statistical Office; in *Portugal*, the Permanent Social Concertation Council;¹⁵⁵ in *Romania*, the National Statistical Commission and the Departmental Statistical Commissions; in *Spain*, the National Statistics Institute, which comes under the Ministry of the Economy; in *Sri Lanka*, the Department of Labour, Census and Statistics, the Ministry of Policy Planning and the Statistical Department of the Central Bank of Sri Lanka; in *Sudan*, the Higher Wages Council; in the *Syrian Arab Republic*, the Directorate of National Accounts and the Directorate of Social and Population Statistics of the Central Statistical Bureau; in *Tunisia*, the Ministries of Planning and Social Affairs and the National Statistical Institute; in *Turkey*, the State Institute of Statistics of the Prime Ministry; in *Uganda*, the Ministry of Planning and Economic Development; in the *United Kingdom*, the Ministry of Employment and, as regards agriculture, the Ministry of Agriculture, Fisheries and Food (MAFF),¹⁵⁶ the Department of Agriculture for Northern Ireland, and the Economics and Statistics Unit of the Scottish Office of the Agriculture and Fisheries Department; in the *United States*, at the federal level, the Bureau of Labor Statistics and the Employment Standards Administration of the Department of Labor; in *Zambia*, the Prices and Incomes Commission.

324. In some countries bodies other than public agencies undertake studies, research and surveys, and compile statistical data. In *Brazil* these bodies are found among trade union and employer circles. In *Mexico* information may also be obtained from trade union organisations as well as private social and economic research institutions, chambers of commerce and industry, and other similar institutions.¹⁵⁷ In *Tunisia* the trade unions send information to the National Commission on Guaranteed Minimum Wages.

325. In countries where minimum wage fixing machinery includes the participation of wage boards or commissions, joint commissions or other similar bodies, it is common for such boards, commissions or bodies to undertake investigations, studies and surveys on the situation in a given industry, requesting information from enterprises and persons concerned, as well as trade union and employers' organisations. This is the case in *Bangladesh*, *Guatemala*, *Malta*,

¹⁵¹ (3), s. 7(b) and (d).

¹⁵² (2), s. 562.

¹⁵³ (2), s. 341(5), and (3), s. 7(1).

¹⁵⁴ (3), s. 15(a).

¹⁵⁵ (9), s. 2(2).

¹⁵⁶ For England, Wales and Scotland.

¹⁵⁷ (2), s. 562.

Pakistan, the Philippines and the United Kingdom (as regards industry and trade).

326. As regards the content and type of studies, research and surveys, national legislation and practice vary considerably. In *Belgium, Guatemala, Mexico, Portugal and Romania* national legislation or information furnished by the governments shows only that the information collected is economic or social in nature. In other countries, legislation or government replies contain greater details as regards the content and type of studies and surveys, as well as statistical data. These refer in general, but not exclusively, to workers' incomes or trends in income (*Argentina, Germany, Ghana, Israel, Mauritius, Pakistan, Spain, Syrian Arab Republic, United Kingdom and United States*¹⁵⁸), the average level or trends in wages or purchasing power of the minimum wage (*Argentina, Brazil, Chile, France, Hungary, Japan, Morocco, Netherlands, New Zealand, Nicaragua, Philippines, Spain, Sudan, United Kingdom and United States*¹⁵⁹), price trends (*Argentina, Brazil, Chile, Côte d'Ivoire, France, Gabon, Guinea, Hungary, Japan, Spain, Syrian Arab Republic, United States*¹⁶⁰), conditions of employment or trends in the labour market (*France, Ghana, Guinea, Honduras*¹⁶¹, *Israel, Morocco, Mozambique, Namibia, Pakistan, Philippines, United States*¹⁶²), the cost or standard of living of the population (*Argentina, Botswana, Cuba, Ghana, Honduras, Hungary, Nicaragua*¹⁶³, *Namibia, Peru*¹⁶⁴, *Philippines, Spain, Trinidad and Tobago, Tunisia, Turkey and United Kingdom*), the proportion of workers earning the minimum wage (*France*), national accounts (*Honduras*), and the number of hours worked (*Guinea, Japan, United Kingdom and United States*¹⁶⁵), productivity (*Ghana, Mauritius, Philippines, Syrian Arab Republic, United States*¹⁶⁶), investments and returns (*Philippines*), poverty (*Trinidad and Tobago*) and the informal sector (*Trinidad and Tobago*).

D. Impact of national and international economic changes on minimum wage fixing and adjustment

327. One of the fundamental objectives of the instruments in question, aside from guaranteeing workers a minimum wage to meet their needs, is to preserve the purchasing power of that wage. Both the criteria set forth in the instruments as regards minimum wage fixing and adjustment, as well as the timing and frequency of this adjustment, help to achieve this objective.

328. The fixing and adjustment of minimum wages is contingent on several microeconomic and macroeconomic factors. Macroeconomic factors seem to have acquired a special importance in recent years, although it is true that Con-

¹⁵⁸ At the federal level.

¹⁵⁹ At the federal level.

¹⁶⁰ At the federal level.

¹⁶¹ (3), s. 7(b) and (d).

¹⁶² At the federal level.

¹⁶³ (2), s. 341(5).

¹⁶⁴ (3), s. 15(a).

¹⁶⁵ At the federal level.

¹⁶⁶ At the federal level.

vention No. 131 had already recognised the links between macroeconomic variables and minimum wage fixing.¹⁶⁷

329. These macroeconomic factors have shaped a new reality which directly or indirectly affects minimum wage fixing and revision. It should be recalled that the drastic fall in the price of certain commodities at the international level led to a series of imbalances at the national level, thereby affecting the social policy of the countries concerned. At the same time, the problem of foreign debt grew more acute (more so in some countries than in others); the need to meet their financial obligations placed these countries under significant economic strain. The usual response to this situation was to seek national economic recovery through the so-called "structural adjustment" programmes; these programmes also had an impact on social policy, and on wage policy in particular, and, therefore, on the application of relevant Conventions.¹⁶⁸

330. In a trend that may be attributed to these problems, workers' organisations have for some years been notifying the Committee of Experts cases of the failure to apply, in whole or in part, the minimum wage Conventions in question; in reply, governments have often justified their position by citing their countries' economic situation, foreign debt, and structural adjustment policies. Some of these problems have been examined by the Committee as regards the application of the Employment Policy Convention, 1964 (No. 122);¹⁶⁹ in other cases these problems have been brought before other supervisory bodies of the ILO as regards the application of other instruments, such as Convention No. 131.¹⁷⁰

331. In this connection, the Committee recalls its position that, in evaluating national law and practice in relation to the requirements of ILO Conventions, the Committee's function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries.¹⁷¹ It is from this perspective that the Committee has examined and will continue to examine the question discussed in the foregoing paragraphs.

332. Questions concerning the consequences of mounting foreign debt, of structural adjustment or of economic recovery policies, have been raised on se-

¹⁶⁷ Article 3(b).

¹⁶⁸ See ILO: *Background document* (WEP 2-46-04-02 (doc. 2)), Tripartite Preparatory Meeting on Employment and Structural Adjustment, Geneva, 27-28 April 1987; and ILO: *Employment policies in the economic restructuring of Latin America and the Caribbean* (WEP 1-4-07 (doc. 1)), Caracas, 1991.

¹⁶⁹ See the *Report of the Committee of Experts* for the following years: 1985, pp. 14 to 19; 1986, pp. 20 to 24; 1987, pp. 30 and 31; 1988, pp. 17 to 19; 1989, pp. 19 to 21; 1990, pp. 17 to 21.

¹⁷⁰ See Report of the committee set up to examine the representation made by the Confederation of Costa Rican Workers (CTC), the Authentic Confederation of Democratic Workers (CATD), the United Confederation of Workers (CUT), the Costa Rican Confederation of Democratic Workers (CCTD) and the National Confederation of Workers (CNT), under article 24 of the Constitution, alleging the failure by Costa Rica to observe international labour Conventions Nos. 81, 95, 102, 122, 127, 130, 131, 138 and 144. ILO: *Official Bulletin*, Special Supplement 3 1985, Vol. LXVIII, series B, 1985. See, in particular, paras. 39-47.

¹⁷¹ ILO: *Report of the Committee of Experts*, 1987, para. 20.

veral occasions within the International Labour Conference. The Conference has adopted a number of resolutions which, in one form or another, concern the need to protect the income levels of workers and the purchasing power of their wages, and to improve the situation of the most disadvantaged groups.¹⁷² These resolutions have also recalled the obligation of member States which have ratified the instruments in question to comply with international labour standards concerning wages. In addition, a number of regional conferences have examined this issue.¹⁷³

333. The Committee notes that the Governing Body has examined this problem on several occasions.¹⁷⁴ The Committee notes the Governing Body's statement once again at its 251st Session (November 1991) that a minimum wages policy should provide the wage floor of the wage structure, and serve also as a social safety net.¹⁷⁵

334. The review of information furnished by governments shows that few of them referred to the impact which structural adjustment programmes may have on wage policies and, in particular, on minimum wage fixing and adjustment; likewise, few governments referred to the difficulties which may arise from such structural adjustment programmes. Other States referred to this question indirectly, stating only that efforts have been made to protect minimum wages in structural adjustment processes,¹⁷⁶ even when minimum wages have been kept at a low level in application of these processes¹⁷⁷ or providing for moderate wages in conjunction with the services of the IMF.¹⁷⁸ Other countries have spoken of an objective to be attained, expressing the hope that structural adjustment programmes will take account of the needs of workers and their families,

¹⁷² Resolution concerning the relations between international trade and employment, ILO: *Official Bulletin*, Vol. LIV, 1971, Series A, No. 3, p. 269; Resolution concerning the convocation by the ILO of a tripartite world conference on employment, income distribution, social progress and the international division of labour, *ibid.*, Vol. LVII, 1974, Series A, No. 1, p. 42; Resolution concerning industrialisation, the guarantee of employment and the protection of the incomes of workers, *ibid.*, Vol. LVIII, 1975, Series A, No. 1, p. 84; Resolution concerning development, foreign debt and the social objectives of the ILO, *ibid.*, Vol. LXIX, 1986, Series A, No. 2, p. 102; Resolution concerning rural employment promotion, *ibid.*, Vol. LXXI, 1988, Series A, No. 2, p. 105; and Resolution concerning structural adjustment, industrial relations and economic and social development, *ibid.*, Vol. LXII, 1991, Series A, No. 2, p. 74.

¹⁷³ See, for example, the Resolution adopted by the Seventh African Regional Conference (1988): Resolution concerning economic development and social progress in Africa, *Official Bulletin*, Vol. LXXII, 1989, Series A, No. 3, p. 121; the resolutions adopted by the Regional Conference of American States Members of the International Labour Organisation at its 10th and 12th Sessions (1974 and 1986): Resolution concerning social development and employment in the Americas, *ibid.*, Vol. LVIII, 1975, Series A, No. 2, p. 169; Resolution concerning growth, development and foreign debt, *ibid.*, Vol. LXX, 1987, Series A, No. 1, p. 57; and the resolution and conclusions adopted by the Tenth and Eleventh Asian Regional Conferences (1985): Resolution concerning the action of the International Labour Organisation in respect of restrictive trade policies and their effects on employment, *ibid.*, p. 41, and Conclusions on Growth and Structural Adjustment (doc. GB.252.6/6, Geneva, March 1992, pp. 20 to 28).

¹⁷⁴ In particular, at its 248th Session (November 1990): see document entitled *Wages, labour costs and their impact on adjustment, employment and growth* (doc. GB.248/CE.2/1, Geneva, Nov. 1990); see also doc. GB.248.16.27, Nov. 1990, GB.244/CE/3.4, Geneva, Nov. 1989 and the *Report of the Tripartite Symposium on Structural Adjustment, Employment and Training in Latin America and the Caribbean* (doc. GB.251/CE/3/1, Geneva, Nov. 1991).

¹⁷⁵ GB.251/CE/3/1, Appendix I, Geneva, Nov. 1991, paras. 16-19.

¹⁷⁶ *Egypt; Ghana; Morocco; Myanmar; Pakistan; Rwanda; Zambia.*

¹⁷⁷ *Burundi; Ghana.*

¹⁷⁸ *Rwanda.*

among other things¹⁷⁹ or remarking that they are aware of the problems in connection with the minimum wages of workers when structural adjustment programmes are embarked on.¹⁸⁰

335. The governments of certain countries¹⁸¹ have stated that they are preparing five-year plans which, in addition to the needs of workers and their families, take account of the exigencies of economic development and productivity, and that they have taken the necessary steps at the national level to guarantee the effective application of the provisions on minimum wages.

336. Certain governments have stated that minimum wages constitute an important aspect of policies aimed at eradicating poverty,¹⁸² or that minimum wage fixing should take account of the concept of the "poverty threshold" or "poverty wage".¹⁸³ The governments of other countries state that provision is made within structural adjustment or reform programmes for the maintenance of minimum wage levels to ensure that workers and their families can effectively meet their basic needs,¹⁸⁴ and at the same time that they take into account the needs arising from the maintenance of employment levels.¹⁸⁵ Other governments report that they have a national development plan or programme which implies growth in economic activity and the existence of stable and well-paid jobs, through actions which protect employment and the real wages of workers, although they admit that they are considering measures to make minimum wages more flexible within the context of their adjustment programmes.¹⁸⁶

337. The governments of other countries where economic, social and political changes are taking place have stated that reform projects, which include a structural readjustment of the economy, have taken account of the needs of workers and their families, as well as the utilisation of existing production capacity, the maintenance of investment and the elimination of unemployment. They have also stated that, in order to strengthen the social protection of the workers in the period of transition to a market economy, laws have been adopted on minimum consumer budget levels and minimum wages, bearing in mind rates of inflation which result from the liberalisation of the prices of goods and services, among other things.¹⁸⁷ Finally, one government¹⁸⁸ considered that minimum wages should be regarded as an important part of social security in that they should help to compensate for the negative effects of the current economic reforms.

338. The governments of a number of countries expressed their concern at the repercussions that minimum wages could have on the labour market, in that they could be a factor causing unemployment,¹⁸⁹ cause difficulties for certain en-

¹⁷⁹ *Swaziland.*

¹⁸⁰ *Uganda.*

¹⁸¹ *Syrian Arab Republic, Turkey.*

¹⁸² *Brazil.*

¹⁸³ *India, Peru.*

¹⁸⁴ *Cuba, Honduras.*

¹⁸⁵ *Honduras.*

¹⁸⁶ *Australia; New South Wales; Mexico; Nigeria; Philippines; Trinidad and Tobago; Zimbabwe.*

¹⁸⁷ *Belarus, Bulgaria, Czechoslovakia, Hungary, Mozambique, Romania, Ukraine.*

¹⁸⁸ *Czechoslovakia.*

¹⁸⁹ *Czechoslovakia, Ghana, Morocco.*

terprises¹⁹⁰ or affect competitiveness on the international market.¹⁹¹ For this reason, one government indicated that rises in minimum wages have to be treated with a certain vigilance. At the same time, self-employment should be encouraged, activities developed which increase the mobility of manpower and involve employers' and workers' organisations.¹⁹² Other governments¹⁹³ have stated that the implementation of structural adjustment programmes has not prevented minimum wages from rising.

339. The Committee observes that, according to information supplied by governments, practically all those which referred to this topic, whether directly or indirectly, stated that employers' and workers' organisations were consulted or were participating in the implementation of structural adjustment programmes and projects.

340. In referring to the observations formulated by workers' organisations from certain countries as regards this topic, the Committee has pointed that although the measures adopted by governments may tend to stabilise labour costs through a certain freezing of minimum wages, with a view to improving the national economy and raising employment levels and fighting unemployment, governments should nevertheless comply with and apply the provisions of Article 3 of Convention No. 131 when fixing minimum wage levels.¹⁹⁴ Secondly, the Committee has emphasised the need to take into account the elements laid down in legislation in force, which give effect to the provisions of Article 3 of Convention No. 131, with a view to avoiding discrepancies between minimum wage levels and the criteria stipulated for fixing them, in particular when minimum wage levels do not keep pace with changes in the consumer price index.¹⁹⁵

341. Aside from the question of the impact of wage and minimum wage policies on the job market and on labour costs, and taking into account the principle which, as noted above, guides the Committee's activities, it would seem important to emphasise the need always to bear in mind the elements provided for in Article 3 of Convention No. 131 when fixing minimum wage levels, in order to guarantee that these levels will comply with the objectives which the various instruments have set for minimum wages. Likewise, it is important to recall that minimum wages play an increasingly important role in the social protection network,¹⁹⁶ which means that minimum wages should maintain their purchasing power in relation to a basic basket of essential consumer goods.¹⁹⁷

¹⁹⁰ *Angola, Czechoslovakia.*

¹⁹¹ *Ecuador.*

¹⁹² *Trinidad and Tobago.*

¹⁹³ *China, Tunisia.*

¹⁹⁴ *Report of the Committee of Experts, 1989, observation concerning the Netherlands, p. 448.*

¹⁹⁵ *Report of the Committee of Experts, 1990, observations concerning Spain and Uruguay, pp. 407 and 411; and 1991, observation concerning Uruguay, p. 444.*

¹⁹⁶ *Santiago González Ortega: "Rapport National. Espagne", in Les problèmes juridiques de la réglementation et de la mise en oeuvre d'un revenu minimum pour chacun, XIII World Congress of Labour Law and Social Security, Athens, 1991, p. 177.*

¹⁹⁷ *GB.251/CE/3/1, Appendix I, para. 17 (Geneva, Nov. 1991).*

Chapter V

Minimum wage enforcement measures

342. Throughout the preparatory work on the instruments being examined here and the discussions at the Conference which led to their adoption, the need was repeatedly expressed for establishing the necessary measures to ensure the effective application of the provisions respecting minimum wages.¹ During the preparatory work on Convention No. 26 it was pointed out that it was clearly impossible to specify for the different countries what constitutes "adequate and appropriate enforcement measures in the terms of the instrument". However, it was pointed out that there would appear to be three essential elements: (a) information to workers and employers on the minimum rates fixed; (b) the establishment of effective forms of sanctions to remedy and prevent infringements of the rates laid down; and (c) the establishment of appropriate supervision of what actually takes place in the trade concerned.² These basic ideas would be developed and extended to cover all the possible aspects of these measures with a view to ensuring compliance with the standards respecting minimum wages and guaranteeing the effective payment of the rates fixed.

343. These instruments thus referred to problems related to the measures to be adopted to ensure that the parties concerned are informed about minimum wages, supervisory machinery and the establishment of sanctions in the event of infringements, the establishment of appropriate procedures to enable workers to recover the sums due to them in respect of the minimum wage, as well as the form of payment of such wages. The Committee will refer to each of these points in the following paragraphs.

1. Form of payment of minimum wages

344. Article 2(1) of Convention No. 99 makes provision for the partial payment of minimum wages in the form of allowances in kind "in cases in which payment in the form of such allowances is customary or desirable". The same Article stipulates in paragraph 2 that in cases in which partial payment of minimum wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that such allowances are appropriate for the personal use and benefit of the worker and his family, and that the value attributed to such allowances is fair and reasonable. This provision incorporated the

¹ See: ILO: Blue Report, ILC, 11th Session, Geneva, 1928, pp. 120-125; ILO: Blue Report, ILC, 10th Session, Geneva, 1927, pp. 44-47; ILO: Report VII(1), ILC, 33rd Session, Geneva, 1950, pp. 28-29; ILO: Report VII(1), ILC, 53rd Session, Geneva, 1968, pp. 46-55; *Report of the Meeting of Experts of 1967*, paras. 88 to 92 and 121 to 124.

² Blue Report, ILC, 11th Session, Geneva, 1929, p. 121.

practice which had been noted in the preparatory report³ and was in line with the provisions of Article 4 of the Protection of Wages Convention, 1949 (No. 95), adopted at the session that took place the year before the preparatory work was begun on Convention No. 99.

345. Although the Office's initial proposal to include a provision of this kind in Convention No. 99 was based on the fact that such practice had been repeatedly observed in different countries, this did not prevent discussion of this point at the Conference, where the Workers' group expressed its intention of establishing a provision prohibiting this form of payment of minimum wages. A number of members of the Committee expressed their concern at the adoption of a provision of this kind. A consensus was finally achieved at the end of the discussion.⁴

346. When this matter was discussed by the Meeting of Experts in 1967, the view was expressed that the ideal solution would be to prohibit the partial payment of minimum wages in kind. However, with account being taken of existing practices and the provisions of Conventions Nos. 95 and 99, the new instrument should contain a provision establishing the partial payment of minimum wages in kind, including a provision requiring the approval by the competent authority for its valuation and for fixing of the maximum percentage of the wage that may be paid in kind.⁵ On the basis of this recommendation, the preparatory report by the Office took this into account and raised a number of questions.⁶

347. Once again during the Conference this point, contained in the proposed instrument which was to become Convention No. 131, was the subject of long discussions. Given the existence of Article 2 of Convention No. 99, which included a provision regulating the payment of minimum wages in kind and a similar provision in Convention No. 95, regarding wages in general, it was considered that the deletion of this question from the proposed Convention under discussion would leave the matter to be dealt with in the legislation of countries which ratified it. The Conference Committee therefore proposed the deletion of this point from the proposed instrument under discussion.⁷ The matter was once again the subject of discussion in the plenary of the Conference,⁸ but the deletion of this point was maintained when the proposed text was discussed again and Convention No. 131 adopted.

348. The matter thus remained regulated by Article 4 of Convention No. 95 and Article 2 of Convention No. 99. In addition, Article 11, paragraph 2, of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) provides that wages shall normally be paid in legal tender only. It also states that where food, housing, clothing and other essential supplies and services form part of remuneration, all practical steps shall be taken by the competent authority to ensure that they are adequate and their cash value properly assessed.⁹

³ See ILO: Report VII(1), ILC, 33rd Session, Geneva, 1950, pp. 39-40.

⁴ See *Record of Proceedings*, ILC, 33rd Session, Geneva, 1950, p. 525.

⁵ See *Report of the Meeting of Experts of 1967*, para. 121.

⁶ See: Report VII(1), ILC, 53rd Session, Geneva, 1968, pp. 46 and 60.

⁷ Report V(1), ILC, 54th Session, Geneva, 1970, p. 10.

⁸ See *Record of Proceedings*, ILC, 53rd Session, Geneva, 1970, pp. 467-473.

⁹ Article 11, para. 7.

349. In some countries it is provided generally that wages shall be paid in cash, as is the case in *Australia*, in Queensland¹⁰ and Victoria,¹¹ *Chile*,¹² *Cuba*,¹³ *Egypt*,¹⁴ *Guatemala*,¹⁵ *Malta*,¹⁶ *Namibia*,¹⁷ *Netherlands*,¹⁸ *Philippines*,¹⁹ *Qatar*,²⁰ *Saudi Arabia*,²¹ *Singapore*²² and *Sri Lanka*.²³

350. In other cases, although provision is made in the legislation for wages to be paid in cash, some provisions of the law suggest that in the end wages will also be partly paid in kind, as is the case in *Australia* in New South Wales,²⁴ the *Bahamas*,²⁵ *Bangladesh*,²⁶ *Benin*,²⁷ *Bulgaria*,²⁸ *Burundi*,²⁹ *Cameroon*,³⁰ *Central African Republic*,³¹ *Côte d'Ivoire*,³² *Djibouti*,³³ *Dominican Republic*,³⁴ *Gabon*,³⁵

¹⁰ (6), s. 17.16(4).

¹¹ (8), ss. 82 and 83.

¹² (1), s. 50; according to explanations given by the Government and in accordance with s. 11 of Decree No. 97 and s. 8 of Legislative Decree No. 670; however, under s. 90 of the Labour Code, wages of agricultural workers may be paid in cash and kind, although the latter may not exceed 50 per cent of remuneration.

¹³ (2), s. 123.

¹⁴ (1), s. 33.

¹⁵ (2), s. 90; however, the same section provides that up to 30 per cent of the wage of rural workers may be paid in the form of articles for personal and immediate consumption by the worker or his family, provided the employer provides them at cost price or less.

¹⁶ (1), ss. 2(1), and 16(1); however, the latter section, which provides that except where otherwise expressly permitted by the provisions of this Act, the entire amount of the wages earned by, or payable to, any employee shall be paid to him in money being legal tender in Malta, suggests that part of the wage may be paid in kind, although nothing indicates that this is in fact the case.

¹⁷ (1), s. 9(p).

¹⁸ (1), s. 6.

¹⁹ (2), s. 102.

²⁰ (1), s. 29(a).

²¹ (1), s. 116.

²² (1), s. 53.

²³ (1), s. 2(a), and (2), s. 19(1)(a).

²⁴ (3), s. 92(1)(a) in conjunction with s. 20(1)(h).

²⁵ (1), s. 14(3).

²⁶ (1), s. 2(8).

²⁷ (1), ss. 80, 81 and 86.

²⁸ (2), s. 269.

²⁹ (1), ss. 71, 75 and 120 to 122.

³⁰ (1), ss. 68 and 74.

³¹ (1), ss. 97 and 94.

³² (1), ss. 81 and 85.

³³ (1), ss. 92 to 94 and 99.

³⁴ (1), s. 246 for the wages of domestic workers.

³⁵ (1), ss. 88 and 99.

Ghana,³⁶ *Guinea*,³⁷ *Guyana*,³⁸ *Honduras*,³⁹ *Italy*,⁴⁰ *Japan*,⁴¹ *Mauritania*,⁴² *Nicaragua*,⁴³ *Romania*,⁴⁴ *Spain*,⁴⁵ *Sudan*,⁴⁶ *Turkey*,⁴⁷ and in the *United States*, federal legislation stipulates that what a worker receives in respect of board and lodging and other facilities from the employer may be considered as part of the wage. However, such benefits shall not be included as part of the wage when collective agreements so provide.⁴⁸ The legislation of some states of the Union contains similar provisions.

351. Mention should be made of the countries in which, as noted above, wages are mainly fixed by means of collective agreements. In these countries the legislation may contain provisions concerning the partial payment of the wage in kind.⁴⁹ In *Greece*, according to information provided by the Government, in practice wages of workers in agriculture include, apart from cash, other benefits, such as food or accommodation, accounting for between 10 and 15 per cent of the wage.

352. The legislation of other countries makes express provision for minimum wages to be paid in cash. This is the case in *Argentina*,⁵⁰ *Equatorial Guinea*,⁵¹ *India*,⁵² *Islamic Republic of Iran*,⁵³ *Mexico*⁵⁴ and *Panama*.⁵⁵ In some cases no provisions have been adopted, although according to information from the governments, the minimum wage may not be paid in kind, as in *Algeria* and *Yugoslavia*.

353. In other countries, however, the legislation explicitly or implicitly allows part of the minimum wage to be paid in kind, as in *Austria*, as regards

³⁶ (2), s. 53.

³⁷ (1), s. 206.

³⁸ (1), s. 18 read together with s. 23 of the same law and s. 13 of Act No. 23 respecting wage councils.

³⁹ (2), s. 361.

⁴⁰ (5), s. 2099.

⁴¹ (3), s. 24(1) in conjunction with wages in general. However, as regards the wages of homeworkers, it is expressly stipulated that wages shall be paid only in cash: (2), s. 6.

⁴² (1), s. 83 in conjunction with s. 89.

⁴³ (2), ss. 72, 78 and 80. However, in accordance with ss. 132 and 247, wages of domestic workers and apprentices may be paid partly in kind.

⁴⁴ (2), s. 7(2).

⁴⁵ The Workers' Statute, s. 26, refers to wages in general and states that all the economic benefits in cash or in kind received by workers shall be considered as wages.

⁴⁶ (1), s. 12(1).

⁴⁷ (2), s. 26.

⁴⁸ (1), s. 3(m).

⁴⁹ *Belgium* (2), s. 6; *Denmark* (1), ss. 5 to 10; *Finland* (1), s. 17; *Iceland* (1), s. 1.

⁵⁰ (2), s. 116.

⁵¹ (1), s. 61(3) *contrario sensu*.

⁵² (1), s. 10(1); however, according to the provisions of paras. 2 and 3 of the same section, the competent authority may authorise payment of part of the wage in kind.

⁵³ (1), s. 42.

⁵⁴ (2), s. 90; however, in the case of domestic workers, s. 334 appears to suggest that payments in kind received by such workers may account for up to 50 per cent of the minimum wage.

⁵⁵ (2), s. 173.

wages in agriculture;⁵⁶ *Brazil*,⁵⁷ *Botswana*,⁵⁸ *Canada*, at the federal level,⁵⁹ and in Alberta,⁶⁰ British Columbia,⁶¹ and Manitoba,⁶² in New Brunswick,⁶³ there would appear to be no provision which expressly permits the payment of the minimum wage in kind, but the Employment Standards Act stipulates that the competent authority may by regulation fix the maximum amount that may be deducted from the minimum wage for the furnishing, inter alia, of board, uniforms or other services; Newfoundland;⁶⁴ similar provisions exist in the legislation of Nova Scotia;⁶⁵ Ontario;⁶⁶ Prince Edward Island;⁶⁷ Quebec;⁶⁸ Saskatchewan.⁶⁹ Provisions respecting the form of payment of the minimum wage are also contained in the legislation of the Canadian Federal Territories: the Northwest Territories;⁷⁰ and the Yukon Territory;⁷¹ *Chad*,⁷² *Colombia*,⁷³ *Fiji*,⁷⁴ *France*,⁷⁵ *India*,⁷⁶ *Kenya*,⁷⁷ *Lesotho*,⁷⁸ *Malawi*,⁷⁹ *Morocco*,⁸⁰ *Mauritius*,⁸¹ *Myanmar*,⁸² *Nepal*,⁸³

⁵⁶ (2), ss. 17 to 21.

⁵⁷ (2), s. 82, which stipulates that the minimum wage paid in cash may not be less than 30 per cent of the minimum wage.

⁵⁸ (1), s. 85, para. 1. Furthermore, in accordance with the Revised National Policy on Incomes, Employment, Prices and Profits, Government Paper No. 1 of 1990, approved by the National Assembly in 1990, payment in kind must continue to be included as part of the minimum wage.

⁵⁹ (1), s. 181(b) and (c), and (2), ss. 20, 21 and 22.

⁶⁰ (4), s. 5, although s. 6 of the Regulation stipulates that employers may not reduce wages below the minimum wage for the furnishing, use, repair or laundering of workers' uniforms.

⁶¹ (5), s. 105, para. 3(a).

⁶² (8), s. 5, stipulates the amount which may be deducted from a worker's wage if the employer provides food or board, although it is not indicated whether these deductions may affect the minimum wage. However, as in Alberta, the employer may not reduce wages below the minimum wage in respect of the uniform provided to his workers: (8), s. 11.

⁶³ s. 9

⁶⁴ (16), ss. 11 and 12; the latter section stipulates that employers may not reduce minimum wages for the furnishing of workers' uniforms.

⁶⁵ (19), s. 7, although s. 13 stipulates that when the uniform is made of wool or similar heavy material requiring dry cleaning, the cost of the cleaning may be charged to the worker, although it is not clear whether this charge may reduce wages below the minimum wage.

⁶⁶ (21), s. 9(2) and (3).

⁶⁷ (25), s. 3.

⁶⁸ (27), s. 6.

⁶⁹ (28), s. 15(4)(e).

⁷⁰ (34), s. 3, which establishes a maximum sum for the amount which may be deducted in respect of food or board provided to the worker, although reductions in the minimum wage may not be made by the employer for the furnishing, cleaning or repair of workers' uniforms.

⁷¹ (36), s. 6.

⁷² (1), s. 151 in conjunction with ss. 144 and 145.

⁷³ (2), s. 129, which stipulates that the amount of the wage paid in kind, in the case of workers who earn the legal minimum wage, may not exceed 30 per cent.

⁷⁴ (1), s. 11.

⁷⁵ (2), ss. D.141-3 and D.141-11.

⁷⁶ (1), s. 11.

⁷⁷ (1), s. 14(2) and (3).

⁷⁸ (1), s. 14(2).

⁷⁹ (1), s. 13(2).

⁸⁰ (6), s. 2, concerning wages of agricultural workers.

⁸¹ (1), s. 96(6).

⁸² (1), s. 13(2).

⁸³ (1), s. 2(o).

*New Zealand;*⁸⁴ *Pakistan;*⁸⁵ *Papua New Guinea;*⁸⁶ *Peru;*⁸⁷ *Poland;*⁸⁸ *Portugal;*⁸⁹ *Rwanda;*⁹⁰ *Syrian Arab Republic;*⁹¹ *Togo;*⁹² *Tunisia;*⁹³ *Uganda;*⁹⁴ *United Kingdom;*⁹⁵

354. In general, the payment in kind of the minimum wage would not appear to give rise to major problems, and in any case the protection of workers against possible abuse should be ensured through the existence of an effective system for the enforcement of minimum wages and an effective inspection service to guarantee compliance with the provisions regulating minimum wages, in particular, and wages in general.

2. Dissemination of information on minimum wage rates

355. Recommendation No. 30 provides that States should adopt measures designed to inform employers and workers of the minimum wage rates in force.⁹⁶ The Recommendation recognises that workers generally have fewer means than employers of informing themselves, and thus provides that in order that workers may be kept informed of the minimum rates at which they are to be paid, employers might be required to display full statements of the rates in force in readily accessible positions on the premises where the workers are employed; and in the case of homeworkers, on the premises where the work is given out or returned on completion, or where wages are paid.

356. This provision in the Recommendation was taken up in Article 4 of Convention No. 99 which establishes that ratifying States shall take the necessary measures to ensure that the employers and workers concerned are informed of the minimum rates of wages in force. This provision is extended and made more specific in Recommendation No. 89, which establishes that for effectively protecting the wages of the workers concerned, the measures to be taken to ensure that wages are not paid at less than the minimum rates fixed should include arrangements for giving publicity to the minimum wage rates in force, and in particular for informing the employers and workers concerned of these rates in the manner most appropriate to national circumstances.⁹⁷

⁸⁴ (2), ss. 4(2) and 7(1).

⁸⁵ (1), s. 2(8), and (2), ss. 6 and 7.

⁸⁶ (2), Appendix 2, ss. 2 and 3.

⁸⁷ (8), ss. 10 and 11.

⁸⁸ In accordance with the Decree adopted by the Government in August 1990.

⁸⁹ (5), s. 1(3), (4) and (5).

⁹⁰ (1), s. 91 in conjunction with s. 84.

⁹¹ (2), s. 87, respecting the minimum wages of agricultural workers.

⁹² (1), s. 95 in conjunction with s. 89.

⁹³ (1), ss. 135 and 139.

⁹⁴ (1), s. 5(5), and (2), s. 30.

⁹⁵ England, Wales and Scotland (industry and trade) (1), s. 7(4), read together with s. 17(1)(b)(ii) and (3)(b), whereby the possible payment in kind is limited to housing provided to the worker; similar provisions are in force in Northern Ireland (industry and trade) (2), s. 9(4) read together with s. 18(1)(ii) and (3)(b); in agriculture the provision respecting the possible payment of the minimum wage in kind is contained in the section establishing the powers granted to the agricultural wages committee, for England and Wales (3), s. 7(1)(a), (b) and (c), for Scotland (4), s. 7(1), and for Northern Ireland (5), s. 4(3).

⁹⁶ Part IV(a).

⁹⁷ Part IV, Para. 8(a).

357. Recommendation No. 135, referring to the enforcement measures provided for generally in Article 5 of Convention No. 131, states that publicity should be given to the provisions respecting minimum wages, adapted where necessary to the needs of illiterate persons or in languages or dialects understood by workers who need protection.

358. In some States minimum wage rates are published in the official gazettes in accordance with the provisions of legislation or other applicable legal texts, or as a matter of practice. It can therefore be assumed, and in fact this appears to be the case, that even in those States where no information is available, either because there is no legal provision which serves as a basis for the publication of the minimum wage rates adopted, or because the government has not included anything in the information communicated, minimum wage rates are generally published in the official gazette of the State. The Committee will therefore limit itself to noting those cases in which the necessary information has been obtained, without prejudice to those concerning which no information is available. Minimum wage rates are published in official gazettes in *Algeria*;⁹⁸ *Australia*, at the federal level,⁹⁹ and in New South Wales,¹⁰⁰ Western Australia¹⁰¹ and Victoria;¹⁰² *Austria*;¹⁰³ *Bangladesh*;¹⁰⁴ *Barbados*;¹⁰⁵ *Botswana*;¹⁰⁶ *Canada*, in the Province of Quebec;¹⁰⁷ *Chad*;¹⁰⁸ *Chile*;¹⁰⁹ *Côte d'Ivoire*;¹¹⁰ *Dominican Republic*;¹¹¹ *Ecuador*;¹¹² *France*;¹¹³ *Ghana*;¹¹⁴ *Guyana*;¹¹⁵ *Honduras*;¹¹⁶ *India*;¹¹⁷ *Israel*;¹¹⁸ *Japan*;¹¹⁹

⁹⁸ According to information provided by the Government, although there appears to be no provision in this respect.

⁹⁹ (1), s. 143(4) in conjunction with the awards granted by the Australian Industrial Relations Commission.

¹⁰⁰ (3), s. 58(3)

¹⁰¹ (9), s. 105.

¹⁰² (8), s. 38(1).

¹⁰³ According to information from the Government and the provisions in force, (1), s. 21, (2), s. 45(2) and (3), ss. 34(3) and 45(2).

¹⁰⁴ (1), s. 6(3).

¹⁰⁵ (1), 25(4).

¹⁰⁶ (1), s. 140.

¹⁰⁷ (26), s. 35.

¹⁰⁸ (1), ss. 122 and 123.

¹⁰⁹ According to information provided by the Government.

¹¹⁰ According to information provided by the Government.

¹¹¹ (1), s. 432.

¹¹² (2), s. 278.

¹¹³ (2), s. D.141-1, as regards the adjustment in the minimum growth wage.

¹¹⁴ (3), s. 16(2).

¹¹⁵ (1), s. 8(4).

¹¹⁶ (3), ss. 30 and 31.

¹¹⁷ (1), ss. 5(2) and 10(2).

¹¹⁸ (1), s. 6.

¹¹⁹ (1), s. 17(1), as regards general minimum wages; (2), s. 12(1), as regards wages of homeworkers. Finally, provision is also made for the publication of the decision of the competent authority concerning the extension of collective agreements to minimum wages, (1), s. 12(1). The Government also points out that efforts are being made to keep employers and workers informed of these matters.

Kenya;¹²⁰ Lesotho;¹²¹ Luxembourg;¹²² Malta;¹²³ Mauritius;¹²⁴ Mexico;¹²⁵ Namibia;¹²⁶ Nepal;¹²⁷ Nigeria;¹²⁸ Netherlands;¹²⁹ Pakistan;¹³⁰; Panama;¹³¹ Papua New Guinea;¹³² Poland;¹³³ Portugal;¹³⁴ Romania;¹³⁵ San Marino;¹³⁶ Spain;¹³⁷ Sri Lanka;¹³⁸ Swaziland;¹³⁹ Syrian Arab Republic;¹⁴⁰ Trinidad and Tobago;¹⁴¹ Uganda;¹⁴² United Kingdom;¹⁴³ Yugoslavia;¹⁴⁴ and Zimbabwe.¹⁴⁵

359. It should be noted in this connection that for practical reasons the publication of minimum wage rates in the official gazette is not by itself sufficient to ensure that the employers and workers concerned are made aware of the rates in force. Thus it is interesting to note the practice adopted in some countries where, in addition to publication in the official gazette, rates are also publicised elsewhere. This is the case in many countries: *Bangladesh*;¹⁴⁶ *Brazil*;¹⁴⁷ *Canada*, in the Provinces of British Columbia, Nova Scotia, Ontario, Quebec

¹²⁰ (1), s. 11(5).

¹²¹ (1), ss. 4(5) and 11(5).

¹²² According to the information communicated by the Government.

¹²³ (1), s. 8(1).

¹²⁴ (1), s. 96(3).

¹²⁵ (2), s. 571(V).

¹²⁶ (1), s. 46(1).

¹²⁷ (1), s. 37(2).

¹²⁸ (1), s. 19(5), concerning publication in the event of an extension of the agreement.

¹²⁹ (1), s. 14(5).

¹³⁰ (1), ss. 6(1)(a) and (3) and 17(2)(d).

¹³¹ Minimum wages are published in the official gazette; furthermore, the Ministry of Labour and Social Welfare periodically publishes an information bulletin on minimum wages.

¹³² (1), s. 32, as amended by Ordinance No. 32 of 1971.

¹³³ (1), s. 79, in addition to information provided by the Government.

¹³⁴ According to information provided by the Government, although there appears to be no express provision.

¹³⁵ (4), s. 12, and in accordance with information provided by the Government.

¹³⁶ Minimum wages are fixed by collective agreement; the law makes provision for the publication of collective agreements in the official gazette or in some other publication, (1), s. 8.

¹³⁷ According to the information provided by the Government, although there appears to be no provision establishing this obligation.

¹³⁸ (1), ss. 29, 33(3), and 39, (2), ss. 23 and 29(3), and (3), s. 6.

¹³⁹ (1), s. 5(5).

¹⁴⁰ According to the information provided by the Government.

¹⁴¹ (1), ss. 16 and 17.

¹⁴² (1), s. 10(2).

¹⁴³ England, Wales and Scotland (industry and trade) (1), Schedule 3, s. 2; Northern Ireland (industry and trade) (2), Schedule 3, s. 2. For agriculture: England and Wales, (3), Schedule 4, s. 4; Scotland, (4), s. 4; Northern Ireland, (5), s. 10(c).

¹⁴⁴ According to the information provided by the Government.

¹⁴⁵ (1), s. 20(1).

¹⁴⁶ According to legislation, (2), s. 16(1), the Government must take all measures to inform employers and workers of minimum wages.

¹⁴⁷ According to information provided by the Government, minimum wage rates are publicised in the mass media, although the Government points out that the minimum wage policy is not always fully understood.

and Saskatchewan;¹⁴⁸ *Côte d'Ivoire*;¹⁴⁹ *Dominican Republic*;¹⁵⁰ *Ecuador*;¹⁵¹ *Fiji*;¹⁵² *France*;¹⁵³ *Germany*;¹⁵⁴ *Guatemala*;¹⁵⁵ *Guyana*;¹⁵⁶ *Honduras*;¹⁵⁷ *Islamic Republic of Iran*;¹⁵⁸ *Kenya*;¹⁵⁹ *Mexico*;¹⁶⁰ *Myanmar*;¹⁶¹ *Nepal*;¹⁶² *New Zealand*;¹⁶³ *Nicaragua*;¹⁶⁴ *Poland*;¹⁶⁵ *Sri Lanka*;¹⁶⁶ in the *United States*, at the federal level, according to the information communicated, the Government ensures that sufficient publicity is given to the provisions of the Fair Labor Standards Act, as well as other texts, through the publication of brochures, and requires that employers display in a suitable place the posters provided by the Department of Labor explaining the

- ¹⁴⁸ In accordance with the information communicated, minimum wage rates are published in the mass media. For the Province of Ontario, it was also indicated that any person concerned could obtain information on the applicable minimum wage rates by calling toll free or writing to the Ministry of Labour.
- ¹⁴⁹ According to information provided by the Government, the texts concerning minimum wages are widely circulated amongst trade unions.
- ¹⁵⁰ In addition to publication in the official gazette, texts must be published in a national newspaper, (1), s. 432.
- ¹⁵¹ The responsible authority must publish decisions establishing minimum wages in the official gazette and in some other publication, (2), s. 8(4).
- ¹⁵² (1), s. 8(4).
- ¹⁵³ In the case of minimum wages fixed by collective agreement, according to the information provided by the Government, the text of the agreement is published in the weekly official gazette of collective agreements. According to the same information, the local and agricultural press regularly publishes the minimum wage rates applicable in the department concerned.
- ¹⁵⁴ Under the legislation, (2), s. 4(3), the minimum conditions of employment specified by technical committees are published in places appointed by the Federal Minister of Labour. As regards conditions of employment fixed for homework, (3), s. 19(2).
- ¹⁵⁵ In accordance with the legislation, (3), s. 61, once minimum wage rates have been fixed they must be published in a mass-circulation newspaper in the Republic.
- ¹⁵⁶ (1), s. 11(4), which establishes that once an order has been issued respecting minimum wages, the responsible authority must bring it to the notice of all interested parties as soon as possible and in a prescribed way.
- ¹⁵⁷ In addition to the legal obligation of publishing minimum wage rates in the official gazette, the Government has indicated that there is a plan for publicising minimum wages in the municipalities and labour offices by the distribution of brochures indicating the minimum wage rates in force, consultations and the distribution of copies of the decrees fixing minimum wages.
- ¹⁵⁸ According to information provided by the Government, changes in the minimum wage rates are announced by the mass media.
- ¹⁵⁹ The legislation makes express provision for the publication of orders respecting minimum wages in a national newspaper, at two consecutive times at intervals specified by the Act, (1), s. 11(5).
- ¹⁶⁰ In addition to the publication which is legally required in the official gazette, in practice minimum wages are also published in the newspapers of the country.
- ¹⁶¹ In accordance with the provisions of the law, (1), s. 10(5), once an order respecting wages has been adopted, the minimum wage council is informed which in turn informs parties concerned as soon as possible and in the manner prescribed.
- ¹⁶² According to information from the Government, the minimum wage rates are publicised in newspapers, radio and television, and are also published in the official gazette.
- ¹⁶³ The Government states that minimum wages are published in the communication media and information bulletins.
- ¹⁶⁴ According to information from the Government, resolutions establishing minimum wages are widely publicised.
- ¹⁶⁵ According to the information provided by the Government, changes in the minimum wage rates are publicised by the communication media.
- ¹⁶⁶ In addition to publication in the official gazette, the Acts establishing minimum wages must also be published in newspapers in the languages indicated in the legislation, (1), ss. 29(3) and 33(3).

provisions of the Act; in the District of Columbia the law provides for the publication of minimum wage rates in the local newspapers.¹⁶⁷

360. In other cases, according to the information provided, States have made provision in their legislation for giving publicity to the minimum wage rates or, in general, the provisions applicable to conditions of employment, including minimum wages, by making it obligatory for employers to place notices in the places where wages are paid or in workplaces or even printing and distributing the applicable regulations concerning conditions of employment, including minimum wages. Such is the case in: *Algeria*;¹⁶⁸ *Australia*, Queensland;¹⁶⁹ *Austria*;¹⁷⁰ in the *Bahamas*, the legislation¹⁷¹ provides that the employer must post in a visible place a copy of the standards respecting minimum wages, failing which the sanctions contained in the same provision shall be applied. Similar provisions are contained in the legislation of *Bangladesh*;¹⁷² *Barbados*;¹⁷³ *Benin*;¹⁷⁴ *Botswana*;¹⁷⁵ *Burundi*;¹⁷⁶ *Cameroon*;¹⁷⁷ in *Canada*, at the federal level,¹⁷⁸ and in some provinces;¹⁷⁹ *Central African Republic*;¹⁸⁰ *Ecuador*;¹⁸¹ *Fiji*;¹⁸² *France*;¹⁸³

¹⁶⁷ (11), s. 36-207.

¹⁶⁸ When the wage rates may be fixed by collective agreement (1), s. 11 stipulates that employers are required to give publicity to the text of the agreements.

¹⁶⁹ (6), s. 15.14.

¹⁷⁰ s. 149 of the Act respecting collective labour relations stipulates that all workers shall have access to remuneration rates; s. 46 of the Act respecting agricultural work makes it obligatory to post in a place which is accessible to all workers the text of the collective agreement containing applicable wage rates and to circulate among such workers a notification from the enterprise concerning such rates; finally, s. 59 of the Act respecting homework contains similar provisions.

¹⁷¹ (1), s. 16(2).

¹⁷² (2), s. 16(2) and (3).

¹⁷³ (1), s. 11(c).

¹⁷⁴ (1), s. 84.

¹⁷⁵ (1), s. 146 and (2), s. 2.

¹⁷⁶ (1), s. 70.

¹⁷⁷ (1), s. 72.

¹⁷⁸ Fair Wages Policy Order, s. 5(a).

¹⁷⁹ In British Columbia, according to information provided by the Government, minimum wage rates of workers must be posted up at the workplace; in Manitoba, in accordance with the relevant regulation (8), s. 12(1), the employer must, at the request of the labour authority, provide workers with a summary of the applicable provisions or post up such a summary in a visible place; similar provisions exist in New Brunswick, (11), s. 11; Newfoundland, (15), s. 31(2); in Nova Scotia, the employer must post up in an appropriate place a copy of the order respecting minimum wages to which all workers may have access, (19), s. 14; Ontario, (20), s. 56; Prince Edward Island, (24), s. 95 and (25), s. 10; Saskatchewan, (28), s. 69(1); in the Yukon Territory, (35), s. 56, the employer may be required to post up in an adequate place the necessary information concerning the law and its application although no specific mention is made of minimum wages.

¹⁸⁰ (1), s. 102.

¹⁸¹ (2), s. 278.

¹⁸² (1), s. 13(2).

¹⁸³ According to the information provided by the Government and the legislation, (2), s. L.620-7, the employer must place a copy of the applicable texts in workplaces.

Gabon;¹⁸⁴ *Germany*;¹⁸⁵ *Guinea*;¹⁸⁶ *Guyana*;¹⁸⁷ *Honduras*;¹⁸⁸ *India*;¹⁸⁹ *Japan*;¹⁹⁰ *Kenya*;¹⁹¹ *Lesotho*;¹⁹² *Malawi*;¹⁹³ *Malta*;¹⁹⁴ *Myanmar*;¹⁹⁵ *Peru*¹⁹⁶ *Rwanda*;¹⁹⁷ *Sri Lanka*;¹⁹⁸ *Swaziland*;¹⁹⁹ *Uganda*;²⁰⁰ and *United Kingdom*.²⁰¹ In the *United States*, at the federal level, the responsible authority may ask the employer to put up posters in a suitable place, although there appears to be no obligatory provision in this respect. In some States of the Union, such provisions have been established²⁰²;

361. Finally, some States have reported that in addition to the publication of minimum wage rates in the official gazettes, employers must also inform workers in some other manner of the minimum wages applicable to them, for example in *France*, as regards collective agreements, employers must have a copy of the applicable text and include a mention of the title of the agreement applicable to workers on their payslips; in the *Netherlands*, according to the information provided by the Government, the employer must indicate the mini-

¹⁸⁴ (1), s. 91.

¹⁸⁵ The law stipulates (2), s. 11(1) that employers shall post the applicable minimum conditions of employment at a convenient place in the undertaking, and shall deliver a copy to every employee whose employment is governed by these minimum conditions.

¹⁸⁶ (1), s. 211.

¹⁸⁷ (5), s. 15(2).

¹⁸⁸ (3), s. 31.

¹⁸⁹ (1), s. 18(2).

¹⁹⁰ (1), s. 19, as regards minimum wages in general. In the case of minimum wages of homeworkers, the Government repeats that efforts are being made to keep workers and employers informed and that information sheets are produced and distributed for this purpose.

¹⁹¹ (1), s. 20(2) and (3).

¹⁹² (1), s. 18(3).

¹⁹³ (1), s. 16(2).

¹⁹⁴ (1), s. 15.

¹⁹⁵ (1), s. 15(2).

¹⁹⁶ (6), s. 20.

¹⁹⁷ (1), s. 87.

¹⁹⁸ (1), s. 43.

¹⁹⁹ (1), s. 18(1) and (2).

²⁰⁰ (1), s. 18(2).

²⁰¹ England, Wales and Scotland (industry and trade), (1), s. 19(2) and (3); Northern Ireland, (2), s. 20(2) and (3). As regards agriculture, in England and Wales as well as in Scotland, according to the information provided by the Government, an employer must keep his workers informed of the provisions of the regulations concerning wages; in Northern Ireland, (5), s. 10(c), provision is made for the adoption of regulations prescribing the way in which persons concerned are informed of the content of the regulations respecting wages.

²⁰² Alaska (3), s. 23.10.105; Arizona (5), s. 23-323; Arkansas (6), s. 11-42-16 which stipulates that the competent authority must provide summaries of the relevant Act at no charge; California (7), s. 1183; Connecticut (9), s. 31-66; Delaware (10), ss. 908 and 1108; Georgia (12), s. 34-4-5; Hawaii (13), s. 387-6(b); Idaho (14), s. 44-1507; Illinois (15), s. 1009; Indiana (16), s. 22-2-2-8; Kansas (17), s. 44-645; Kentucky (18), s. 337.335; Maine (20), s. 668; Maryland (21), s. 88 stipulates that the competent authority must provide summaries of the respective Act, at the request of the employer, at no cost; Massachusetts (23), s. 16; Minnesota (25), s. 117.31; Missouri (27), s. 10; Michigan (24), s. 408.391; Nebraska (29), s. 48-1205; Nevada (30), s. 608.080; New Hampshire (31), s. 279:27; New Jersey (32), s. 34:11-56a21; New Mexico (34), s. 50-4-25; New York (33), s. 661; North Carolina (35), s. 95-25.15(c); Ohio (36), s. 4111.09; Oklahoma (37), s. 197.6; Oregon (38), s. 653.050; Pennsylvania (39), s. 33.108 and (40), ss. 231.37 and 231.53; Rhode Island (43), s. 28-22-11; Vermont (48), s. 393, which also stipulates that the commissioner shall provide to employers a copy of the orders respecting minimum wages; West Virginia (53), 42-8-4.4, as well as in the District of Columbia (11), s. 36-212.

imum wage applicable to workers on their payslips;²⁰³ in *Suriname* legislation²⁰⁴ stipulates that the association which concludes a collective agreement shall take measures to ensure that the text is communicated as soon as possible to all the members concerned; in *Turkey*, in accordance with the information provided by the Government, and in application of the legislation, employers must include in the payslip the minimum applicable wage rates.

3. Supervision of the enforcement of minimum wages

362. Each of the Conventions under study contains provisions respecting the measures which States must take with a view to the establishment of systems for the enforcement of minimum wages. Convention No. 26 speaks in general terms of this obligation,²⁰⁵ whereas Conventions Nos. 99 and 131 indicate expressly that States must establish control through an inspection system²⁰⁶ with a view to ensuring the effective application of the provisions respecting minimum wages.

363. The supplementary Recommendations extended the provisions of the Conventions and stressed the need to have a sufficient number of inspectors, with the power to carry out effectively the inspection and monitoring of the application of the provisions concerning minimum wages.²⁰⁷ The first two Recommendations specify in some detail the functions to be carried out by the inspectors (to make investigations with a view to ascertaining whether the minimum rates in force are in fact being paid, to impose the necessary measures or sanctions in the event of infringements) as well as the obligations which could be assigned to employers as a means of enabling the inspectors to carry out their duties adequately (keeping a list of wages paid and providing workers where necessary with wage books).²⁰⁸

364. In this connection it should be remembered that under Article 3, paragraph 1(a), of the Labour Inspection Convention, 1947 (No. 81), and Article 6, paragraph 1(a), of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the labour inspection system is responsible in particular for ensuring the application of the legal provisions respecting wages.

365. Many States prescribe that the supervision of the enforcement of the provisions respecting minimum wages is the responsibility of the labour authorities: *Argentina*;²⁰⁹ *Australia*, at the federal level²¹⁰ and in New South Wales;²¹¹

²⁰³ (1), s. 1638o.

²⁰⁴ (1), s. 5.

²⁰⁵ Article 4, para. 1.

²⁰⁶ Article 4, para. 1, and Article 5, respectively.

²⁰⁷ Recommendation No. 30, Part IV, Para. 2; Recommendation No. 89, Part IV, Para. 9; and Recommendation No. 135, Part IV, Para. 14(b).

²⁰⁸ Recommendation No. 30, Part IV, Para. 2, and Recommendation No. 89, Part IV, Para. 10.

²⁰⁹ The legislation provides that the authority responsible for enforcing the Act respecting minimum wages is the Ministry of Labour (3), s. 17; although, according to other legal texts, (16), s. 1, this function is also the responsibility of the labour inspectorate.

²¹⁰ According to information provided by the Government, this power is granted to the Department of Industrial Relations, through the labour inspectorate, (1), ss. 84(4) and (5) and 86.

²¹¹ According to the information provided by the Government, the application of standards con-

Belarus,²¹² *Benin*,²¹³ *Bulgaria*,²¹⁴ *Burundi*,²¹⁵ *Central African Republic*,²¹⁶ *Chile*,²¹⁷ *China*,²¹⁸ *Colombia*,²¹⁹ *Cuba*,²²⁰ *Czechoslovakia*,²²¹ *Dominican Republic*,²²² *Fiji*,²²³ *Finland*,²²⁴ *France*, in the overseas departments and territories,²²⁵ *Germany*,²²⁶

cerning minimum wages is the responsibility of the Department of Industrial Relations, which exercises these functions through the labour inspectorate.

- ²¹² According to information provided by the Government, this is the responsibility of different State bodies with the participation of trade unions.
- ²¹³ According to the information provided by the Government, the authority responsible for the application of labour standards is the Ministry of Labour and Social Affairs.
- ²¹⁴ According to the information provided by the Government, the application of the respective standards is the responsibility of the Ministry of Labour and Social Affairs. To this end, a state labour inspectorate was established by Decree No. 193 dated 2 October 1991.
- ²¹⁵ According to the information provided by the Government, the Minister is responsible for ensuring the application of the legislative provisions or regulations. The Labour Code contains provisions concerning labour inspection, (1), ss. 111 to 118.
- ²¹⁶ (1), ss. 152 to 160.
- ²¹⁷ (1), s. 450, whereby the monitoring of compliance with labour legislation is the responsibility of the Labour Directorate.
- ²¹⁸ According to the information provided by the Government, the administrative labour departments supervise the application of minimum wages.
- ²¹⁹ (2), s. 485, stipulates that supervision and control are carried out by the Ministry of Labour in the form prescribed by the Government or the Ministry itself; according to the information provided by the Government, these powers are exercised through the Directorate General of Inspection and Supervision at the national level and the regional directorates at the departmental level, in accordance with Decree No. 1422, 89 and Decree No. 1096 dated 25 April 1991.
- ²²⁰ According to the information provided by the Government, the State Committee on Labour and Social Security is responsible for supervising the enforcement of wage policy in the country under the powers conferred upon it by Legislative Decree No. 67, of 19 April 1983, s. 61, and the Labour Code, s. 296; these powers are exercised through the labour inspectorate, (2), s. 301. This function may also be exercised by the provincial committees, (3), s. 4(e). The Labour Code also provides for self-inspection by the labour bodies, s. 300.
- ²²¹ According to the information provided by the Government, the State bodies for which provision is made in the Labour Code, s. 270(a), are responsible for the application of labour standards. At the same time, the Government pointed out that s. 13 of the General Agreement of 1991 establishes that application will be supervised by the competent Council of Social Agreement. Finally, according to the same agreement and information provided by the Government, the social partners are responsible for the correct application of the agreement and the standards resulting from it.
- ²²² (1), ss. 389 et seq.
- ²²³ (1), s. 16.
- ²²⁴ According to information provided by the Government.
- ²²⁵ According to the information provided, in such departments and territories there are no labour inspectors in the agricultural sector, and thus the monitoring of compliance with the provisions respecting the minimum growth wage is the responsibility of the departmental directorate of labour and employment.
- ²²⁶ According to the legislation, (2), s. 12, the highest labour authority of each *Land* is responsible for ensuring that the inspection and supervision of the application of the minimum working conditions are carried out effectively. This authority may also delegate its powers in this respect to other bodies. The legislation respecting homeworkers also places the supervisory power in the supreme authority of the *Land*, (3), s. 23(1).

*Iceland;*²²⁷ *Israel;*²²⁸ *Italy;*²²⁹ *Mozambique;*²³⁰ *Namibia;*²³¹ *Nicaragua;*²³² *Nigeria;*²³³ *Pakistan;*²³⁴ *Panama;*²³⁵ *Peru;*²³⁶ *Philippines;*²³⁷ *Qatar;*²³⁸ *Romania;*²³⁹ *San Marino;*²⁴⁰ *Syrian Arab Republic;*²⁴¹ *Turkey;*²⁴² *Uganda;*²⁴³ *Ukraine.*²⁴⁴ In the *United States*, at

²²⁷ According to information provided by the Government, it is the responsibility of the Ministry of Social Affairs to monitor the application of the legal provisions in cooperation with employers' and workers' organisations. However, it should also be noted that legislation makes provision for the appointment of mediators (2), ss. 20 and 24, whose functions are to ensure compliance with the provisions relating to working conditions.

²²⁸ (1), s. 18(a).

²²⁹ (2), s. 9.

²³⁰ According to the information provided by the Government and the provisions of the law, (3), s. 4(2), the Ministry of Labour is responsible for monitoring compliance with the respective wage standards and for advising enterprises on the preparation of the wage application instruments. Sections 164 and 165 of the respective labour Act stipulate that the labour inspectorate is responsible for ensuring compliance with the labour legislation, in close collaboration with the trade unions.

²³¹ According to the information provided by the Government, the Ministry of Labour is responsible for applying wage legislation in force. This legislation makes provision for the establishment of the labour inspectorate and its respective powers, (1), ss. 56 to 57.

²³² (3), s. 7(3), the National Minimum Wage Commission supervises compliance with the agreements establishing minimum wages; see also: (2), ss. 243 to 246, 335 to 338, 341(1) and 350, respecting labour inspection.

²³³ In accordance with the information provided by the Government and the provisions of the labour legislation in force, (1), s. 6(1), and (3), s. 21.

²³⁴ In accordance with the provisions of the law, (1), s. 12(2), the President of the Board is empowered to monitor compliance with the provisions respecting minimum wages. The same text, (1), s. 17(2)(g), provides for the appointment of labour inspectors by ordinance.

²³⁵ In accordance with the legislation in force, (4), s. 20(c), the National Committee on Minimum Wages may receive, for transmission to the Ministry of Labour, denunciations or complaints respecting failure to comply with the provisions of decrees respecting minimum wages; furthermore, it would appear that the enforcement of these provisions is also the responsibility of the labour inspectorate.

²³⁶ (3), s. 23.

²³⁷ (2), ss. 128 et seq.

²³⁸ According to the information provided by the Government, the Ministry of Labour, Social Affairs and Housing is responsible for supervising labour standards in the private sector; see also the provisions of the law, (1), s. 74.

²³⁹ According to the information provided by the Government, the Ministry of Labour and Social Protection is responsible for controlling the application of labour standards. Section 181(1) and (2) of the Labour Code also entrusts this function to other bodies; but it is not possible to say that these provisions are in force.

²⁴⁰ According to the information provided by the Government, the Ministry of Labour and Cooperation as well as the Ministry of Health and Social Security are responsible for supervising the application of labour standards; the legislation in force also describes the same function for the labour inspectorate, (1), s. 50.

²⁴¹ According to the information provided by the Government, the Ministry of Social Affairs and Labour is responsible for monitoring the application of labour standards, through the labour inspectorate, (1), ss. 212 to 214, and (2), s. 245. The Government has also pointed out that, in accordance with the law, trade union committees participate in monitoring the correct application of the above-mentioned standards.

²⁴² According to information provided by the Government, the Ministry of Labour and Social Security is responsible for supervising labour standards, through the labour inspectorate, (2), ss. 88 and 89.

²⁴³ (1), s. 19.

²⁴⁴ In accordance with information provided by the Government, the supervision of the application of labour standards is the responsibility of various state bodies, and in particular, the labour inspectorate.

the federal level, the legislation names the authority responsible for the application of the provisions respecting labour and minimum wages²⁴⁵, as it does in some states of the Union,²⁴⁶ and *Zimbabwe*.²⁴⁷

366. The legislation of many States establishes in general terms that supervision is the responsibility of the labour inspectorate, and is established by the general labour legislation; in other cases, these powers are prescribed in legislation respecting minimum wages. These countries are: *Saudi Arabia*; *Algeria*; *Australia*, Queensland,²⁴⁸ Tasmania,²⁴⁹ Victoria,²⁵⁰ Western Australia;²⁵¹ *Austria*;²⁵² *Bahamas*;²⁵³ *Belgium*;²⁵⁴ *Botswana*;²⁵⁵ *Brazil*;²⁵⁶ *Canada*, at the federal level,²⁵⁷ in the provinces and territories, in which one of the labour authorities is responsible for supervising the appropriate application of the labour standards or appointing officials to carry out this task: Alberta,²⁵⁸ British Columbia,²⁵⁹ Manitoba;²⁶⁰

²⁴⁵ (1), s. 11(a)

²⁴⁶ Often the provisions establishing the responsibility of the authority also make provision for summary proceedings through which a worker may recover the wages due: Alaska (3), ss. 23.10.080 and 23.10.085; Arizona (5), s. 23-312; Arkansas (6), s. 11-4-209; California (7), ss. 1195 and 1195.5; Colorado (8), ss. 8-6-108 and 8-6-115; Connecticut (9), s. 31-39; Delaware (10), s. 903; Hawaii (13), s. 387-12; Idaho (14), s. 44-1508(1); Illinois (15), s. 1012(a) and (b); Kansas (17), s. 44-1207(a); Kentucky (18), s. 336.985(1); Maine (20), s. 665; Maryland (21), s. 84(a) and (b); Massachusetts (23), ss. 15 and 17; Michigan (24), s. 408.392; Minnesota (25), s. 177.21(1), (3) and (5); Missouri (27), s. 5; Montana (28), s. 39-3-403; New Hampshire (31), s. 279:27; New Jersey (32), s. 34:11-56a6(b); New Mexico (34), s. 50-4-26(A); New York (33), s. 660; North Carolina (35), s. 95-25.15(a); Ohio (36), s. 4111.04(A) to (C); Oklahoma (37), ss. 197.7 and 197.10; Oregon (38), s. 653.040(1) to (3); Rhode Island (43), s. 28-12-14; Utah (46), ss. 30-40-202 and 30-40-203; Vermont (48), s. 385(1) to (3); Washington (50), s. 49.46.040(1); West Virginia (52), s. 21-5C-6(a) and (b); and in the District of Columbia (11), ss. 36-205, 36-210 and 36-215, and Puerto Rico (41), s. 245(a);

²⁴⁷ In accordance with the information provided by the Government.

²⁴⁸ (6), ss. 4.30(1), 14.6, 15.3 and 15.9(1).

²⁴⁹ According to the information provided by the Government and in accordance with the law, (7), ss. 74 to 78.

²⁵⁰ (8), ss. 87 et seq.

²⁵¹ (9), s. 98.

²⁵² Although the Act respecting labour inspection, s. 2(6), gives express power to the labour inspectors to monitor the payment of minimum wages. Furthermore, the same Act, s. 1(2), excludes from its scope agricultural work, for which special provisions have been established. The Act respecting homework refers explicitly (s. 52) to the obligation of labour inspectors to monitor compliance of such provisions in respect of these workers. Finally, according to the information provided by the Government, the supervisory functions are shared between the federal authorities and the provincial governments.

²⁵³ (1), ss. 27 et seq.

²⁵⁴ (1), ss. 52-55, and (2), ss. 37 and 38.

²⁵⁵ (1), ss. 4 and 11; furthermore, the Government has stated that the enforcement of the standards respecting minimum wages is the responsibility of the labour inspectors; however, reference is also made to the document adopted by the National Assembly (Government Paper No. 1 of 1990, p. 25, Recommendation 3.38), which states that this task must be shared with workers.

²⁵⁶ In accordance with the information received, the federal labour inspection system is responsible for the enforcement of legislation respecting minimum wages.

²⁵⁷ (1), ss. 249-251.

²⁵⁸ (3), s. 15.

²⁵⁹ (5), ss. 97 and 98.

²⁶⁰ (7), s. 5 stipulates that the general administration of the provisions established by the above-mentioned Act is the responsibility of the Minister; however, s. 1 of the same Act defines the term "inspectors", who also certainly carry out the functions of supervising and monitoring the enforcement of labour standards. Mention should also be made of the Department of Labour

New Brunswick;²⁶¹ Newfoundland;²⁶² Nova Scotia;²⁶³ Ontario;²⁶⁴ Prince Edward Island;²⁶⁵ Quebec;²⁶⁶ Saskatchewan;²⁶⁷ Northwest Territories;²⁶⁸ Yukon Territory;²⁶⁹ Côte d'Ivoire;²⁷⁰ Djibouti;²⁷¹ Dominica;²⁷² Ecuador;²⁷³ Egypt;²⁷⁴ Equatorial Guinea;²⁷⁵ France;²⁷⁶ Gabon;²⁷⁷ Ghana;²⁷⁸ Guatemala;²⁷⁹ Guinea;²⁸⁰ Guyana;²⁸¹ Honduras;²⁸² India;²⁸³ Indonesia;²⁸⁴ Islamic Republic of Iran;²⁸⁵ Japan;²⁸⁶

Act of Manitoba which establishes the powers and duties of the inspectors and employers, (10), s. 7.

²⁶¹ (11), ss. 57 and 58.

²⁶² (15), ss. 57 and 60.

²⁶³ According to the legislation in force, (18), s. 3, enforcement of the labour standards is the responsibility of the Ministry of Labour. There are no specific provisions concerning any body of inspectors; however, in the same Act, s. 16 stipulates the powers of the Director of Labour Standards and other officers concerning specific activities to be carried out in monitoring the application of these standards.

²⁶⁴ (20), s. 4, the application of the law is the responsibility of the Ministry through the respective service of the Ministry ("Employment Practices Branch"), and provision is also made for the appointment of the necessary officials and the scope of their powers, ss. 41 and 45.

²⁶⁵ (24), ss. 2 and 63.

²⁶⁶ The supervision of labour legislation is the responsibility of the "Commission des normes du travail", (26), ss. 4 and 5.

²⁶⁷ (28), ss. 3 and 68(1).

²⁶⁸ The Commissioner shall appoint a Labour Standards Officer to administer the Act, (33), s. 33(1); inspectors shall also be designated who shall carry out their functions in accordance with the powers conferred by the Act, (33), ss. 34 et seq.

²⁶⁹ The Executive Council, which is responsible for appointing the official responsible for the application of the law, and officials shall be appointed who shall have such powers as conferred by the Act for the purposes of enforcing its provisions, (35), ss. 66.

²⁷⁰ (1), ss. 122 et seq.

²⁷¹ (1), ss. 145 et seq.

²⁷² (1), ss. 28 et seq.

²⁷³ (2), ss. 279, 529(7), 531 et seq.

²⁷⁴ According to the information provided by the Government.

²⁷⁵ According to the information provided by the Government.

²⁷⁶ (2), ss. L.161-1 et seq.

²⁷⁷ (1), ss. 144 and 148.

²⁷⁸ (2), ss. 48 et seq., and (3), s. 19.

²⁷⁹ (1), ss. 278 and 281(b); furthermore, under s. 110(b) of the Labour Code, it is the responsibility of the joint committees on minimum wages to ensure that the agreements establishing minimum wages in their respective jurisdictions are effectively enforced, and to denounce any infringements thereof.

²⁸⁰ (1), ss. 357 et seq.

²⁸¹ (1), s. 14, and (5), s. 16.

²⁸² According to the legislation on minimum wages (3), s. 41, it is the responsibility of the Secretariat of Labour and Social Insurance to ensure strict compliance with these provisions, and the Secretariat shall exercise its powers through the labour inspectorate. Similar provisions are to be found in the decrees which fix minimum wage rates; for example s. 5 of the Executive Decree No. 19-90 dated 26 Sep. 1990. It should, however, be noted that the Government has pointed out that "there are cases in which workers have had to accept lower wages and at the same time sign receipts equal to the established minimum wage". It does not say whether these actions have resulted in any sanctions, although it can be supposed that the Government could have reacted by applying the relevant legal provisions with a view to ensuring their enforcement.

²⁸³ (1), s. 19.

²⁸⁴ According to the information provided by the Government.

²⁸⁵ (1), ss. 96 et seq.

²⁸⁶ (3), ss. 97 et seq., (1), ss. 37 to 39, and (2), ss. 29 to 31.

*Kenya;*²⁸⁷ *Jamaica;*²⁸⁸ *Lesotho;*²⁸⁹ *Malawi;*²⁹⁰ *Malta;*²⁹¹ *Mauritania;*²⁹² *Mauritius;*²⁹³ *Mexico;*²⁹⁴ *Morocco;*²⁹⁵ *Nepal;*²⁹⁶ *New Zealand;*²⁹⁷ *Papua New Guinea;*²⁹⁸ *Poland;*²⁹⁹ *Portugal;*³⁰⁰ *Rwanda;*³⁰¹ *Singapore;*³⁰² *Spain;*³⁰³ *Sri Lanka;*³⁰⁴ *Sudan;*³⁰⁵ *Swaziland;*³⁰⁶ *Togo;*³⁰⁷ *Trinidad and Tobago;*³⁰⁸ *Tunisia;*³⁰⁹ *United Kingdom;*³¹⁰ *Yugoslavia;*³¹¹ and *Zambia.*³¹²

367. In some cases there is a special body of inspectors responsible for the enforcement of the provisions of labour legislation in general and in particular

²⁸⁷ (1), ss. 22 to 25.

²⁸⁸ (1), ss. 12 et seq.

²⁸⁹ (1), ss. 20 et seq.

²⁹⁰ (1), s. 18.

²⁹¹ (1), ss. 28 et seq.

²⁹² (1), ss. 21 et seq.

²⁹³ According to information provided by the Government.

²⁹⁴ (2), ss. 540 and 541; furthermore, s. 330(IV) expressly stipulates that the labour inspector shall verify whether the minimum wages paid to homeworkers comply with the established rates.

²⁹⁵ (9), s. 43.

²⁹⁶ (1), ss. 5 and 5A.

²⁹⁷ (2), s. 8C.

²⁹⁸ (1), s. 16, as amended by Ordinance No. 32 of 1971, and s. 17.

²⁹⁹ (2), ss. 8 and 9.

³⁰⁰ According to the information provided by the Government.

³⁰¹ According to information from the Government, the labour inspectorate is responsible for guaranteeing compliance with the provisions respecting minimum wages. Sections 151 and ff. of the Labour Code establish the powers and obligations of the labour inspectors; furthermore, section 8 of a circular from 1976 establishes the specific powers of labour inspectors concerning minimum wages.

³⁰² (1), ss. 131 et seq.

³⁰³ (3), ss. 3(I)(b), and (4), s. 2(I)(1).

³⁰⁴ According to the Government, the labour inspectorate is responsible for the application of the standards respecting minimum wages. The legislation in force contains the respective provisions; (1), ss. 52 and 55, (2), ss. 46 and 50, and (3), ss. 38 and 44.

³⁰⁵ According to the provisions of the law, (1), s. 53.

³⁰⁶ (1), ss. 20 et seq.

³⁰⁷ (1), ss. 143 et seq.

³⁰⁸ (1), ss. 20 et seq.

³⁰⁹ (1), ss. 170 et seq. The law also establishes that the police authorities and the national guard shall retain their powers in tracking down infringements of labour legislation, (1), s. 178.

³¹⁰ England, Wales and Scotland (industry and trade); in accordance with the information provided by the Government, there is a Wages Inspectorate which is dependent on the Department of Employment. The Wages Act establishes the powers of the officials appointed by the Secretary of State in the enforcement of the standards respecting minimum wages; Northern Ireland (2), s. 21.

³¹¹ (2), s. 79.

³¹² (1), s. 5.

the provisions respecting minimum wages in certain sectors, for example homework,³¹³ agriculture,³¹⁴ or the maritime sector³¹⁵

368. A special case is that of some States which stipulate that enforcement of the provisions on conditions of employment, including wages, is the direct responsibility of the courts. This is the case in *Australia*, in the province of New South Wales, where magistrates may order an employer to pay the wage due under an award or an agreement as well as impose a penalty if the award or agreement is not respected. However, according to the information provided by the Government, this supervisory power is also entrusted to the body of industrial labour inspectors. Furthermore, in *Switzerland*, the legislation respecting homework³¹⁶ stipulates that the implementation of the law is the responsibility of the cantonal authorities, with enterprises in the Confederation implementing the Act under the supervision of the labour inspectors.

369. Mention should be made of the case of some countries where the trade union organisation may exercise supervisory duties in respect of the application of labour law provisions which regulate working conditions, for example in *Angola* where, according to the provisions of the legislation, trade unions and labour committees are responsible for this task;³¹⁷ a similar situation exists in *Belarus*.³¹⁸ In *Cuba*, where trade union organisations may exercise inspection functions as regards the application of the provisions governing conditions of employment. The legislation regulates the organisation of the system of trade union inspection of work and the functions, powers and obligations of the trade union organisations.³¹⁹ In *China*, according to information provided by the Government, trade union organisations also participate in supervising the application of the rules respecting wages within their respective enterprises. This is also the case of *Mozambique*. In *Ukraine*, according to information provided by the

³¹³ In *Bangladesh*, legislation (2), ss. 19 and 20, provides for the establishment of a body of inspectors responsible for the application of legislation respecting minimum wages; in *Barbados*, the legislation stipulates ((1), ss. 17 et seq.) the duties of the labour commissioner in this respect and also refers to the powers granted to the police magistrate ((1), ss. 19 et seq.); *Germany* (3), s. 23(2), which establishes a body of "wage inspectors". In *Myanmar*, the legislation ((1), s. 17.) provides for the appointment by the President of "officers" responsible for verifying compliance with the provisions of the Act wages; in the Netherlands, according to the information provided by the Government, the Wage Inspection Department is responsible for monitoring the application of the standards. In the same way, according to the same source, a series of provisions was added to the Civil Code to ensure enforcement of the minimum wage and the relevant legislation. Finally, according to the amended text of the Act respecting minimum wages ((1), s. 18(a)), the Ministry of Social Affairs and Employment may carry out investigations concerning the obligation to pay the wage to which reference is made in the above-mentioned Act.

³¹⁴ In *Algeria*, according to information from the Government, the Ministry of Agriculture and Agrarian Reform and the Inspectorate of Agricultural Social Security and Rural Affairs are responsible for enforcing the provisions respecting minimum wages in agriculture; *Austria*, ss. 112 and 113 of the Act respecting agricultural work; *United Kingdom*: England and Wales, according to information from the Government, the wage inspectors are appointed by the Ministry of Agriculture, Fisheries and Food; their powers are established by the legislation, (3), s. 12; similar information was provided for Scotland, (4), s. 12, and Northern Ireland, (5), s. 11.

³¹⁵ *Japan* where, in the case of wages of seafarers, the supervisory functions carried out by the labour inspectors are also vested in the Ministry of Transports and the Chief of the Office of Maritime Transportation, (1), s. 40.

³¹⁶ (3), s. 15.

³¹⁷ Act No. 9/81 and Joint Executive Decree No. 43/84.

³¹⁸ According to information provided by the Government.

³¹⁹ (2) ss. 305 and 307.

Government, trade unions also participate in the supervision of the application of labour standards.

370. National legislation frequently contains detailed provisions concerning the powers granted to inspectors to carry out their functions. These powers generally conform to the provisions of the instrument being examined here, and are also prescribed in the Conventions and Recommendations respecting labour inspection.³²⁰ The Committee recalls that in 1985 it dedicated its General Survey to the instruments concerning labour inspection, in which it referred in detail to these powers.³²¹

371. Some national legislation contains provisions concerning the obligations imposed on employers to facilitate the work of the labour inspectorate. In the legislation of *Germany*, for example, employers and workers are required to furnish the bodies responsible for monitoring minimum conditions of employment with information on all matters relating to conditions of employment, and to produce all documents requested.³²² Similar provisions are to be found in other countries, for example: *Saudi Arabia*,³²³ *Austria*,³²⁴ *Barbados*,³²⁵ *Botswana*,³²⁶ *Canada*,³²⁷ *Colombia*,³²⁸ *Dominica*,³²⁹ *Guyana*,³³⁰ *India*,³³¹ *Jamaica*,³³² *New Zealand*,³³³ and *Uganda*.³³⁴

4. Sanctions against the infringement of minimum wages

372. All the instruments examined here advocate that authorities adopt appropriate sanctions in the event of the infringement of minimum wage rates with a view to guaranteeing workers the payment of such rates.³³⁵

373. The nature of these sanctions appears to have been made explicit, not only because reference was made to the existing practice in countries, but be-

³²⁰ Labour Inspection Convention and Recommendation (No. 81), Labour Inspection (Mining and Transport) Recommendation (No. 82), and Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133).

³²¹ *General Survey of the Reports on the Labour Inspection Convention (No. 81) and Recommendation (No. 81), the Labour Inspection (Mining and Transport) Recommendation (No. 82), and the Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133)*, Report III (Part 4(b)), ICL, 71st Session, Geneva, 1985.

³²² (2), s. 11(2). Similar provisions exist for homeworkers ((3), s. 28) where specific mention is made of remuneration and records of remuneration.

³²³ (1), s. 91(b).

³²⁴ (3), s. 51.

³²⁵ (1), ss. 17 et seq.

³²⁶ (1), s.11.

³²⁷ At the federal level, (1), ss. 249(c) and 252, and in New Brunswick (11), s. 59.

³²⁸ (2), s. 93 as regards homeworkers.

³²⁹ (1), s. 29(2).

³³⁰ (1), ss. 10 and (5), s.15(1).

³³¹ (1), s. 19(4).

³³² (1), s. 12.

³³³ (2), s. 8A(2).

³³⁴ (1), s. 19.

³³⁵ Convention No. 26, Art. 4, para. 1; Convention No. 99, Art. 4, para. 1; Convention No. 131, Art. 5.; Recommendation No. 30, Part IV(c); Recommendation No. 89, Part IV, Para. 8(c); and Recommendation No. 135, Part VI, Para. 14(c).

cause the establishment of such sanctions sought to guarantee adequate compliance with the provisions respecting minimum wages. However, when Article 2, paragraph 1, of Convention No. 131 was discussed, the Employers expressed their opposition to penal sanctions.³³⁶ The idea of introducing this kind of sanction to guarantee the minimum wages none the less prevailed. It was pointed out by the Workers' members of the Conference technical committee as well as by some Government members that "in many developing countries the threat of imprisonment was the only effective deterrent against the failure of employers to pay the minimum wage".³³⁷

374. On various occasions the Committee has addressed comments to governments drawing attention to the need to adopt the necessary measures to establish appropriate sanctions in the event of infringements of standards respecting minimum wages and to communicate the necessary information.³³⁸

375. The legislation of practically all States includes provisions laying down sanctions - both fines and imprisonment - in the event of infringement of the standards respecting wages in general, without specific reference to minimum wages, although it is understood that they cover the latter. Such is the case in: *Angola*;³³⁹ *Australia*, at the federal level;³⁴⁰ and in New South Wales,³⁴¹ Queensland,³⁴² Tasmania,³⁴³ and Victoria,³⁴⁴ Western Australia,³⁴⁵ *Austria*;³⁴⁶

³³⁶ *Record of Proceedings*: ILC, 53rd Session, Geneva, 1969, pp. 470 and 681; *Record of Proceedings*: ILC, 54th Session, Geneva, 1970, p. 379.

³³⁷ *Record of Proceedings*: ILC, 54th Session, Geneva, 1970, p. 379.

³³⁸ See direct requests concerning Convention No. 26, for example, *Chile*, 1989; concerning Convention No. 131, for example *Brazil*, 1987, 1988 and 1989; *Islamic Republic of Iran*, 1989; *Nepal*, 1989; and the observation concerning Convention No. 26 addressed to *Rwanda* in 1989.

³³⁹ (3), s. 24.

³⁴⁰ (1), s. 178(1) and (4).

³⁴¹ (3), s. 93(1).

³⁴² (6), s. 18.42.

³⁴³ (7), s. 48, in conjunction with s. 49(1) and s. 51(1) and (6).

³⁴⁴ (8), s. 108(1)(a).

³⁴⁵ (9), s. 83(1) and (2).

³⁴⁶ The legislation ((2), s. 237, (3), ss. 53 and 54 and (4), s. 6(3)) provides for the imposition of penalties without indicating what these penalties are; however, the Act on labour inspection establishes the possibility of initiating penal proceedings in the event of an infringement of the labour provisions; the Act on homework also provides for the initiation of administrative proceedings if it is shown that a wage below the fixed rate is paid (s. 54).

Bulgaria;³⁴⁷ *Canada*, at the federal level,³⁴⁸ as well as in some provinces;³⁴⁹ *Chad*;³⁵⁰ *Chile*;³⁵¹ *Colombia*;³⁵² *Côte d'Ivoire*;³⁵³ *Cuba*;³⁵⁴ *Dominican Republic*;³⁵⁵ *Ecuador*;³⁵⁶ *Egypt*;³⁵⁷ See also *Equatorial Guinea*;³⁵⁸ *Guatemala*;³⁵⁹ *Iceland*;³⁶⁰ *Mozambique*;³⁶¹ *Nepal*;³⁶² *Poland*;³⁶³ *Romania*;³⁶⁴ *San Marino*;³⁶⁵ *Saudi Arabia*;³⁶⁶ *Spain*;³⁶⁷ *Sudan*;³⁶⁸ *Togo*;³⁶⁹ *Tunisia*;³⁷⁰ in the *United States*, at the federal level in the event of inf-

³⁴⁷ (2), s. 414.

³⁴⁸ (1), s. 256.

³⁴⁹ Manitoba, (7), s. 15(1), where both pecuniary and prison sanctions may be applied in the event of an infringement of the standards relating to minimum wages; New Brunswick, (11), s. 98; Newfoundland, (15), s. 68, whereby an employer convicted of an infringement may be subject to an economic sanction or imprisonment; Nova Scotia, (18), ss. 93 and 94; Ontario, (20), s. 59; Prince Edward Island, (24), s. 99(1)(d); Quebec, (26), s. 140(6). In this respect it should be noted that in comparison with the other provinces, the economic sanction provided by this section in the event of an infringement of the labour standards would appear to be the least severe; however, the final objective sought, to guarantee the payment of the minimum wage to a worker, is achieved by another mechanism which is peculiar to this province (see para. 384); Saskatchewan, (28), s. 85(1) whereby an employer who infringes the provisions of the law is subject to a pecuniary sanction, the non-payment of which will result in a prison sentence; similar provisions are to be found in the legislation of the Territories: Northwest Territories, (33), s. 40 and the Yukon Territory, (35), s. 99.

³⁵⁰ In accordance with the Labour Code, s. 282, infringements of the general collective agreement are punishable by fines.

³⁵¹ (1), s. 451; in accordance with information provided by the Government, in application of Act No. 12.927, s. 13, an employer who pays a wage lower than that established by the law commits an offence and may be subject to imprisonment.

³⁵² (2), ss. 41 and 486(2).

³⁵³ (1), s. 190.

³⁵⁴ The applicable legislation apparently does not make any provision for pecuniary sanctions in the event of infringements of the provisions respecting working conditions; however, labour inspectors may initiate disciplinary proceedings or, where applicable, penal proceedings against leaders, officials and other workers presumed responsible for proven infringements, (2), s. 301(c).

³⁵⁵ (1), s. 678, and Appendix No. 28 of the Labour Code, paras. 8 and 11, which make provision for pecuniary sanctions and imprisonment.

³⁵⁶ (2), s. 605 et seq.

³⁵⁷ (1), s. 170.

³⁵⁸ (1), s. 86(3).

³⁵⁹ (2), s. 272(b).

³⁶⁰ The Act respecting trade unions and work disputes provides for sanctions in the event of infringements of the provisions of the Act, (2), s. 79.

³⁶¹ (2), s. 172, (3), s. 57, and (6), s. 4.

³⁶² (1), s. 42.

³⁶³ (1), ss. 282(1) and (3).

³⁶⁴ According to the Government, infringements are punished by fines or imprisonment. See also: (1), s. 182(1) and (3), and (3), s. 13(2).

³⁶⁵ Legislation stipulates that, in the event of infringements, the inspector shall prepare the corresponding report with a view to the application of sanctions by the corresponding magistrate, but the text does not indicate what these sanctions are.

³⁶⁶ The law ((1) s. 121) stipulates that if the employer delays the payment of the wage, he shall be subject to a fine of up to twice the outstanding amount.

³⁶⁷ Economic sanctions are applied in the event of an infringement of the legal provisions respecting work (1), s. 57(3). See also the Act respecting infringements and sanctions, ss. 7, 8 and 37.

³⁶⁸ (1), s. 60(2).

³⁶⁹ (1), s. 227(b).

³⁷⁰ (1) introductory paragraph of Act No. 66-27 enacting the Labour Code and s. 234. It is interesting to note that under the Act, any employer who pays sums lower than those which he

rations provision is made for both pecuniary sanctions and imprisonment³⁷¹ although some States provide only for pecuniary sanctions.³⁷² whereas in others, according to the legislation, in addition to the pecuniary sanction the employer may also be subject to imprisonment;³⁷³ and *Zambia*.³⁷⁴

376. In *Belgium* economic sanctions and/or prison sentences are established by the Act respecting collective agreements,³⁷⁵ with fines being increased in the event of a repetition of the offence; similar provisions exist in the Act respecting the protection of workers' wages.³⁷⁶

377. Many States specifically establish sanctions in the event of an infringement of the standards respecting minimum wages. Of these, mention may be made of those States which establish pecuniary sanctions,³⁷⁷ those which also establish penal sanctions.³⁷⁸ and those which prescribe sanctions of an adminis-

should pay, must pay to the state budget a sum equal to three times the amount of the underpayment of the wage.

³⁷¹ (1), 16(a).

³⁷² Arkansas (6), s. 11-4-206(a) and (b); California (7), s. 1197.1(a) and (e), with the penalty being doubled in the event of a recurrence of the offence; Delaware (10), ss. 910 and 911(a) and (b); Indiana (16), s. 22-2-2-9; Kansas (17), s. 44-1210(a); Kentucky (18), s. 337.990(7); Maine (20), s. 671; Maryland (21), s. 89; Minnesota (25), s. 177.32(1); Michigan (24), s. 408.396; Missouri (27), s. 12; Montana (28), s. 39-3-104; Nebraska (29), s. 48-1206(2); Nevada (30), ss. 608.195 and 608.290; New Hampshire (31), s. 279:28(11); North Carolina (35), s. 95-25.22(a); Ohio (36), s. 411.99(A) to (C); Texas (45), s. 13(a) and (b); Vermont (48), s. 394(b); Virginia (49), s. 40.1-28; Washington (50), s. 49.46.100(1); West Virginia (52), s. 21-5C-8(a) to (d); Wisconsin (54), ss. 101.02 13(a), 104.03, 104.04 and 104.11.

³⁷³ Alaska (3), s. 23.10.140; Arizona (5), s. 23-329(B); Colorado (8), s. 8-6-116; Connecticut (9), s. 31-39; Hawaii (13), s. 387-12(a); Illinois (15), s. 1011(a) and (b); Massachusetts (23), s. 19(2); New Jersey (32), s. 34:11-56a24; New York (33), s. 198; New Mexico (34), s. 50-4-26(A); Oklahoma (37), s. 197.13; Oregon (38), s. 653.055(1)(c); Pennsylvania (39), s. 333.112(a); Puerto Rico (41), s. 245(x); Rhode Island (43), s. 28-12-17; Utah (46), ss. 34-40-202 and 34-40-203, s. 30-40.204(1) and (2) prescribes for penal sanctions in the event of "repeated violations"; and in the District of Columbia (11), s. 36-214.

³⁷⁴ (1), s. 4(4).

³⁷⁵ s. 56.

³⁷⁶ ss. 42 and 43.

³⁷⁷ *Algeria* (1), ss. 149 and 153; *Argentina* (3), ss. 17 and (17), s. 4; *Benin* (1), s. 203(b); *Brazil* (2), s. 120; *Dominica* (1), s. 32; *Egypt*, according to the provisions established by the Labour Code, s. 170, anyone who infringes the provisions respecting minimum wages is subject to a minimum or maximum fine of an amount determined for each worker affected; *France* (2), s. R. 154-1; *Ghana* (3), s. 18(1); *Guinea* (1), s. 236; *Guyana* (1), ss. 12(1) and (5), s. 11(2); *Honduras* (3), s. 40; similar provisions are to be found in the decrees establishing minimum wages, for example s. 5 of Executive Decree No. 19-90 of 26 Sep. 1990; *Islamic Republic of Iran* (1), s. 174; *Israel* (1), s. 14; *Italy* (2), s. 16; *Jamaica* (1), s. 5(1); *Kenya* (1), s. 15(2); *Malawi* (1), ss. 14(2) and 16(3); *Malta* (1), s. 30(1); *Morocco* (1), s. 4; *Myanmar* (1), ss. 11(2) and 15(3); *New Zealand* (3), s. 10; the fine established by this section of the law is increased for each day during which the infraction continues; *Nigeria* (1), s. 3(1), and (3), s. 12; *Panama* (2), s. 180; *Portugal* (5), s. 10; *Turkey* (2), s. 9(B)(2); *Solomon Islands* (1), s. 29(1); *Syrian Arab Republic* (1), s. 228, and (2), s. 90; *Uganda* (1), s. 14(2); *United Kingdom*: England, Wales and Scotland (industry and trade) (1), ss. 16(2) and 19(4), Northern Ireland (2), ss. 17(2) and 20(4). In the agricultural sector: England and Wales (3), s. 4(1), Scotland (4), s. 4 and Northern Ireland (5), s. 9(1); and *Yugostavia* (2), s. 89(1) and (9).

³⁷⁸ *Bahamas* (1), s. 32; *Bangladesh* (1), s. 9(3); employers who infringe the provisions respecting minimum wages are punished by prison sentences which may be of up to six months or a fine or the application of both sanctions; *Barbados* (1), ss. 20 et seq.; *Benin* (1), s. 203(b); *Botswana* (1), ss. 143(2) and 172(d); *Burundi*, Labour Code, s. 315(a), prescribes a fine and a penal sentence of between seven days and three months or both sanctions; *Cameroon* (1), ss. 177(a) and 179; *Central African Republic* (1), ss. 221(a) and 226(b); *Côte d'Ivoire*, in accordance with the

trative nature as well, such as the closing down of the enterprise or other measures.³⁷⁹

378. Other States make provisions for pecuniary sanctions as well as penal and administrative sanctions.³⁸⁰ In the *Netherlands*, the legislation³⁸¹ provides that if an employer infringes the law, the works council is informed as well as the workers' and employers' organisations concerned, whose opinions will be taken into account. In *Tunisia*, according to information provided by the Government, in addition to fines imposed in the event of an infringement, an administrative sanction is also applied which consists of a payment to the State of an amount equal to three times the part of the wage which has not been properly paid. This amount is assigned to the occupational accident fund.

379. The legislation in force in *Switzerland* establishes pecuniary sanctions in the event of an infringement of the provisions of the Act respecting contracts of employment of foreign nationals, although no specific reference is made to the case of infringements of the provisions respecting wages.³⁸² As regards homework, the legislation³⁸³ stipulates that persons infringing its provisions shall be subject to fines and, in serious cases, to arrest.

Labour Code, s. 190, infractions of the Code are subject to penalties and according to the conditions established by decree; *Fiji* (1), s. 9(2); *Gabon* (1), s. 253(e); *Guinea* (1), s. 236; *India* (1), s. 22(1); in *Japan*, legislation stipulates that, in the event of infringement of the standards respecting wages, employers will be subject to sanctions, without specifying what these are, (1), s. 44, and (2), s. 34; *Lesotho* (1), s. 15(2); in *Luxembourg*, in addition to the described pecuniary sanctions, it appears that there may be penal sanctions in the event of infringements of the standards respecting minimum wages, (1), s. 9. See also: *Mauritius* (1), s. 97(2), an employer who does not pay the minimum wage due is subject to a prison sentence of no more than six months and a fine; *Mexico* (2), ss. 992, 1003 and 1004, in the event of an infringement of the standards respecting minimum wages, an employer shall be punished by a fine and prison sentence, the amount and duration of which vary according to the seriousness of the case; *Namibia* (1), s. 76(1)(c); *Nicaragua* (2), s. 81 which provides for imprisonment, and s. 352, and (3), s. 9; *Pakistan* (1), s. 9(3); *Papua New Guinea* (1), ss. 49 et seq., as amended by Ordinance No. 32 of 1971; *Philippines*, under the law (1), s. 12, persons infringing the law are punished with fines and or prison sentences of no less than one year and no more than two years, in cases which do not come under any of the exceptions established by the Act; *Singapore* (1), s. 74(2), in the event of infringements of the provisions respecting minimum wages established for minors; *Sri Lanka* (1), ss. 4 and 44, and (2), s. 52; *Swaziland* (1), s. 15(2); *Trinidad and Tobago*; (1), s. 24; *Tunisia* (1), s. 234; *Zimbabwe* (1), s. 20(3)(b).

³⁷⁹ *Spain*, (1), s. 57(4) which provides that, in the event of infractions of exceptional seriousness, the Government may order the suspension of the activities of the enterprise for a specific period of time or, in an extreme case, even its closing, without prejudice to the guarantee of payment of wages to workers.

³⁸⁰ *France*; in addition to pecuniary sanctions and prison sentences (the latter in the event of a repetition of the offence), provision may be made for the publication of the sentence as provided by the applicable provisions of the Penal Code (2), s. R.154-1.

³⁸¹ (1), s. 18(a)(2).

³⁸² (6), ss. 20 and 39(2)(c) and (7), s. 54.

³⁸³ (3), s. 12.

380. The prescribed sanctions are increased in the event of a repetition of the offence, for example in *Algeria*;³⁸⁴ *Brazil*;³⁸⁵ *Benin*;³⁸⁶ *Burundi*;³⁸⁷ *Canada*;³⁸⁸ *Chile*;³⁸⁹ *Ecuador*;³⁹⁰ *Egypt*;³⁹¹ *France*;³⁹² *Guinea*;³⁹³ *Guyana*;³⁹⁴ *Honduras*;³⁹⁵ *Mexico*;³⁹⁶ *Morocco*;³⁹⁷ *Namibia*;³⁹⁸ and *Panama*.³⁹⁹

5. Procedures for obtaining payment of the minimum wage due

381. The Conventions examined here contain provisions concerning the measures to be adopted to ensure that workers can recover the amounts due to them in respect of wages if they have been paid sums lower than the established minimum wage rates.⁴⁰⁰ These provisions are made more explicit in the corresponding Recommendations.⁴⁰¹

382. The guarantee of payment of minimum wages to workers requires the establishment not only of sanctions or supervisory machinery but also of procedural mechanisms enabling the worker to recover sums due in respect of the minimum wage. Hence the instruments under study include such provisions. It appeared natural that these instruments provide for these procedures to be established within the framework of national legislation, including time-limits within which proceedings can be taken to recover the outstanding amounts. However, Recommendations Nos. 30 and 89 recognise that in cases where workers are not in a position individually to enforce, by judicial or other legal proceedings, their rights to recover wages due at the minimum rates in force, other measures should be provided which will be effective in preventing infringement of these rates. On the other hand, Recommendation No. 135 emphasises that workers should be given the possibility of recovering amounts outstanding

³⁸⁴ (1) s. 149, the pecuniary sanction is increased in accordance with the rates prescribed by the Act.

³⁸⁵ (2) s. 120.

³⁸⁶ In the event of a recurrence of the offence, a prison sentence of between six and ten days may be imposed in addition to a fine or both sanctions, (1), s. 203(b).

³⁸⁷ (1) s. 135.

³⁸⁸ In the Province of Manitoba, an employer who contravenes the labour provisions is considered as committing a separate offence for each day the contravention continues, (7), s. 15(2); in the Province of Newfoundland, the sanctions are increased, (15), s. 63; in Quebec, (26), s. 140.

³⁸⁹ (1), s. 451.

³⁹⁰ (2), s. 609.

³⁹¹ (1), s. 170.

³⁹² (2), s. R.154-1, in the event of a recurrence, the fine will be higher and a prison sentence may be imposed on an employer who infringes the provisions respecting minimum wages.

³⁹³ (1), s. 236.

³⁹⁴ (1), s. 12(1).

³⁹⁵ (3), s. 40.

³⁹⁶ (2), s. 1004.

³⁹⁷ (1), s. 4.

³⁹⁸ (1), s. 50(5).

³⁹⁹ (2), s. 180.

⁴⁰⁰ Convention No. 26, Art. 4, para. 2; Convention No. 99, Art. 4, para. 2; and Convention No. 131, Art. 5, in broad terms, although the concept is made more specific by the supplementary Recommendation.

⁴⁰¹ Recommendation No. 30, Part IV, Para. 3; Recommendation No. 89, Part IV, Para. 11; and Recommendation No. 134, Part VI, Para. 14(d).

in respect of the minimum wage, and stipulates that legal provisions and procedures should be simplified and that workers should be trained in the effective exercise of their rights under the regulations respecting minimum wages.⁴⁰²

383. The Committee recalls that Article 10, paragraph 4, of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) provides that a worker to whom wages at less than the minimum rates have been paid shall be entitled to recover, by judicial or other means authorised by law, the amount by which he has been underpaid, subject to such limitation of time as may be determined by legislation.

384. The recovery of outstanding sums in respect of minimum wages, or the difference between the wage paid and the amount which should have been received, is explicitly or implicitly established in the legislation of most of the States which provided information. In the majority of them, the procedural channels are those normally established for cases of labour disputes, as for example in *Algeria*,⁴⁰³ *Angola*,⁴⁰⁴ *Argentina*,⁴⁰⁵ *Australia*, at the federal level,⁴⁰⁶ and in New South Wales,⁴⁰⁷ Queensland,⁴⁰⁸ Tasmania⁴⁰⁹ and Victoria,⁴¹⁰ Western Australia,⁴¹¹ *Austria*,⁴¹² *Benin*,⁴¹³ *Botswana*,⁴¹⁴ *Brazil*,⁴¹⁵ *Bulgaria*,⁴¹⁶ *Burundi*,⁴¹⁷ *Cameroon*,⁴¹⁸ *Canada*, at the federal level,⁴¹⁹ and in some provinces, where the initial proceedings are dealt with by the labour authority responsible for supervising labour standards or the official appointed for this purpose, before being placed before a court, in the event that the employer in question fails to respect

⁴⁰² In this connection the Committee emphasises the usefulness of workers being able to express their views on the existence of a suitable procedure for the recovery of sums outstanding in respect of the minimum wage. This was reiterated in an observation made by one of the workers' organisations of *Spain*, the *Comisiones Obreras*, in its comments annexed to the report which the Government sent under article 19.

⁴⁰³ (2) ss. 1 et seq. In cases of rights under collective agreements, specific procedural standards are established, (1), ss. 128 and 129.

⁴⁰⁴ (4), ss. 12 et seq.

⁴⁰⁵ (18), s. 1.

⁴⁰⁶ (1), s. 179.

⁴⁰⁷ (3), s. 92(2) and (3).

⁴⁰⁸ (6), s. 17.20.

⁴⁰⁹ (7), s. 52.

⁴¹⁰ (8), ss. 29, 96 and 97(1).

⁴¹¹ (9), ss. 83(1)(d), and (4), and 114(2).

⁴¹² Where according to information provided by the Government, workers may take the matter to the labour and social affairs court to obtain the statutory minimum wage. The Act respecting homework contains similar provisions, ss. 53 and 54.

⁴¹³ According to the information provided by the Government, a worker who receives a wage below the minimum growth wage may make a complaint to the respective labour inspector or labour courts.

⁴¹⁴ (1), s. 157.

⁴¹⁵ Under the law, (2), s. 118, all wage-earners receiving an amount less than the minimum wage are entitled to claim from the employer the difference with respect to the established minimum wage, irrespective of the provisions of any contract or agreement to the contrary. Furthermore, any dispute concerning the matter must be settled in accordance with the established procedure, (2), ss. 837 et seq.

⁴¹⁶ (2), ss. 357 et seq.

⁴¹⁷ (1), ss. 169 to 204.

⁴¹⁸ (1), ss. 138 and 139.

⁴¹⁹ (1) ss. 258 and 259.

the established provisions;⁴²⁰ special emphasis should be placed on the case of Quebec where the Act stipulates⁴²¹ that the Commission may make the payment of the wage due to the worker if the employer does not do so within certain limits and time. A provision of this nature fully guarantees a worker's right to obtain the wage for the work carried out or services provided. See also: *Central African Republic*;⁴²² *Chad*;⁴²³ *Colombia*;⁴²⁴ *Côte d'Ivoire*;⁴²⁵ *Cuba*;⁴²⁶ *Chile*;⁴²⁷ *Djibouti*;⁴²⁸ *Dominican Republic*;⁴²⁹ *Ecuador*.⁴³⁰ *France*;⁴³¹ *Gabon*;⁴³² *Guatemala*;⁴³³ *Islamic Republic of Iran*;⁴³⁴ *Japan*;⁴³⁵ *Morocco*;⁴³⁶ *Mauritania*;⁴³⁷ *Mexico*;⁴³⁸ *Nepal*;⁴³⁹ *Panama*;⁴⁴⁰ *Peru*;⁴⁴¹ *Poland*;⁴⁴² *Portugal*;⁴⁴³ *Qatar*;⁴⁴⁴ *Rwanda*;⁴⁴⁵ *San Marino*;⁴⁴⁶

⁴²⁰ Alberta, (3), ss. 92-94 and 110; British Columbia, (5), ss. 14, 15(1), 80, 82 and 83; Manitoba, (7), s. 15(3); however, under s. 21 of the same Act, workers may seek the recovery of wages due from an employer by action in a court of competent jurisdiction; New Brunswick, (11), ss. 61, 62, 73 and 75; Newfoundland, (15), ss. 58 and 64; Nova Scotia, (18), ss. 21, 56 and 90; Ontario, (20), s. 47(1)(c); Prince Edward Island, (24), ss. 90(2) and 99(1)(d) and (2)(b); Quebec, (26), ss. 39(4), 98, 102 et seq.; Saskatchewan, (28), ss. 68 and 87; similar provisions are to be found in the legislation of the Territories: Northwest Territories, (33), ss. 39(6) and (7), 43(1) and 44(1) and (2), the Yukon Territory, (35), ss. 69, 75(1) and (5) and 101(1).

⁴²¹ (26), s. 112.

⁴²² (1), ss. 180 and 208.

⁴²³ (1), ss. 10, 244 et seq.

⁴²⁴ (5), ss. 2 et seq.

⁴²⁵ (1), ss. 149 et seq.

⁴²⁶ According to the legislation, (2), s. 308, the responsibility for infringements of labour legislation is enforceable by administrative and where applicable penal measures, in accordance with the provisions of the respective legislation.

⁴²⁷ (1), ss. 395 et seq.

⁴²⁸ (1), ss. 179 et seq.

⁴²⁹ (1), ss. 448 et seq.

⁴³⁰ (2), s. 603.

⁴³¹ (2), ss. L.511-1 et seq.

⁴³² (1), ss. 211 et seq.

⁴³³ (2), ss. 321 et seq.

⁴³⁴ (1), ss. 157 et seq.

⁴³⁵ (1), ss. 5 and 39, (2), ss. 16 and 32, and (3). At all events, according to the labour legislation, s. 115, the procedure governing the recovery of sums due in respect of wages is regulated by standards governing civil procedures.

⁴³⁶ (1), s. 11.

⁴³⁷ (1), ss. 10 et seq.

⁴³⁸ (2), ss. 685 et seq. Furthermore, s. 1003 stipulates that both workers and employers, trade unions, and federations and confederations of both workers and employers may report to the labour authorities infringements of labour standards.

⁴³⁹ (1), ss. 40 and 41.

⁴⁴⁰ (2), ss. 520 et seq.

⁴⁴¹ (3), s. 24.

⁴⁴² According to the information provided by the Government.

⁴⁴³ According to the information provided by the Government.

⁴⁴⁴ (1), ss. 66 to 68.

⁴⁴⁵ According to the information provided by the Government, in addition to the normal channels used to settle disputes, workers may also make use of the procedure established in section 8 of the circular of 1976.

⁴⁴⁶ (1), s. 6.

Spain;⁴⁴⁷ *Syrian Arab Republic*;⁴⁴⁸ *Togo*;⁴⁴⁹ *Tunisia*;⁴⁵⁰ *Turkey*;⁴⁵¹ *United States*;⁴⁵² *Yugoslavia*⁴⁵³.

385. In *Romania*, ss. 173 and 174 of the Labour Code make provision for bodies to settle individual labour disputes, for example the "unit judicial commissions". It remains to be seen whether these are still in force. The same is true as regards *Hungary*.⁴⁵⁴

386. In other countries it is stipulated that outstanding sums may be recovered through other procedures established for this purpose in the specific

⁴⁴⁷ In application of the Act respecting legal procedure.

⁴⁴⁸ (1), ss. 188 et seq., and (2), ss. 217 et seq.

⁴⁴⁹ (1), ss. 183 et seq.

⁴⁵⁰ (1), ss. 198 et seq.

⁴⁵¹ In accordance with the information provided by the Government.

⁴⁵² The federal legislation, (1), s. 16(b), and that of some States of the Union frequently establishes an administrative procedure with the participation of the competent authority responsible for the application of labour standards, which may require the employer to pay the sum due in respect of the minimum wage, irrespective of whether provision is made otherwise for recourse by workers to other jurisdictions to recover the sums due to them in respect of wages: Alaska (3), s. 23.10.110; Arizona (5), s. 23-327; Arkansas (6), s. 11-4-218; California (7), ss. 1195 and 1995.5; Colorado (8), ss. 8-106-8, 8-6-115 and 8-6-117; Connecticut (9), s. 31-68; Delaware (10), ss. 910 and 911(a) and (b); Georgia (12), s. 34-4-6; Hawaii (13), s. 387-12; Idaho (14), s. 44-1508(2); Illinois (15), s. 1012(a) and (b); furthermore specific procedures are established in the case of workers receiving a wage lower than the fixed rate, irrespective of whether the worker is a woman or a minor, s. 198.16; Indiana (16), s. 22-2-29; Kansas (17), s. 44-1211(a) and (b); Kentucky (18), s. 337.385(1) and (2); Maine (20), ss. 670 and 671; Maryland (21), s. 90 and (2), ss. 09.12.42.09(C)(5)(c) and 09.12.42.12(C) and (D); Massachusetts (23), s. 20; Michigan (24), s. 408.393; Montana (28), s. 39-3-403; Nebraska (29), s. 48-1206, (1) and (3) to (5); Nevada (30), s. 5.608.260; New Hampshire (31), s. 279:29; New Jersey (32), s. 34:11-56a25; New York (33), ss. 198 and 663; New Mexico (34), s. 50-4-26(B); North Carolina (35), ss. 95-25.16(c) and 95-25.20; Ohio (36), s. 4111.10(A); Oklahoma (37), s. 197.10; Oregon (38), s. 653.055(1) and (3); Pennsylvania (39), s. 331(o); Puerto Rico (41), s. 246(d); Rhode Island (43), s. 28-12-19; South Dakota (44), s. 60-11-4; Texas (45), s. 13(a) and (b); Vermont (48), s. 392; Virginia (49), s. 40.1-28.12; this provision also establishes that the employer must pay 8 per cent per year of the amount of the unpaid wage; Washington (50), s. 49.46.090(1) and (2); West Virginia (52), s. 21-5C-8(a) to (d); Wisconsin (54), ss. 111.322(2m) and 104.12; Wyoming (55), ss. 27-4-204, 27-4-502, 27-4-506 and 27-4-508; and in the District of Columbia (11), ss. 36-210 and 36-215.

⁴⁵³ (2), s. 80.

⁴⁵⁴ (1), ss. 63 et seq.

legislation respecting minimum wages, as is the case in the following countries: *Bangladesh*;⁴⁵⁵ *Barbados*;⁴⁵⁶ *China*;⁴⁵⁷ *Germany*;⁴⁵⁸ *Honduras*;⁴⁵⁹ *Israel*.⁴⁶⁰

387. In the *Solomon Islands* the legislation makes provision for specific procedure regarding the recovery of outstanding sums in respect of the minimum wage, and for the compensation for lower amounts paid in this respect and the sum which should actually have been paid. Furthermore, the procedure followed in this case does not prejudice the worker's right to take the matter to the civil courts or pursue other means established for the purpose of obtaining the payment of the statutory minimum wage.⁴⁶¹ Similar provisions are to be found in the legislation of *Bahamas*;⁴⁶² *Botswana*;⁴⁶³ *Fiji*;⁴⁶⁴ *Ghana*;⁴⁶⁵ *Guyana*;⁴⁶⁶ *India*;⁴⁶⁷ *Kenya*;⁴⁶⁸ *Jamaica*;⁴⁶⁹ *Lesotho*;⁴⁷⁰ *Malawi*;⁴⁷¹ *Malta*;⁴⁷² *Mauritius*.⁴⁷³ See also: *Myanmar*;⁴⁷⁴ *Namibia*;⁴⁷⁵ *New Zealand*;⁴⁷⁶ *Nigeria*;⁴⁷⁷ *Pakistan*;⁴⁷⁸ *Philippines*;⁴⁷⁹ *Sri*

⁴⁵⁵ A worker who has received a wage below the minimum may make a complaint to the Government, (2), s. 21.

⁴⁵⁶ Specific procedures are established for the recovery of outstanding sums in respect of the minimum wage and the application of sanctions in the event of infringements of the standards applicable to such wages.

⁴⁵⁷ According to the information provided by the Government, workers may present a complaint to the special agencies of the labour affairs departments or to the arbitration committees of the enterprises or directly to the labour arbitration committees. Furthermore, workers may also appeal to the courts.

⁴⁵⁸ (2), s. 13, the highest authority of the *Land* or any body it may designate may order an employer who fails to observe the minimum conditions of employment to satisfy existing claims within a time specified in the order and to produce documentary evidence that he has done so. Furthermore, (2), s. 14, stipulates the said authorities may prosecute on their own behalf employees' claims based on minimum conditions of employment. The decision which is issued for this purpose will also be binding on the worker, whether it is in his favour or not. In the case of homeworkers, the legislation ((3), ss. 24 and 25) stipulates similar provisions.

⁴⁵⁹ The recovery of the sums which the employer owes the worker in respect of the minimum wage or the existing difference is affected by summary proceedings, (3), s. 39.

⁴⁶⁰ (1), ss. 6 to 9.

⁴⁶¹ (1), s. 29(2) et seq.

⁴⁶² (1), ss. 12 and 34.

⁴⁶³ (1), s. 157(2).

⁴⁶⁴ (1), ss. 9(2) and 15(5).

⁴⁶⁵ (3), s. 18(2).

⁴⁶⁶ (1), s. 13, and (5), s. 17(5).

⁴⁶⁷ (1), s. 20.

⁴⁶⁸ (1), ss. 15 and 16.

⁴⁶⁹ (1), ss. 6 et seq.

⁴⁷⁰ (1), ss. 15 et seq.

⁴⁷¹ (1), ss. 14 et seq.

⁴⁷² (1), s. 30(4).

⁴⁷³ (1), s. 97(4).

⁴⁷⁴ (1), s. 11(3)(b) and (4).

⁴⁷⁵ (1), ss. 51 to 53.

⁴⁷⁶ (2), ss. 11 and 11A.

⁴⁷⁷ (1), ss. 3(2), 6(4) and (5), and (3), s. 12(2).

⁴⁷⁸ (1), s. 9-A.

⁴⁷⁹ (2), s. 129.

Lanka;⁴⁸⁰ *Swaziland*;⁴⁸¹ *Trinidad and Tobago*;⁴⁸² *Uganda*;⁴⁸³ *United Kingdom*;⁴⁸⁴ *Zambia*;⁴⁸⁵ and *Zimbabwe*.⁴⁸⁶

388. In *Iceland*, the legislation⁴⁸⁷ prescribes that the action taken to obtain the payment of wages under the law respecting the protection of wages may be dealt with, at the request of the workers, as private police cases. In the same country, the legislation concerning trade unions and industrial disputes contains provisions concerning the settlement of disputes resulting from the non-respect of contracts of employment.⁴⁸⁸

389. In the *United Kingdom*, in addition to the specific procedures established for the recovery of the outstanding part of the wage in respect of the minimum wage, the use of such a procedure shall not be in derogation of any right to recover such sums by civil or other proceedings.⁴⁸⁹ Similar provisions are to be found in the legislation of other countries: *Bahamas*;⁴⁹⁰ *Botswana*;⁴⁹¹ *Guyana*;⁴⁹² *India*;⁴⁹³ *Jamaica*;⁴⁹⁴ *Lesotho*;⁴⁹⁵ *Malawi*;⁴⁹⁶ *Malta*;⁴⁹⁷ *Myanmar*;⁴⁹⁸ *Solomon Islands*;⁴⁹⁹ *Trinidad and Tobago*.⁵⁰⁰

6. Information and training measures for workers concerning minimum wages

390. Without doubt one of the most appropriate measures to ensure the respect of the provisions respecting minimum wages is the provision of information and training to workers concerning their rights.

391. The instruments examined here refer implicitly or explicitly to these measures by establishing the obligation of States to adopt the necessary meas-

⁴⁸⁰ (1), s. 44(3) and (4), and (2), s. 52(2) and (3).

⁴⁸¹ (1), s. 15(3) and (4).

⁴⁸² (1), s. 25.

⁴⁸³ (1), ss. 14 and 15.

⁴⁸⁴ As regards industry and trade; England, Wales and Scotland (1), s. 16, Northern Ireland (2), s. 17. As regards agriculture, England and Wales (3), s. 4, Scotland (4), s. 4, and Northern Ireland (5), s. 9.

⁴⁸⁵ (1), ss. 4(5) and 6(1) and (2).

⁴⁸⁶ (1), s. 20(4) to (6).

⁴⁸⁷ (1), s. 4.

⁴⁸⁸ (2), s. 44(2).

⁴⁸⁹ United Kingdom: as regards industry and trade, England, Wales and Scotland (1), s. 16(7), Northern Ireland (2), s. 17(7). In the field of agriculture, England and Wales (3), s. 4(4), Scotland (4), s. 4(4), and Northern Ireland (5), s. 9(9).

⁴⁹⁰ (1), ss. 12 and 34.

⁴⁹¹ (1), s. 157(2).

⁴⁹² (1), ss. 13 and (5), s. 17(5).

⁴⁹³ (1), s. 20.

⁴⁹⁴ (1), ss. 6 et seq.

⁴⁹⁵ (1), ss. 15 et seq.

⁴⁹⁶ (1), ss. 14 et seq.

⁴⁹⁷ (1), s. 30(4).

⁴⁹⁸ (1), s. 11(3)(b) and (4).

⁴⁹⁹ (1), ss. 29(2) et seq.

⁵⁰⁰ (1), s. 25.

ures to ensure respect of the standards concerning minimum wages.⁵⁰¹ The provisions are supplemented by the corresponding provisions of the Recommendations.⁵⁰² Recommendation No. 135 also contains two other important related provisions, the first concerning the participation of workers' and employers' organisations in the measures taken to protect workers against abuse, and the second concerning the protection of workers against reprisals.

392. The Committee recalls that the Protection of Wages Convention, 1949 (No. 95), stipulates that effective measures must be taken to ensure that "workers are informed in an appropriate and easily understandable manner: (a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and (b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change". The Committee has repeatedly emphasised that this provision should be respected and that governments should adopt appropriate measures to ensure that workers are informed concerning their wages. The Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) stipulates that the necessary measures should be taken "to ensure that the employers and workers concerned are informed of the minimum wage rates in force and that wages are not paid at less than these rates."

393. The law and practice of States include some measures to ensure the provision of information and training to workers concerning not only the rates of minimum wages but also in general the rights concerning such wages. According to the information provided by some States, workers are informed of the fixed minimum wages, inter alia, by means of official gazettes.⁵⁰³ As indicated above, it would appear that the obligation to inform the parties concerned through such publications of the minimum wage rates or any other provision respecting these wages would not be sufficient from a practical point of view to guarantee that such persons concerned are properly informed. It is thus interesting to emphasise the obligation established in some States or the practice followed in them to give greater publicity to the obligations concerning minimum wages and the publication of the respective rates in the mass communication media.⁵⁰⁴

394. The obligation to inform workers and employers of the standards concerning minimum wages and the respective rates would appear to be more effective when employers are required to display notices in appropriate locations indicating the minimum wages which should be paid to workers and to provide them with copies or extracts from the applicable standards.⁵⁰⁵

395. As regards the obligation to provide training to workers on their labour rights, and in particular those concerning minimum wages, it should be noted that, according to the information provided by the Government of *Australia*, in Queensland, the labour inspectorate offers an independent advisory

⁵⁰¹ Convention No. 26, Article 4, para. 1; Convention No. 99, Article 4, para. 1; and Convention No. 131, Article 5.

⁵⁰² Recommendation No. 30, Part IV; Recommendation No. 89, Part IV; and Recommendation No. 135, Part VI.

⁵⁰³ See para. 358.

⁵⁰⁴ See para. 359.

⁵⁰⁵ See paras. 370 and 371.

service on the provisions of labour legislation, awards and agreements, with a view to facilitating the proper payment of workers' wages; in Victoria the Labour Department provides an information service for employers and workers on matters concerning their rights and obligations resulting from awards and state legislation. In *Canada*, in the Province of Newfoundland the directorate of the Department of Employment and Labour Relations is responsible for informing and educating the public concerning labour standards. In *Honduras*, the Government has indicated that the "publicity plan" involves not only the publication and distribution of decrees establishing minimum wages, but also advisory services and awareness campaigns concerning the rights and obligations of employers and workers concerning minimum wages. According to information provided by the Government of *Mauritius*, part of the Workers' Education Programme is devoted to informing workers on the provisions respecting minimum wages.



Chapter VI

Final considerations and observations

I. Importance of the ILO's international instruments on minimum wages

396. The importance of these instruments stems from their central objective, namely to ensure a minimum wage to workers that will enable them to meet their subsistence needs and those of their families adequately in the context of the economic and social conditions of the country in which they live.

397. This objective is universal in character and, as already seen, constitutes a fundamental principle underlying these instruments and the Constitution of the International Labour Organisation as well. In this respect the Committee observes that both the countries that have ratified the Conventions in question and those that have not ratified them recognise the importance of their objectives and the need to ensure the right to a minimum wage either in the Constitution or in the ordinary law. Even in the case of countries that do not have any regulations on the subject, it can be observed that this objective is pursued through collective bargaining which, in most cases, constitutes an effective means of guaranteeing workers a minimum wage.

398. The Committee recognises that the working world of today has been undergoing sweeping changes caused, on the one hand, by the new national and international economic circumstances affecting a large number of countries and, on the other hand, by the transformation of a planned economy system into a market economy system in some countries. While not disregarding the fact that these changes should be taken into consideration in the application of the principle of a minimum wage for workers, and that such application must fit in with today's reality, the Committee nevertheless considers the principle to be as valid and as important as ever and that, consequently, the need still exists to respect the standards contained in the instruments and to apply them properly.

399. Doubtless, a large proportion of the world's active population is engaged in activities outside the framework of a contractual relationship. It is presumed that those to whom the minimum wage instruments apply, the wage-earning class, constitute a minority in many countries; although they represent a large majority in some countries in view of the latter's level of development. Nevertheless, this minority has an overwhelming role and importance, since its labour accounts for most of the goods and services that make up the gross national product in almost every country.¹ This must therefore be borne in mind in assessing the importance of minimum wage fixing.

¹ See, in this respect, ILO: *The dilemma of the informal sector*. Report of the Director-General (Part I), ILC, 78th Session, Geneva, 1991; OECD: *The informal sector revised*. Edited by David Turnham, Bernard Salomé and Antoine Schwarz, Paris, 1990, and ILO: *The changing*

400. Finally, the number of countries that have ratified the Conventions under review, which today stands at 181, as well as the number of reports received from these countries and from those that have not yet ratified them, provide a further indication of the importance of minimum wage fixing.

II. Difficulties encountered in applying the Conventions

401. The Committee has observed that a number of governments stated that the instruments under review are applied by the law and practice in their countries and that no difficulties have been encountered in this connection.

402. Difficulties encountered in applying the instruments in certain countries result, according to the governments, from the economic and social conditions of the country, caused either by depression in their economies, which they are taking steps to redress through structural reforms, or by changes under way towards a market economy.²

403. Other governments have reported that the problems stem from the workers' acceptance of wages below the established rates or from a tendency on the part of the employer to pay less than the established minimum.³

404. In another case it has been stated that the problems originate in the political, social and economic changes taking place in the country which have entailed the adoption of a considerable number of new laws, including one on minimum wage fixing, and that the workers may be having difficulty in understanding these laws.⁴

405. Other governments have referred to problems caused by the lack of adequate human and material resources to ensure effective application of minimum wage legislation, especially in connection with labour inspection.⁵

406. One government has stated that the lack of reliable statistics on the various economic factors that should be taken into consideration is an obstacle to minimum wage fixing.⁶ Nevertheless, the Government states that the necessary measures are being taken to set up the relevant technical department.

407. The Government of another country has reported difficulties in applying the Conventions under review, caused by the small size of the country's agricultural enterprises and the fact that these rarely employ paid labour since they are essentially run by family members.⁷

408. Two countries have referred to problems connected with Convention No. 99 as regards the partial payment in kind of the minimum wage.⁸ One of these Governments has stated that it is not planned to amend the legislation in

world of work: Major issues ahead. Report of the Director-General (Part I), ILC, 72nd Session, Geneva, 1986.

² *Angola, Brazil, Burkina Faso, Czechoslovakia, Mauritius, Pakistan, Romania, Trinidad and Tobago.*

³ *Czechoslovakia, Honduras, Pakistan, Trinidad and Tobago.*

⁴ *Romania.*

⁵ *Nigeria, Pakistan.*

⁶ *Equatorial Guinea.*

⁷ *Greece.*

⁸ *Japan, Syrian Arab Republic.*

the near future to bring it in line with the Convention but that application of the Convention is in fact guaranteed through the country's supervisory machinery.⁹

409. The Committee is aware of the difficulties facing countries in applying the provisions of ratified Conventions. It nevertheless once again urges the Governments concerned to continue to adopt the necessary measures to apply the provisions of the ratified Conventions, so that the relevant action may be taken to bring national law and practice into line with the Conventions, extending the guarantee of a minimum wage to all workers and ensuring the actual payment of the minimum wage.

III. Prospects for ratification

410. A number of countries have stated that for the time being they are not considering ratifying any or all of the Conventions in question.¹⁰ The reasons given for not considering ratification vary: for example, the absence of legislation or incompatibility between current law and practice and the provisions of the Conventions,¹¹ and the existence at the national level of minimum wage fixing machinery already covering the objectives of the Conventions in question, especially when one of these Conventions has already been ratified.¹² Some governments have sent in comments from organisations of employers and workers stating that the system in force in their country complies with the objectives of the Conventions and that it is not necessary to ratify the instruments, especially since some of them have already been ratified.¹³

411. Other governments have stated that the economic and social difficulties their countries are experiencing are disincentives to ratification of the Conventions under review.¹⁴

412. The governments of other countries have stated that they are considering ratifying one or more of the Conventions in question.¹⁵

413. Two Governments¹⁶ which have stated that they do not intend to ratify Convention No. 131 in particular explained that one of the reasons for this is that Article 2, paragraph 1, would be contrary to freedom of collective bargaining. This is because collective bargaining is the means whereby minimum wages are fixed in these countries, irrespective of any other machinery provided for in their legislation. The Governments in question consider that if they rati-

⁹ *Syrian Arab Republic.*

¹⁰ *Argentina, Bangladesh, Belarus, Belgium, Benin, Burkina Faso, Canada, Czechoslovakia, Denmark, Djibouti, Finland, Germany, Israel, Mozambique, Norway, Pakistan, Panama, Portugal, Rwanda, Saudi Arabia, Trinidad and Tobago.*

¹¹ *Belgium, Benin, Denmark, Germany, Mozambique, Norway, Rwanda, Saudi Arabia.*

¹² *Belgium, Denmark, Finland, Germany, Ghana, Panama, Portugal.*

¹³ *Austria: Austrian Congress of Chambers of Labour; Finland: Finnish Employers' Confederation (STK), Employers' Confederation of Service Industries (LTK); Sweden: Swedish Trade Union Confederation (LO), Swedish Employers' Confederation, Swedish Association of Local Authorities, and Federation of Swedish County Councils.*

¹⁴ *Bangladesh, Belarus, Burkina Faso, Djibouti, Israel, Pakistan, Trinidad and Tobago.*

¹⁵ *Algeria, Botswana, Gabon, Honduras, Lebanon, Romania.*

¹⁶ *Belgium, Germany.*

fied Convention No. 131 they would be restricting freedom of negotiation which in one of them is even recognised in the Constitution.

414. The Committee considers that Convention No. 131 clearly makes it obligatory for a ratifying State to establish or maintain a system of fixing minimum wages to give effect to the Convention. Pursuant to Article 2, paragraph 1, minimum wages shall be given the force of law and shall not be subject to abatement. This point is all the more important where the minimum wage fixing machinery is collective bargaining which, by its very nature, tends in general to increase minimum wages, rather than lower them. The Committee therefore stresses that the principles guiding the Convention are not contrary to freedom of collective bargaining which is expressly referred to in paragraph 2 of Article 2 of the Convention, which states that freedom of collective bargaining shall be fully respected, subject to the provisions of paragraph 1 above.

415. The Committee hopes, in view of the importance of the objectives established in the Conventions in question, that governments will give due consideration to ratifying them.

IV. Concluding observations

416. The general principles on minimum wages set out in various other international instruments and in the Constitution of the ILO are worded in general terms. The ILO Conventions and Recommendations examined in the present survey provide for the framework, the actual wage fixing machinery and the broad lines of its operation, and the prior and worthwhile consultation of employers' and workers' organisations on an equal footing. The Recommendations and Convention No. 131 also specify the elements to be taken into consideration, "so far as possible and appropriate in relation to national practice and conditions" in determining the level of minimum wages. This level is closely related to the economic, social and political conditions of each country and cannot be determined outside this frame of reference.¹⁷

417. Although according to the reports received nearly all countries have minimum wage fixing machinery, this machinery does not always operate or does not always correspond to that described in the legal texts. The Committee realises that it is necessary that minimum wage fixing machinery be adapted to reality and considers that the relevant legislative texts should be amended accordingly. Furthermore, as the Committee has emphasised on various occasions through comments made in connection with the application of the Conventions in question, the Committee stresses the importance of effective operation of the minimum wage fixing machinery prescribed in legal texts.

418. The minimum wage fixing machinery prescribed in national laws and regulations or encountered in practice in certain countries is very varied in character and, at times, quite complex. All this machinery appears to be equally suitable for achieving the objectives of the instruments in question in so far as it

¹⁷ The Wages, Hours of Work and Manning (Sea) (Revised) Convention, 1949 (No. 93), makes an attempt at fixing international minimum wages applicable internationally to a particular category of wage earners without regard to differences in national conditions. Article 5 of the Convention determines the basic pay or wages of an able seaman and the methods of adjusting this amount; this Convention has been ratified by six States.

allows for the effective fixing of minimum wages. When this has not been the case the Committee has addressed comments on the subject to the governments concerned.

419. Furthermore, the information supplied has revealed that in a large number of countries exclusions are still being made in respect of certain sectors or groups of workers. The exclusion of certain sectors or groups of workers from the operation of minimum wage fixing machinery has been remedied through other machinery which provides these sectors or groups of workers with a different minimum wage from that generally applied to the rest of the workers. But there still remain sectors or groups of workers that are excluded from the general minimum wage fixing machinery and are not protected in another way. The Committee would like to emphasise once again the importance of the general application of the principle embodied in the instruments in question, allowing for the cases where these instruments provide for the possibility of fixing different minimum wages for the different sectors or groups of workers to be covered. In this respect the Committee urges States to adopt the necessary measures to bring the sectors or groups of workers who are at present excluded from the system of minimum wage fixing that is in force in the country, and to guarantee them the protection of the relevant minimum wage provisions as soon as possible.

420. The information supplied by governments does not enable the Committee to have an idea of the number or percentage of the working population actually protected by minimum wages. Consequently, as it did on other occasions,¹⁸ the Committee urges governments to supply information on the number of workers covered by minimum wages.

421. The consultation and participation of representatives of employers and workers or of their organisations aims at guaranteeing effective operation of minimum wage fixing machinery. The principle of consultation and participation of the social partners is a fundamental principle of the International Labour Organisation. It can reasonably be said that the majority of States attach due importance to this principle and do in fact provide for such consultation and participation in the minimum wage fixing procedures in force in their respective countries.

422. Nevertheless, the fact that the minimum wage fixing machinery in force provides for consultation and participation of the social partners does not necessarily guarantee consultation or participation in actual fact, as has been seen from the information sent in by the governments themselves or from the comments on the matter communicated by organisations of employers or workers.

423. Furthermore, as has been observed in the course of this survey, the fact of consulting employers' or workers' representatives or their organisations, or of having them participate, is no guarantee either that the consultation or participation of the social partners will be effective. In a certain number of countries, consultation or participation is a mere formality in that the employers' and workers' representatives do not have a real opportunity to present their views on the establishment or modification of minimum wage fixing machinery or its operation.

¹⁸ See: RCE 1985, General observation concerning Convention No. 99.

424. The consultation and participation of employers' and workers' representatives should be on an equal footing. The Committee has observed that in a number of countries, where consultation and participation does take place it has been confined only either to employer representatives or to worker representatives. Even in countries where the organisation of employers or workers is only emerging or is totally non-existent, governments should ensure that the consultation and participation of employers' and workers' representatives take place on an equal footing.

425. Consequently, the Committee strongly urges governments to take the necessary action to ensure that the consultation and participation of the social partners in the establishment and modification of minimum wage machinery or its operation is useful and effective, that is to say that these representatives are genuinely given an opportunity to express their views, in full knowledge of the facts, that their views are taken into consideration at the appropriate time, and that their consultation and participation are on an equal footing.

426. The instruments provide for the consultation and participation of qualified independent persons who are experts on minimum wage matters. The Committee emphasises the importance of consulting the employers' and workers' organisations concerned when these persons are being appointed.

427. The instruments in question contain provisions in respect of the elements that should be taken into account in fixing minimum wages. The validity and universality of these elements appear to be corroborated by the information sent in by the governments which also show that these elements have in fact been taken into consideration in fixing minimum wages or, more frequently, have been embodied in legal instruments which establish minimum wage fixing machinery. Similarly, certain countries furnished detailed information on the criteria taken into account in fixing minimum wages.

428. As recalled above, the level of minimum wages is closely linked to the economic, social and political circumstances of each country. Consequently, the weight given to each of these elements will vary from country to country according to these circumstances – all the more so since, as already stated, the political, economic and social changes that have been taking place in a large number of countries since the 1980s tend to favour some of these elements as against others. The Committee wishes to recall once again that the fundamental and ultimate objective of the instruments in question is to ensure to workers a minimum wage that will provide a satisfactory standard of living for them and their families. It is however necessary to note that this objective is not always attained and that in some countries, allowing for the erosion of the value of money caused by inflation, minimum wages represent only a percentage of what workers really need.

429. This fundamental objective of the minimum wage systems should constantly be borne in mind when, in certain countries, structural adjustment programmes are being applied or where, in other countries, the transition is under way from a planned to a market economy.

430. It is recognised that minimum wages are an important element of the labour market, especially in ensuring a certain minimum for workers with very low incomes, and that, furthermore, minimum wages can help in achieving the aims of income redistribution. The effect of increases in minimum wages on employment, and especially on the employment of young people entering the

labour market who are generally over-represented in the low wage category, has been the subject of numerous studies in the industrialised market economy countries. Some of these have revealed an adverse, though limited, effect of minimum wages on the employment of young people.¹⁹ In contrast, other studies on the effect on employment of minimum wages do not reach quite the same conclusions. A recent study on the situation in France, where the relative value of the minimum wage has tended to increase over the last two decades, states that increases in the real value of the SMIC have indeed raised the average earnings of young workers, "but that it is extremely difficult to derive robust negative effects on youth employment".²⁰

431. In view of the results of these studies it can be concluded that any adverse effect on employment may result not so much from the obligations imposed by the Conventions to fix minimum wages or to establish minimum wage fixing machinery as from the actual amount of the minimum wage which is determined not by the Conventions themselves but by agreement between the parties or by decision of the competent authority in consultation with the parties concerned. Even so, such adverse effect is likely only in so far as the minimum wage is unduly high in relation to what the economists call equilibrium wage levels – although the latter notion will remain somewhat Utopian in developing countries, where it has been found that wages in general and minimum wages in particular have systematically been losing their purchasing power both in absolute and relative terms.²¹

432. The best way of taking the various elements mentioned in the instruments into consideration and according them their due weight is no doubt by compiling the information and statistics referred to in the instruments themselves. The Committee has observed that a number of countries have developed mechanisms for compiling this information which often allow for the participation of trade unions or private bodies, with a view to using it in fixing minimum wages. In other countries, such mechanisms are in their early stages or simply non-existent. The Committee urges the governments of such countries to take the necessary measures to establish instruments and machinery that will enable them to collect the necessary information for minimum wage fixing. The Committee considers that, if necessary, these governments should request for technical assistance from the International Labour Office for this purpose.

433. The fact that minimum wages are established in each of the countries studied does not necessarily guarantee that the said minimum wages are actually paid to the workers. In view of this, the instruments prescribe a series of measures with a view to guaranteeing the actual payment of these wages. The Committee has observed in the course of this survey that the majority of countries have made provision for machinery to guarantee the actual payment of minimum wages. Nevertheless, the Committee has found that certain governments have reported that in actual fact the minimum wages that have been fixed are not observed, either because of the economic conditions prevailing in the coun-

¹⁹ See, for example, C. Brown: "Minimum wage laws: Are they overrated?", in *Journal of Economic Perspectives*, 1988, pp. 133-145.

²⁰ S. Bazen, and J.P. Martin: "The impact of the minimum wage on earnings and employment in France", in *OECD Economic Studies*, No. 16, Spring 1991, p. 206. This conclusion does not prevent the authors from stating that they nevertheless consider that an increase in minimum wages has a detrimental effect on employment.

²¹ Document GB.248, CE/2/1, Geneva, Nov. 1990, paras. 28 to 37.

try,²² or because of acquiescence on the part of the workers to receive a wage below the fixed minimum,²³ or because there are no adequate means of supervision to ensure compliance with the minimum wages.²⁴ On other occasions it has been the workers' organisations that have commented on the inadequacy in the operation of existing machinery.²⁵

434. The Committee, therefore, requests governments to make provision for adequate machinery that will allow for the supervision of the application of minimum wages once it has been established. The Committee considers that in those cases where it is recognised that an adequate labour inspection system is lacking, the governments concerned might request the necessary technical assistance from the International Labour Office to establish labour inspection services or improve existing ones since these are essential to the proper compliance with the international standards on minimum wages. In this connection the Committee recalls that on numerous occasions it has addressed comments to governments so that the latter may adopt the necessary practical measures to guarantee the effective application of provisions on minimum wages and communicate the relevant information to the International Labour Office.²⁶

435. Lastly, the Committee has observed, in the light of information examined, that a number of countries are faced with economic and social difficulties such that the existence of minimum wage fixing machinery and its implementation do not suffice to ensure that workers have the necessary incomes to meet their basic needs and those of their families. Consequently, the Committee urges governments to pay due attention to this situation.

²² *Angola, Brazil, Pakistan.*

²³ *Czechoslovakia, Fiji, Honduras.*

²⁴ *Burkina Faso, Mauritius, Nigeria, Pakistan, Trinidad and Tobago.*

²⁵ *Austria:* the Austrian Congress of Chambers of Labour states that the system in force whereby minimum wages are fixed by collective agreement, is such as to enable certain employers not to respect the terms of these agreements. The organisation in question consequently proposes a reform of the system in force. *Sri Lanka:* the Lanka Jathika Plantation Workers Union has emphasised the need for the Government to implement the provisions of the instruments in question.

²⁶ See, in particular, RCE, 1985, General observation on Convention No. 99.

Appendix I

Text of the substantive provisions of instruments under consideration

Convention No. 26

Convention concerning the Creation of Minimum Wage-Fixing Machinery ¹

.....

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades (and in particular in home working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.

2. For the purpose of this Convention, the term "trades" includes manufacture and commerce.

Article 2

Each Member which ratifies this Convention shall be free to decide, after consultation with the organisations, if any, of workers and employers in the trade or part of trade concerned, in which trades or parts of trades, and in particular in which home working trades or parts of such trades, the minimum wage-fixing machinery referred to in Article 1 shall be applied.

Article 3

1. Each Member which ratifies this Convention shall be free to decide the nature and form of the minimum wage-fixing machinery, and the methods to be followed in its operation:

2. Provided that –

- (1) before the machinery is applied in a trade or part of trade, representatives of the employers and workers concerned, including representatives of their respective organisations, if any, shall be consulted as well as any other per-

¹ Date of coming into force: 14 June 1930.

sons, being specially qualified for the purpose by their trade or functions, whom the competent authority deems it expedient to consult;

- (2) the employers and workers concerned shall be associated in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by national laws or regulations;
- (3) minimum rates of wages which have been fixed shall be binding on the employers and workers concerned so as not to be subject to abatement by them by individual agreement, nor, except with general or particular authorisation of the competent authority, by collective agreement.

Article 4

1. Each Member which ratifies this Convention shall take the necessary measures, by way of a system of supervision and sanctions, to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable.

2. A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other legalised proceedings, the amount by which he has been underpaid, subject to such limitation of time as may be determined by national laws or regulations.

Article 5

Each Member which ratifies this Convention shall communicate annually to the International Labour Office a general statement giving a list of the trades or parts of trades in which the minimum wage-fixing machinery has been applied, indicating the methods as well as the results of the application of the machinery and, in summary form, the approximate numbers of workers covered, the minimum rates of wages fixed, and the more important of the other conditions, if any, established relevant to the minimum rates.

.....

Convention No. 99**Convention concerning Minimum Wage Fixing Machinery in Agriculture ¹**

.....

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to create or maintain adequate machinery whereby minimum rates of wages can be fixed for workers employed in agricultural undertakings and related occupations.

2. Each Member which ratifies this Convention shall be free to determine, after consultation with the most representative organisations of employers and workers concerned, where such exist, to which undertakings, occupations and categories of persons the minimum wage fixing machinery referred to in the preceding paragraph shall be applied.

3. The competent authority may exclude from the application of all or any of the provisions of this Convention categories of persons whose conditions of employment render such provisions inapplicable to them, such as members of the farmer's family employed by him.

Article 2

1. National laws or regulations, collective agreements or arbitration awards may authorise the partial payment of minimum wages in the form of allowances in kind in cases in which payment in the form of such allowances is customary or desirable.

2. In cases in which partial payment of minimum wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that—

- (a) such allowances are appropriate for the personal use and benefit of the worker and his family; and
- (b) the value attributed to such allowances is fair and reasonable.

Article 3

1. Each Member which ratifies this Convention shall be free to decide, subject to the conditions stated in the following paragraphs, the nature and form of the minimum wage fixing machinery, and the methods to be followed in its operation.

2. Before a decision is taken there shall be full preliminary consultation with the most representative organisations of employers and workers concerned,

¹ Date of coming into force: 23 August 1953.

where such exist, and with any other persons specially qualified by their trade or functions whom the competent authority deems it useful to consult.

3. The employers and workers concerned shall take part in the operation of the minimum wage fixing machinery, or be consulted or have the right to be heard, in such manner and to such extent as may be determined by national laws or regulations but in any case on a basis of complete equality.

4. Minimum rates of wages which have been fixed shall be binding on the employers and workers concerned so as not to be subject to abatement.

5. The competent authority may permit exceptions to the minimum wage rates in individual cases, where necessary, to prevent curtailment of the opportunities of employment of physically or mentally handicapped workers.

Article 4

1. Each Member which ratifies this Convention shall take the necessary measures to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable; these measures shall include such provision for supervision, inspection, and sanctions as may be necessary and appropriate to the conditions obtaining in agriculture in the country concerned.

2. A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other appropriate proceedings, the amount by which he has been underpaid, subject to such limitation of time as may be determined by national laws or regulations.

Article 5

Each Member which ratifies this Convention shall communicate annually to the International Labour Office a general statement indicating the methods and the results of the application of the machinery and, in summary form, the occupations and approximate numbers of workers covered, the minimum rates of wages fixed, and the more important of the other conditions, if any, established relevant to the minimum rates.

.....

Convention No. 131**Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries¹**

.....

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include—

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

¹ Date of coming into force: 29 April 1972.

- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of—

- (a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
- (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

.....

Recommendation No. 30**Minimum Wage-Fixing Machinery Recommendation, 1928**

.....

I

(1) In order to ensure that each Member ratifying the Convention is in possession of the information necessary for a decision upon the application of minimum wage-fixing machinery, the wages actually paid and the arrangements, if any, for the regulation of wages should be ascertained in respect of any trade or part of trade to which employers or workers therein request the application of the machinery and furnish information which shows *prima facie* that no arrangements exist for the effective regulation of wages and that wages are exceptionally low.

(2) Without prejudice to the discretion left to the Members by the Convention to decide in which trades or parts of trades in their respective countries it is expedient to apply minimum wage-fixing machinery, special regard might usefully be had to trades or parts of trades in which women are ordinarily employed.

II

(1) The minimum wage-fixing machinery, whatever form it may take (for instance, trade boards for individual trades, general boards for groups of trades, compulsory arbitration tribunals), should operate by way of investigation into the relevant conditions in the trade or part of trade concerned and consultation with the interests primarily and principally affected, that is to say, the employers and workers in the trade or part of trade, whose views on all matters relating to the fixing of the minimum rates of wages should in any case be solicited and be given full and equal consideration.

(2) (a) To secure greater authority for the rates that may be fixed, it should be the general policy that the employers and workers concerned, through representatives equal in number or having equal voting strength, should jointly take a direct part in the deliberations and decisions of the wage-fixing body; in any case, where representation is accorded to one side, the other side should be represented on the same footing. The wage-fixing body should also include one or more independent persons whose votes can ensure effective decisions being reached in the event of the votes of the employers' and workers' representatives being equally divided. Such independent persons should, as far as possible, be selected in agreement with or after consultation with the employers' and workers' representatives on the wage-fixing body.

(b) In order to ensure that the employers' and workers' representatives shall be persons having the confidence of those whose interests they respectively represent, the employers and workers concerned should be given a voice as far as is practicable in the circumstances in the selection of their representatives, and if any organisations of the employers and workers exist these should in any

case be invited to submit names of persons recommended by them for appointment on the wage-fixing body.

(c) The independent person or persons mentioned in paragraph (a) should be selected from among men or women recognised as possessing the necessary qualifications for their duties and as being dissociated from any interest in the trade or part of trade concerned which might be calculated to put their impartiality in question.

(d) Wherever a considerable proportion of women are employed, provision should be made as far as possible for the inclusion of women among the workers' representatives and of one or more women among the independent persons mentioned in paragraph (a).

III

For the purpose of determining the minimum rates of wages to be fixed, the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living. For this purpose regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organised and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality.

Provision should be made for the review of the minimum rates of wages fixed by the wage-fixing bodies when this is desired by the workers or employers who are members of such bodies.

IV

For effectively protecting the wages of the workers concerned and safeguarding the employers affected against the possibility of unfair competition, the measures to be taken to ensure that wages are not paid at less than the minimum rates which have been fixed should include:

- (a) arrangements for informing the employers and workers of the rates in force;
- (b) official supervision of the rates actually being paid; and
- (c) penalties for infringements of the rates in force and measures for preventing such infringements.

(1) In order that the workers, who are less likely than the employers to have their own means of acquainting themselves with the wage-fixing body's decisions, may be kept informed of the minimum rates at which they are to be paid, employers might be required to display full statements of the rates in force in readily accessible positions on the premises where the workers are employed, or in the case of home workers on the premises where the work is given out or returned on completion or wages paid.

(2) A sufficient staff of inspectors should be employed, with powers analogous to those proposed for factory inspectors in the Recommendation concerning the general principles for the organisation of systems of inspection adopted by the General Conference in 1923, to make investigations among the employers and workers concerned with a view to ascertaining whether the minimum

rates in force are in fact being paid and taking such steps as may be authorised to deal with infringements of the rates. As a means of enabling the inspectors adequately to carry out these duties, employers might be required to keep complete and authentic records of the wages paid by them, or in the case of home workers to keep a list of the workers with their addresses and provide them with wage books or other similar record containing such particulars as are necessary to ascertain if the wages actually paid correspond to the rates in force.

(3) In cases where the workers are not in general in a position individually to enforce, by judicial or other legalised proceedings, their rights to recover wages due at the minimum rates in force, such other measures should be provided as may be considered effective for preventing infringements of the rates.

.....

Recommendation No. 89**Recommendation concerning Minimum Wage Fixing Machinery in Agriculture ¹**
.....**I**

1. For the purpose of determining minimum rates of wages to be fixed it is desirable that the wage fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living.

2. Among the factors which should be taken into consideration in the fixing of minimum wage rates are the following: the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements in agriculture, and the general level of wages for work of a comparable skill in other industries in the area where the workers are sufficiently organised.

II

3. Whatever form it may assume, the minimum wage fixing machinery in agriculture should operate by way of investigation into conditions in agriculture and related occupations, and consultation with the parties who are primarily and principally concerned, namely employers and workers, or their most representative organisations, where such exist. The opinion of both parties should be sought on all questions concerning minimum wage fixing and full and equal consideration given to their opinion.

4. To secure greater authority for the rates that may be fixed, in cases where the machinery adopted for fixing minimum wages makes it possible, the workers and employers concerned should be enabled to participate directly and on an equal footing in the operation of such machinery through their representatives, who should be equal in number or in any case have an equal number of votes.

5. In order that the employers' and workers' representatives should enjoy the confidence of those whose interest they respectively represent, in the case referred to in Paragraph 4 above, the employers and workers concerned should have the right, in so far as circumstances permit, to participate in the nomination of the representatives, and if any organisations of employers and workers exist, these should in any case be invited to submit names of persons recommended by them for appointment on the wage fixing body.

6. In the case where the machinery for minimum wage fixing provides for the participation of independent persons, whether for arbitration or otherwise, these should be chosen from among men or women who are recognised as possessing the necessary qualifications for their duties and who have no such interest in agriculture or in any branch thereof as would give rise to doubt as to their impartiality.

III

7. Provision should be made for a procedure for revising minimum wage rates at appropriate intervals.

IV

8. For effectively protecting the wages of the workers concerned, the measures to be taken to ensure that wages are not paid at less than the minimum rates which have been fixed should include—

- (a) arrangements for giving publicity to the minimum wage rates in force, and in particular for informing the employers and workers concerned of these rates in the manner most appropriate to national circumstances;
- (b) official supervision of the rates actually being paid; and
- (c) penalties for infringements of the rates in force and measures for preventing such infringements.

9. A sufficient number of qualified inspectors, with powers analogous to those provided for in the Labour Inspection Convention, 1947, should be employed; these inspectors should make investigations among the employers and workers concerned with a view to ascertaining whether the wages actually paid are in conformity with the minimum rates in force and, if need be, should take such steps as may be authorised in the case of infringement of the rate fixed.

10. In order to enable the inspectors to carry out their duties efficiently, employers should, where appropriate or necessary in the opinion of the competent authority, be required to keep complete and authentic records of the wages paid by them, and might also be required to issue the workers pay books or similar documents containing the information necessary for verifying whether the wages actually paid correspond to the rates in force.

11. In cases where the workers are not in general in a position individually to enforce, by judicial or appropriate proceedings, their rights to recover wages due at the minimum rates in force, such other measures should be provided as may be considered effective for this purpose.

Recommendation No. 135

Recommendation concerning Minimum Wage Fixing, with Special Reference to Developing Countries

.....

I. PURPOSE OF MINIMUM WAGE FIXING

1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.

2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

II. CRITERIA FOR DETERMINING THE LEVEL OF MINIMUM WAGES

3. In determining the level of minimum wages, account should be taken of the following criteria, amongst others:

- (a) the needs of workers and their families;
- (b) the general level of wages in the country;
- (c) the cost of living and changes therein;
- (d) social security benefits;
- (e) the relative living standards of other social groups;
- (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

III. COVERAGE OF THE MINIMUM WAGE FIXING SYSTEM

4. The number and groups of wage earners who are not covered in pursuance of Article 1 of the Minimum Wage Fixing Convention, 1970, should be kept to a minimum.

5. (1) The system of minimum wages may be applied to the wage earners covered in pursuance of Article 1 of the Convention either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers.

(2) A system based on a single minimum wage—

- (a) need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in costs of living;
 - (b) should not impair the effects of decisions, past or future, fixing minimum wages higher than the general minimum for particular groups of workers.
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IV. MINIMUM WAGE FIXING MACHINERY

6. The minimum wage fixing machinery provided for in Article 4 of the Convention may take a variety of forms, such as the fixing of minimum wages by—

- (a) statute;
- (b) decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies;
- (c) decisions of wages boards or councils;
- (d) industrial or labour courts or tribunals; or
- (e) giving the force of law to provisions of collective agreements.

7. The consultation provided for in paragraph 2 of Article 4 of the Convention should include, in particular, consultation in regard to the following matters:

- (a) the selection and application of the criteria for determining the level of minimum wages;
- (b) the rate or rates of minimum wages to be fixed;
- (c) the adjustment from time to time of the rate or rates of minimum wages;
- (d) problems encountered in the enforcement of minimum wage legislation;
- (e) the collection of data and the carrying out of studies for the information of minimum wage fixing authorities.

8. In countries in which bodies have been set up which advise the competent authority on minimum wage questions, or to which the government has delegated responsibility for minimum wage decisions, the participation in the operation of minimum wage fixing machinery referred to in paragraph 3 of Article 4 of the Convention should include membership of such bodies.

9. The persons representing the general interests of the country whose participation in the operation of minimum wage fixing machinery is provided for in Article 4, paragraph 3, subparagraph (b), of the Convention should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making.

10. To the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those mentioned in Paragraph 3 of this Recommendation, and their probable evolution.

V. ADJUSTMENT OF MINIMUM WAGES

11. Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions.

12. To this end a review might be carried out of minimum wage rates in relation to the cost of living and other economic conditions either at regular

intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-living index.

13. (1) In order to assist in the application of Paragraph 11 of this Recommendation, periodical surveys of national economic conditions, including trends in income per head, in productivity and in employment, unemployment and underemployment, should be made to the extent that national resources permit.

(2) The frequency of such surveys should be determined in the light of national conditions.

VI. ENFORCEMENT

14. Measures to ensure the effective application of all provisions relating to minimum wages, as provided for in Article 5 of the Convention, should include the following:

- (a) arrangements for giving publicity to minimum wage provisions in languages or dialects understood by workers who need protection, adapted where necessary to the needs of illiterate persons;
 - (b) the employment of a sufficient number of adequately trained inspectors equipped with the powers and facilities necessary to carry out their duties;
 - (c) adequate penalties for infringement of the provisions relating to minimum wages;
 - (d) simplification of legal provisions and procedures, and other appropriate means of enabling workers effectively to exercise their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid;
 - (e) the association of employers' and workers' organisations in efforts to protect workers against abuses;
 - (f) adequate protection of workers against victimisation.
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Appendix II

Ratifications and declarations of application of the Conventions Nos. 26, 99 and 131

Convention No. 26

Member States	Date of ratification
ANGOLA	04.06.76
ARGENTINA	14.03.50
AUSTRIA	15.03.74
BAHAMAS	25.05.76
BARBADOS	08.05.67
BELGIUM	11.08.37
BELIZE	15.12.83
BENIN	12.12.60
BULGARIA	04.06.35
BURUNDI	11.03.63
CANADA	25.04.35
CENTRAL AFRICAN REPUBLIC	27.10.60
CHAD	10.11.60
CHILE	31.05.33
CHINA	05.05.30
COLOMBIA	20.06.33
COMOROS	23.10.78
CONGO	10.11.60
COTE D'IVOIRE	21.11.60
CZECHOSLOVAKIA	12.06.50
DJIBOUTI	03.08.78
DOMINICA	28.02.83
DOMINICAN REPUBLIC	05.12.56
FIJI	19.04.74
GABON	14.10.60
GERMANY	30.05.29
GHANA	02.07.59
GRENADA	09.07.79
GUATEMALA	04.05.61
GUINEA	21.01.59
GUINEA-BISSAU	21.02.77
HUNGARY	30.07.32
INDIA	10.01.55
IRELAND	03.06.30
ITALY	09.09.30

Member States	Date of ratification
JAMAICA	08.07.63
LESOTHO	31.10.66
LUXEMBOURG	03.03.58
MADAGASCAR	01.11.60
MALAWI	22.03.65
MALI	22.09.60
MALTA	04.01.65
MAURITANIA	20.06.61
MAURITIUS	02.12.69
MOROCCO	14.03.58
MYANMAR	21.05.54
NEW ZEALAND	29.03.38
NIGERIA	16.06.61
NORWAY	07.07.33
PANAMA	19.06.70
PAPUA NEW GUINEA	01.05.76
PARAGUAY	24.06.64
PERU	04.04.62
RWANDA	18.09.62
SAINT LUCIA	14.05.80
SENEGAL	04.11.60
SEYCHELLES	06.02.78
SIERRA LEONE	15.06.61
SOLOMON ISLANDS	06.08.85
SUDAN	18.06.57
SWITZERLAND	07.05.47
TANZANIA (TANGANYIKA)	19.11.62
TANZANIA (ZANZIBAR)	22.06.64
TOGO	07.06.60
TUNISIA	15.05.57
TURKEY	29.01.75
UGANDA	04.06.63
VENEZUELA	20.11.44
ZAIRE	20.09.60

Non-Metropolitan Territories	Date of declaration
- Applicable without modification	
ANGUILLA (UNITED KINGDOM)	29.05.63
BRITISH VIRGIN ISLANDS (UNITED KINGDOM)	05.10.62
HONG KONG (UNITED KINGDOM)	04.06.62
MONTSERRAT (UNITED KINGDOM)	12.06.64

Other State	Date of ratification
SOUTH AFRICA	28.12.32

Convention No. 99

Member States	Date of ratification
ALGERIA	19.10.62
AUSTRALIA	19.06.69
AUSTRIA	29.10.53
BELGIUM	17.10.68
BELIZE	15.12.83
CENTRAL AFRICAN REPUBLIC	09.06.64
COLOMBIA	04.03.69
COMOROS	23.10.78
COTE D'IVOIRE	05.05.61
CZECHOSLOVAKIA	21.01.64
DJIBOUTI	03.08.78
GABON	13.06.61
GERMANY	25.02.54
GRENADA	09.07.79
GUATEMALA	04.08.61
GUINEA	12.12.66
HUNGARY	18.06.69
IRELAND	22.06.78
ITALY	05.05.71
KENYA	09.02.71
MALAWI	22.03.65
MALTA	28.11.69
MAURITIUS	02.12.69
MOROCCO	14.10.60
NEW ZEALAND	01.07.52
PAPUA NEW GUINEA	01.05.76
PARAGUAY	24.06.64
PERU	01.02.60
PHILIPPINES	29.12.53
POLAND	05.07.77
SENEGAL	22.10.62
SEYCHELLES	06.02.78
SIERRA LEONE	13.06.61
TUNISIA	12.01.59
TURKEY	23.06.70
UNITED KINGDOM	09.06.53

Non-Metropolitan Territories	Date of declaration
- Applicable without modification	
ANGUILLA (UNITED KINGDOM)	08.05.63
GUERNSEY (UNITED KINGDOM)	03.09.59
ISLE OF MAN (UNITED KINGDOM)	10.03.56
JERSEY (UNITED KINGDOM)	24.04.56

Other States	Date of ratification
COOK ISLANDS	01.07.52
NIUE ISLAND	01.07.52

Convention No. 131

Member States	Date of ratification
AUSTRALIA	15.06.73
BOLIVIA	31.01.77
BRAZIL	04.05.83
BURKINA FASO	21.05.74
CAMEROON	06.07.73
COSTA RICA	08.06.79
CUBA	05.01.72
ECUADOR	02.12.70
EGYPT	12.05.76
FRANCE	28.12.72
GUATEMALA	14.06.88
GUYANA	10.01.83
IRAQ	16.05.74
JAPAN	29.04.71
KENYA	09.04.79
LEBANON	01.06.77
LIBYAN ARAB JAMAHIRIYA	27.05.71
MALTA	09.06.88
MEXICO	18.04.73
NEPAL	19.09.74
NETHERLANDS	10.10.73
NICARAGUA	01.03.76
NIGER	24.04.80
PORTUGAL	24.02.83
ROMANIA	28.10.75
SPAIN	30.11.71
SRI LANKA	17.03.75
SWAZILAND	05.06.81
SYRIAN ARAB REPUBLIC	18.04.72
TANZANIA (UNITED REPUBLIC OF)	30.05.83
URUGUAY	02.06.77
YEMEN REPUBLIC	29.07.76
YUGOSLAVIA	06.12.83
ZAMBIA	20.06.72

Non-Metropolitan Territories	Date of declaration
- Applicable without modification	
ARUBA (NETHERLANDS)	18.02.86
FRENCH GUIANA (FRANCE)	09.05.86

Non-Metropolitan Territories	Date of declaration
FRENCH POLYNESIA (FRANCE)	09.05.86
GUADELOUPE (FRANCE)	09.05.86
MARTINIQUE (FRANCE)	09.05.86
NEW CALEDONIA (FRANCE)	09.05.86
REUNION (FRANCE)	09.05.86
ST. PIERRE AND MIQUELON (FRANCE)	09.05.86

Appendix III

Table of reports requested and received from Member States of the ILO

25 March 1992 (Article 19 of the Constitution)

Member States	Conventions						Recommendations		
	26		99		131		30	89	135
	Ratifi- cation	Art. 19	Ratifi- cation	Art. 19	Ratifi- cation	Art. 19	Art. 19		
Afghanistan	—	X	—	X	—	X	X	X	X
Algeria	—	X	R	—	—	X	X	X	X
Angola	R	—	—	X	—	X	X	X	X
Antigua and Barbuda	—	—	—	—	—	—	—	—	—
Argentina	R	—	—	X	—	X	X	X	X
Australia	R	—	R	—	R	—	X	X	X
Austria	R	—	R	—	—	X	X	X	X
Bahamas	R	—	—	X	—	X	X	X	X
Bahrain	—	—	—	—	—	—	—	—	—
Bangladesh	—	X	—	X	—	X	X	X	X
Barbados	R	—	—	—	—	—	—	—	—
Belarus, Rep. of	—	X	—	X	—	X	X	X	X
Belgium	R	—	R	—	—	X	X	X	X
Belize	R	—	R	—	—	—	—	—	—
Benin	R	—	—	X	—	X	X	X	X
Bolivia	R	—	—	—	R	—	—	—	—
Botswana	—	X	—	X	—	X	X	X	X
Brazil	R	—	R	—	R	—	X	X	X
Bulgaria	R	—	—	X	—	X	X	X	X
Burkina Faso	R	—	—	X	R	—	X	X	X
Burundi	R	—	—	X	—	X	X	X	X
Cambodia	—	—	—	—	—	—	—	—	—
Cameroon	R	—	R	—	R	—	X	X	X
Canada	R	—	—	X	—	X	X	X	X
Cape Verde	—	—	—	—	—	—	—	—	—
Central African Rep.	R	—	R	—	—	—	—	—	—
Chad	R	—	—	X	—	X	X	X	X
Chile	R	—	—	X	—	X	X	X	X
China	R	—	—	X	—	X	X	X	X
Colombia	R	—	R	—	—	X	X	X	X
Comoros	R	—	R	—	—	—	—	—	—
Congo	R	—	—	—	—	—	—	—	—
Costa Rica	R	—	R	—	R	—	—	—	—
Côte d'Ivoire	R	—	R	—	—	X	X	X	X

Member States	Conventions						Recommendations		
	26		99		131		30	89	135
	Ratifi- cation	Art. 19	Ratifi- cation	Art. 19	Ratifi- cation	Art. 19	Art. 19		
Spain	R	—	R	—	R	—	X	X	X
Sri Lanka	R	—	R	—	R	—	X	X	X
Sudan	R	—	—	X	—	X	X	X	X
Suriname	—	X	—	X	—	X	X	X	X
Swaziland	R	—	R	—	R	—	X	X	X
Sweden	—	X	—	X	—	X	X	X	X
Switzerland	R	—	—	X	—	X	X	X	X
Syrian Arab Republic	R	—	R	—	R	—	X	X	X
Tanzania, United Rep. of	R	—	—	—	R	—	—	—	—
Thailand	—	—	—	—	—	—	—	—	—
Togo	R	—	—	X	—	X	X	X	X
Trinidad and Tobago	—	X	—	X	—	X	X	X	X
Tunisia	R	—	R	—	—	X	X	X	X
Turkey	R	—	R	—	—	X	X	X	X
Uganda	R	—	—	X	—	X	X	X	X
Ukraine	—	X	—	X	—	X	X	X	X
United Arab Emirates	—	—	—	—	—	—	—	—	—
United Kingdom	R	—	R	—	—	X	X	X	X
United States	—	X	—	X	—	X	X	X	X
Uruguay	R	—	R	—	R	—	—	—	—
Venezuela	R	—	—	—	—	—	—	—	—
Yemen	—	—	—	—	R	—	—	—	—
Yugoslavia	—	X	—	X	R	—	X	X	X
Zaire	R	—	—	—	—	—	—	—	—
Zambia	R	—	R	—	R	—	X	X	X
Zimbabwe	—	X	—	X	—	X	X	X	X

In addition, a total of 62 reports have been received, under article 19 of the Constitution, in respect of the following non-metropolitan territories: United Kingdom (Bermuda, British Virgin Islands, Falkland Islands, Gibraltar, Guernsey, Hong Kong, Jersey, Monserrat.)

R Conventions ratified.

X Reports requested and received (under article 19 of the Constitution).

— Reports requested and not received (under article 19 of the Constitution).

Appendix IV

Legislative texts and general collective agreements

Algeria

1. Act No. 90-11 respecting labour relations, of 21.04.1990 (LLD 1990-DZA 4).
2. Ordinance No. 75-32 respecting labour courts, of 29.04.1975.
3. Executive Decree No. 90-385 establishing a national guaranteed minimum wage, of 24.11.1990.

Angola

1. Act No 6: General Labour Act, of 24.08.1981 (L.S. 1981-Ang.1).
2. Act No. 8 respecting the wage system, of 26.10.1981.
3. Act No. 9 respecting labour courts of 02. 11.1981.
4. Joint Executive Decree No. 3 to regulate Act No. 9/81, of 11.01.1982.
5. Decree No. 8-E, of 16.03.1991.
6. Decree No. 86 respecting the minimum wage scale, of 26.10.1981.

Argentina

1. Constitution of the Argentinian nation, of 01.05.1853, as amended in 1957 (L.S. 1957-Arg.2).
 2. Act No. 20744 to approve the rules governing contracts of employment, of 11.09.1974 (L.S. 1974-Arg.2).
 3. Act No. 16.459 respecting a sliding minimum living wage, of 07.06.64.
 4. Decree No. 174 to re-establish Act No. 16.459, of 10.02.1988.
 5. Decrees No. 14538 and No. 6648 respecting the organisation of industrial apprenticeship and the regulation of the employment of young persons. of 03.06.1944. (L.S. 1944-Arg.1) and 24.03.1945 (L.S. 1945-Arg.2).
 6. Act No. 12713 respecting homework, of 03.10.1941 (L.S. 1941-Arg.1).
 7. Decree No. 118.755 to regulate Act No. 12.713, respecting home work, of 29.04.42.
 8. Legislative Decree No. 326 concerning the rights and duties of domestic staff, of 14.01.1956 (L.S. 1956-Arg.1).
 9. Act No. 22248 to approve nation-wide rules governing agricultural work, of 03.07.1980 (L.S. 1980-Arg.1).
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10. Decree No. 563 respecting the application of Act No. 22.248, of 24.03.81.
11. Decree No. 9 respecting the transitory and partial suspension of union activity of workers', employers' and occupational bodies, of 24.03.76.
12. Act No. 21.356 respecting the scope of suspension of 22.07.76.
13. Act No. 14250 respecting collective labour agreements, of 13.10.1953 (L.S. 1953-Arg.1).
14. Decree No. 6582 to regulate Act No. 14.250, of 26.04.54.
15. Decree No. 825 respecting the Ministry of Labour. Organic structure, of 21.12.73.
16. Act No. 18.608 on the exercise of the powers of the labour inspectorate in places or activities subject to federal jurisdiction, of 06.02.70.
17. Act No. 18692 to issue basic rules for the functioning of the National Labour Standards Inspection Service, of 29.05.1970 (L.S. 1970-Arg.3A).
18. Act No. 18694 to establish a uniform system of penalties for violations of the national labour legislation, of 29.05.1970 (L.S. 1970-Arg.3C).
19. Act No. 18695 to lay down the procedure for the imposition of sanctions in the case of non-observance of the standards for the orderly maintenance and regulation of the performance of work, of 29.05.1970 (L.S. 1970-Arg.3D).

Australia

Federal Jurisdiction

1. Industrial Relations Act, of 1988.
2. Remuneration Tribunal Act, of 1973.

State Jurisdiction

New South Wales

3. Industrial Arbitration Act, of 1940.
4. Coal Industry Act, of 1946.
5. Factories, Shops and Industries Act, of 1962.

Queensland

6. Industrial Relations Act, of 1990.

Tasmania

7. Industrial Relations Act, of 1984.

Victoria

8. Industrial Relations Act, of 1979.

Western Australia

9. Industrial Relations Act, of 1979.
 10. Equal Opportunity Act, of 1984.
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Austria

1. Federal Act respecting collective labour relations (Collective Labour Relations Act), of 14.12.1973. (L.S. 1973-Aus.2).
2. Agricultural Labour Act, of 18.07.1984. See also: A Federal Act No. 140 to lay down principles to govern labour law in agriculture and forestry ('Agricultural Labour Act'), of 02.06.1948 (L.S. 1948-Aus.2), as amended by texts No. 318, of 13.07.1971 (L.S. 1971-Aus.1A) and No. 333, of 16.07.1971 (L.S. 1971-Aus.1B).
3. Federal Act respecting home work (Home work Act), of 10.03.1954 (L.S. 1954-Aus.1).
4. Federal Act respecting labour inspection, of 05.02.1974 (L.S.1974-Aus.1).

Bahamas

1. Fair Labour Standards Act No. 13, of 17.07.1970.

Bangladesh

1. The Minimum Wages Ordinance No. XXXIX, of 1961.
2. The (E.P.) Minimum Wages Rules, of 1961.

Barbados

1. Wages Boards Act, of 17.09.1943.

Belarus

1. Constitution of 14.04.1987.
2. Labour Code of 23.06.1972
3. Order to approve new wage rates, of 30.05.1991.

Belgium

1. Act respecting collective industrial agreements and joint committees, of 12.05.1968 (L.S. 1968-Bel.1).
 2. Act respecting the protection of workers' remuneration of 04.12.1965 (L.S. 1965-Bel.2).
 3. Act to protect the competitiveness of the country, of 06.01.1989.
 4. Royal Order No. 180 establishing certain measures of moderation in remunerations, of 30.12.1982.
 5. Act establishing taxation and other measures (supplementing Royal Order No. 180), of 01.08.1985.
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6. Royal Order No. 401 establishing a social security contribution, called wage moderation contribution, of 06.05.1986.

Benin

1. Labour Code, of 27.09.1967 (L.S. 1967-Dah.1).
2. General collective labour agreement applicable to undertakings in Dahomey in the private sector, of 17.05.1974 (L.S. 1974-Dah.2).

Botswana

1. Employment Act No. 29, of 09.12.1982.
2. Employment (Exhibition of Ministers' Notices in Connection with Minimum Wages) Regulations, of 28.12.1984.
3. Regulation of Minimum Wages Order, of 04.03.1991.

Brazil

1. Constitution of the Federative Republic of Brazil, of 05.10.1988.
2. Consolidation of Labour Laws (L.S. 1985-Bra.1).
3. Act No. 7.789 respecting wage policy, of 03.07.1989.
4. Act No. 8.178 to establish rules respecting wages and prices, of 01.03.1991.
5. Act No. 8.222 respecting wage policy, of 05.09.1991.

Bulgaria

1. Constitution, of 12.07.1991.
2. Labour Code, of 1986.
3. Decree No. 56 on Economic Activity, of 1989.
4. Council of Ministers Decree No. 49 on an increase of the minimum wage level, of 1990.
5. Council of Ministers Decree No. 129, of 05.07.1991.
6. Council of Ministers Decree No. 193, of 02.10.1991.

Burkina Faso

1. Labour Code, of 07.07.1962, as amended by Act No. 9/AN of 07.06.1973.
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Burundi

1. Labour Code, of 02.06.1966.

Cameroon

1. Labour Code (Law No. 74-14), of 27.11.1974 (L.S. 1974-Cam.1), (actualised 01.06.1979).

Canada

Federal Jurisdiction

1. Canada Labour Code, Part III, of 09.1989.
2. Canada Labour Standards Regulations, of 01.1983.

Provinces

Alberta

3. Employment Standards Code, of 1988, as amended and effective on 19.02.1990.
4. Minimum Wage Regulation, as amended and effective on 01.09.1988.

British Columbia

5. Employment Standards Act, of 1980, as amended and effective on 12.04.1991.
6. Employment Standards Act Regulation, of 1981, as amended and effective on 01.04.1990.

Manitoba

7. The Employment Standards Act, of 1987, as amended and effective on 14.12.1990.
8. Minimum Wages and Working Conditions Regulation, of 1987, as amended and effective on 01.03.1991.
9. The Construction Industry Wages Act, of 16.07.1987.
10. The Department of Labour Act, of 1987.

New Brunswick

11. Employment Standards Act, of 1982, as amended and effective 01.04.1989.
12. Minimum Wage Regulation, 01.10.1990,
13. Minimum Wage for Categories of Employees in Crown Construction Work Regulation, of 01.01.1991.
14. Minimum Wage for Counsellor and Program Staff at Residential Summer Camps Regulation, of 1987, as amended and effective on 06.12.1990.

Newfoundland

15. The Labour Standards Act, of 1977, as amended and effective 18.12.1989.
 16. The Labour Standards Regulations, of 1988, as amended and effective on 01.12.1988.
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17. Minimum Wage (Handicapped Persons) Order.

Nova Scotia

18. Labour Standards Code, of 22.02.1990.

19. Minimum Wage Order General, of 01.01.1989.

Ontario

20. Employment Standards Act, of 1980, as amended and effective 13.06.1991.

21. Employment Standards General Regulation, of 1980, as amended and effective 01.10.1990.

22. Industrial Standards Act, of 1980, as amended and effective 31.03.1990.

23. Fruit, Vegetable and Tobacco Harvesters Regulation, of 1980, as amended and effective 01.01.1991.

Prince Edward Island

24. Labour Act of 1988, as amended and effective 09.05.1991.

25. Minimum Wage Order 1, of 1985, as amended and effective on 18.05.1991.

Quebec

26. An Act respecting Labour Standards, of 1979, as amended and effective 01.01.1992.

27. Regulation respecting Labour Standards, of 1981, as amended and effective 01.10.1989.

Saskatchewan

28. The Labour Standards Act, of 1978, as amended and effective 01.04.1990.

29. The Labour Standards Regulations, of 1977, as amended on 29.03.1984.

30. Minimum Wage Board Order, of 1989, as amended and effective on 30.03.1990.

31. The Minimum Wage Board Order No. 2, of 1981, effective on 01.01.1981.

32. The Minimum Wage Board Order No. 3, of 1981, effective on 01.01.1981.

Territories

Northwest Territories

33. Labour Standards Act of 1974, as amended and effective 16.03.1989.

34. Labour Standards Wages Regulation, of 1980, as amended and effective 01.04.1991.

Yukon Territory

35. Employment Standards Act, of 1986, as amended and effective on 07.12.1989.

36. Minimum Wage Regulations, of 01.05.1988.

37. Minimum Wage Order No. 1, of 01.04.1991.

38. General Exemption Regulation, of 01.01.1985.

Central African Republic

1. Labour Code (Act No. 61-221), of 02.06.1961.
2. Order No. 5/M-AS-T-JS, to prescribe the general conditions of employment and fix the wages of domestic workers, of 04.09.1961 (L.S. 1961-C.A.R.2).

Chad

1. Labour and Social Welfare Code, of 04.03.1966 (L.S. 1966-Chad 1).

Chile

1. Labour Code, of 06.07.1987.

Colombia

1. Political Constitution of Colombia, of 18.07.1991.
2. Labour Code, of 08.05.1950 (L.S. 1950-Col.3), as amended in 1961 (L.S. 1961-Col.1), 1965 (L.S. 1965-Col.1) and 1990 (D.D.S. 1990-Col.1, only in Spanish).
3. Act No. 54 to establish the National Labour Council, of 18.12.1987.
4. Rules of the National Labour Council adopted by the National Labour Council.
5. Procedural Labour Code, of 24.06.1948.

Comoros

1. Labour Code (Act No. 018), of 18.02.1984.

Côte d'Ivoire

1. Labour Code, of 01.08.1964 (L.S. 1964-I.C.1).
2. Decree No. 68-300 to codify the regulations established in application of Title VII "Bodies and means of execution" of Act No. 64-290 to establish a Labour Code, of 20.06.1968.
3. Inter-occupational collective agreement, of 20.07.1977.

Cuba

1. Constitution of the Republic of Cuba, of 24.02.1976.
 2. Labour Code, of 28.12.1984 (L.S. 1984-Cuba 1).
 3. Rules for the application of the general reform of wages, Resolution No. 457, of 12.06.1980.
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4. Resolution No. 476 respecting the determination of the general wage scale, of 07.07.1980.
5. Resolution No. 53/87 establishing a special agricultural scale, of 06.10.1987.

Czechoslovakia

1. Constitutional Act No. 556, of 1990.
2. Law amending and expanding the Labour Code, of 05.12.1990.
3. General agreement for the year 1991, of 28.01.1991.

Denmark

1. Notification of the Act respecting agricultural and domestic assistants No. 115, of 19.03.1980. (L.S. 1980-Den.2).

Djibouti

1. Labour Code (Overseas), 15.12.1952 (L.S. 1952-Fr.5).
2. Order No. 485 establishing the membership of the Advisory Labour Commission, of 21.04.1953.

Dominica

1. Act No. 2 to provide for the fixing of wages of workers, the hours of work, their leave and generally for matters pertaining to the welfare of workers, of 31.03.1977.

Dominican Republic

1. Labour Code, of 11.06.1951, (L.S. 1951-Dom.1) as amended until 1984.
2. Resolution No. 2 to establish a national minimum wage for workers in the private sector, of 28.09.1990.
3. Act No. 45 to establish in general new and higher minimum wages for all workers, of 31.05.79.

Ecuador

1. Political Constitution of the Republic of Ecuador, codified on 12.06.1984.
2. Labour Code, as amended by Act No. 13, of 13.11.1991.

Egypt

1. ~~Labour~~ Labour Code, of 06.08.1981 (L.S. 1981-Egypt 2).

Equatorial Guinea

1. Act No. 2 respecting the General Ordering of Work, which revises Act No. 11 (20.06.1984), of 04.01.1990 (D.D.S. 1990-GNQ 1) (only in Spanish).

Fiji

1. Wages Councils Act, of 12.08.1960.
2. Employment Ordinance No. 15, 02.07.1964.

Finland

1. Act No. 320 respecting contracts of employment, of 30.04.1970 (L.S. 1970-Fin.2).
2. Act No. 436 respecting collective agreements, of 07.06.1946 (L.S. 1946-Fin.2).
3. Seamen's Act. No. 423, of 07.06.1978 (L.S. 1978-Fin.2).
4. Act respecting the conditions of employment of domestic workers, of 16.12.1977 (L.S. 1977-Fin.1).

France

1. Constitution, of 1958, as amended on 29.10.1974.
2. Labour Code, as of 1991.

Gabon

1. Labour Code, of 01.06.1978 (L.S. 1978-Gab.1).
2. Decree No. 0795/PR/MTE establishing the membership of the National Wage Study Committee, of 04.07.1980.
3. Decree No. 00956/PR/MTSS to establish a single scheme for the guaranteed inter-occupational minimum wage, of 03.09.1977.

Gambia

1. Labour Act, of 1990.

Germany

1. Basis Law for the Federal Republic of Germany, of 23.05.1949 (L.S. 1949-Ger.F.R.1).
 2. An Act respecting the prescribing of minimum conditions of employment, of 11.01.1952 (L.S. 1952-Ger.F.R.1).
 3. Homework Act, of 14.03.1951 (L.S. 1951-Ger.F.R.1).
 4. Notification of the consolidated text of the Collective Agreements Act, of 25.08.1969 (L.S. 1969-Ger.F.R.4).
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Ghana

1. Industrial Relations Act No. 299, of 23.06.1965 (L.S. 1965-Ghana 2).
2. Labour Decree No. 157, of 10.04.1967 (L.S. 1967-Ghana 1).
3. Legislative Instrument No. 632 on Labour Regulations, of 15.09.1969 (L.S. 1969-Ghana 1C).
4. Minimum Wage Regulations (L.I. 1495), of 02.03.1990.

Greece

1. Act No. 1876 concerning free collective bargaining and making other provisions, of 07.03.1990 (L.L.D. 1990-GRC 1).

Guatemala

1. Constitution of the Republic of Guatemala, of 31.05.1985 (L.S. 1985-Gua.1).
2. Labour Code, of 05.05.1961 (L.S. 1961-Gua.1).
3. Governmental agreement No. 967: Rules of the National Committee on Wages and the Joint Committees on Minimum Wages, of 02.04.1966.
4. Governmental agreement No. 881: Establishment and rules of the Administrative Office of Wages, of 20.09.1965.

Guinea

1. Labour Code, of 28.01.1988 (L.S. 1988-Gui.1).

Guyana

1. Labour Act, of 23.01.1942.
2. Labour (Amendment) Act No. 22, of 30.11.1978.
3. Labour (Amendment) Act No. 9, of 06.04.1984.
4. Wages Councils Act, of 15.12.1956.
5. Wages Councils (Amendment) Act No. 23, of 30.11.1978.
6. Labour (Conditions of Employment of Certain Workers) Act No. 18, of 18.10.1978.

Honduras

1. Constitution, of 11.01.1982.
 2. Labour Code, of 01.06.1959 (L.S. 1959-Hon.1).
 3. Minimum Wage Act, of 30.04.1971 (L.S. 1971-Hon.1).
 4. Executive Decree No. 19, to reform the Minimum Wage Table, of 26.09.1990.
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Hungary

1. Labour Code, of 08.10.1967 (L.S. 1967-Hun.2).

Iceland

1. Act No. 28 respecting the payment of wages, of 19.05.1930 (L.S. 1930-Ice.1).
2. Act No. 80 on Trade Unions and Industrial Disputes, of 11.06.1938.
3. Act No. 55 on Wage-Earners' Terms of Employment and the Obligatory Insurance of Pension Rights, of 09.06.1980.

India

1. Act No. XI to provide for fixing minimum rates of wages in certain employments, of 15.03.1948 (L.S. 1948-Ind.2), as amended by Act No. 26, of 20.05.1954, and Act No. 30, of 17.09.1957 (L.S. 1957-Ind.1).

Indonesia

1. Regulation of Minister of Manpower No. 5 on Minimum Wage, of 1989.

Islamic Republic of Iran

1. Labour Code, of 20.11.1990 (L.L.D. 1990-IRN 1).

Iraq

1. Act No. 71 to establish the Labour Code, of 27.07.1987.

Ireland

1. Payment of Wages Act No. 25, of 23.07.1991.

Israel

1. Minimum Wage Law, of 1987.

Italy

1. Constitution of the Italian Republic, of 22.12.1947 (L.S. 1947-It.5).
 2. Act No. 741 on Minimum Wages; Conditions of Work, of 14.07.1959 (L.S. 1959-It.3).
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3. Act No. 191 on the automatic adjustment of wages as a result of variations in the cost of living, of 13.07.1990.
4. Act No. 38 respecting compensation in the event of contingency, of 26.02.1986.
5. Italian Civil Code, of 1957.

Jamaica

1. The Minimum Wage Act, of 22.12.1938.

Japan

1. Law No. 137 on Minimum Wages, of 15.04.1959 (L.S. 1959-Jap.1).
2. Industrial Home Work Act No. 60, of 16.05.1970 (L.S. 1970-Jap.1).
3. Law No. 49 on Labor Standard, of 07.04.1947 (L.S. 1947-Jap.3).

Kenya

1. Regulation of Wages and Conditions of Employment Ordinance, of 07.04.1951 (L.S. 1951-Ken.1), as amended in 1967.
2. The Regulation of Wages (Agricultural Industry) Order, of 01.08.1982.
3. Employment Act No. 2 (Codification), of 12.04.1976 (L.S. 1976-Ken.1).

Lebanon

1. Labour Code Act, of 23.09.1946 (L.S. 1946-Leb.1).

Lesotho

1. Act No. 35 on Wages and Conditions of Employment Act 1969, of 10.11.1969.

Libyan Arab Jamahiriya

1. Labour Code, of 01.05.1970 (L.S. 1970-Libya 1).
2. Act No. 15 respecting wages, of 1981.

Luxembourg

1. Act establishing a reform of the minimum social wage, of 12.03.1973.
 2. Act establishing the salary scheme of State officials, of 22.06.1963.
 3. Act establishing the creation of the right to a minimum guaranteed income, of 26.07.1986.
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Madagascar

1. Labour Code, of 17.05.1975 (L.S. 1975-Mad.1).

Malawi

1. Regulation of Minimum Wages and Conditions of Employment, as revised in 1965.

Mali

1. Labour Code, of 19.08.1962 (L.S. 1962-Mali 1).

Malta

1. Act No. XI to make provisions for the regulation of conditions of employment and contracts of service, of 22.03.1952 (L.S. 1952-Malta 1), as amended by Act No XXI of 24.07.1969 (L.S. 1969-Malta 1).
2. Minimum Weekly Wage National Standard Order, of 1989.

Mauritania

1. Labour Code as amended, of 27.01.1976 (L.S. 1976-Mau.1).

Mauritius

1. The Industrial Relations Act, of 1973.

Mexico

1. Political Constitution of the United States of Mexico, of 1917.
2. Federal Labour Act, of 02.12.1969 (L.S. 1969-Mex.1).

Morocco

1. Decree respecting the minimum remuneration of wage-earning and salaried employees, of 18.06.1936 (L.S. 1936-Mor.3). See also (L.S. 1937-Mor.3A), (L.S. 1937-Mor.3D), (L.S. 1938-Mor.1).
 2. Dahir respecting the determination of the wages of manual workers of both sexes performing home work, of 20.12.1939.
 3. Decree No. 2-72-054 to raise the minimum wage in industry, commerce, the liberal professions and agriculture, of 15.02.1972.
 4. Decree No. 2-75-292 to raise the minimum wage in industry, commerce, the liberal professions and agriculture, of 12.06.1975.
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5. Decree No. 2-77-52 to raise the minimum wage in industry, commerce, the liberal professions and agriculture, of 28.12.1976.
6. Order respecting the application of the minimum wage to agricultural workers, of 15.09.1951.
7. Dahir extending to the province of Tangiers and the former Spanish protectorate the provisions of Dahir, of 18.06.1936, of 13.02.1958.
8. Order establishing the minimum agricultural wage, of 28.09.1954.
9. Dahir No. 1-72-219 to determine the conditions of employment and remuneration of agricultural workers, of 24.04.1973 (L.S. 1973-Mor.1).

Mozambique

1. Constitution, of 02.11.1990.
2. Labour Act, of 14.12.1985 (L.S. 1985-Moz.1).
3. Decree No. 5 respecting the wage system, of 30.01.1987.
4. Decree No. 33 respecting collective bargaining, of 24.12.1990.
5. Decree No. 4 respecting the new wage provisions, of 10.09.1980.
6. Decree No. 39 to establish minimum wages, of 28.12.1990.

Myanmar

1. Act No. 66 on Minimum Wages, of 1949 (L.S. 1949-Bur.1).

Namibia

1. Constitution, of 21.03.1990.
2. The Wage and Industrial Conciliation Ordinance No. 35, of 08.07.1952.

Nepal

1. Nepal Factories and Factory Workers Act, of 1959, as amended on 03.05.1978.

Netherlands

1. Minimum Wage and Minimum Leave Allowance Act, of 27.11.1968 (L.S. 1968-Neth.1), as amended by Act, of 11.02.1988.
2. Organisation of Industry Act, of 27.01.1950 (L.S. 1950-Neth.1).

New Zealand

1. An Act No. 77 to reform the law relating to labour relations, of 27.05.1987 (L.S. 1987-NZ 1), as amended by Act No. 110, of 31.08.1987.
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2. Act No. 115 to consolidate and amend the law relating to minimum wages, of 16.12.1983, as amended by Act No. 83, of 28.05.1987 and by Act, No. 113, of 31.08.1990.
3. The Minimum Wage Order, of 13.08.1990.
4. Act No. 16 to reform the law relating to apprenticeship, of 27.09.1983, as amended by Act No. 4, of 08.03.1985

Nicaragua

1. Constitution of the Republic of Nicaragua, of 09.01.1987 (L.S. 1987-Nic.1).
2. Labour Code, as amended up to 1986.
3. Act No. 129 respecting minimum wages, of 18.06.1991.

Niger

1. Labour Code, of 13.07.1962.

Nigeria

1. National Minimum Wage Act No. 6, of 03.09.1981.
2. National Minimum Wage (Amendment) Decree No. 48, of 31.12.1990.
3. Wages Boards and Industrial Councils Decree No. 1, of 12.01.1973.

Pakistan

1. The Minimum Wage Ordinance No. XXXIX, of 28.09.1961.
2. Payment of Wages Act No. IV. Assented to 23.04.1936 (L.S. 1936-Ind.1).

Panama

1. National Constitution, of 11.10.1972, as reformed on 25.10.1978.
2. Labour Code, of 30.12.1971 (L.S. 1971-Pan.1).
3. Act No. 1 establishing labour provisions to promote employment and productivity and the adoption of other standards, of 17.03.1986.
4. Cabinet Decree No. 249 to promulgate the organic law of the Ministry of Labour and Social Welfare, of 16.07.1970.
5. Decree No. 32 to appoint the members of the National Minimum Wage Commission, of 28.08.1990.

Papua New Guinea

1. Industrial Relations Ordinance No. 39, of 01.05.1962.
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2. An Ordinance No. 32 to amend the Industrial Relations Ordinance (of 1962) so as to provide for a Minimum Wage Board, of 06.04.1971.

Peru

1. Constitution of 12.07.1979 (L.S. 1979-Peru.1).
2. Legislative Decree No. 568 respecting the Act respecting the organisation and functions of the Ministries of Labour and Social Promotion.
3. Ministerial Resolution No. 136-91-TR to approve the general rules of the National Minimum Living Remuneration Committee.
4. Ministerial Resolution No. 056-91-TR.
5. Decree No. 007, of 21.05.1965 (L-S. 1965-Per.1A).
6. Supreme Decree No. 017-91-TR, of 11.03.1991.
7. Act No. 24792, respecting the fixing of the minimum living remuneration.
8. Legislative Decree No. 14222, to prescribe rules for minimum wage fixing, of 23.10.1962 (L.S. 1965-Per.1B).
9. Legislative Decree No. 140, of 1981.

Philippines

1. Wage Rationalization Act No. 6727, of 25.07.1988, effective on 01.07.1989.
2. Labour Code, of 01.05.1974 (L.S. 1974-Phi.1A).

Poland

1. Labour Code, of 26.06.1974. (L.S. 1974-Pol.1).
2. Act respecting the State Inspectorate of Labour, of 06.03.1981 (L.S. 1981-Pol.1).
3. Law amending certain regulations of the criminal law and the law of offences, of 28.09.1990.

Portugal

1. Constitution, of 02.04.1976 (L.S. 1976-Por.2).
 2. Legislative Decree No. 274, of 27.05.1974.
 3. Legislative Decree No. 113, of 29.05.1978.
 4. Legislative Decree No. 440, of 06.11.1979.
 5. Legislative Decree No. 69-A to update the minimum wage and repeal Legislative Decree No. 440 (of 1979), of 09.02.1987.
 6. Legislative Decree No. 411 to amend Legislative Decree No. 60-A (of 09.02.1987), of 31.12.1987.
 7. Legislative Decree No. 14-B to standardise the minimum wage, of 09.01.1991.
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8. Legislative Decree No. 519-CI, to lay down the legal principles governing collective labour relations, of 29.12.1979 (L.S. 1979-Por.5).
9. Legislative Decree No. 74 to establish the Standing Council on Social Consultation, of 02.03.1984.
10. Legislative Decree No. 50 to set up a wage guarantee system with the object of guaranteeing to workers the payment of the remuneration owed and not paid by the undertaking which employed them and which has been declared wound-up, bankrupt or insolvent, of 27.02.1985 (L.S 1985-Por.1).

Qatar

1. Labour Law No. 3, of 01.06.1962, as amended in 1974.

Romania

1. Labour Code, of 23.11.1972 (S.L. 1972-Rom.1).
2. Act No. 14 respecting the fixing of wages, of 08.02.1991.
3. Act No. 13 respecting collective labour agreements, of 08.02.1991 (D.D.S. 1991-ROM 2) (only in French).
4. Government Order No. 219, of 27.03.1991.
5. Legislative Decree No. 35 to amend certain regulations respecting wages, of 20.01.1990.

Rwanda

1. Labour Code, of 02.28.1967 (L.S. 1967-Rwa.1).
 2. Ministerial Order No. 221/09 respecting occupational classifications and the respective minimum wages and seniority bonuses, of 03.05.1976.
 3. Circular letter No. 2805/09.18/061 respecting the application of Ministerial Order No. 221/09 (of 03.05.1976), of 26.05.1976.
 4. Legislative Decree No. 15 to establish the National Commission on Staff in the Public Administration and Private Sector, of 07.06.1977.
 5. Presidential Order No. 151/09 to appoint members and determine the methods of operation of the National Commission and national subcommissions for the public sector and the private sector, of 07.06.1977.
 6. Presidential Order No. 264/09 to supplement Presidential Order No. 151/09 (of 07.06.1977), of 12.09.1977.
 7. Legislative Decree No. 35 to amend the Labour Code, of 10.11.1977.
 8. Ministerial Order No. 887/06 to amend Ministerial Order No. 221/09 (of 03.05.1976), of 21.10.1980.
 9. Circular letter No. 3297/06.18/061 concerning the application of Ministerial Order No. 887/06 (of 21.10.1980), of 21.10.1980.
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Saint Lucia

1. Ordinance No. 1 to provide for the Establishment of Wages Councils, of 06.02.1952.

San Marino

1. Act No. 7, respecting the protection of labour and workers, of 17.02.1961 (L.S. 1961-S.M.1).
2. Act No. 59 respecting the declaration of the rights of citizens and the fundamental principles of order in San Marino, of 08.07.1974.
3. Decree No. 57 to regulate the application of the sliding scale to dependent workers and pensioners, of 30.04.1986.
4. Single General Labour Contract, of 1990-91.

Saudi Arabia

1. Labour Code, of 15.11.1969 (6 Ramadan 1389). (L.S. 1969-Sau.Ar.1).

Senegal

1. Labour Code (Act No. 61-34), of 15.06.1961 (L.S. 1962-Sen.2B). See also (L.S. 1971-Sen.1A), (L.S. 1971-Sen.1B), (L.S. 1971-Sen.-1C), (L.S. 1971-Sen.1D), (L.S. 1975-Sen.1), (L.S. 1976-Sen.1), (L.S. 1977-Sen.1A), (L.S. 1977-Sen.1B) and (L.S. 1980-Sen.1A) (L.S. 1980-Sen.1B).

Seychelles

1. Act No. 22 to consolidate and up-date the laws respecting to employment which are hereby repealed, of 31.12.1985 (L.S. 1985-Sey.1).

Sierra Leone

1. The Regulation of Wages and Industrial Relations Act No. 18, of 15.12.1971 (L.S. 1971-S.L.1).

Singapore

1. Act No. 17 to consolidate and amend the law relative to employment, assented 06.08.1968 (L.S. 1968-Sin.1).

Solomon Islands

1. The Labour Act, of 31.12.1982.
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Spain

1. Worker's Charter, of 10.03.1980 (L.S. 1980-Sp.1).
2. Decree No. 2380 to make provisions for the regulation of wages, of 17.08.1973 (L.S. 1973-Sp.1).
3. Act No. 39 respecting the organisation of the Inspectorate of Labour, of 21.07.1962 (L.S. 1962-Sp.4).
4. Decree No. 2122 to approve the Labour Inspection Regulations, of 23.07.1971 (L.S. 1971-Sp.5).
5. Labour Procedure Act, of 27.04.1990.
6. Act No. 8 respecting social infringements and sanctions, of 07.04.1988.
7. Royal Decree No. 8 to fix an inter-occupational minimum wage for 1991, of 11.01.1991.

Sri Lanka

1. Wages Boards Ordinance No. 27, of 19.09.1941 as amended.
2. Act No. 19 to provide for the regulation of employment, hours of work and remuneration of persons in shops and offices, of 13.03.1954, as amended (L.S. 1954-Cey.1) and see also (L.S. 1957-Cey.2).
3. Act No. 43 to provide for the prevention, investigation and settlement of industrial disputes, and for matters connected therewith or incidental thereto, assented to 16.12.1950, as amended (L.S. 1950-Cey.1). See also (L.S. 1956-Cey.1), (L.S. 1957-Cey.1) and (L.S. 1962-Cey.1).

Sudan

1. Act respecting individual employment relationships, of 1981.
2. Act respecting wage committees and conditions of service, of 1976.

Suriname

1. Government Ordinance to issue regulations respecting collective agreements, of 14.07.1962 (L.S. 1962-Sur.1).

Swaziland

1. The Wages Proclamation No. 16, of 15.06.1964 (L.S. 1964-Swa.1), as amended by law No. 10, of 24.09.1981.
2. The Statistics Act, of 27.10.1967.

Switzerland

1. Federal Labour Act, of 13.03.1964 (L.S. 1964-Swi.1).
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2. Ordinance I respecting the implementation of the federal Labour Act, as amended on 21.12.1977.
3. Federal Law on Work at home, of 20.03.1981.
4. Ordinance respecting home work, of 20.12.1982.
5. The federal Act on the extension of the scope of collective bargaining agreements, of 28.09.1956.
6. The Employment Services and Rental of Services Act, of 06.10.1989.
7. Ordinance limiting the number of foreigners, of 06.10.1986.
8. Code of Obligations.

Syrian Arab Republic

1. Labour Code (law No. 91), of 05.04.1959 (L.S. 1959-U.A.R.1).
2. Agricultural Labour Code (Act No. 134), of 04.09.1958 (L.S. 1963-Syr.1B).

The United Republic of Tanzania

1. An Ordinance No. 15 to provide for the Establishment of Minimum Wage Boards and Wages Councils, of 27.02.1951.
2. The Regulation of Wages and Terms of Employment Order, of 24.08.1990.

Togo

1. Labour Code, of 08.05.1974.

Trinidad and Tobago

1. Minimum Wages Act No. 35, of 18.06.1976.

Tunisia

1. Labour Code, of 30.04.1966 (L.S 1966-Tun.1). See also (L.S. 1973-Tun.2) and (L.S. 1976-Tun.1).
2. Decree No. 73-247 respecting the wage-fixing procedure, of 26.05.1973.
3. Decree No. 74-493 setting up a National Commission on the guaranteed minimum wage, of 20.04.1974.
4. Decree No. 71-285 respecting agricultural labour committees, of 02.08.1971.

Turkey

1. The Constitution of the Republic of Turkey, of 1982.
 2. Labour Act No. 1475, of 25.08.1971, as amended up to 29.07.1983 (L.S. 1983-Tur.3).
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Uganda

1. Ordinance No. 21 to provide for the establishment of minimum wages advisory boards and wages councils. Assented to 16.10.1957 (L.S. 1957-Ug.1).
2. Employment Decree No. 4, of 02.06.1975 (L.S. 1975-Ug.1).
3. Minimum Wages Order No. 38, of 21.09.1984.

Ukraine

1. Ukrainian Labour Code, as amended.
2. Law on the Economic Independence of the Ukraine, of 03.08.1990.
3. Law on Undertakings, of 27.03.1991.

United Kingdom

1. Act to make fresh provision with respect to the protection of workers in relation to the payment of wages; to make further provision with respect to wages councils, of 25.07.1986 (S.L. 1986-U.K.1).
2. The Wages (Northern Ireland) Order No. 796, of 27.04.1988.
3. Agricultural Wages (Consolidation) Act, of 13.07.1948 (L.S. 1948-U.K.5).
4. Agricultural Wages (Scotland) Act, of 26.04.1949.
5. The Agricultural Wages (Regulation)(Northern Ireland) Order, of 21.12.1977.
6. Employment Protection Act, of 12.11.1975 (L.S. 1975-U.K. 2).
7. Agriculture Act, of 10.05.1967.
8. Agriculture (Miscellaneous Provisions) Act, of 1968.

United States of America

Federal Legislation

1. The Fair Labor Standards Act, of 1938, as consolidated in 1966 (L.S. 1966-U.S.A.1) and last amended on 17.11.1989.
2. Code of Federal Regulation, 29, parts 510-697, revised 01.07.1990.

States

Alaska

3. Alaska Wage and Hour Act, L. 1959, as last amended by Ch. 12, L. 1990, of 01.09.1990.
4. Alaska Administrative Code, 8 AAC, of 04.10.1990, C.

Arizona

5. Arizona Revised Statutes, as last amended by Ch. 179, L. 1988, of 05.05.1988.
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Arkansas

6. Arkansas Code, Secs 11-4-201 to 11-4-219, as last amended by Act 544, L. 1991, of 01.07.1991.

California

7. Labour Code, Part 4 of Division 2, as last amended by Chs. 460 and 1407 Ls. 1987, of 01.01.1988.

Colorado

8. Colorado Revised Statutes, Title 8, Article 6 as last amended by S.B. 12, L. 1986, of 01.07.1986.

Connecticut

9. General Statutes, Ch. 558, as last amended by P.A. 366, L. 1987, of 01.10.1987.

Delaware

10. Ch. 9 of Title 19, Delaware Code as amended by Ch. 141, L. 1989, of 01.01.1990.

District of Columbia

11. District of Columbia Code, as last amended by D.C. Law 6-203, L. 1987, of 28.02.1987.

Georgia

12. Georgia Minimum Wage Law, Title 34, Ch. 4, as last amended by Act 1281, L. 1984, of 01.07.1984.

Hawaii

13. Revised Law of Hawaii, Ch. 387 as last amended by Act 264, L. 1991, of 01.07.1991.

Idaho

14. Idaho Code, Ch. 15 of Title 44, as last amended by H.B. 596 and Ch. 212, Ls. 1990, of 01.04.1990.

Illinois

15. Minimum Wage Law, Ch. 48 of Illinois Revised Statutes, as last amended by P.A. 401, L. 1989, of 01.01.1990.

Indiana

16. Minimum Wage Law, Indiana Code, as last amended by H.B. 1012, L. 1990, of 01.07.1990.

Kansas

17. The Minimum Wage and Maximum Hours Law, Secs. 44-1201 to 44-1213 of Kansas Statutes Annotated, as amended by H.B. 2960, L. 1988, of 01.07.1988.

Kentucky

18. Kentucky Revised Statutes, as last amended by H.B. 687, L. 1990, of 13.07.1990.

19. 803 Kentucky Administrative Regulations 1:080 to 1:090, as last amended, of 09.07.1990.

Maine

20. Wages: Laws Secs. 661 to 668 Title 26, as last amended by Ch. 544, L. 1991, of 09.10.1991.

Maryland

21. Annotated Code, as last amended by Ch. 55, L. 1990, of 10.04.1990.

22. Code of Maryland Regulations, as amended, of 24.12.1990.

Massachusetts

23. General Laws, as last amended by Ch. 306, L. 1990, of 01.04.1991.

Michigan

24. Minimum Wage Law, as last amended by P.A. 45, L.1979, of 02.07.1979.

Minnesota

25. Minnesota Fair Labor Standards Act, as last amended by Ch. 418, L. 1990, of 09.04.1990.

26. Minnesota Rules, of 1989.

Missouri

27. Revised Statute of Missouri, as last amended by H.B. 461, L. 1989, of 28.08.1989.

Montana

28. Montana Code Annotated, as last amended by Ch. 216, L. 1991, of 01.04.1991.

Nebraska

29. Wage and Hour Act, as last amended by L.B. 297, L. 1991, of 07.06.1991.

Nevada

30. Nevada Revised Statutes, as last amended by Ch. 763, L. 1989, of 01.07.1989.

New Hampshire

31. Revised Statutes Annotated, Ch. 279, as last amended by Ch. 198, L. 1990, of 27.04.1990.

New Jersey

32. New Jersey State Wage and Hour Law, Ch.34:11-56a as last amended by A.B. 13, L. 1990, of 03.05.1990.

New York

33. Labour Law, as last amended by Ch. 38, L. 1990, of 30.03.1990.

New Mexico

34. New Mexico Statutes Annotated, Ch. 50, Article 4, as last amended by Ch. 59, L. 1983, of 17.06.1983.

North Carolina

35. Wage and Hour Act, Ch. 95, Art. 25, as last amended by Ch. 330, L. 1991, of 19.06.1991, and by Chs. 270 and 492, Ls. 1991, of 01.01.1992.

Ohio

36. Ohio Revised Code, Secs. 4111.01 to 4111.13, as last amended by H.B. 446, L. 1990, of 25.09.1990.

Oklahoma

37. Oklahoma Minimum Wage Act, Title 40, Secs 197.1 to 197.17, as last amended by H.B. 1163, L. 1983, of 01.11.1983.

Oregon

38. Oregon Revised Statutes, Ch. 653, as last amended by Ch. 870, L. 1991, of 29.09.1991.

Pennsylvania

39. Minimum Wage Act, Sec. 333.102 to 333.113 of Title 43, as last amended by Act 79, L. 1990, of 09.07.1990.
40. Rules and Regulations, Title 43, Sec. 231, of 05.05.1979.

Puerto Rico

41. Minimum Wage Board Regulation No 7, of 23.12.1982.
42. Minimum Wage Board Regulation No 13, of 29.07.1990.

Rhode Island

43. Minimum Wage Law, Ch. 28-12, as last amended by Ch. 222, L. 1990, of 09.07.1990.

South Dakota

44. South Dakota Codified Law, SDCL 60-11-3 to 60-11-5, as last amended by S.B. 53, L. 1991, of 01.07.1991.

Texas

45. Texas Minimum Wage Act of 1970, Article 515qd, as last amended by H.B. 863, L. 1989, of 01.09.1989.

Utah

46. Utah Code Annotated, Ch. 40 of title 34, as amended by H.B. 65, L. 1990, of 14.02.1990.
47. R487-1 to R487-3 and Rules and Regulations, as last revised of 01.04.1991.

Vermont

48. Vermont Statutes, as last amended by Act 131, L. 1990, of 20.03.1990.

Virginia

49. Virginia Minimum Wage Act, Ch. 3 of title 40.1, Art. 1.1, as last amended by Chs. 547 and 596, Ls. 1991, of 01.07.1991.

Washington

50. Washington Revised Code, Title 49, as last amended by Ch. 149, L. 1990, of 07.06.1990.

51. WAC Rules and Regulations, of 24.02.1976.

West Virginia

52. Secs 21-5C-1 to 21-5C-10, Article 5C of Ch. 21, as last amended by Ch. 97, L. 1991, of 09.03.1991.

53. Administrative Regulations, Title 42, Series 8, as last revised of 31.12.1982.

Wisconsin

54. Wisconsin Statutes, as last amended by Act 225, L. 1990, of 20.04.1990.

Wyoming

55. Wyoming Statutes Annotated, as amended.

North Dakota

56. North Dakota Century Code, as last amended by Ch. 1, L. 1989, of 01.07.1989, and S.B. 2498, L. 1991, of 01.07.1991.

Yemen

1. Labour Code No. 5, of 15.10.1970, published in 06.1976.

Yugoslavia

1. Constitution of the Socialist Federal Republic of Yugoslavia, of 21.02.1974 (L.S. 1974-Yug.1).
2. Act No. 921 respecting the fundamental rights arising out of the employment relationship, of 28.09.1989.
3. Social compact concerning collective bases and measures for independent regulation of relations in obtaining and distributing income in Yugoslavia.

Zaire

1. Labour Code, of 09.08.1967 (L.S. 1967-Congo (Kin.)1). See also (L.S. 1973-Zai.1).
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Zambia

1. Act No. 25 to repeal and replace the Minimum Wages, Wages Councils and Conditions of Employment Act, of 20.08.1982.
2. Act No. 9 to provide for the establishment of the Prices and Incomes Commission, of 05.04.1981, as amended by Law No. 13, of 08.04.1983.

Zimbabwe

1. Labour Relations Act, of 1984 (L.S. 1985-Zim.1).

Non-metropolitan territories*Falkland Islands*

1. Labour (Minimum Wage) Ordinance, of 13.03.1942.

Guernsey

1. The Industrial Disputes and Conditions of Employment Law, of 22.02.1947, as amended on 12.07.1958.

Hong Kong

1. Trade Boards Ordinance, of 21.06.1940.

Jersey

1. Industrial Disputes Law, of 18.05.1956, as amended and registered on 05.09.1959.

Montserrat

1. Employment Ordinance No. 19 to amend and update Labour Legislation, of 07.12.1979.
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